

IS THE RAILROAD RETIREMENT BOARD DOING ENOUGH TO PROTECT AGAINST FRAUD?

HEARING

BEFORE THE
SUBCOMMITTEE ON
GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MAY 1, 2015

Serial No. 114-23

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PUBLISHING OFFICE

95-176 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

JASON CHAFFETZ, Utah, *Chairman*

JOHN L. MICA, Florida	ELIJAH E. CUMMINGS, Maryland, <i>Ranking</i>
MICHAEL R. TURNER, Ohio	<i>Minority Member</i>
JOHN J. DUNCAN, JR., Tennessee	CAROLYN B. MALONEY, New York
JIM JORDAN, Ohio	ELEANOR HOLMES NORTON, District of
TIM WALBERG, Michigan	Columbia
JUSTIN AMASH, Michigan	WM. LACY CLAY, Missouri
PAUL A. GOSAR, Arizona	STEPHEN F. LYNCH, Massachusetts
SCOTT DESJARLAIS, Tennessee	JIM COOPER, Tennessee
TREY GOWDY, South Carolina	GERALD E. CONNOLLY, Virginia
BLAKE FARENTHOLD, Texas	MATT CARTWRIGHT, Pennsylvania
CYNTHIA M. LUMMIS, Wyoming	TAMMY DUCKWORTH, Illinois
THOMAS MASSIE, Kentucky	ROBIN L. KELLY, Illinois
MARK MEADOWS, North Carolina	BRENDA L. LAWRENCE, Michigan
RON DESANTIS, Florida	TED LIEU, California
MICK MULVANEY, South Carolina	BONNIE WATSON COLEMAN, New Jersey
KEN BUCK, Colorado	STACEY E. PLASKETT, Virgin Islands
MARK WALKER, North Carolina	MARK DeSAULNIER, California
ROD BLUM, Iowa	BRENDAN F. BOYLE, Pennsylvania
JODY B. HICE, Georgia	PETER WELCH, Vermont
STEVE RUSSELL, Oklahoma	MICHELLE LUJAN GRISHAM, New Mexico
EARL L. "BUDDY" CARTER, Georgia	
GLENN GROTHMAN, Wisconsin	
WILL HURD, Texas	
GARY J. PALMER, Alabama	

SEAN McLAUGHLIN, *Staff Director*

DAVID RAPALLO, *Minority Staff Director*

ALEXA ARMSTRONG, *Professional Staff Member*

SARAH VANCE, *Clerk*

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

MARK MEADOWS, North Carolina, *Chairman*

JIM JORDAN, Ohio	GERALD E. CONNOLLY, Virginia, Ranking
TIM WALBERG, Michigan, <i>Vice Chair</i>	Minority Member
TREY GOWDY, South Carolina	CAROLYN B. MALONEY, New York
THOMAS MASSIE, Kentucky	ELEANOR HOLMES NORTON, District of
MICK MULVANEY, South Carolina	Columbia
KEN BUCK, Colorado	WM. LACY CLAY, Missouri
EARL L. "BUDDY" CARTER, Georgia	STACEY E. PLASKETT, Virgin Islands
GLENN GROTHMAN, Wisconsin	STEPHEN F. LYNCH, Massachusetts

CONTENTS

Hearing held on May 1, 2015	Page 1
WITNESSES	
The Hon. Martin J. Dickman, Inspector General, Railroad Retirement Board	
Oral Statement	5
Written Statement	7
The Hon. Michael S. Schwartz, Chairman, Railroad Retirement Board	
Oral Statement	30
Written Statement	32
Mr. Daniel Bertoni, Director, Education, Workforce, and Income Security, Government Accountability Office	
Oral Statement	38
Written Statement	40
APPENDIX	
Questions from Chairman Meadows	84

IS THE RAILROAD RETIREMENT BOARD DOING ENOUGH TO PROTECT AGAINST FRAUD?

Friday, May 1, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:02 a.m., in room 2154, Rayburn House Office Building, Hon. Mark Meadows (chairman of the subcommittee) presiding.

Present: Representatives Meadows, Walberg, Mulvaney, Carter, Grothman, Connolly, and Maloney.

Also present: Representatives Palmer and Mica.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order.

Without objection, the chair is authorized to declare a recess at any time.

I ask unanimous consent that our colleagues Mr. Mica and Mr. Palmer be allowed to fully participate in today's hearing.

Without objection, so ordered.

I now recognize Mr. Connolly, the ranking member of the Subcommittee on Government Operations, for his opening Statement.

I will let you go first, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And thanks for calling this hearing on a day when we're out of session.

For over a century, the railway industry has supported thousands of well-paying jobs across our Nation, including more than 16,000 railroad workers and retirees in the Commonwealth of Virginia. We all ought to be proud of this American success story.

The Railroad Retirement Board was created in the 1930's to administer retirement, unemployment, sickness, and survivor benefit programs for railroad workers and their families. In that era, railroad workers had a well developed pension plan but sought to expand it to a national retirement system because Social Security was still in the planning stages. The results of those workers' efforts and legislation is what we see today, one of the largest pension funds, worth more than \$26 billion last year. The most impressive aspect of this retirement plan is that it is solely funded by fees collected from railroad workers and rail employees. In fact, railroad workers have historically had more money deducted from their pay-

checks to pay for their retirement than most individuals contribute to Social Security for theirs.

The bottom line is that the RRB is responsible for administering a vital safety net that is only funded by and only benefits America's railroad workers and families who are not eligible to claim Social Security benefits. Today we're here to discuss oversight of disability benefits programs provided by the railroad retirement system. Concerns have legitimately been raised about the vulnerability for fraud in those programs. This is an important discussion because it's against the background of the Long Island Rail Road retiree fraud, in which the RRB and its inspector general initially failed to detect widespread false claims for occupational disability benefits.

Fortunately, a team consisting of the Department of Justice and the OIG was eventually able to uncover the fraud and bring those responsible to justice. Let's be clear, all stakeholders abhor and condemn in the strongest possible terms the massive fraud perpetrated by LIRR retirees, doctors, and disability facilitators. In fact, railroad workers and their families were likely the most outraged about it since it's their money that solely funds the RRB-administered pension fund, and, ultimately, any theft from that fund comes out of their pockets. Indeed, no group in America has a greater incentive to enhance RRB's ability to detect and prevent disability fraud than our Nation's railroad workers since it's their money, and theirs alone, which will rise to compensate for any theft from the fund.

In 2014, GAO found that the RRB is at risk for making improper payments to individuals who did not qualify for occupational disability benefits because there's no systematic way to evaluate potential fraudulent claims or prevent fraud. GAO also found that the RRB was not sufficiently committed to fraud awareness throughout the agency. GAO and the IG has produced several recommendations to improve the integrity of the disability programs. And it's important to note the RRB is implementing a set of initiatives to strengthen fraud detection and prevention pursuant to GAO recommendations.

For example, the RRB now requires independent medical exams for all disability applicants, as opposed to relying on medical evidence submitted by the applicant. The RRB is also expanding its fraud awareness training beyond its headquarters to apply to all staff. It's important we bring balance to this hearing. The vast majority of dedicated and hard-working railroad retirees who participate in disability programs are honest and deserving recipients of the earned benefits that they and other railroad workers solely funded.

Mr. Chairman, this is personal for me. My mother's side of the family were all railroad men. My grandfather made very little, didn't have much of a pension, and died prematurely because, frankly, of the toxic effects of the exhaust he was subjected to every day. My uncles and their uncles were all railroad men. And they were hard-working people who certainly didn't cheat the system. And I think they were in great company.

I just want to say that because I know from personal experience what working on the railroad can be like. And it's hard work. And

it takes a lot out of the body over a number of years. And I hope we—I know you and I hope and certainly believe my colleagues will respect that fact.

As with any program, there are always unscrupulous individuals who are dishonest and seek to perpetrate fraud. And it's vital we uncover those individuals and bring them to justice. However, it would be deeply unfair to presume that the majority of participants are dishonest based on those few bad actors. Further, we must exercise caution in advancing solutions to ensure that we do not adversely impact the thousands of railroad retirees who work hard and played by the rules, like my grandfather and my uncles. For instance, while high approval rates for disability benefits may indicate a higher risk of fraud, it's an imprecise indicator. Depending on the structure of a given plan, it's also plausible that a program might feature high integrity and high approval rates.

Moving forward, Congress should provide the RRB with a fair opportunity to implement the recommendations made by the GAO and the IG and gauge how well they are working. By doing so, we can avoid punishing the majority of railroad workers who have done nothing wrong because of the transgressions of a few; protect the National Railroad Retirement Investment Trust that is funded by our Nation's hard-working railroad workers.

I look toward to the testimony of our witnesses today. And I thank the chair for his courtesy.

Mr. MEADOWS. I thank the gentleman from Virginia.

And rarely do we share the same kind of background that we do today. Actually, my grandfather worked on the railroad for security in Pine Bluff, Arkansas. There was never a more honest individual or a hard-working individual. In addition, I have one of my dearest friends, Forrest Jarrett, who is a retired security gentleman from one of the rail industries. And he's admonished me: Whatever you do, be good to the guys that work on the rail.

And so it is with that in mind that not only do we hold this hearing but that we look to address some of the bad actors as the ranking member is talking about. We're here really today to perform one of the committee's core function, and that is protecting the taxpayer dollars from waste and fraud. And, in this case, we're also trying to protect the wallets of every single railroad customer in the country.

And the chain of events that brought us here today actually started in the late 1990's when a group of doctors, RRB employees, and union officials, and railroad workers in the New York area conspired to defraud the Railroad Retirement Board—or its disability program. And this fraud scheme that they cooked up was fairly simple: Union officials and RRB employees connected some railroad employees with crooked doctors who sold phoney paperwork for cash in my opinion. And the railroad employees took phoney paperwork to the RRB to support their claims for disability payments. Now, unlike the gentleman to my right's grandparents and relatives and my grandfather—we couldn't imagine that happening from somebody in our family. And so that is what has brought us here today. By the time they were caught, the fraud ring resulted in the RRB awarding \$1 billion worth of bogus disability claims.

As we're going to hear from two of our witnesses today, the RRB remains at risk for similar scams still today. If we could start the video please. What we're about to look at here is a Long Island Rail Road employee who was simultaneously earning a fifth degree black belt in jujitsu. Now, when this video was filmed, the man was collecting occupational disability benefits from the RRB.

[Video shown.]

Mr. MEADOWS. And, according to this man's disability application, he suffered from severe pain in his shoulder, lower back, and neck. Maybe it's because of all of this activity. He claimed the pain was so severe that he had a difficult time standing, sitting, walking, bathing, and dressing. And the RRB claim examiner determined that he was no longer capable of performing his job because of his physical condition.

I would ask each one of you, what do you think?

Had the RRB claims examiner had access to this video, I hope that things would have turned out differently. But, even still, without the video, there would have been other things that should have struck the examiner as odd. For example, in his last 17 months as a railroad employee, he worked about 1,500 hours of overtime, including the day before he retired with disability working overtime. He claimed that he had trouble doing the basic tasks, to manage the work, massive amount of overtime until the very last day of retiring. But the RRB claimed that examiners don't ask those sort of questions. As the inspector general will tell us, they just rubber stamp it.

Now, the man in the video was only one of many individuals involved in this fraud scheme. There were others who were observed by the investigators competing in golf tournaments, playing tennis, participating in a 400-mile bike ride, and even hiking Mount Kilimanjaro. The RRB's disability benefits program is a crucial safety net for rail workers who are injured due to the demanding nature of the job. And we must protect it from fraud so that it can serve those who suffer from legitimate disabilities.

Now, all of this came to light in 2008. And the IG began making immediate recommendations addressing the potential areas that undermine the disability application process. And the first of the IG's recommendations was in 2008. And, since that time, the IG has issued nearly 70 other recommendations in response to the Long Island Rail Road fraud scheme. Yet, according to the IG, it appears that only 5, get that, 5 of 70 recommendations have been fully implemented. February of last year, the inspector general issued a 7-day letter. Now, a 7-day letter is kind of a last-resort tool that the inspector generals use. It's kind of basically like the government's equivalent of pulling a fire alarm, saying, Wait, we got a real problem here.

So what's the fire? Well, the national approval rate for disability applications remains just as high as it was when the LIRR fraud scheme was bilking the RRB out of billions of dollars.

Sounds like not much has changed. And I look forward to hearing from Mr. Dickman and Mr. Bertoni about the problems that they have identified and about their recommendations to fix those problems. But what I real want to hear today will come from you, Mr. Schwartz. You can tell us why these problems still persist and

haven't been fixed after all these years. More importantly, when can we expect to hear that the RRB is finally taking some meaningful actions to ensure that the program remains available for those that are truly in need?

So I would like to thank all the witnesses here today for joining us. And I look forward to hearing your testimony. And, with that, I want to hold the record open for 5 legislative days for any members who would like to submit a written Statement.

Mr. MEADOWS. We will now recognize the panel of witnesses.

I'm pleased to welcome the Honorable Martin Dickman, inspector general of the Railroad Retirement Board.

Welcome, Mr. Dickman.

The Honorable Michael Schwartz, Chairman of the Railroad Retirement Board; and Mr. Daniel Bertoni—is that correct? Close enough?

Mr. BERTONI. Close enough.

Mr. MEADOWS. Okay. Bertoni, Director of Education, Workforce, and Income Security at the Government Accountability Office, also known as the GAO.

Welcome to all of you.

And, pursuant to committee rules, all witnesses will be sworn in before they testify. I'd ask that you please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Let the record reflect that all witnesses answered in the affirmative. And, in order to allow time for discussion, I would ask that your oral testimony be limited to 5 minutes. Your entire written Statement will be made part of the record.

I would like to go ahead and recognize our first witness, Mr. Dickman.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE MARTIN J. DICKMAN

Mr. DICKMAN. Thank you, Chairman Meadows, Ranking Member Connolly and members of the committee, thank you for allowing me the opportunity to speak to you here today. As an inspector general of the Railroad Retirement Board, the basic function of an inspector general is to promote economy and efficiency; prevent and detect waste, fraud, and abuse of the parent agency.

Pursuant to our 7-day letter and our continuing examination of the Railroad Retirement Board's occupational disability program starting in 2007, it has been an ongoing educational process to us as far as the programs involved by the Railroad Retirement Board. And I go into much greater detail about the problems and some of the solutions that we have presented, many different types of solutions, all the way from eliminating the Railroad Retirement Board's occupational disability program to limiting it to a 2-year program. And I would be happy to explain that later in the conference.

Drilling down to the core issue, the core issue—and these are my views alone. They are not representative of the administration or anybody else's. Unless there is a change in the culture of the Rail-

road Retirement Board, this culture of we're here to pay, without looking at anything else, without even—and they acknowledge it—without even using and acceding to the regulations that are in place, as far as finding out the job description, as far as doing more of an in-depth analysis of the individual's application process, and then we have also obviously made recommendations that require change in regulations or even some change by the legislature, by the Congress. But, basically, it goes to this feeling that, again, we're here to pay. And unless that culture is changed, all of the money that's going to be spent, the \$3.3 million that's proposed in the Fiscal Year 2016 budget for program integrity, in my opinion, would be a total waste of money.

And, to us, the proof is in the 98 percent approval rate that continues. Other people may say 98 percent, you know, they've got—if you looked at the surface of what they have done and look at the various programs, you'd say the inspector general has to be, you know, he's an idiot because look at what we're doing here. We have these doctors that look at these people; we'll review this; we'll review that. It's all superficial. The doctors look at somebody for 20 minutes. The American Medical Association will say to do an in-depth examination, a residual functional capacity exam takes 6 to 8 hours to find out whether the person is lying or not.

The other portion that really has to change is the structure of the Board. I realize and everyone else realizes it's a function of collective bargaining between labor and the management. Those are the realities of the situation. The big-ticket items are decided by them. And, in my opinion, you know, forget about what the Chairman wants; forget about what Congress wants; it's what they want to do. Because they are a very powerful force and because, you know, the basic function of the railway and how it is intertwined in our economy, that if occupational disability is somewhat changed, there would be a nationwide rail strike. And everybody knows that.

But to give the Railroad Retirement Board an opportunity, a real opportunity for change, in my opinion, the Board structure has to be changed from this troika, where you have a rail member, management member, and a Chairman. And the Chairman is only Chairman in name only. He has no more power than anybody else. So the big ticket items are decided by rail and labor. And the Chairman just sits there, tries his best, in my opinion, is the most aggressive pushing for change. But the end result is, as I have said, we still have this 98 approval rate.

So, unless something like that is done, then I don't think that all this money that's going to be spent is really going to make any difference down the road. We could come back here 2 years from now and we'll still have a 98 percent approval rate.

I thank you for the opportunity to speak this morning. And, again, I would like to thank my staff for doing all the heavy lifting in this program and also, as far as concerning the Long Island Rail Road case, the U.S. attorney, who took on a very difficult case, and the FBI, which also helped tremendously in this matter. Thank you.

[Prepared Statement of Mr. Dickman follows:]

**Statement of Martin J. Dickman
Inspector General, U.S. Railroad Retirement Board**

**Before the
U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Government Operations**



**Systemic Deficiencies within the Railroad Retirement Board's
Occupational Disability Program**

May 1, 2015

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, I am Martin J. Dickman, Inspector General of the U.S. Railroad Retirement Board (RRB). I truly appreciate the Subcommittee's time and continued interest in the issues raised by my February 10, 2014 seven-day letter. (A copy of this letter is attached and respectfully submitted as part of this testimony). My office has long voiced concerns regarding the RRB's occupational disability program; however, starting in 2007, while investigating massive occupational disability fraud at the Long Island Rail Road (LIRR) we discovered a number of serious systemic deficiencies. The program's weaknesses are pervasive and require both procedural and legislative changes to assure that the RRB is paying only truly deserving beneficiaries.

It was after significant deliberation and considerable work and review by my office that I felt compelled to issue a seven-day letter. The agency has now had more than a year to address the issues raised, but unfortunately their initial reaction was one of defensiveness and inaction. I acknowledge that lately we have seen some movement within the agency to address these issues, but they offer little more than a veneer of program improvement. The RRB's occupational disability program offers a benefit for our nation's railroad workers and their families, but unless there is a radical transformation in agency culture and fundamental legislative and procedural changes, the occupational disability program will remain vulnerable to fraud and abuse.

According to the agency's *2014 Annual Report*, as of September 30, 2013, the RRB is paying approximately 60,500 occupational disability annuities with an average dollar value of \$2,638 per month.¹ This calculates to an annual occupational disability expenditure of approximately \$1.9 billion. The most striking agency statistic, however, is the RRB's national occupational disability approval rate of 98%.² According to the Government Accountability Office (GAO) in their 2009 review of the RRB's occupational disability program "a nearly 100-percent approval rate in a federal disability program is troubling, and could indicate lax internal controls in RRB's decision-making process, weaknesses in program design, or both."³

My testimony today will focus on the foundational flaws that continue to leave the RRB's occupational disability program susceptible to fraud and abuse, including an agency culture that focuses on paying benefits quickly, thereby increasing the likelihood of erroneous payments. I will also present several key recommendations that address weaknesses in the occupational disability program and will serve as a deterrent to those who may wish to defraud or abuse this program. This testimony is based on information my office has obtained through a wide-breadth of investigations and audits.

¹ Railroad Retirement Board, *2014 Annual Report* (Chicago, 2014).

² This approval rate excludes applications processed pursuant to Board Orders 13-33 and 13-55. These Board Orders are discussed on pages 4 and 5.

³ GAO, *Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities*, GAO-09-821R (Washington, D.C., September 9, 2009).

Background

The RRB is an independent agency in the executive branch of the Federal government. The RRB administers comprehensive disability, retirement-survivor, and unemployment-sickness insurance benefit programs for the nation's railroad workers and their families. These programs are codified under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA), respectively.⁴ During fiscal year 2014, the RRB paid approximately \$12 billion, net of recoveries and offsetting collections, in railroad retirement and survivor payments (including disability annuity payments) to about 562,000 beneficiaries. The RRB also paid approximately \$86 million, net of recoveries and offsetting collections, in unemployment-sickness insurance benefits to roughly 26,000 beneficiaries.⁵

The RRA was enacted in the 1930s to establish a Federally-administered railroad retirement system (including total and permanent disability annuities). Occupational disability annuities were added through the 1946 amendments.

A railroad employee is considered to be occupationally disabled if a physical and/or mental impairment permanently disqualifies them from performing his or her *regular railroad occupation* (even though the employee may be able to perform other kinds of work).⁶ Total and permanent disability annuitants are adjudicated as being disabled from performing any substantial gainful activity.

There are several ways for the RRB to adjudicate an occupational disability application, with the independent case evaluation (ICE) process being the mechanism most commonly used and the most susceptible to fraud and abuse. In fact, RRB disability claims examiners use the ICE process in nearly 80% of the occupational disability application reviews. The ICE process is utilized to collect and review disability applications and related occupational/medical documentation to determine benefit eligibility. This process also includes a determination of basic requirements for an occupational disability including years of service, medical inability to perform their *regular railroad occupation*, and a *current connection* with the railroad industry.

Long Island Rail Road Prosecution

In 2007, the OIG initiated a joint investigation with the Federal Bureau of Investigation that unraveled a complex occupational disability fraud scheme perpetrated by a number of LIRR retirees, doctors, and disability facilitators. This investigation revealed that three doctors used their medical practices to run "disability mills." These doctors charged a premium of approximately \$800 to \$1,000 in exchange for grossly exaggerated medical documentation designed to fraudulently qualify their client for an RRB occupational disability. In fact, the doctors also helped the retirees pre-plan their disabilities so they

⁴ 45 U.S.C. § 231 and 45 U.S.C. § 351-369.

⁵ Railroad Retirement Board, *Performance and Accountability Report* (Chicago, Illinois, November 7, 2014).

⁶ 45 U.S.C. § 231a(a)2.

would coincide with their anticipated retirement dates. Some of the retirees also used disability facilitators to increase the likelihood of being approved. These facilitators assisted and coached their clients on how to complete the RRB disability application in order to gain approval. One of the facilitators convicted in this scheme is a former RRB employee.

This case was referred to and prosecuted by the U.S. Attorney's Office for the Southern District of New York. All 33 people charged in connection with the LIRR disability fraud scheme have either pled guilty (28 individuals) or been convicted at trial (5 individuals). Federal sentences imposed by the court totaled 544 months of prison, 594 months of probation, 456 months of supervised release, 57 months of home confinement, 300 hours of community service, and approximately \$614 million in restitution, forfeiture, and fines. We estimate that more than 700 individuals may have been involved in this fraud scheme and the investigation remains ongoing.

The RRB's Response to Occupational Disability Fraud and Systemic Weaknesses

I remain dismayed by the reaction and response from agency leadership to our occupational disability fraud prosecutions, audits, and numerous related program alerts and memoranda. Even several years after the LIRR prosecution, there still remains no unified, cohesive response that would enable the RRB to detect or prevent fraud and abuse against its occupational disability program. In fact, the agency's response to our successful occupational disability fraud prosecution and the associated exposure of systemic weaknesses shows an agency culture willing to protect those associated with a high likelihood of defrauding the system by not only allowing them to reapply for benefits, but also preventing the collection of fraudulent payments.

The following table illustrates this point by briefly evaluating the agency's response as evident in their associated Board Orders.

Board Order	Date	Purpose	Brief Description	Result
08-63	10/20/2008	To increase oversight of LIRR occupational disability applications.	Five point plan aimed at increasing program integrity. Plan included centralizing LIRR adjudication to two RRB disability claims examiners and an increased use of contract consultative medical exams.	Approximately 96% LIRR occupational disability approval rate including the approval of 7 individuals who subsequently plead guilty to defrauding the program.
12-29	05/21/2012	LIRR voluntary disclosure and disposition program.	Offered LIRR disability annuitants the opportunity to cancel their annuities under either an early agreement or a standard agreement. The early agreement did not require any repayment of previous benefits unless the annuitant reapplied for disability benefits. The standard agreement required a 50% repayment. Both agreements required 100% repayment if the annuitant applied for future disability benefits.	45 individuals participated in this program.
13-33	06/27/2013	Terminated disability benefits for LIRR annuitants associated with Dr. Peter Ajemian. Allowed terminated annuitants to file "new" applications.	See discussion below.	Approximately 89% re-approval rate. As of 04/02/2015, 542 out of 570 terminated annuitants have reapplied for disability benefits. RRB did not review previous applications for indications of fraud.
13-55	09/30/2013	Terminated disability benefits for LIRR annuitants associated with Dr. Peter Lesniewski. Allowed terminated annuitants to file "new" applications.	See discussion below.	Approximately 96% re-approval rate. As of 04/02/2015, 169 out of 174 LIRR terminated annuitants have reapplied for disability benefits. RRB did not review previous applications for indications of fraud.
15-02	11/06/2014	Supersedes 08-63	Three Member Board adopted changes to the processing of disability annuities under the RRA.	Has not been implemented; however, these changes fail to address core program deficiencies.

Board Orders have Been Ineffective at Dealing with Fraud and Abuse

Board Orders 13-33 and 13-55 established the RRB's policy regarding the termination of occupational disability annuities that were originally awarded based upon medical evidence from the doctors found guilty in connection with the LIRR prosecution. These orders, however, also prevented the recovery of previous improper payments made to the annuitants.

In order to preserve future prosecutorial action, my office originally asked the RRB to not take any administrative recovery action regarding disability annuities previously paid to annuitants associated with Dr. Ajemian (the case against Dr. Lesniewski was still pending at that time). RRB's General Counsel agreed that no recovery would be initiated at that time for previously paid annuities. My office subsequently requested that the agency remove any reference to previously paid annuities from termination notices. The agency never responded to this request and the RRB's actual termination letters stated "[a]nnuity payments made to you prior to the termination...will not be reopened or recovered." (Emphasis added.) We estimate that through the use of this language, the RRB declined to pursue as much as \$275 million in improper payments.

LIRR annuitants re-approved through Board Orders 08-63, 13-33, and 13-55 are the very same individuals the Chairman characterized in his February 18, 2014, response to my seven-day letter as exploiting the occupational disability program. It is illogical that the RRB would potentially recover improper payments from individuals who have actually taken ownership of their actions by volunteering to terminate their annuities, under the voluntary disclosure and disposition program set forth in Board Order 12-29, while individuals who failed to take any responsibility for their actions were not only permitted to re-apply but were for the most part made whole once their applications were reapproved (with an average re-approval rate of approximately 91%) through the RRB's deficient adjudication process.

Occupational Disability Program Improvements Hampered by RRB Agency Culture

The RRB is an independent agency in the executive branch of the Federal government. The RRA mandates a three member Board that is appointed, with the advice and consent of the Senate, by the President of the United States. One member is appointed upon the recommendation of rail employers; another member is appointed upon the recommendation of rail labor; and the third, who is the Chairman, is appointed to represent the public's interest. Each member serves a five year term. In my experience, this structure is problematic because it allows rail labor and management to exercise control over a Federal agency and has resulted in a culture that is focused on paying benefits quickly, not accurately. Further, this structure has hampered the agency's response to the identified weaknesses in the occupational disability program.

Decision Making at the RRB

Historically, changes in RRB programs are typically initiated and agreed to by private-sector parties, in negotiations between rail management and labor, and then Congress examines the possible modifications.⁷ This practice differs from the RRA which states that the Board shall work in *cooperation* with labor and management to determine occupational disability standards.⁸ The importance of agency leadership is made clear in Standards for Internal Control in the Federal Government, which describes the control environment as the foundation for the internal control system.⁹ The oversight body and management should establish and maintain an environment throughout the entity that sets a positive attitude toward internal control. A key principle in the system of internal controls is management's commitment to integrity and ethical values. Paramount to this principle is the tone at the top or how management demonstrates the importance of integrity and ethical values through their directives, attitudes, and behavior. Management's behaviors reflect the integrity and ethical values expected throughout the entity, and can either be a driver to strong internal controls or a barrier.

My office has identified several troubling practices in which rail labor and management assert control over the RRB. For example, the RRB's disability regulation, 20 CFR § 220.10(a), states, in pertinent part, that "[i]n accordance with section 2(a)(2) of the Railroad Retirement Act this subpart was developed with the cooperation of employers and employees." While input from rail labor and management is important, they should not be allowed to dictate the actions of a Federal agency. Rail labor and management control over the RRB's rules and regulations have undermined the integrity of the occupational disability program. It is readily acknowledged that decisions affecting the occupational disability program are negotiated between rail labor and management, which has resulted in a culture where payments are made without the due care needed to protect a Federal agency.

For example, agency regulations provide that:

the Board *shall* select two physicians, one from recommendations made by representatives of employers and one from recommendations made by representatives of employees. These individuals *shall* comprise the Occupational Disability Advisory Committee (Committee). This Committee *shall* periodically review, as necessary, this subpart and the [Disability Claims] Manual and make recommendations to the

⁷ Congressional Research Service, *Railroad Retirement: Legislation in the 107th Congress*, Order Code RS20797 (Washington, D.C., Updated January 22, 2002).

⁸ 45 U.S.C. § 231a(a)(2).

⁹ GAO, *Standards for Internal Control in the Federal Government*, GAO-17-704G (Washington, D.C., September 10, 2014). While these Standards are effective beginning with fiscal year 2016, information on internal control of agency leadership is consistent with the standards in place until that time.

Board with respect to amendments to this subpart or the [Disability Claims] Manual. The Board *shall* confer with the Committee before it amends either this subpart or the [Disability Claims] Manual.¹⁰ (Emphasis added.)

Since Federal statute requires a three-member Board to represent varying interests, I've previously recommended that 20 CFR § 220.10(b) be amended to require a third Occupational Disability Advisory Committee physician/member who represents the Chairman and his constituents—the public. This recommendation has remained unanswered since July 2014.

According to the agency, the last deliverable submitted by the Occupational Disability Advisory Committee was in 2008, and it wasn't until October 2014 that the Board sought nominations (one each from recommendations by representatives of employers and employees) to fill this committee.

The issuance of Board Order 15-02 further illustrates the power that rail labor and management exercises over the decisions of the RRB. It states "the three-Member Board adopted changes to the processing of disability annuities under the Railroad Retirement Act as detailed in the memoranda dated September 4, 2014 and September 9, 2014, issued respectively by Labor Member Barrows and Management Member Anthony."¹¹ Thus, decisions on changes to the processing of RRB annuities were negotiated and decided by two Members, without input and discussion by the Chairman, to protect the public interest.

Another example is the three member Board's December 3, 2013 letter to the Association of American Railroads and the Brotherhood of Railroad Signalmen, which sought input regarding the RRB's job duty verification process. The letter states, in pertinent part, "[w]e would appreciate your [rail labor and management] cooperation in this matter and will provide whatever assistance is needed. It might be helpful if rail labor and the industry first discuss potential methods of review and contact the RRB after preliminary agreements are established." I note that in January 2013, my office issued Audit Report 13-02, *Audit of Job Duty Verification Procedures for Long Island Rail Road Occupational Disability Applicants*, which identified several weaknesses in the RRB's job duty verification procedure and made five targeted recommendations to the agency. To date, the RRB has not yet responded to these commonsense recommendations.

Recent Agency Response in Light of Congressional Pressure

While the above examples are disheartening, I note that in response to significant Congressional pressure and oversight by the Office of Management and Budget and my office, the RRB has recently taken some preliminary steps to

¹⁰ 20 CFR § 220.10(b).

¹¹ Railroad Retirement Board, *Board Order 15-02* (Chicago, Illinois, November 6, 2014).

acknowledge and address program integrity in its occupational disability program. For instance, the fiscal year 2016 President's Budget includes \$3.3 million in mandatory funding for RRB's program integrity activities. In its briefing book for the fiscal year 2016 budget hearings, the RRB explained that these funds would be used to assign 29 full time equivalent staff to perform activities such as oversight of fraud prevention initiatives, quality assurance reviews, special studies, support enhanced emphasis on initial eligibility and continuing entitlements to benefits, and eliminate a growing backlog of possible improper payments referrals. It would also allocate funds to conduct fraud training for employees, confirm medical exams for all initial disability applications, in some cases using specialists, and additional communication with beneficiaries. Further, in reaction to a previous OIG Alert, the RRB included a legislative proposal to amend the RRA and RUIA to include felony charges for individuals committing fraud against the agency. Currently, 45 U.S.C. § 2311 (RRA) and 45 U.S.C. § 359 (RUIA) contain misdemeanor penalties.

Additionally, in 2014, the RRB contracted with an outside consultant (at an expense of more than \$275,000) for a benefit payment fraud prevention/detection assessment and advisory examination. Work is still ongoing under this contract. Further, in communication with various Congressional committees, the RRB has indicated additional program integrity activities it is undertaking such as seeking input from rail labor and industry on an update to the job descriptions currently in use, increasing fraud awareness training, and reviewing best practices in place at the Social Security Administration.

While my office continues to believe that the aforementioned agency actions do not adequately address the core problems within the occupational disability program, due, in part, to their lack of necessary specificity, timeframes, and cohesiveness to be fully successful, I remain committed to continuing oversight of their program integrity initiatives to assure taxpayer funds are protected. I commit to reporting to Congress on the results of this work. However, without fundamental legislative and procedural change to the occupational disability adjudication process, including key qualification definitions, I believe the occupational disability program is at continued risk of fraud and abuse, regardless of the above described agency actions.

Ways to Reduce Occupational Disability Fraud and Abuse

Program integrity could be greatly enhanced through effective implementation of existing regulations in conjunction with targeted legislative changes.

Implementation of Existing Regulations Could Improve Program Integrity

Our investigative and audit work has revealed a fundamental breakdown in the RRB's adjudication of disability applications. Both RRB disability claims examiners and field office staff should be the first line of defense in identifying potential fraudulent disability

applicants and assuring that cases are properly adjudicated to preclude improper payments. Unfortunately, we found that RRB disability claims examiners looked for anything “to hang their hat on” in order to award benefits, which is facilitated by an organizational culture that encourages approval of applications and an adjudication process that lacks basic controls, such as information verification. For example, we identified the following weaknesses in the adjudication process that in some cases are in direct contrast to the regulations overseeing the occupational disability program.

Failure to verify self-reported job information.

Disability claims examiners frequently do not verify self-reported job information provided by applicants. RRB regulations state that “in determining the job demands of the employee’s regular railroad occupation, the Board will not only consider the employee’s own description of his or her regular railroad occupation, but *shall* also consider the employer’s description of the physical requirements and environmental factors relating to the employee’s regular railroad occupation, as provided by the employer on the appropriate form....”¹² (Emphasis added.) Contrary to its regulations, the RRB forms used to collect job information from the railroad employers, do not require the railroads to provide this information or even to return the form. As a result, obtaining the job information from the employer is not done in most cases. In April 2015, the RRB reported that in 2014, 85.8% of the time they adjudicated claims without a job information form returned by the employer. That percentage remains basically unchanged at 85.6% for 2015, to date. Without key information regarding an applicant’s job requirements, it would be very difficult to determine if a medical condition would prevent a railroad employee from completing that work, the foundation of a disability determination.

As previously mentioned, my office’s January 2013 audit pertaining to this issue identified several weaknesses in the implementation of this regulation. At that time, we made five recommendations to the Office of Programs. To date, the RRB has not yet responded to these commonsense recommendations.

Work related records not requested.

Records, such as fitness for duty exams and payroll records, are not requested from railroad employers. Such records may expose a history of overtime leading up to their retirement, which not only indicates the individual was able to work extended hours but also bolsters the income that future private annuity payments may be based on. Depending upon when an application is submitted, gathering this type information would provide disability claims examiners with invaluable information regarding the applicant’s general health condition immediately preceding their disability application. Even though the RRB’s *Disability Claims Manual* states that “[m]any employers can furnish valuable medical evidence

¹² 20 CFR § 220.13(b)(2)(iv)(E).

through their medical departments or affiliated hospital association" this information is not requested on a regular basis.¹³

Failure to question the application based on observations of employee and treating physician.

Our office saw instances where, according to the treating physician's statement, the applicant appears to be non-ambulatory and unable to perform even basic life functions; however, that same applicant personally drove themselves to the RRB's district office and hand-delivered their application. This type of activity level was in direct contradiction to the treating physician's medical assessment and restrictions. In addition, applicants also listed severe physical limitations on their applications despite their ability to physically appear at the district office. This type of contradictory evidence was hardly, if ever, collected by the field office staff or questioned by claims examiners.

Failure to confirm annuitant is obtaining treatment.

RRB regulations require the annuitant to follow treatment prescribed by their physician if the treatment can restore their ability to work. The regulations also allow for the annuity to be denied or stopped if the annuitant does not follow the treatment plan without good reason, as defined.¹⁴ However, in its *Disability Claims Manual*, RRB directs its disability claims examiners that, while there are conditions that can be controlled by prescribed treatment to a level considered not a disability, whether or not an employee is availing themselves of medical treatment to correct or control the condition has no bearing on an annuity decision.¹⁵

These procedural failures contribute to the staggering 98% approval rate for occupational disability annuities, which if unaddressed, leave the program vulnerable to fraud and abuse.

The Railroad Retirement Act is in Need of Meaningful Legislative Change

My office has issued numerous recommendations aimed at increasing program integrity within the RRB's occupational disability program, and the RRB has also proposed their own changes to the system. I have, however, come to the conclusion that the RRA is in need of meaningful legislative change as described below. (A more extensive list of legislative proposals is attached and respectfully submitted as part of this testimony).

¹³ Disability Claims Manual Part 4.3.4 C.

¹⁴ 20 CFR 220.115.

¹⁵ Disability Claims Manual Part 3.2.3 A.

Re-define Regular Railroad Occupation and Current Connection

Current RRB regulations permit an employee to be adjudicated as occupationally disabled from an occupation which they held the most during the last 15 years. This means that an employee may be adjudicated as being occupationally disabled from an occupation they may not have held for years.

Additionally, railroad employees must maintain a *current connection* to the railroad industry to be eligible for an occupational disability. An employee who worked for a railroad in at least 12 months in the 30 months immediately preceding the month their occupational disability is to begin meets the *current connection* requirement. If the railroad employee does not meet the 12 month requirement, they may still meet the *current connection* requirement if they have not held regular employment outside the railroad industry. Railroad employees can maintain their *current connection* even if they retire, voluntarily leave railroad employment, are self-employed in an unincorporated business, or work for select U.S. Government agencies. While a commonsense approach to *current connection* should bar those who have left the railroad industry from applying for occupational disability benefits, it actually allows railroad employees, under certain situations, to apply for and be granted an occupational disability long after they leave the rail industry.

For example, the RRB's *Disability Claims Manual* provides the following:

An employee works in the CSX railroad as a conductor from 1968 through July 1984. He then works as a locomotive engineer from August 1984 through July 1990. In August 1990, he then starts his own business. In January 2006, this employee files a disability application with the RRB. It is determined that the work done for this business is self-employment and allows the employee to keep his current connection. Based on the information provided, the employee's regular railroad occupation would be a locomotive engineer.¹⁶

In this example, the employee had not worked in the rail industry for 16 years (owning his own business in the interim), yet he still retains his *current connection* with the rail industry and maintains the position of locomotive engineer as his *regular railroad occupation*. This defies logic and legislative language should be introduced to re-define and update the program in more sensible terms.

Eliminate the Use of the One Job Aspect

Further complicating the agency's ability to properly administer the occupational disability program is the propensity to award occupational disability annuities based upon the applicant's inability to perform only one aspect of their *regular*

¹⁶ Disability Claims Manual Part 3 Initial Determinations, Section 3.2.3.

railroad occupation. Even though agency regulations are void of specificity regarding this issue area, and the standards are set as “the job demands of the employee’s regular railroad occupation,” our investigative experience has revealed that RRB disability claims examiners adjudicate applicants based upon their inability to perform a single job task, regardless of the frequency of this task.¹⁷ This means that occupational disability benefits could be approved based on a job aspect that the employee is not even required to perform. Agents interviewed a number of RRB occupational disability annuitants who admitted that they were granted an occupational disability based upon their inability to perform a single job aspect even though they were no longer required to perform this function due to seniority.

Make the Disability Program Experience-Rated

In addition to its disability program, the RRB also administers an unemployment insurance program for the nation’s railroad workers. Like state-run unemployment programs, the RRB’s unemployment program collects taxes from rail employers using an experience-rated contribution formula. This means that unemployment taxes are based upon usage.¹⁸ As an added program integrity measure, the RRA should be amended to incorporate an experience-rating provision similar to the RUIA; wherein, rail employers pay taxes calculated based upon program usage.

Eliminate the Three-Member Board Structure.

As noted previously, the RRB’s current three-member board structure is problematic because it allows special interest groups (rail employers and employees) to exercise control over a Federal agency, since they represent two-thirds of the Board.

While input from rail employers and employees is important, they should not be allowed to dictate the actions of a Federal agency. The RRA should be amended to shift the current rail representatives (Labor and Management Board Members) into advisory roles, while retaining the Chairman as the final decision maker.

Occupational Disability Benefits Should Be Temporary

An occupational disability annuity is generally provided for life to a railroad employee who is deemed eligible. The annuitant is required to notify the RRB in certain circumstances including if they return to work or if their condition improves, among other things.

Additionally, there is an alarmingly high rate of musculoskeletal injuries claimed as a basis for an occupational disability which, according to information from both the RRB and an external medical expert, should

¹⁷ 20 CFR § 220.13(b)(2)(iv)(f).

¹⁸ 45 USC § 358(a)(1)(c).

resolve in about 95% of people. Even in its own disability claims examiner training, RRB's medical consultants indicated that "[t]he main treatment for a herniated disk is a short period of rest with pain and anti-inflammatory medications, followed by physical therapy. Over 95% of people will follow these treatments will recover and return to their normal activities." A 2014 report by the RRB's Program Evaluation and Management Services, "shows that musculoskeletal impairments (Arthritis and Rheumatism; Other Diseases of the Musculoskeletal System) remain relatively consistent and constitute the majority of occupational disability awards...over the observed nine-year period."¹⁹

Without fundamental changes to program controls, including legislative reform (see attached legislative recommendations), the occupational disability program will remain vulnerable to fraud and abuse and benefits should be limited to either one or two years. This recommendation is in line with the 1990 Commission on Railroad Retirement Reform which recommended an amendment to the RRA to limit occupational disability benefits to 24 months.²⁰

Conclusion

Given the pervasive fraud exposed by my office, coupled with the inconceivable and continuing 98% approval rate, the occupational disability program requires significant change, both legislative and programmatic. While the RRB has taken some steps to increase oversight of the occupational disability program, it is my opinion that it is a veneer of improvement. The RRB's failure to address the institutional culture that supports the approval of nearly all claims and allows widespread abuse in the program is the reason I issued a seven-day letter. Without significant changes, the RRB's practice of awarding disability benefits based on questionable and even fraudulent applications will continue to cost the RRB and its eligible beneficiaries billions in unwarranted expenses. Disability claims examiners and RRB field office staff members should be the agency's front-line against fraud and abuse within the RRB's disability program, but there is a fundamental breakdown of this role. If the RRB is unwilling to implement the necessary changes to be responsible public stewards, Congress should mandate several of the straightforward changes suggested. Conversely, I believe the railroad retirement system should be privatized and complete control and responsibility returned to the rail industry. (Please see Appendix III for further discussion regarding this topic.)

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, this completes my prepared statement. I would like to first thank you and the other Members of Congress who have worked diligently to bring these matters to the forefront. Further, I would like to thank all of those in my office who contributed to this

¹⁹ Railroad Retirement Board, *Trend Charts and Analysis: Occupational Disability Awards, Calendar Year 2005-2013*, Report 15-02 (Dec. 10, 2014).

²⁰ Commission on Railroad Retirement Reform, *Final Report* (Washington, D.C., September 1990).

work, as well as the staff from the Federal Bureau of Investigation and the U.S. Attorney's Office for the Southern District of New York who participated in the prosecution of the LIRR case. I would be pleased to respond to any questions that you may have at this time.

Appendix I: Legislative Proposals to Reduce Fraud and Strengthen Program Integrity in the Railroad Retirement Board's Occupational Disability Program

Legislative changes incorporating the following recommendations would dramatically increase program integrity within the RRB's disability program and help the RRB meet its mission of paying benefits to the right people, in the right amounts.

1. The RRA should be amended to remove the *Independent Case Evaluation* process.

The RRA should be amended to require that all applicants for occupational disability benefits, who meet applicable age and years of service requirements but do not qualify under the matrix contained in 20 CFR § 220, appendix 3, to be medically disqualified by their current rail employer in order to be deemed occupational disabled.

2. The RRA should be amended to incorporate an experience-rating provision.

Similar to state-run unemployment insurance programs and the RRB's unemployment program, the RRA should be amended to incorporate an experience-rating provision similar to the RUIA; wherein, rail employers pay taxes calculated based upon program usage.

3. The terms *regular railroad occupation* and *current connection* should be redefined.

The terms *regular railroad occupation* and *current connection*, as currently defined, make the occupational disability program susceptible to abuse, are overly broad, and should be amended.

4. Rail employees who voluntarily relinquish their job rights, through retirement, should not be eligible for disability (or sickness insurance) benefits.

Once an employee retires or voluntarily leaves their position, they are no longer required to perform the functions of their position and they should not be eligible for disability (or sickness insurance) benefits. This common sense change should be implemented to protect the RRB trust funds.

5. The RRA should be amended to make occupational disability annuities temporary in nature.

As recommended by the Commission on Railroad Retirement Reform 25 years ago, the occupational disability provisions of the RRA should be amended to limit occupational disability benefits to 24 months.

- 6. The Occupational Disability Advisory Committee should be expanded to include a third physician/member who represents the Chairman and his constituents – the public.**

While the RRA requires a three-member Board to represent varying interests, the Occupational Disability Advisory Committee only represents two interests: employers and employees. 20 CFR § 220.10(b) should be amended to require a third Occupational Disability Advisory Committee physician/member who represents the Chairman and his constituents – the public.

- 7. The RRA should be amended to eliminate the three-member Board structure.**

The current structure of the Board allows special interest groups (rail labor and management) to exercise control over a Federal agency. While input from rail labor and management is important, they should not be allowed to dictate the actions of a Federal agency. The RRA should be amended to shift the current rail representatives (both labor and management) into advisory roles to the Chairman, who would have decision making authority.

- 8. Modify the structure of the RRB to better reflect its current operations by converting it to a private entity or a government corporation.**

See discussion in Appendix III.

Appendix II: February 10, 2014 Seven-Day Letter to Congress



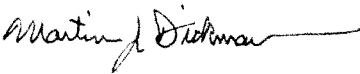
UNITED STATES RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Memorandum

February 10, 2014

TO: Michael S. Schwartz
Chairman

FROM: Martin J. Dickman 
Inspector General

SUBJECT: Seven-Day Letter to Congress

Statutory Reporting Requirements

Section 5(d) of the Inspector General Act of 1978, as amended, requires an Inspector General to immediately report to the agency head "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of [the agency]."¹ This section also requires the agency head to transmit the Inspector General's concerns, along with the agency head's comments, to Congress within seven calendar days.

Under the above referenced statute, the Office of Inspector General (OIG) hereby alerts the Railroad Retirement Board (RRB) to particularly serious or flagrant deficiencies in the administration of the RRB's occupational disability program. Failure to properly address these deficiencies continues to unnecessarily expose the RRB's trust funds to fraud and increases the likelihood of improper payments among the RRB's \$2.3 billion in annual disability payments.

Long Island Rail Road Fraud Investigation

A number of deficiencies have been uncovered during our investigation into massive occupational disability fraud committed by individuals associated with the Long Island Rail Road (LIRR). To date, 33 people have been charged in connection with the LIRR disability fraud scheme: 28 of whom have pled guilty and 5 of whom have been convicted in Federal court. The pleas and convictions include two orthopedic doctors, a union official, and a former RRB District Manager. These judicial actions have netted the government approximately \$400 million in restitution and forfeiture. Additionally, another 44 individuals have entered into a voluntary disclosure program. These individuals avoided prosecution by (1) admitting that they submitted false information to the agency for the purpose of obtaining RRB occupational disability benefits and (2) agreeing to the termination of their occupational disability benefits.

¹ 5 U.S.C. App. 3, § 5(d).
844 N RUSH STREET CHICAGO IL 60611-2092

After systemic problems within the occupational disability program were publicly exposed, the RRB attempted to increase oversight efforts for LIRR applications through Board Order 08-63. The occupational disability approval rate for LIRR applicants; however, remains essentially unchanged and continues to be near 96%. In fact, the RRB re-adjudicated a number of subsequently indicted LIRR annuitants under the 'increased scrutiny' of Board Order 08-63. Of these individuals, 100% were re-approved despite their eventual guilty pleas to committing fraud against the RRB. This illustrates the ineffectiveness of the RRB's ability to properly adjudicate the occupational disability program and gives me little assurance of their ability to enact real and meaningful change.

Serious Occupational Disability Program Deficiencies

Serious program integrity issues remain unresolved in the administration of the RRB's occupational disability program: a program which continues to have a staggering 98% approval rate. Over the past several years, we have issued numerous recommendations aimed at increasing program integrity within the RRB's occupational disability program; however, only a few of these recommendations have been implemented. The RRB's failure to adequately address deficiencies identified by the OIG, permits ineffective adjudication and unnecessarily increases the program's exposure to fraud, waste, and abuse.

The RRB owes it to the nation's railroad workers and their families to fulfill the agency's mission to "pay benefits to the right people, in the right amounts, in a timely manner, and . . . [to] take appropriate action to safeguard [their] customers' trust funds."² This entails the agency being proactive and not defensive by acknowledging areas of deficiency; instituting necessary corrective systems fully utilizing existing regulations; and, when necessary, pursuing regulatory change.

Board Orders 13-33 and 13-55

As you are aware, after the plea and conviction of the two aforementioned doctors, we recommended the immediate termination of occupational disability benefits for more than 700 annuitants who had utilized those doctors to support their RRB disability applications. We estimate that those benefits cost the agency approximately \$2 million per month. The RRB originally rejected our recommendation but finally agreed to terminate those benefits. Almost 500 of these same individuals have re-filed "new" disability applications under the terms set forth in Board Orders 13-33 and 13-55.

Critical Timing

The timing of this memorandum is critical because the RRB is in the process of finalizing the adjudication process for "new" disability applications filed under Board Orders 13-33 and 13-55.

² Railroad Retirement Board, *Mission Statement*. (Chicago, Illinois: September 2003). Retrieved from <http://www.rrb.gov/general/mission.asp>. Accessed February 5, 2014.

My review of the RRB's proposed adjudication process for these 'new' applications provides me with little confidence in the RRB's ability to properly adjudicate the disability program. In particular, I find it inconceivable and unacceptable that the RRB plans on utilizing the same divisional disability claims examiner structure which had ineptly adjudicated applications throughout the duration of the LIRR fraud scheme. The LIRR investigation should have acted as the RRB's wake-up call that program integrity must be a top priority. To that end, I reiterate the following recommendations, which should be utilized for the 'new' applications processed under Board Orders 13-33 and 13-55 and for all future disability applications adjudicated by the RRB.

- The RRB should employ a licensed medical doctor to oversee the entire disability program. This individual should have the authority to make final award determinations.
- The RRB should replace their current disability claims examiners with licensed medical staff to adjudicate disability applications.

Oversight efforts under Board Order 08-63 proved to be ineffective at identifying fraudulent applications and simply expanding the contract for third party medical review is a waste of RRB trust funds. Implementing the above recommendations, ensures that both the adjudication process and final determinations are conducted by medically trained individuals, which in my opinion, is a better use of funds.

Three-Member Board

The Railroad Retirement Act vests power with a three member Presidentially appointed and Senate confirmed Board that, in addition to your representation of the public's interest, includes one member to represent the interests of rail labor and one member to represent the interests of rail management. I hope that the entire Board will recognize the seriousness and magnitude of this situation and agrees to take substantial and meaningful actions to protect the integrity of the occupational disability program.

Recommended Legislative Changes

If the Board is unwilling to enact such changes, I recommend either of the following legislative changes.

1. The occupational disability program should be eliminated and disabled railroad workers should apply for benefits under the sickness insurance program. If the railroad worker is physically or mentally unable to return to work when their sickness insurance benefits terminate, they should then apply for a total and permanent disability annuity.
2. The occupational disability program should be a temporary program with a maximum benefit of one year. If the railroad worker is physically or mentally unable to return to work after their temporary occupational disability benefits terminate, they should then apply for a total and permanent disability annuity.

Conclusion

The three-member Board's continued inability to effectuate substantial and meaningful change within the RRB's occupational disability program warrants closer scrutiny by Congress where they can use the full range of tools at its disposal to prevent further waste, fraud, or abuse.⁸ Please transmit this memorandum to the appropriate Congressional Committees and Subcommittees within seven calendar days.

cc: Walter A. Barrows, Labor Member
Jerome F. Keever, Management Member
Karl T. Blank, General Counsel
Martha P. Rico, Secretary to the Board

³ Chairman Darrell E. Issa, House Committee on Oversight and Government Reform letter to Inspector General Martin J. Dickman, August 3, 2012.

Appendix III: Organizational Structure of RRB and History of Discussions to Privatize

While the RRB has long been a Federal agency, there has been extensive discussion in prior decades about the most appropriate organizational structure for the entity. Several options have been discussed, including transitioning the RRB to a government corporation as the first step to converting it to a private corporation or entity. Based on the information presented in this statement, I believe revisiting the organizational structure of the RRB is again appropriate.

In his 1948 budget message, President Harry Truman explained his criteria to determine when a corporate option was appropriate. His explanation included government programs that: are predominately of a commercial character (those which are revenue producing, are at least potentially self-sustaining and involve a large number of business-type transaction with the public); have operations that require greater flexibility than customary appropriations budget ordinarily permit; and its usefulness is dependent on its ability to deal with the public in a manner employed by private enterprise for similar work. In the case of the RRB these criteria are generally applicable.

In a 2011 report by the Congressional Research Service, several key aspects of a government corporation were presented that are applicable to a discussion on the organizational structure of the RRB.²¹

- Traditional agencies receive the preponderance of their financial support from funds appropriated by Congress. Government corporations generally receive most, if not all, of their funds from users of their services. Through the NRRIT, the RRB invests approximately \$25 billion in publicly traded stocks and investment vehicles thus making it potentially self-sustaining and comparable to a private entity. Further, the RRB conducts work that is similar to many private pension plans.
- The location of a government corporation can vary greatly including being located in a Federal agency or assigned independent status.
- The form of governance can also vary. For example a government corporation can be managed by a full-time board, a chief executive officer, a part-time board consisting of Cabinet-level officials, or a mixed board of governmental and private appointees. The current RRB structure is actually one that is made up of a Board that represents private sector interests (Management and Labor Members).
- May be considered a useful alternative to privatization of some agencies or may be employed as a transition step toward eventual full privatization.

²¹ Congressional Research Service, *Federal Government Corporations: An Overview*, Order Code RL30365 (Washington, D.C., June 8, 2011).

In 1990, the Commission on Railroad Retirement Reform's Final Report extensively discussed options to restructure the pension system in the railroad industry. The work of the Commission was established via the Omnibus Budget Reconciliation Act of 1987, which charged the Commission with conducting a comprehensive study of issues pertaining to the long-term financial health of the railroad system including establishing a privately funded and administered pension plan, among other topics.²² In its Final Report, the Commission recommended the development of alternative systems for newly hired railroad employees only. In discussing this recommendation, the Commission noted several key factors.

- Given current conditions, creating a statutory retirement plan for railroad workers would not be justified today because the U.S. labor market is much better balanced now than it was at the time the RRB was established.
- Congress has responded to challenges regarding unfunded and underfunded retirements plans to protect participants in private plans.
- The railroad sector no longer has special needs that require Congress to mandate pension rules that are different from those that apply to other industries or companies in the private sector.

The Commission concluded that pension plan rules that generally applied to private industry should also apply to the railroad industry. One key change since the 1990 Commission report is the creation of the National Railroad Retirement Investment Trust (NRRIT), which is granted the ability to invest in equities and other private-sector securities and was specifically created as "not a department, agency, or instrumentality of the Government of the United States." The long term financial insolvency of the RRB has largely been addressed a result of this funding structure. As a result, initiating a multi-year plan to transition retirement and disability benefits and Medicare benefits to other Federal agencies while also converting Tier II retirement benefits to the private sector as a multi-employer benefit plan should be considered. Transition of Tier I, disability, and Medicare programs eliminates a duplicative program and the need for the annual financial interchange process. Transitioning Tier II benefits better reflects the reality of the current structure of the RRB where Tier II benefits are more aligned with private pensions.

²² Pub. L. 100-203.

Mr. MEADOWS. Thank you, Mr. Dickman.

I would be remiss, I appreciate not only your staff but your leadership on this. But I would be remiss if I didn't say that we have got a great staff here, both on the majority and minority side.

Mr. DICKMAN. I agree with that too.

Mr. MEADOWS. So much of what we do is actually their hard work and certainly not as much ours.

But we'll go ahead and recognize Mr. Schwartz for 5 minutes.

STATEMENT OF THE HONORABLE MICHAEL S. SCHWARTZ

Mr. SCHWARTZ. Thank you. Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, I'm Michael Schwartz, and I'm the Chairman of the U.S. Railroad Retirement Board. I want to thank you for this opportunity to appear today and discuss the railroad retirement disability programs. Walter Barrows, representing rail labor; Steven Anthony, representing rail employers; and I are responsible for the agency's programs and operations.

Let me begin by saying that my fellow Board members and I share in the outrage at the physician-assisted fraud perpetrated on the railroad retirement system by certain retirees at the Long Island Rail Road. We applaud the efforts of our inspector general and the U.S. Attorney's Office for the Southern District of New York in investigating and prosecuting this fraud.

The Long Island experience has helped us recognize a number of shortcomings in the disability benefit program. We have worked tirelessly to examine every step of our disability adjudication process and identify those areas that need improvement. Today, I'm pleased to report that we have made notable strides in strengthening the integrity of this program and better protecting our system from fraud. This experience has been a true catalyst for the change in the way we do business. And we are sincerely committed to effecting real and measurable improvements through the initiatives we have put in place and those we plan going forward.

This morning, I will provide the subcommittee with the summary of the significant changes we are making. These changes were crafted after careful consideration of recommendations by our inspector general and the Government Accountability Office during their respective reviews of the Board's programs. The quality and integrity of our benefit decisions are of the utmost importance to the Board and its stakeholders. The improvements we are making provide the foundation for a higher standard of disability determination. The process we are adopting is much different and more comprehensive than what was used when the Long Island Rail Road scheme surfaced.

Independent medical examinations will be required for all disability applicants with limited exceptions. And each exam will be performed by physicians who specialize in the area of the claimed impairment. Contractual positions will now be onsite at our headquarters building at least two times a week in the Disability Benefits Division to provide medical advice and support to claims examiners. Physicians are also providing more extensive training to the examiners on medical conditions and the interpretation of medical evidence. The Board is creating a quality assurance unit to assess

the quality of medical evidence, accuracy in disability determinations, adherence to the established procedures, areas in need of improvement, and subject-matter appropriate for refresher training.

We have enhanced our fraud training awareness. The Board will continue to procure antifraud training from outside sources and make such training mandatory for all agency personnel. We will employ contractual medical personnel to provide refresher training for those responsible for making or reviewing disability decisions, such as claims examiners, reconsideration specialists, hearing officers, and quality assurance specialists. There will be more frequent contact with fraud-risk populations through the expanded use of continuing disability reviews for all occupational cases and mandatory periodic recertification of disability.

Senior claims examiners will review all initial disability determinations prior to the final rating. Treating physician information is already being tracked to identify any suspicious activities or patterns. And RRB forms, including a disability application, are being reviewed and revised to gather more relevant and accurate information.

Along with these improvements, in December 2013, the Board created a fraud task force that assists in implementing disability reform measures, along with other benefit-related program integrity measures. The task force has approved a number of internal modifications to procedures and forms and is driving implementation of fraud prevention and detection initiatives, many of which were recommended by the GAO and our IG. The initiatives I have outlined for you today will substantially strengthen the overall integrity of the disability program and better protect our system from fraud. Whether it's securing current vocational information and using the most accurate and specialized medical evidence and opinions when making disability determinations, providing ongoing fraud awareness training to agency employees, offering our claims examiners ready access to expert medical guidance, or establishing a much needed quality assurance unit, we are committed to real change that will ensure continued confidence in a program that has meant vital financial security to generations of our Nation's railroad workers and their families. Thank you.

[Prepared Statement of Mr. Schwartz follows:]

Statement of Michael S. Schwartz

Chairman

U.S. Railroad Retirement Board

before the

Committee on Oversight and Government Reform

Subcommittee on Government Operations

U.S. House of Representatives

May 1, 2015

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, my name is Michael Schwartz, and I am Chairman of the U.S. Railroad Retirement Board (RRB). I want to thank you for this opportunity to appear today and discuss the railroad retirement disability programs. Walter Barrows representing rail labor, Steven Anthony representing rail employers and I are responsible for the agency's programs and operations.

Let me begin by saying that my fellow Board members and I share in the outrage at the physician assisted fraud perpetrated on the railroad retirement system by certain retirees of the Long Island Rail Road. We applaud the efforts of our Inspector General (IG) and the U.S. Attorney's Office for the Southern District of New York in investigating and prosecuting this fraud.

The Long Island experience has helped us recognize a number of shortcomings in the disability benefit program. We have worked tirelessly to examine every step of our disability adjudication process and identify those areas that need improvement. Today, I am pleased to report that we have made notable strides in strengthening the integrity of this program and better protecting our system from fraud. This experience has been a true catalyst for change in the way we do business, and we are sincerely committed to effecting real and measurable improvements through the initiatives we have put in place and those we plan going forward.

This morning, I will provide the Subcommittee a summary of the significant changes we are making, many of which result from recommendations made by our IG and the Government Accountability Office (GAO).

HISTORY

At the outset, I would like to offer some brief background information which I hope will put the RRB's disability programs in context. The Board administers two types of disability benefits under the Railroad Retirement Act (RRA)¹, total and permanent disability and occupational disability. Total and permanent disability is similar to a total and permanent disability under the Social Security Administration (SSA) program while an occupational disability benefit is unique to the railroad industry.

¹ 45 U.S.C. §231 et. seq.

Occupational disability was established by 1946 amendments to the Railroad Retirement Act. Its purpose was to provide annuities to railroad workers who were not totally disabled but whose impairment prevents them from doing their regular railroad jobs.

In the early 1970's, Congress directed representatives of rail employees and rail carriers to negotiate mutual recommendations for a restructuring of the railroad retirement system. Subsequent to these negotiations, the Railroad Retirement Act of 1974 was enacted, incorporating the agreements reached by labor and management and maintaining provisions governing the occupational disability program.

The entitlement requirements for an occupational disability are set forth in section 2(a)(1)(iv) of the RRA (45 U.S.C. §231a(a)(1)(iv)) which provides for an annuity for employees with a current connection with the railroad industry who are age 60 and who have at least 10 years of railroad service, or who may be any age if they have at least 20 years of railroad service. The RRB must determine that the employee is disabled from his or her regular railroad occupation, which is defined by section 2(a)(2) of the RRA (45 U.S.C. §231a(a)(2)) generally as the occupation the employee engaged in railroad service for hire in more calendar months than any other occupation in each of the last five years of earnings as an employee, consecutive or not.

The occupational disability program is also distinct with regard to its funding mechanism. Unlike disability annuities for those determined to be totally disabled, which are funded in part by a financial interchange with the social security trust funds, occupational disability annuities are paid for entirely from the Railroad Retirement Account, which is funded primarily by payroll taxes on earnings paid by covered railroad employers and employees.

PROGRAM INTEGRITY INITIATIVES

The quality and integrity of our benefit decisions are of the utmost importance to the Board and its stakeholders. To ensure the RRB has the necessary information, knowledge, tools, and training to make timely and accurate decisions, the Board developed an aggressive and meaningful plan to strengthen our processes throughout our disability programs. Specific improvements include additional focus and review of disability applications by medical professionals, creating a quality control program to focus on patterns and trends within our disability programs, partnering with other agencies to identify best practices and use of an outside contractor to evaluate our programs to identify and mitigate the potential for fraud, waste and abuse. We believe the improvements we are making provide the foundation for a higher standard of disability determination. The process is much different and more comprehensive than what was used when the LIRR scheme surfaced. The RRB carefully crafted these improvements after consideration of recommendations made by the IG and GAO during their respective reviews of the RRB's programs.

Independent Medical Exams

Independent Medical Examinations (IMEs) are independent physical examinations performed to obtain objective medical evidence to make a disability determination. The RRB will now require *all* disability applicants, with limited exceptions², to undergo an IME, which will be performed by physicians unknown to the applicant who specialize in the area of the claimed impairment. Previously, disability examiners rating an occupational disability claim could rely on medical information, records and tests provided by an applicant's treating physicians without ordering an independent exam, and in cases where IMEs were ordered, they could be performed by general internists. The new process is more comprehensive by requiring exams for nearly all applicants and by providing that the exams be performed by specialists throughout the country with expertise related to the claimed impairment.

We believe the additional level of evidentiary review by independent medical consultants is a more efficient and feasible method to address the specific suggestions the IG made in his Seven-Day letter regarding replacement of claims examiners with medical doctors. Benefits from securing these reviews contractually include: 1) the availability of a wide range of physicians who specialize in different disciplines rather than one generalist physician responsible for the program; 2) the knowledge and expertise of practicing physicians; and 3) the ability to obtain expert and specialized medical advice as needed.

Consultative Medical Opinions

Consultative medical opinions are rendered by contracted independent physicians who review all of the medical evidence in the applicants' files. These physicians will now be onsite at our headquarters building at least two times per week in the Disability Benefits Division. Disability claims examiners are encouraged to seek and obtain advice from the additional contractual physicians while on site or by phone or email when necessary. This in-house medical presence provides examiners with valuable support, including assistance with interpreting medical reports or test results, reconciling conflicting medical reports, determining the limiting effects of impairments, and providing residual functional capacity assessments as part of the adjudication process. In this way, an on-site physician can have input as to whether the applicant qualifies for a disability annuity. Additionally, consultative physicians are providing more extensive training to the disability examiners on medical conditions and interpretation of medical evidence, and will continue to do so.

Quality Assurance Unit

Per the recommendations of the GAO in its June 2014 report (GAO-14-418), the Board has approved the creation of a quality assurance unit. The responsibilities of this unit will include the assessment of (1) the quality of medical evidence; (2) the accuracy of disability determinations; (3) adherence to established procedures; (4) areas in need of improvement; and (5) subject matter appropriate for refresher training. The unit will be multidisciplinary and include individuals with extensive disability review knowledge. The quality assurance unit will be independent of the agency's Disability Benefits Division, will produce a statistically valid measure of the overall initial disability determination accuracy, and will perform an assessment of fraud potential by

² IMEs will not be requested in any case, regardless of alleged impairment, if (a) the medical evidence submitted meets (i) the Social Security Listing of Impairments, or (ii) the RRB Occupational Disability Tables; (b) the applicant has been disqualified for service by the railroad employer; or (c) the applicant has a terminal illness.

looking at unusual patterns or indicators. The unit will also work with an independent medical contractor to evaluate whether the medical limitations identified by the examiner are supported by the medical evidence in the record. A double blind annual review of a statistically valid random sample of adjudicated disability cases is currently in development. Besides the Quality Assurance Unit's statistically valid measure of the overall initial disability determination accuracy, the agency will establish procedures for documentation, validation and certification of performance information.

To date, two disability analyst positions and a third management analyst position have been created to lead the data analysts and develop internal procedures for quality reviews, including performance measures for tracking the accuracy of disability determinations. This comprehensive review of all aspects of completed disability determinations will be a permanent feature of the RRB's adjudicative procedures so that any unusual patterns can be identified quickly and dealt with appropriately.

Enhance Oversight, Fraud Awareness and Training

Also responsive to the GAO's recommendations, we are strengthening our pre-payment fraud detection measures by enhancing our fraud awareness training. Training for Field staff, Hearings and Appeals staff, along with program employees in the disability units, has already been conducted and is on-going. The RRB will continue to procure anti-fraud training from outside sources and make such training mandatory for all agency personnel. We will also employ contractual medical personnel to provide refresher training for those responsible for making or reviewing disability decisions, such as claims examiners, reconsideration specialists, hearings officers and quality assurance specialists. The Board believes that training related to fraud awareness and detection should track similar training that is mandated Government-wide for IT security purposes. To that end, we have a newly established Learning Management System training unit for serving all RRB employees and the curriculum will include annual fraud awareness and deterrence training. Medical professionals under contract with the Board have also conducted several advanced medical training sessions for disability staff.

The agency has established and filled a Director of Audit Affairs position with an audit expert to assist in tracking, implementing, and reporting audit matters. In addition, the Board created a Fraud Task Force in December 2013 that assists in implementing disability reform measures along with other benefit-related program integrity measures. The task force, which consists of high-level agency officials, has approved a number of internal modifications to procedures and forms and is driving implementation of fraud prevention and detection initiatives, many of which were recommended by the GAO and our IG.

In September 2014, the agency procured the services of an independent contractor with extensive experience in fraud prevention and detection analysis in both the public and private sectors. The contractor will provide a full review of all benefit programs and offer recommendations and a plan of action to improve program integrity and help deter and detect fraud.

Additional anti-fraud measures include:

- More frequent contact with fraud-risk populations through the expanded use of continuing disability reviews for all occupational cases and required periodic re-certification of disability
- Pursuant to recently revised procedure, a senior disability examiner performs a review of each disability case to ensure that all requirements, policies and procedures are adhered to prior to a final disability determination
- Tracking of all treating physician information to identify any suspicious activity or patterns for referral to the IG
- Review and revision of forms, including the disability application, to gather more relevant and accurate information

Improve the Quality and Timeliness of Vocational Information

In adjudicating occupational disability claims, the RRB collects vocational information from both applicants and employers relating specifically to the applicant's regular railroad job. To further bolster the disability adjudication process, we are working with rail labor and industry to update the job descriptions currently in use. The updated job descriptions will reflect changes made to the workplace over the years and will provide more specific, uniform and accurate information concerning a job's physical requirements.

Occupational Disability Advisory Committee

To further assess the quality of medical evidence, the RRB is also tasking its Disability Advisory Committee³ with reviewing the effectiveness of all contracted medical sources used during the disability adjudication process, which includes independent medical exams and consultative medical opinions. A review of our medical contracts has never been done previously by the Advisory Committee, which is comprised of two physicians with expertise in occupational health. Their recommendations will be used to enhance the quality and efficacy of existing and future contracts, as well as the overall disability program.

Review SSA Best Practices

A multi-component team from the agency has been created and tasked with reviewing SSA's best practices to take advantage of tested program integrity initiatives utilized by SSA. SSA has shared some of its analytical modeling used to detect fraud. We are studying analytics associated with these models and will modify them to fit to our program, where appropriate. We are also monitoring SSA in its review of guidelines that have a direct effect on the agency's disability processing. The RRB will seek to obtain shared training and other resources that might assist its examiners in reviewing, interpreting, and weighing medical evidence. We anticipate that this will be an ongoing partnership between the RRB and SSA as both organizations continue to focus efforts to detect and prevent fraud in their respective benefit programs.

³ The Disability Advisory Committee is provided for in RRB regulations at 20.C.F.R. §220.10(b).

CDI Program

The agency has inquired into SSA's Cooperative Disability Investigative (CDI) program. The CDI is a partnership program between SSA and its IG, and its stated mission is to obtain evidence that can resolve questions of fraud before benefits are paid. CDI units also provide information to examiners during continuing disability reviews which can be used to identify those cases where benefits should be terminated.

CONCLUSION

In summary, the initiatives I have described above were crafted by the Board with the concerns of the IG and GAO in mind. Our intent is to utilize the most accurate and specialized medical opinions and current vocational information when making disability determinations. Specialized training of all staff in fraud awareness and detection is ongoing and examiners have ready access to medical experts for guidance. Finally, we have created a quality assurance unit, and its work will be enhanced by contractual medical review. The entire disability process will be regularly analyzed and reviewed for accuracy. The Board is committed to effectuating real change to combat fraud by continuing to implement these extensive and ongoing program integrity efforts.

Thank you for your interest in the railroad retirement disability programs.

Mr. MEADOWS. Thank you, Mr. Schwartz.
Mr. BERTONI.

STATEMENT OF DANIEL BERTONI

Mr. BERTONI. Chairman Meadows, Ranking Member Connolly, members of the subcommittee, good morning. I'm pleased to discuss the Railroad Retirement Board's disability programs and the challenges that expose taxpayer dollars to fraud, abuse, and improper payments. As a steward of both the occupational and total and permanent disability programs, RRB is accountable for managing and overseeing the expenditure of billions of dollars annually.

However, our work has identified internal control weaknesses and oversight gaps in these programs. Related audits by the Board's inspector general and the Department of Justice investigation have also identified similar challenges. My Statement is based on our prior work and focuses on key vulnerabilities that threaten the integrity of RRB's programs as well as actions that the Board has taken to address our recommendations.

In summary, instances of past fraud and improper payments have highlighted gaps in the Board's oversight, due in part to a manual, paper-based process and impedes the agency's ability to systematically identify potential fraud patterns, such as a high concentration of claims from one source or boilerplate medical exam information submitted for multiple claims by the same doctor. To address this issue, the Board has taken some limited steps to compile and analyze electronic data, primarily for Long Island Rail Road claims. But more could be done, including mining such data for the other railroads it oversees in its total and permanent disability program.

Our June 2014 report further highlighted fundamental shortcomings in RRB's policies and procedures. First, we found that field staff rely on outdated information to verify claimants' self-reported work and earnings activity although more timely data is available. And they risk paying benefits to ineligible individuals as a result. We recommended that RRB seek more timely earnings data, such the National Directory of New Hires data base. Agency officials agreed to work with OMB in exploring this option going forward.

Second, we reported that the Board's claims process fell short of basic internal control standards and that a single examiner could both review and approve a claim in many cases without any independent review by another third party. In fact, we found that up to one-third of all claims were approved by the same examiner who reviewed the application. And we noted that the absence of a second set of eyes on these claims could expose the agency to improper payments due to fraud or error by the claims examiner and recommended supervisory review of all claims.

The Board subsequently revised its policy to strengthen such reviews effective September 2014. We also found an insufficient commitment to quality and integrity at RRB, as reflected in their quality assurance activities and performance metrics, which focus primarily on payment timeliness and accuracy and less on whether disability decisions were supported by the medical evidence and were, in fact, correct. While it's important that claims be paid quickly, it's equally important that benefit decisions be accurate.

Thus, we recommended that the Board shore up its quality assurance processes and establish more balanced performance metrics. While the agency agreed with our recommendations and is in the process of developing a new quality assurance plan, we have yet to receive it or review it.

Last, we noted an insufficient commitment to fraud prevention throughout the agency, even after high-profile Long Island Rail Road incident. Our interviews with staff showed an inconsistent level of fraud awareness. And claims reps in four offices we contacted said they had not received any fraud-related training. Some other staff told us it was not their job to be on the lookout for fraud. We recommended that RRB take steps to elevate the importance of fraud prevention and detection agency-wide. The Board agreed and has begun to take steps to amend its procedures, training, and other program tools in this area.

In conclusion, RRB's disability programs remain vulnerable to fraud and overpayments due to various management and systemic weakness that warrant sustained attention going forward. Absent a more proactive stance by the Board to make substantial progress in movement away from a business-as-usual approach to claims processing, public confidence in these programs may be further undermined. At present, much work still needs to be done. And we look forward to working with this subcommittee, Board officials, and inspector general staff as the agency continues to implement our recommendations.

Mr. Chairman, this concludes my Statement. I'd be happy to answer any questions that you or other members of the subcommittee may have. Thank you.

[Prepared Statement of Mr. Bertoni follows:]

GAO Highlights

Highlights of GAO-15-535T, a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

May 2015

RAILROAD RETIREMENT BOARD

Actions Needed to Reduce Continued Risk of Fraud and Improper Payments

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 bertoni.d@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(j). *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.

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

Use of the Railroad Retirement Board Occupational Disability Program across the Rail Industry. GAO-10-351R. Washington, D.C.: February 4, 2010.

Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities. GAO-09-821R. Washington, D.C.: September 9, 2009.

Mr. MEADOWS. Thank you so much.

This is a, what we would normally call a fly out day. And so in the interest of being sympathetic to some of our members that may be flying out soon and that have a real interest in this, I'm going to recognize the vice chair of this subcommittee, the gentleman from Michigan, Mr. Walberg.

Mr. CONNOLLY. I just want to say, Mr. Chairman, before Mr. Walberg, I have to fly to Fairfax at some point.

Mr. WALBERG. Thank you, Mr. Chairman. It's interesting talking about flying out when we're dealing with railroads. So we'll try to fly a little lower at this point.

But thanks for having this hearing. Railroads are important to our economy. Railroads do carry things that we can't do as efficiently otherwise. And there are plenty of dedicated people, some you've mentioned from your families, involved. But that requires that we be more effective in making sure that every system works and everyone is involved in doing it the proper way.

Mr. Dickman, did the OIG recommend that the RRB attempt to recover the payments that were deemed improper after the Long Island Rail Road fraud?

Mr. DICKMAN. Initially, when the Board was going to send out at our request termination letters for those individuals that saw Dr. Ajemian and Dr. Lesniewski, we told them not to request, that they would be looking at trying to recover any of that money because the U.S. Attorney's Office, since, as a former prosecutor, the criminal matter always trumps any civil action. And they wanted time to make a determination as to what, if anything, they were going to do with the 700 people or up to 1,500 people that were involved in this. There was one other doctor, a third doctor, who is deceased, who was, obviously, never tried in this matter.

So we sent a notice saying hold off on doing anything like that. We received a letter from the general counsel saying: At the present time, we will not do anything as far as seeking recovery of the prior benefits. Then, unbeknownst to us, later they sent out—when they sent out a notice to all these individuals, they State that we will not recover or seek to recover any more benefits, which took us by shock and we were shocked. And so was the U.S. Attorney's Office shocked because now the Board is, obviously, not going to recover, seek any recovery. And the U.S. Attorney's Office, which was considering civil actions, is now prevented from seeking any restitution from these individuals.

So it's really, it's kind of mind-boggling to send out a termination notice saying the Board States to these people: You are involved in fraud, but now we're going to let you reapply, and we're not going to go after any of these prior benefits, these millions and millions of dollars that we've given you, and let you reapply. And when the people did reapply, they approved 94 percent of them.

Mr. WALBERG. So your counsel was temporary, waiting for the process to develop?

Mr. DICKMAN. We were waiting, right. We initially said hold off. And then—

Mr. WALBERG. Based upon determining the necessity for prosecution and the evidence.

Mr. DICKMAN. Correct. Based on the U.S. Attorney's Office giving us direction on which way they were going.

Mr. WALBERG. Then I would follow that up, Chairman Schwartz, why did the RRB choose to abandon the option to recover 275—as I understand it—\$275 million in improper payments following exposure of the Long Island fraud ring?

Mr. SCHWARTZ. When we received the information that Dr. Ajemian, the doctors involved pled guilty, we immediately started the process to open cases. And that process would be open cases, take a look at the information in the cases, and see if the person was legitimately disabled. In that process, we could have recovered payments.

Mr. Dickman, at that time and rightfully so, said to us: You have to stop that process because you could interfere with prosecution, and we don't want you to recover payments.

So he, along with us, decided that what we would do would be to issue a Board order that would allow people to reapply. Now, these are not people who were accused of anything. These were not people that were, that anyone indicted, that anyone accused. These were people who did go to that doctor. But they were not, they did not come in and voluntarily disclose that they did something.

Mr. WALBERG. Let me go back.

Mr. Dickman, in looking at all of that information, what was just said, do you agree with that?

Mr. DICKMAN. No.

Mr. WALBERG. Why?

Mr. DICKMAN. Because we said: Hold off because we're waiting for direction from the U.S. attorney in how they're going to proceed. And these individuals all went to Dr. Ajemian or Dr. Lesniewski. And then the Board sends out a termination letter, based upon our request, stating the termination that is in case you people have committed fraud against the Railroad Retirement Board. And then, subsequently, down the road, they issue a Board order, which States to these individuals that you can reapply, which we know they had the opportunity the to reapply, and States that we will not be seeking any recovery from you.

Mr. WALBERG. Looks like a coverup?

Mr. DICKMAN. I don't know if you'd call it a coverup. But it was maybe disingenuous. But we were taken aback by it.

Mr. SCHWARTZ. I would like to say something on that though. Our chief counsel says that there's nothing that was in that letter that we have sent—and this is good news actually—on the termination that precludes us from recovering any money from someone who has committed fraud. And we thought, I can tell you, we thought we were working with the Inspector General's Office every step of the way. We have worked with the Inspector General's Office every step of the way.

Mr. WALBERG. It doesn't sound like it. When we see the type of fraud that went on and the percentage of people who were involved in that situation who were reinstated and have received the final, final verdict that they were worthy of receiving those retirement benefits and those disability benefits, that doesn't seem like you're working with it.

I know my time has expired. Hopefully, we will continue. And I yield back.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the ranking member, Mr. Connolly.

Mr. CONNOLLY. Mr. Chairman, in the spirit of comity, if there are colleagues on your side who are pressed because of a flight, I will reserve my time and defer to them if anyone needs it.

Mr. MEADOWS. I think we're OK. Thank you. Thank you for your graciousness.

Mr. CONNOLLY. Certainly.

Mr. Dickman, in 2007, the IG, your IG office, not you personally, issued the following Statement with respect to the RRB: "The RRB has adequate controls to provide a reasonable assurance that disability applications are processed in compliance with applicable laws and regulations. There are sufficient edits and checks in the RRB computer system to provide assurance that the information on the disability application is correct and, therefore, the occupational disability decisions are based on correct information." Do you recall that?

Mr. DICKMAN. I sure do.

Mr. CONNOLLY. OK. So, obviously, today, we would have to disavow that assessment.

Mr. DICKMAN. Well, I take full responsibility for that audit. It was a very superficial audit. It was not one of our best efforts by any means. And it just, it looked—it didn't go behind the whole process. It said, in effect, it was: Are all the boxes checked? Is it done within an efficient manner?

And the auditors who did that were not aware of the Long Island case; it was just being developed then as a criminal matter that they wouldn't know about it. So, yes, we did say superficially, based upon what we've seen, what they saw, it was correct. But some of the recommendations, two of the recommendations we made was, one of them was that there be, there can't, that the individual who is reviewing the case cannot also make the determination, that there should be some secondary oversight. And they agreed to that. And that was in 2007. Yet, it's still is going on.

Mr. CONNOLLY. Right. I'm not trying to make the case to discredit the IG. I'm simply pointing out that we've learned a lot with that Statement.

Mr. DICKMAN. Yes.

Mr. CONNOLLY. Mr. Bertoni, prior to 2008, did the GAO make any adverse findings against the RRB?

Mr. BERTONI. We had some work we did in the, I believe, late 1980's. And we actually took—you're pulling on the memory strings here. I believe we took a sample of claims and we had some experts, external experts, maybe even SSA adjudicators to look at these claims to see if they were correctly adjudicated. And we had some real concerns with the action and reliability decisions.

Mr. CONNOLLY. Mr. Schwartz?

Mr. SCHWARTZ. Yes.

Mr. CONNOLLY. There's some confusion here. You went through a long laundry list of improvements based on both the IG and GAO reports. And yet Mr. Bertoni's testimony is we haven't seen a plan yet. In a sense, he's saying everything you're saying is all news to

him formally. He may have heard of it. But, in terms of a formal response, here's an action plan—I mean, how many recommendations were there in the GAO report, Mr. Bertoni?

Mr. BERTONI. I believe we had five.

Mr. CONNOLLY. Five? How many have you implemented or are you planning to implement? And when do you intend to notify the GAO?

Mr. SCHWARTZ. All five.

Mr. CONNOLLY. All five?

Mr. SCHWARTZ. We have told the GAO we're planning to implement them. We have a plan. And I have to say that Mr. Bertoni's and Mr. Dickman's recommendations have really, really been a big part of the plan we put together. Mr. Dickman's comments about changing the way we do business, he is right, spot on. He really is.

Mr. CONNOLLY. So you agree with his Statement that part of the problem here is, "we're here to pay," culture?

Mr. SCHWARTZ. I think that part of the issue that we have is that we cannot sacrifice accuracy for expediency. In other words, we want to pay, but we can't sacrifice accuracy. That's why we have a quality assurance area that we've put together, which Mr. Bertoni suggested, which Mr. Dickman, I hope, will agree with as well. I think many of the things that he wants is in that quality assurance unit, where we will be able to basically double check our work and make sure that our work is proper.

So, in answer to your question about the plan, we do have an improvement plan. I think that Mr. Dickman and Mr. Bertoni both will get a copy of that very soon. And I think it's also important when you say when will things be put together, we'll have timelines on that plan too. And then Mr. Dickman and Mr. Bertoni can monitor that.

Mr. CONNOLLY. OK.

Mr. Dickman, you indicated that we still have a 98 percent approval rating of disability claims. And I assume, by citing that, you think that's way too high and obviously allows for fraud?

Mr. DICKMAN. Yes.

Mr. CONNOLLY. What would be a number that you would be comfortable with?

Mr. DICKMAN. When you get to, a statistician will tell you when you get to 98 percent, that's 100 percent. So something has to be wrong with the system. And it's either, you know, if railway labor and management want to continue this, then why not turn it into an entitlement? That's basically what it is because there is no real screening going on. If you have 100 percent of the people applying receiving the benefit, the screening seems—is just—meaningful—it's very superficial.

Mr. CONNOLLY. I'm running out of time, unfortunately. But, Mr. Schwartz, I would like you to respond to that, 98 percent?

I mean, Mr. Dickman is basically saying, by definition, you've got fraud going on when the number is that high. And one other thing I would like you to respond because, in Mr. Dickman's testimony, he also called into question the medical examination process. It's cursory and obviously some doctors are corrupt, as we learned in Long Island. So what are you doing to rotate doctors; to try to min-

imize fraud and corruption and collusion; and to have a more thorough examination so that the results are more credible?

Mr. SCHWARTZ. When we get an application—

Mr. CONNOLLY. Start with the 98 percent first.

Mr. SCHWARTZ. The 98 percent, I would say that when you start with that, you would say that the occupational disability law, actually—well, here's the best way to put it, the person has to have 10 years of rail experience or be 60 years old or have 20 years of rail experience and a current connection; then they can't do their job. That's it. It's a very unique, unique law. That being said, we have to do better. We absolutely have to do better. We have doctors all the way through. In our plan, we actually have doctors at the beginning, the IMEs; we have consultative exams in the middle; and, at the end, we have doctors, we have a contract with a doctor to do assessment at the end to make sure we did our work properly. So we have doctors all the way through the process.

As far as Mr. Dickman's comment about how long an exam could last, I've not seen the contract on the exams that our IMEs are doing right now. So I would have to wait to comment on that.

Mr. MEADOWS. Thank you, Mr. Schwartz.

I thank the ranking member.

The chair recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman.

Mr. Schwartz, you just mentioned the law and that part of the situation is contributed to by the fact that the law is unusual. And it sounds like if you meet the 10-year requirements and you cannot do your specific job, you qualify, is that what you're saying?

Mr. SCHWARTZ. If you meet the requirements, yes, the non-medical requirements and you can't do your job, that's correct.

Mr. MULVANEY. Should we change the law?

Mr. SCHWARTZ. That would be up to—if Congress would sit down with rail labor and management and discuss that, then we would administer anything that you—

Mr. MULVANEY. Would you support us changing the law?

Mr. SCHWARTZ. What I would say is if you do change the law, we'll administer it.

Mr. MULVANEY. That's not what I'm asking. I'm saying, look, I've got a disability policy. A lot of folks in this room probably do. And the language is different; you're right. But what you just described, it sounds like it's unusual, maybe not unique but unusual. And the disability policies I'm familiar with say I can't do my job or something similar. What if we change the law to say that? In order to qualify for the RRB payments or the program, you would have to not only not be able to do your job but a similar job as well. Would you support that?

Mr. SCHWARTZ. Yes, I mean, I think that would be something that you could, that rail labor and rail management would have to discuss. I think that it would be something—

Mr. MULVANEY. Do you think your Board would support it?

Mr. SCHWARTZ. Do I think the—

Mr. MULVANEY. You're a three-member board, right?

Mr. SCHWARTZ. Yes.

Mr. MULVANEY. Do you think they would support that?

Mr. SCHWARTZ. Changing the occupation—I think that if there's changes that need to be made in the laws, I think that they would—

Mr. MULVANEY. I'm not asking you that. And you see where I'm getting on this. People like it the way it is, don't they?

Mr. SCHWARTZ. People like?

Mr. MULVANEY. The people who can get the benefits. It's a great system, isn't it?

Mr. SCHWARTZ. I think that occupational disability as a system needs to be improved. The way we administer occupational disability needs to be improved.

Mr. MULVANEY. Come back to what Mr. Walberg was asking you about, toward the end of your questioning, you mentioned that your lawyers told you that the letters that you sent out to the people who had to re-qualify did not prevent you from subsequently seeking to collect payments from them, is that a true Statement? Is that accurate?

Mr. SCHWARTZ. For fraud, yes.

Mr. MULVANEY. For fraud. So why haven't you done it yet?

Mr. SCHWARTZ. These were people who, that, OK, we terminated their benefit because they had seen doctors that had plead guilty.

Mr. MULVANEY. No, I understand that.

Mr. SCHWARTZ. They were not indicted. They did not have any criminal charges brought against them. So what we decided to do is have them reapply with new medical evidence.

Mr. MULVANEY. No, I get all that. But my point is the OIG, I think, has indicated that there might be as many as \$275 million worth of payments that you could collect. You said you asked them to collect it earlier, and they said no because of the ongoing investigation. There's no controversy there. But now there's no ongoing controversy, and you could go get it. So the question is, why haven't you done that?

Mr. SCHWARTZ. I would have to see if we had a legal basis to do that. And I will.

Mr. MULVANEY. No, you just said your lawyers told you you did have a legal basis to do it.

Mr. SCHWARTZ. We have a legal basis to collect the money for fraud. What I would have to do is talk to my lawyers, and we would have to see if fraud can be proved.

Mr. MULVANEY. That's fine. I'll grant that for sake of discussion. Why haven't you talked to your lawyers yet? Your opening Statement was that you were working tirelessly on this. It's an interesting word by the way. I'm not really sure what it means. You also said you were committed to real change. So, in this tireless work that you've been doing, why haven't you called your lawyers about trying to get this money back?

Mr. SCHWARTZ. In my opening Statement, I was referring to the changes that we're making in the program.

Mr. MULVANEY. OK. So you're working tirelessly on fixing the stuff going forward but not tirelessly on collecting the money that might have been stolen already.

Mr. SCHWARTZ. These were people who went to this doctor.

Mr. MULVANEY. The history is fine. No one is disagreeing with you about the history. Why haven't you done it yet?

Mr. SCHWARTZ. Why haven't—

Mr. MULVANEY. Why haven't you tried to get this money back yet? Why haven't you talked to your lawyers about it? You're spending all your time fixing things going forward, is that what you're saying? There's just not enough time in the day to fix things going forward and trying to gain redress for past wrongs?

Mr. SCHWARTZ. These were people who reapplied and submitted new medical evidence.

Mr. MULVANEY. Right. And that means what to you, Mr. Schwartz?

Mr. SCHWARTZ. They reapplied. They submitted—

Mr. MULVANEY. Oh, I see what you're saying, you're saying Mr. Dickman is wrong and there really isn't, you've done an investigation. And, because these folks have resubmitted their medical information, that you disagree with his determination that there might be up to \$275 million worth of recoverable losses.

Mr. SCHWARTZ. I think Mr. Dickman does a great job. I think his recommendations to us have been very, very helpful.

Mr. MULVANEY. Do you think he's wrong?

Mr. SCHWARTZ. I would not say that Mr. Dickman is wrong. This is what I would say: I would say that back when Dr. Ajemian pled guilty, there were 1,500 applications that Mr. Dickman was looking at. When we went to terminate people, we asked for a list of people that went to Dr. Ajemian. He gave us back a list of 700—

Mr. MULVANEY. That's fine. We've done the history. I'm over time. I apologize. I will close with this. Something miraculous happened in this building a couple weeks ago. In fact, I think it was in this room. We had somebody here in a similar position of authority within the government. And she gave answers that were almost as bizarre and indefensible as the ones you've given here, that we've heard about before today. Do you know what happened to her, Mr. Schwartz? Ms. Leonhart from the DEA? Are you familiar with that? I'm sorry, sir, is that a yes or a no?

Mr. SCHWARTZ. No.

Mr. MULVANEY. OK. She's gone as the result of a bipartisan uproar over the way that administration was administered. In fact, I think before she left the room, there were 23 names on a letter to the President saying: This person is not capable of doing the job; please give us somebody else.

This is real. We take this stuff real seriously. And the days of you being able to come in and just say what you want to say, completely contradict the GAO and the IG's Office, and think that nothing is going to happen is, thankfully, coming to an end.

Thank you, Mr. Chair.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you for being here today.

Just so I get it straight, the occupational disability program, what is the percent of people's pay or how much do you determine we get every month if you become eligible for this?

Mr. SCHWARTZ. Right now, it depends. I mean, it depends on, I mean, I've seen annual Statements that people get probably

around, I'd say right now somewhere between \$2,700 and \$2,900 a month, depending on the year.

Mr. GROTHMAN. OK. How about the total and permanent disability program, what do they get?

Mr. SCHWARTZ. More like \$1,700 or \$1,800 a month.

Mr. GROTHMAN. OK.

Mr. SCHWARTZ. I don't have the exact numbers in front of me, but something like that.

Mr. GROTHMAN. Do you know percentage-wise every year how many people apply for these programs?

Mr. SCHWARTZ. Yes. I mean, the percentage of people who apply for the programs has gone down tremendously. Ten years ago, basically there were, oh, probably, I mean, when you're talking about for total and permanent disability, they were probably 30 percent of the applications. Now it's down to 15. Occupational disability, probably 8 percent of the people applied; now it's down to 3. So the percent of people who are applying for these has dropped tremendously in the past 10 years.

Mr. GROTHMAN. Wait a minute, I must be missing something here. Thirty percent of what are applying?

Mr. SCHWARTZ. OK, if you have like—let me give you an example. Last year, 12,400 people received new benefits. Of those, 10,200 were age and service; in other words, those were benefits that weren't disability. OK, so that left, oh, around 2,000, 2,100 people that applied for benefits. Of those, 800 were total and permanent; 1,100 were Social Security equivalent; and 200 were occupational disability. So you had about 2 percent for that type of disability, pure occupational disability.

Mr. GROTHMAN. So, every year, 2 percent of the employees say they are disabled?

Mr. SCHWARTZ. Well, right now—well, what it comes down to is—well, there is—occupational disability as a pure disability that doesn't get a Social Security equivalent—

Mr. GROTHMAN. Yep.

Mr. BERTONI [continuing]. Are not an age and service. It is about 2 percent. But there is a total and permanent program as well, and there is also a process for an occupational disability where they get a Social Security equivalent.

Mr. GROTHMAN. Right.

Mr. SCHWARTZ. So, last year, 18 percent of the people—18 percent total received some kind of disability.

Mr. GROTHMAN. How many of the employees under this system every year percentage-wise, say, I am disabled?

Mr. SCHWARTZ. Last year it was 18 percent.

Mr. GROTHMAN. Eighteen percent of the people said they were disabled? I mean, could you compare that to other occupations out there in the world like the—both government and nongovernment like—

Mr. BERTONI. There is not a lot of evidence on occupational. There are not a lot of occupational programs. RRB is very unique in it being an occupational program.

The Social Security Administration is going to look—sort of to your question, is it a five-step sequential process. One of the sequences is first to say, can this person do their prior work? If yes,

then that's a different answer. If no, then they go to, can they do another job in a national economy? So that is all that you have. It is sort of an apples-and-oranges question.

Mr. GROTHMAN. I am either asking the question wrong or something. That can't be right.

Mr. CONNOLLY. Would my friend—would my friend just yield for a clarification?

Mr. GROTHMAN. Sure.

Mr. CONNOLLY. I thank my friend. I'm not understanding your answer, Mr. Schwartz, to my friend from Wisconsin. Are you saying that 18 percent of the total awards, 18 percent of the total awards are for disability? Workforce?

Mr. GROTHMAN. OK, that is not the question. I think you are missing the question.

Mr. CONNOLLY. OK.

Mr. GROTHMAN. Of all the people who would be eligible to be disabled, of your sea of people who are working under these programs, what percent of employees every year submit a claim of some nature for disability? That is the question.

Mr. SCHWARTZ. Last year, as I said, we had 12,400 people get awards, 12,400 get awards. OK? Of those, 18 percent—18 percent of those people received an award for disability.

Mr. GROTHMAN. OK, so we are looking at about, I guess what you told me, like 2,000—

Mr. SCHWARTZ. Yes.

Mr. GROTHMAN. OK. OK, and how many people are in the program total who would be eligible? What I'm trying to get at here is, there are X number of railroad employees who could hypothetically become disabled. Every year a given percent say, I'm disabled. What is that percent? How many people—how many working employees do you have every year who could be covered by the system? Let's see how we can work this through for you.

Mr. SCHWARTZ. Well, right now, there's about 250,000 people in the work force.

Mr. GROTHMAN. OK, so then we are saying about 1 percent of the employees every year say they are disabled, is that what we are trying to say?

Mr. SCHWARTZ. You could run the numbers that way.

Mr. GROTHMAN. Well, I mean—

Mr. SCHWARTZ. Well, I mean, let me—

Mr. GROTHMAN. OK, the deal we are trying to get at—

Mr. SCHWARTZ. Yes, yes, just really, honestly, if you could let me know what you are getting at maybe I can understand better.

Mr. MEADOWS. Mr. Schwartz, let me—if the gentleman would yield for just a second. How many are eligible to get benefits? What's the total number? It's not 200,000, is it?

Mr. SCHWARTZ. Eligible to get benefits?

Mr. MEADOWS. Qualify either 10 years or 20 years, the whole—

Mr. SCHWARTZ. I don't have that number.

Mr. MEADOWS. OK. It's about 70,000—

Mr. BERTONI. How many are currently on the rolls?

Mr. MEADOWS. Yes.

Mr. BERTONI. Is that the question? How many are currently on the rolls?

Mr. MEADOWS . Yes. I guess—

Mr. BERTONI. Occupational disability, 61,000; total and permanent, 21,000.

Mr. MEADOWS. Thank you.

Mr. SCHWARTZ. That's on the rolls.

Mr. MEADOWS. Thank you.

Mr. SCHWARTZ. That's on the rolls.

Mr. GROTHMAN. There's 61,000 people that are currently on some form of disability, railroad disability? No?

Mr. SCHWARTZ. There's 58,000 people currently that are labeled as occupationally disabled; 45,000 of those people have reached the age of 62; 5,000 of those people are—have the pure occupational disability where they aren't able to get any other benefit. They aren't able to get an age and service benefit. That would be a regular retirement. They aren't able to get any kind of Social Security equivalent. There's 58,000 people that are categorized as occupationally disabled, as Mr. Bertoni said, 20,000 total and permanent.

Mr. MULVANEY. Will the gentleman yield for a second?

Mr. GROTHMAN. Sure.

Mr. MULVANEY. Mr. Schwartz, you just—I don't follow the significance of what you just said. You said a certain—there is a large number 60-some thousand. And how many of those are 62?

Mr. SCHWARTZ. There's 58,000 people labeled as occupationally disabled because their application originally came in as occupationally disabled.

Mr. MULVANEY. OK.

Mr. SCHWARTZ. All right, 45,000 of those people are 62 and over.

Mr. MULVANEY. And let me stop you right there. What is the significance of that, of being over 62?

Mr. MEADOWS. OK, the gentleman's time is expired, but you can answer that question.

Mr. SCHWARTZ. The significance of that is that they could be getting, if we didn't exist, let's say we didn't exist, they could be getting some kind of benefit.

Mr. MULVANEY. From whom?

Mr. SCHWARTZ. Social Security.

Mr. MULVANEY. Thank you.

Mr. MEADOWS. I thank the gentleman from Wisconsin, and we are going to have another round so if you would like to sit around.

The gentleman from Florida is going to have to leave so the chair recognizes the gentleman for 5 minutes.

Mr. MICA. Thank you.

Again, it is good to be here and also have been here because I remember I think it was back in 2008 when this was disclosed. And we had evidence of, at that time, it was over 90 percent were getting these disability approvals. Isn't that the case?

Mr. DICKMAN. Ninety-eight percent.

Mr. MICA. Yes, OK. Basically, we were not, my side was not in charge when this came down. And I was told that those responsible would be prosecuted; this would be halted; and that those would be held accountable who have participated. Some of them have gone to jail. Some of them held accountable.

Mr. DICKMAN. Yes.

Mr. MICA. But when I saw—thank you, Mr. Chairman, and ranking member for holding this meeting—but when I saw the numbers, I just about fell off my chair. Is this 96.7 percent grant rate correct on these claims?

Mr. DICKMAN. That's national average, or is that the re-adjudication?

Mr. MICA. There is disability applications, all applications filed during the period—filed during fiscal years 2013 to 2014 grant rate. What is this?

Mr. DICKMAN. I believe that is—

Mr. MICA. Denial is 98, and then 2,839, the grant rate is 96.7.

Mr. DICKMAN. Right.

Mr. MICA. Is that correct?

Mr. DICKMAN. Correct, yes.

Mr. MICA. Well, again, we haven't come very far from where we were. Now, there was fraud and abuse of the system before. Is that the case now, inspector general?

Mr. DICKMAN. Well, I think it is the case, and more—

Mr. MICA. Is it fraud? Because before it was fraud and people were fraudulently approving these. There is a doctors' ring, and then they were—OK, is that still the case?

Mr. DICKMAN. Well, we are finding it's still the case. Not to maybe the same extent because of the particular—

Mr. MICA. It is gamed a little bit differently?

Mr. DICKMAN. Different because, in the Long Island case, they had a private pension plan that a person could retire.

Mr. MICA. And then it is also abuse.

Mr. DICKMAN. It is abuse because one of the problems is, the way they define you can't do your regular railway occupation, is that, for some reason, they use—you can't do one aspect of your job. And we found that that is not defined anywhere in any of the rules or regulations. So there is—

Mr. MICA. So the whole process is a sham. How many people do you have, Schwartz, operating this Board? Are there a couple of employees? How many employees are reviewing these claims, the whole thing?

Mr. SCHWARTZ. Down in that section, there is around 30.

Mr. MICA. And the whole Board that—operations are 30.

Mr. SCHWARTZ. Who, well, no—

Mr. MICA. What are the 700 people doing that I am told—860 total.

Mr. SCHWARTZ. Well, the occupation disability is not all that we do. We have a lot of those people working the computer area that—we have other types of pension benefits? Occupation disability is not—

Mr. MICA. But, I mean, that section costs a lot of money to operate. You have got the Board. I mean, hell, you might just as well grant everybody disability and agree on something, close down, and save your administrative costs. That's probably not the solution. You need a better process for processing these folks for approval. And the inspector general has talked about how it is gamed. That's going to require a legislative fix, is that correct, or can it be done administratively?

Mr. DICKMAN. I think, as far as what the definition of occupational disability, that can be done administratively; that the person cannot do their regular railroad occupation, not one aspect of it. I mean, you could—your job might entail doing 15 different things. If they say—and the claims examiners are told that the person can't do 1 thing, 1 out of that 15, that means that they are occupationally disabled.

Mr. MICA. The average benefit, I heard, was somewhere in the \$400,000 once this is granted is what they receive, is that correct?

Mr. DICKMAN. Down the road?

Mr. MICA. Yes.

Mr. DICKMAN. Well, it all—it depends on each—

Mr. MICA. It is an average.

Mr. DICKMAN. Right.

Mr. MICA. But I remember distinctly, there was a conductor who walked the aisles or something, and collected tickets, got approval for disability.

Mr. DICKMAN. Sure.

Mr. MICA. I think the New York Times reported he was playing golf in Florida, and which I have no problem with people retiring and playing golf in Florida, but to do it on a pension, a government pension, a disability provision that was not properly awarded, raises a lot of questions. I'm stunned, Mr. Chairman. We need to change the law if they won't change the rules and get a handle on this.

Thank you. I yield back.

Mr. MEADOWS. I thank the gentleman from Florida for his leadership, not only on this issue many years ago but certainly for his leadership on other transportation issues.

And the chair recognizes the gentleman from Alabama who has been involved in this particular circumstance for many months, if not longer.

And Mr. Palmer, from Alabama.

Mr. PALMER. Thank you, Mr. Chairman.

Chairman Schwartz, on February 18 of this year, I sent you a letter, which contained 13 distinct groupings of questions. The Board responded on April 15, 2015. Do you believe that this April 15 letter was fully responsive to all of my questions?

Mr. SCHWARTZ. When we responded to your letter, we responded the best way we could.

Mr. PALMER. I ask you, though, do you believe that it was fully responsive, fully responsive to all of my questions?

Mr. SCHWARTZ. Is there something that you felt you still need an answer to? I apologize for that. I thought we did answer the questions, yes.

Mr. PALMER. So you answered, yes, that you think you fully responded to my questions?

Mr. SCHWARTZ. What I think has—when we received your letter, we put together answers that were the very best answers to your questions we could put together. Yes.

Mr. PALMER. So your answer is yes. Thank you.

I'm not sure that they were fully responsive. For instance, in question two, I asked—

Mr. SCHWARTZ. Sure.

Mr. PALMER. If Congress were to enact legislation to limit occupational disability to a time certain, how long a period would you recommend? And you dodged that question. You said you needed time to consult with other stakeholders. After I sent the letter, you requested an extension to fully respond. I think you have had plenty of time to respond and discuss with the stakeholders. If Congress were to limit the time a person could draw benefits, how long would that be?

Mr. SCHWARTZ. I would have to say rail labor and rail management would have to be involved in those discussions.

Mr. PALMER. OK, and question four, I asked: How many disability fraud referrals have been made to the inspector general?

In your response, you provide the number 44. But it's my understanding that 38 of those are unemployment cases. That would make, in my opinion, it would make your response inaccurate and perhaps misleading. Would you agree that an unemployment case is not the same as a disability case?

Mr. SCHWARTZ. If you were talking about investigative disability cases, in other words, referring to the inspector general for an investigation, you are exactly right, it is different.

Mr. PALMER. OK, and then that begs the question of why you answered the question the way you did. The question was: How many disability fraud referrals have been made to the inspector general? And you said 44; 38 of those were unemployment cases. If they were not disability cases, does that mean there were only six? But, yet, you answered 44. Can you respond to that?

Mr. SCHWARTZ. No, I can't. I can't respond to that. I mean, when we worked with our people and asked them how many had been submitted, they said 44. And basically, it turns out, if it's six, I apologize for the answer.

Mr. PALMER. Mr. Dickman, do you have any idea of how many disability fraud claims were referred to the—to your office?

Mr. DICKMAN. I think four. No, I think less than four. I think it might be two.

Mr. PALMER. OK. On question seven, I note that the latest statistics for occupational disability approval rate is 98 percent.

Mr. SCHWARTZ. Uh-huh.

Mr. PALMER. And then I asked you for updated numbers. Did you provide updated numbers in your response?

Mr. SCHWARTZ. It's 98 percent. I think we just assume that throughout the letter, it was 98 percent, and apparently we did not put down 98 percent. It's 98 percent.

Mr. PALMER. I find that interesting, particularly in context of question five. It indicates that—in your answer to question five that indicated that examiners who were doing the disability exams were to consult with a medical professional and not that the disability applicant submit to—or that the disability—let me rephrase that.

That they consult with a medical professional rather than have a disability applicant submit to an exam by a medical professional. And then you also say that you require a Social Security disability examiner and a Social Security Administration medical professional to review the case prior to the Railroad Retirement Board

review and decision. How has this process impacted the RRB's disability approval rate?

Mr. SCHWARTZ. What happens is, there's two types of disabilities. There is total and permanent, and there is occupational. About 33 percent of our cases end up going to Social Security for review. The Social Security rate, Dan, is probably somewhere in the 70's.

Mr. BERTONI. Seventy-eight percent.

Mr. SCHWARTZ. Yes, the Social Security rate is somewhere around 78 percent. What is happening is, we are just putting this plan in place. Basically, we are putting a plan in place that will have doctors involved, have exams by doctors. We will have a quality assurance unit. We will have training.

Mr. PALMER. Let me interrupt you. You say you will have exams by doctors. Now, based on the response to the questions, you said that you would have a Social Security disability examiner and a medical professional review the case. In other words, the disability examination would be done by someone else, but you would have a medical professional associated with Social Security to review the case. That's not the same as having a medical professional do the evaluation.

Mr. SCHWARTZ. Every application in our plan that comes in will have an independent medical exam.

Mr. PALMER. And it is also interesting—and you know, I will check my numbers.

Mr. MEADOWS. Mr. Palmer, your time is expired. And we are going to have a second round so if you can hang around. If not, I will let you ask one last question.

Mr. PALMER. One last question. The numbers that I have on Social Security approval rate is less than 40 percent before appeal, and 65 percent after appeal. But you say 78 percent?

Mr. BERTONI. No, the total and permanent program is at 78 percent. Social Security Administration's initial claims approval rate is about 30 percent. And that's problematic for us because supposedly the Social Security Administration and the RRB are using the same criteria. So there is a pretty wide gulf between what is being approved at the Social Security level versus RRB.

Mr. PALMER. Well, apparently.

Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman.

I thank the gentleman for his leadership on this particular issue. I'm going to ask a few questions.

Mr. Dickman, what incentive is there to prevent fraud? I mean, when we really look at this in terms of is there any incentive to deny claims under the existing policy that Mr. Schwartz has had in place?

Mr. DICKMAN. Well, again, in our view, there really isn't as long as you have this culture of we are here to play, and the feeling is in the industry is that it's our money.

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. But culture is an ambiguous thing, and so I guess what I'm saying, is there any review process or anything that gives a rating to those that would deny a claim? I mean, are you aware of any matrix that is out there?

Mr. DICKMAN. At the present time?

Mr. MEADOWS. At the present time.

Mr. DICKMAN. No.

Mr. MEADOWS. OK. Mr. Schwartz.

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. Let me—you actually have a chairman and ranking member that has a great affinity for railroad employees and the union, which is——

Mr. SCHWARTZ. Yes, sir.

Mr. MEADOWS [continuing]. Is rare to have this. You also have a ranking member and a chairman who loves railroad management.

Mr. SCHWARTZ. Yes, sir.

Mr. MEADOWS. That is unusual to find those two. And I think both the union, from what I understand, both the union and management hate fraud.

Mr. SCHWARTZ. Correct.

Mr. MEADOWS. Both the union and management wish we weren't here today, you know, and so it's unique to have that kind of group together.

And I guess my question to you, Mr. Schwartz, we have got recommendation—70 recommendations.

Mr. SCHWARTZ. Yes, sir.

Mr. MEADOWS. And you implemented five. What happens to the other 65 recommendations? Do you just look the other way?

Mr. SCHWARTZ. Well, I think that I would like to sit down with Mr. Dickman after this meeting and find out, you know, get our lists together.

I think some of those, Mr. Dickman, were probably legislative. Is that correct, sir?

Mr. DICKMAN. Some are, yes.

Mr. SCHWARTZ. Some are legislative. And I think many of them—and I think that he might need that clarification as well—are in our plan. I think many of the things that he has recommended are in our plan.

Mr. MEADOWS. Well, I appreciate you sharing that here at this hearing, Mr. Schwartz. My understanding is they sent you a list, and you never responded. Is that correct?

Mr. SCHWARTZ. I don't know exactly.

Mr. MEADOWS. You are under oath, so I mean——

Mr. SCHWARTZ. I know that. Mr. Dickman, would you help me with that?

Mr. DICKMAN. I don't know what—we sent so many requests and so many alerts.

Mr. MEADOWS. So is that, Mr. Schwartz is that your general counsel behind you? I mean, is your general counsel here today? You have got somebody behind you that is here helping you with this testimony? I guess the question is, do you want to turn around and ask them if you have gotten letters that you have not responded to with the IG because we have information that that's the case.

Mr. SCHWARTZ. Yes, I just—I don't know which, you said that you received a letter. I—Mr. Chairman, I didn't understand the question. You said you received a letter. I didn't know which letter.

But if you say “letters,” yes, we have received letters that we haven’t responded to.

Mr. MEADOWS. OK, there’s 13 recommendations. So I will be specific; 13 recommendations that the IG has made to you that you just didn’t respond to. Does that mean that you don’t intend to respond to, that you haven’t had time, or you are just ignoring them because you thought it would go away?

Mr. SCHWARTZ. Mr. Chairman, there is no way I would ignore the IG’s recommendations. There is no way.

Mr. MEADOWS. Well, it’s hard for us to believe that when we have had 70 recommendations and only five implemented. And Mr. Bertoni was talking about—let me quote him—“There’s only been limited progress,” I think was his words, in responding from you, Mr. Schwartz. And not just you, but the other members of the Board that are not here, and you know, you are catching the heat today, and perhaps we have to have another hearing to have all three of you if—but you are the Chairman, and so I—why would Mr. Bertoni say limited response, Mr. Dickman have 13 issues that were not responded to, and you in your testimony lay out a grand plan of how you have got this all under control. So is it all under control?

Mr. SCHWARTZ. Mr. Chairman, the GAO gave us five recommendations. We have agreed with all five recommendations and are implementing all five recommendations.

Mr. MEADOWS. All right, when will they be—when will they be implemented?

Mr. SCHWARTZ. I will give you a timeline. I will submit that for the record.

Mr. MEADOWS. All right. And so what about Mr. Dickman’s recommendations, the 13 nonresponses? Are you going to respond to those 13?

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. Even if it is that we reject—

Mr. SCHWARTZ. Yes, I will.

Mr. MEADOWS. OK. That’s fair. So let me go on a little bit further because this is all about cooperation.

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. I think most of us here believe, I can tell you, I can’t even imagine climbing Mount Kilimanjaro or a 400-mile bike ride, and I don’t get disability. So what, you know, you laid out a great plan in your opening testimony. But how much of that plan has just been derived for this hearing? Because my understanding is a lot of that hadn’t been communicated in terms of the new plan. When did you start working on that because you said 2013, but you just meant the task force was 2013, isn’t that correct?

Mr. SCHWARTZ. We have been working on that plan for a long time. And I think that—

Mr. MEADOWS. How much of the plan has happened in this year? How much of your plan? If we were to ask for documents, how much of the plan actually happened since you were notified that there was going to be a hearing?

Mr. SCHWARTZ. Oh, a lot of the plan happened before that, before we were notified we had a hearing.

Mr. MEADOWS. How much?

Mr. SCHWARTZ. Well, I would have to get that to you. Hang on a second.

Mr. MEADOWS. How about after the 7-day letter? How much of it came after the 7-day fire alarm?

Mr. SCHWARTZ. All of it. All of it.

Mr. MEADOWS. So every bit.

Mr. SCHWARTZ. Absolutely, I mean, Mr. Dickman's 7-day letter had a great effect. There's absolutely no—I won't deny that.

Mr. MEADOWS. So my question is, why would Mr. Dickman have to go through such extreme measures to pull the fire alarm, to say, Mr. Schwartz, to get rid of a guy who is getting jujitsu, why would he have to go through that to make you respond, Mr. Schwartz?

Mr. SCHWARTZ. Mr. Chairman, the question was how much of this plan was after the 7-day letter. All of it was. Before that, we did do some things but we weren't doing as good a job. It is absolutely true.

Mr. MEADOWS. OK, I'm going to ask one last question.

Mr. SCHWARTZ. Yes, sir.

Mr. MEADOWS. And then allow the ranking member to ask a few questions before we recognize the others. I have a real concern—

Mr. SCHWARTZ. Yes.

Mr. MEADOWS [continuing]. About your willingness to solve the problem and work with the GAO, and the IG. And you have got sympathetic guys up here that don't want to hurt anybody. We want them to have that safety net. Yet, at the same time, when this committee asked you for particular documents, we have to review them in camera—or had to review them in camera, and you made it very difficult for us to get the documents for our review. Do I have your commitment today that that will change?

Mr. SCHWARTZ. You have my commitment today that we will do everything we can to be cooperative.

Mr. MEADOWS. That's not the question. That's a great answer to a question I didn't ask. Do I have your commitment today that that will change? Because if not, Mr. Schwartz, let me assure you, you have enough people both on the Democrat and Republican side that we can do the research and it may be laborious for us, but we want to get this over with quickly; solve the problems so that your—the folks that depend on this safety net can depend on that money being there.

Mr. SCHWARTZ. Absolutely.

Mr. MEADOWS. And that we actually address this problem. But I'm not going to let this go on for a long time. So do I have your commitment that you are going to not make my staff have to go through all kinds of laborious, systematic ways to get information and that you and the other Board members will commit to being transparent, and give this committee what it needs?

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. Thank you very much. I recognize the ranking member—oh, we have got the gentlewoman from New York, Mrs. Maloney, is here and so I would recognize her for a series of questions.

Mrs. MALONEY. Let me—

Mr. MEADOWS. All right, I recognize the ranking member for a second.

Mr. CONNOLLY. I thank the chair.

Mr. Schwartz, you have got a 98 percent approval rating?

Mr. SCHWARTZ. Yes.

Mr. CONNOLLY. Do you think that is too high?

Mr. SCHWARTZ. I think we have to make sure. The problem is we have to make sure that the people are getting the benefits they deserve. But we also have to make sure we are paying it properly. And I think we need to put our plan in place to ensure that everything is done properly.

Mr. CONNOLLY. Yes, Mr. Schwartz, Mr. Dickman has just testified that when you get to 98 percent, it is virtually an entitlement program. It has gone far beyond what its original purpose was. Do you share that view, or do you think 98 percent is—I'm honestly asking because, in my opening Statement, I said in and of itself, a high rate of approval need not mean fraud. It could mean people are self-selecting when they apply, and it is corroborated. But 98 percent to a layman and to Mr. Dickman, your IG, seems to be a warning sign flashing something is fundamentally, systemically wrong with the whole process of how we evaluate disability claims. I'm asking you, as Chairman of the RRB, do you share that concern? Would you agree?

Mr. SCHWARTZ. Oh, I absolutely share that concern that there could be—that there could be an issue—that there is an issue that we have—that we have to fix. We have to change the way we do business. We really do. The things that Mr. Dickman brought up, the things that Mr. Bertoni brought up, are absolutely correct. We have to change the way we do business, and we have to make fundamental changes, and that's what we are doing.

Mr. CONNOLLY. Mr. Dickman and Mr. Bertoni, the Long Island Rail Road fraud, obviously, none of us were suspecting that was going on in earlier years, but in light of the fact that it did happen, and it was so stunning, do we believe that that was a bad apple but not characteristic of the system, or do we now believe that the LIRR case reveals systemic problems that won't go away until and unless we reform the system? I mean, what is your—what lessons should we be learning from the Long Island case?

Maybe, Mr. Bertoni, give you the chance to go first, and then Mr.——

Mr. BERTONI. I think part of this is, I mean, we don't know if it is systemic. We do know that physician-assisted fraud happens. I just issued a report a couple of months back for the Social Security Administration. We know it is happening there. But if you are not looking for it, if you don't have the tools in place, the data analytics and other tools to sort of look at the quality of the decision and what is going into the decision, you don't know.

I would just say, we know it is happening, there is collusion. It usually involves two to three parties, but to catch these things, it is usually chance and luck. Unless you have the appropriate tools in place, we are not going to know how big it is and whether it is systemic, but it is happening.

Mr. MEADOWS. Mr. Dickman.

Mr. DICKMAN. I believe it is a systemic problem. Obviously, the Long Island Rail Road case was very unique because of the private pension that they had there after they have changed it. It was 20

and 50. You could retire at age 50 with a full pension, full private pension. It is now 20 and 55. But, after that, I mean, we have cases throughout the whole United States involving, obviously, not to the great degree because there were obviously three doctors that were involved with the majority of those cases. But going back to what I said previously, that is systemic because of the way the Board looks at what an occupation—the definition of an occupational disability is; that it can be one aspect of the job and not the—not doing the job, all the duties of the job. They hang their hat on just one aspect, and I still believe that the culture is that we are here to pay. And that culture has to change.

And, in defense of the Chairman, even though he is the Chairman, it is Chairman in name only. As I said before, the big ticket items and the things that are really done in the Board are—the big items—are done between labor and management and as a function, as I have said, of collective bargaining between those two units throughout for the whole United States. That's fine. If that's what it is, that's what it is. But, you know, my job is to prevent and detect fraud, waste, and abuse.

As I have said before, this system, this occupational disability program, has become an entitlement. Why not eliminate the facade of what an occupational disability is, make it an early retirement, as has been stated, instead of going to this, you know, long, prolonged process of an individual being supposedly occupationally disabled. And the nature of business of work in the railroad industry, obviously, has changed dramatically from 1946 to the present. Previously, it was very labor intensive. It is not labor intensive anymore.

Now, an individual who works on the railroad for—works for 30 years can retire at age 60 with full benefits. Nobody else in the whole United States has that opportunity to retire at age 60 with full Social Security benefits. So that they do have unique, there are unique functions of it. That's fine. But I think that this particular portion of it has morphed into something that was not intended by Congress at the time that it was enacted in 1946.

Mr. CONNOLLY. Mr. Chairman, my time is up.

And I thank you, Mr. Dickman, Mr. Bertoni.

I guess what I'm not satisfied with, is, well, what are the lessons learned and how are we applying them to ensure that kind of fraud, systemic fraud, cannot recur? And I'm not getting, I don't feel reassured—not your fault, but, I mean, I don't feel reassured from the answers that we are headed in that direction. Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman.

Mr. Schwartz, I'm going to recognize the gentlewoman from New York, Mrs. Maloney, but I want to say one thing is—I want to make it clear is—I don't necessarily agree with all of the recommendations that Mr. Dickman made but, certainly, with a lot of them. But, for instance, you know, there's some audit suggestions that he recommends that I don't necessarily agree with. And so what I'm asking you is to get serious because we have got an obligation to Mr. Dickman as the IG, to Mr. Bertoni as the GAO. Both of them are paid to make sure that the American taxpayers are protected. And, right now, you just heard the ranking member, I

don't know that there is that confidence there, and so I need the message that you take back is this is not going to go away. We expect this to be addressed in very short order, or we will have another hearing. And, as uncomfortable as this may be today, it can be a lot more uncomfortable.

I mean, I think history and YouTube will show you that this is a fairly benign hearing compared to some that happen here.

And, with that, I would recognize the gentlewoman from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. OK, first of all, I would like to apologize really to the ranking member and to the chair for not being here earlier, but I had to chair a Financial Services Committee for the Democrats and had a prior meeting earlier this morning, too, on income inequality, which is very disturbing. In the past couple years, the gap between the haves and have-nots is growing deeper and stronger. And it is not good for the rich or the poor, or the Black, the White, the Asian, or whatever. It is a very disturbing trend.

And I want to go through some legislative changes that could reduce, possibly, disability fraud from the IG report.

But I just want to preface it by saying that the world seems to be getting more unfair every day. Workers are being asked to give more and receive less in return, and some are equating the demise or the weakening of the labor movement to the reason that the gap is taking place in our—between our haves and have-nots.

But I do say that it is rare for labor and management to have an equal stake in their working relationships. Usually it is not the case. And here, for once, the partnership between the Federal Government, the American worker, and the industry seems to be working OK. And I would like to get your remarks on it from all of the members here.

But one of the recommendations that was a legislative recommendation—so I want to focus on the legislation recommendations since we are a legislative body—recommended that the three-member RRB structure be eliminated.

So I would like to begin with the chairman of the RRB, Mr. Schwartz, on what do you consider to be the key strengths and weaknesses of this organizational structure, and do you agree with the IG recommendation that the structure be eliminated?

Mr. SCHWARTZ. I think that the strengths of the structure are that this program, the trust fund as we have talked earlier, is funded by rail management and rail labor. They have a seat at the table. I think that's the strength of it. I think the weakness of it is, at times, it can be unwieldy, you know, because there's three, you know, there's three different offices to deal with, but maybe that is by design. Maybe the unwieldiness is by design. Whoever set this up, set it up so there would be, at times, an acrimonious situation where people represent different constituencies. And so I would say that would be the minus.

And as far as agreeing or not agreeing with it, I really can't weigh into that. I think it would be something that management, labor, and Congress would have to talk about.

Mrs. MALONEY. Well, how do you balance? You said basically that there is competing priorities or stakes from the three Board

members. How do you balance the competing priorities of the three Board members in the decisionmaking process?

Mr. SCHWARTZ. Well, I think that what I meant by that is probably there is competing—with, you know, industry, they represent industry and labor. As far as the Board members are concerned, I think that they work well together, but the way I balance it is, sometimes I help with compromise. I mean, basically, there's times where they may not be too far apart, and I'm able to help out there.

Mrs. MALONEY. OK, Mr. Bertoni, you are representing the GAO, correct?

Mr. BERTONI. Yes.

Mrs. MALONEY. And does the GAO or you have any objections to the current RRB structure, or what are your comments on it?

Mr. BERTONI. We haven't done any analysis on the structure. So I really couldn't weigh in on that.

Mrs. MALONEY. And, Mr. Dickman, you recommended, I understand, that this be changed legislatively.

Mr. DICKMAN. Yes.

Mrs. MALONEY. And could you give me your reasons?

Mr. DICKMAN. Well, again, I think the proof is in, you know, the way the plan is administered. And I think, as I have Stated before, if you are going to implement change, real change there, a troika is not the way to do it, and that you need to give the power to the Chairman or the individual that has the power of a Chairman, not just in name only, so that he can unilaterally make these decisions.

People are pulled three different ways at the Railroad Retirement Board as far as what are they supposed to be doing? How are they supposed to be administering not only the occupational disability but other plans that are done by the Railroad Retirement Board? And I see no reason why there shouldn't be a Chairman and have the advisory committee of an individual from railway labor and railway management. I mean, if they—you know, and as I Stated previously over and over again, the big ticket items are done by railway labor and management behind the scenes. And if that is the way it is then, you know, either eliminate the whole program or privatize the Railroad Retirement Board. And I know that is blasphemy for me as a, you know, inspector general to eliminate my own job. But it's—you have a trust which is a private entity now, which is an anomaly in all of Federal Government because it is not an instrumentality of the Federal Government, yet it is—the money is considered part of the Federal Government. But until there is some really substantial change where you allow the Chairman to take full responsibility for his actions, I don't think you are going to get any meaningful change, or unless Congress puts labor and management's feet to the fire and say: Enough is enough; we have got to make some substantial change here.

Mrs. MALONEY. And finally, if I could, Mr. Schwartz, can you discuss the potential merits or drawbacks of this recommendation, this basic change in the current RRB?

Mr. MEADOWS. Mr. Schwartz, you can go ahead and answer that, but the gentlewoman's time is expired.

Mrs. MALONEY. And then my time is expired.

Mr. SCHWARTZ. All right, I think that the drawbacks would be that you would have an entity that is—well, you weren't talking about—you were talking about the one person instead of the three is what you are talking about? OK.

Mrs. MALONEY. Well, basically, I believe—I don't want to paraphrase.

Mr. SCHWARTZ. Sure.

Mrs. MALONEY. But I believe Mr. Dickman recommended that you basically privatize it, or do away with it completely.

Mr. SCHWARTZ. Oh, OK. Thanks.

Mrs. MALONEY. And put one person in charge. Am I saying what you are saying? Isn't that what you said?

Mr. DICKMAN. Well, privatize was something totally different, but our recommendation as far as having just a Chairman and having a railway labor member, railway management member, just be part of an advisory committee to the Chairman.

Mrs. MALONEY. And the Chairman would come from where? What's your recommendation?

Mr. DICKMAN. The Chairman would be as it is right now. They are all Presidential appointees.

Mrs. MALONEY. Presidential appointees. OK.

Mrs. MALONEY. But not the two other members. The labor member and the management member would drop down and just be advisors.

Mrs. MALONEY. And then the President would appoint someone. I think this is important to hear Mr. Schwartz' response to the recommendation.

If we could have a little extra time, Mr. Chairman.

Mr. MEADOWS. You can answer that.

Mrs. MALONEY. And then my time is up. Thank you. Thank you very much.

Mr. SCHWARTZ. I think that the drawback would be that industry and labor do—the trust fund is funded with industry and labor tax dollars, and I think that for them to have a seat at the table, I think you would end up with a system that there would be more commitment. I guess if you wanted to look at—if you want to look at just pure efficiency, it is sort of like the—what we were talking about on doing claims expediency instead of quality.

I mean, if you want to look at sheer efficiency, things would go faster. There would be less consternation. And, well, there would be one decisionmaker, but also you wouldn't have a check and balance. So, I mean, I think that's—that's the thing. You might have a quicker process, a process where one person would be doing it, but you wouldn't have a check and balance over their funds. I think that would be the answer.

Mr. MEADOWS. All right, I'm going to recognize the gentleman from South Carolina, but let me make sure I'm clear on your testimony.

Mr. SCHWARTZ. Yes, sir.

Mr. MEADOWS. Your testimony is that the three-member Board has provided a good check and balance up to this point? Is that your testimony? I mean, we have seen guys doing all kinds of things, so the three-member Board is a good check and balance based on what we have already seen?

Mr. SCHWARTZ. What I'm saying is, is the Railroad Retirement Board does a lot of things. I mean, and I can say—

Mr. MEADOWS. So it is a good check and balance in other areas?

Mr. SCHWARTZ. What I'm saying is, is our business of the Railroad Retirement Board, we have rail labor and rail industry, that both have a stake in it. They are stakeholders. And I think that an answer to your question is, it is a check and balance. I think, as far as occupational disability is concerned, we can do better.

Mr. MEADOWS. All right. The chair recognizes the gentleman from South Carolina.

Mr. MULVANEY. Thank you very much.

And as we draw this to a close and try and focus on some things we can do to improve it, as we see the situation going forward, Mr. Dickman, let me go back and ask you to clarify again something you mentioned before at the close of, I believe, Mr. Mica's questioning, which was these rules, again, that we have talked about a little bit that seem stunningly unusual to me regarding this occupational disability, and I think you gave the example that, under the current system, if an employee has 15 duties, can establish that they cannot do 1 of them, they qualify for benefits. Is that—

Mr. DICKMAN. They can qualify for benefits. Yes.

Mr. MULVANEY. Can qualify for benefits.

Mr. DICKMAN. Yes, they can't perform one aspect of their job.

Mr. MULVANEY. OK, and Mr. Schwartz, I think I will ask you again. This is something I asked you the first time around, which is, do you think we should change that?

Mr. SCHWARTZ. I think what we are doing right now is we are—labor and management are sitting down and they are talking about the vocational issues as far as job descriptions. What is happening is, we have outdated and very, very poor job descriptions. I mean, I think that is our first problem there. I think that it should be if they can't do their job.

Mr. MULVANEY. OK, and let me come back to you, Mr. Dickman, because I think you said earlier that that is not defined in the rules and regs. Did I hear that correctly?

Mr. DICKMAN. Yes.

Mr. MULVANEY. Say that again then, please. What's not defined?

Mr. DICKMAN. The one-aspect definition of occupational disability, that the individual can't do one aspect of their job. We haven't been able to find it anywhere in the rules and regulations.

Mr. MULVANEY. Mr. Schwartz, should you have all come up with rules and regs on that by now? Is that one of the recommendations that anybody has made, or are you working on that on your own?

Mr. SCHWARTZ. The recommendation would be to—what he was just talking about, no, there is not a recommendation for that, to have one aspect of the job be your job. No, there is no recommendation on that.

Mr. MULVANEY. OK, well, maybe that's something we could look at. Let me take the opportunity then with the couple of minutes I have left to do something we don't do nearly enough here, which is to thank you two gentlemen on the ends for what you do. We call you in—we know you have got a tough job, and I don't think we ever have enough time because we only have 5 minutes—it is rare for us to have two rounds of questioning—to say thank you for

doing it because we could not do our job if it weren't for what you guys would do.

And let me add to something that's apparently unusual in this town, which is, you have something that not that many people in this town have at the GAO, and the IG's Office. And that is you have a bipartisan group of supporters on Capitol Hill who like what you do and want to help you do what you do. Democrats and Republicans may have very different ideas about what government should do, but we both hate bad government. Good governance is something that actually binds the two parties, and I think we made some small progress on that in the last couple of months.

So I say that to you because I want to say this: If you have difficulties going forward at the RRB, or at anybody that you happen to oversee and be involved with, let us know. You don't have to sit there and toil in anonymity and just go home and complain that you can't do anything at work. Call us and let us know because this is the type of thing that is getting more and more attention, and I think rightly so.

The converse of that is that anybody who opposes you, slow-plays you, ignores you, doesn't implement your recommendations in a timely fashion, has something that is just as rare, which is, they have a common—they have a bipartisan enemy on Capitol Hill.

And I think the days of being able to ignore these folks, Mr. Schwartz, and this is not to you personally—OK, it is to you personally, but also to anybody else who has to deal with these folks—is the days of being able to ignore these folks are gone. And we intend to hold you and folks who have to deal with these folks accountable for when you ignore what they suggest.

So, with that, I appreciate the opportunity for the hearing today, Mr. Chairman, and I yield back the balance of my time.

Mr. MEADOWS. I thank the gentleman from South Carolina for remaining over and not going back to God's country quickly so he could participate.

The chair recognizes the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Yes, I'm going to followup on what I talked to you before about, Mr. Schwartz.

Mr. SCHWARTZ. Yes.

Mr. GROTHMAN. I mean, my concern is, is there a culture of disability developing within the railroad system. Okay? You know, and that is a problem you have all around our society in which people, you know, begin to look for the—look to say they are disabled when they aren't.

How long has this current system been in existence, Mr. Schwartz?

Mr. SCHWARTZ. Since the 1940's.

Mr. GROTHMAN. The 1940's, OK. Can you go back and tell us, say, 1960, 1970, 1980, the percent of people who were filing for disability every year compared to, say, 2005, 2010?

Mr. SCHWARTZ. No, but I can go back to—like I said, if you even go back 10 years ago, you had 38 percent of the people getting disability awards. And, last year and in 2013, you had 18 percent getting disability.

Mr. GROTHMAN. It is a misleading total, though. What you are doing there is you are comparing disability awards.

Mr. SCHWARTZ. Applying for—well, I would have to get the applications. But I can tell you that if you go back to 2000—well, that's the only way to keep it is on awards. But—

Mr. GROTHMAN. No, no. What we are looking for is of the total people in the system, how many people are claiming they are disabled in any given year?

Mr. SCHWARTZ. What I can do is, if you can—I can provide something for you for the record if I get the question exactly framed as you would like, we can get our actuary to give you numbers, whatever you want.

Mr. GROTHMAN. I would hope you would have it, but OK. You have a given number of people who every year are part of the system, right, paying into the system, working in the railroad. OK, and every year, a given percentage of those people say: I am disabled; I am entitled to something. OK?

And the question we are trying to get at, first of all, is, what is that percentage, say, in the year 2010, compared to the year 1990 or 1980? The question is, are we developing a culture in which people are saying, "I'm disabled"? That's what we are trying to get.

Mr. SCHWARTZ. OK, we can get that for you.

Mr. GROTHMAN. OK, and I would also like to know if you can compare that to other occupations. OK? Disability compared to—I know they break these down by occupations by State, like maybe people working in a factory, you know, maybe policemen, whatever. So we can compare the number of people who are saying they are disabled in the railroad industry compared to other places.

Mr. SCHWARTZ. I understand where you are going with that.

Mr. GROTHMAN. That's what we are trying to see here. OK?

We also like to know, you look, when we talk about this high approval rate in which everybody says "I'm disabled," you know, they wave you through; sure, you are disabled. If you could give us those numbers and maybe I would think yourself would want to compare not only the Social Security disability, but maybe people who say they are disabled in other occupations as well. You know, look at individual cities when they say maybe union disability, you know, police and fire, that way, percentage of people that you are approving compared to other groups.

Mr. SCHWARTZ. We're—OK, we will do the best we can on that. And if—and we can get ahold of you if we don't have the exact question framed, and we will do the very best we can to get you those numbers, sir.

Mr. GROTHMAN. And, see, it is an important thing because, you know, this money is coming from somewhere. OK, we are asked to do things like subsidize. I don't know whether Amtrak is part of this, but, I mean, insofar as we are just bleeding money here, that's a problem, and not to mention, it gets to the general overall decline of society in which people are able to say, "Guess what, I'm disabled," and people are accepting it.

And there are other areas of society that are going to have to look at Social Security disability. But, from the testimony I hear today, I am gathering there is that culture in the railroad industry

that says: You know, I'm going to say I'm disabled. And we want to see if that's true.

Mr. SCHWARTZ. I understand.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

And I'm going to thank the gentleman from Wisconsin for asking for the number of people added to the disability rolls each year, particularly since I asked that question in my letter. And you did not provide that. So I'm very pleased to know that you do have that information and that you will provide it at least to Mr. Grothman.

Another thing that I wanted to bring up, in your response to me, you say it is rare for someone who has left the industry for an extended—for self-employment for them to become entitled to an occupational disability annuity, yet in the inspector general's written testimony, it points to an example in the agency's disability claims manual where an individual left the railroad employment for 16 years but still retains their current connection with the railroad industry. That may be—even if that's the only example, does it make sense an individual can be able to claim an occupational disability from a job they haven't held for 16 years?

Mr. SCHWARTZ. Well, current connection was put into place actually to prevent people—they wanted to make sure that people had a current connection to the railroad. That is—it's very rare, and he did put an example in there that was in the manual. That's exactly true. It is very rare that would happen.

Mr. PALMER. Okay, I want to ask you something else in the context of my letter. I asked for copies of all of the correspondence, including emails, related to the RRB's decision to utilize very specific language in their termination letters to the Long Island Rail Road occupational disability annuitants. You attached a February 1, 2013, memo from Inspector General Dickman regarding this topic. Is this the only communication that exists—that exists regarding the subject matter? And if not, why didn't you provide the information I requested?

Mr. SCHWARTZ. I think you were referring to Mr. Dickman asking us not to go back and recover claims, and that was the correspondence we had for that, the letter that he had sent that said not to recover. Which question are you talking about? I have to look at the question here.

Mr. PALMER. I asked for copies of all correspondence, including emails, relating to the decision to utilize very specific language in the termination letters. I'm going to ask you, again, to provide that information and provide it for the committee.

Mr. SCHWARTZ. Okay.

Mr. PALMER. I want to move on.

The Board's response indicated—and this is your response to my letter to question nine—that there was a recent meeting with Dr. Robert McLellan, the chief of the Occupational & Environmental Medical Section at Dartmouth-Hitchcock Medical Center, associate professor at the Geisel School of Medicine at Dartmouth. In June 2014, the inspector general had forwarded you a lengthy list of poignant recommendations authored by Dr. McLellan. Why did it take the agency 9 months to contact him?

Mr. Chairman, if he is—

Mr. SCHWARTZ. I think that what it comes down to is, we were looking at all of the possibilities to improve our disability program. We want to enhance it. We want to make it better. We want to change the way we do things. Dr. McLellan is one of the people we thought we should talk to, as suggested by Mr. Dickman, to get his ideas on how to do that.

Mr. PALMER. Well, the last thing that I want to ask is, what actions will the Board take regarding his recommendations? Because, as Mr. Connolly has said, and as Mr. Meadows has said, I think all of us here, our objective is good government. Our objective is to do what is best for the employees of the railroad, and I think, in that regard, implementing these recommendations—you have heard from Mr. Bertoni. You have heard from Mr. Dickman. I want to know if—what you intend to do? If you intend to implement these recommendations? And I have got one last question.

Mr. SCHWARTZ. All five of Mr. Bertoni's recommendations we intend to implement. Many of Mr. Dickman's we intend to implement. And, as I said, Mr. Dickman and I will be sitting down and going through them and making sure he has a response to all of his recommendations.

Mr. PALMER. I'm good with that. Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman for his insightful questions.

And I would like to thank all of the witnesses for you taking the time today to answer these.

I want to close with these very brief remarks. And that is, Mr. Bertoni, Mr. Dickman, we have had sworn testimony today that Mr. Schwartz—and I assume I'm speaking on behalf of the other two Board members that are not here, that they acknowledged that you are here representing the Board—has agreed to work with the two of you in terms of implementing those recommendations.

So here is what I would ask of you, Mr. Schwartz. We want—we want real progress.

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. That is made in very short order. A 9-month, 10-month delay is not good enough. Much of what you talked about in your opening testimony sounded great, but it gave very little incentives in terms of denying claims that are fraudulent. It gave very little in terms of going back to revisit those who are getting benefits that may have gotten benefits for something that was temporary in nature; i.e., a broken arm where they would have been awarded some kind of disability, and yet, from the documents we have, there is no revisit of them that that arm could heal. They could continue to receive benefits.

And, with that in mind, Mr. Schwartz, what I don't want to happen is for another New York Times reporter to be waiting for a tee time and find somebody teeing off ahead of them getting full retirement. And, under your scenario, wouldn't you agree that today that some of the egregious things that would happen could still be happening. Wouldn't you agree with that?

Mr. SCHWARTZ. I would say, Mr. Chairman, that we need to change our culture absolutely. We need to change the way we do business, and the way things are right now today without these

extra things, without the quality assurance, without the extra doctors, and those things, something could be happening, yes.

Mr. MEADOWS. So it could still be happening.

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. So here is what I ask of you: In the next 120 days from this hearing, I want to make sure that there is correspondence with both the GAO and the inspector general and this committee.

Mr. SCHWARTZ. OK.

Mr. MEADOWS. And I want tangible—this is what we have implemented, and these are the results. And then, from there, we are going to revisit this entire thing.

Mr. SCHWARTZ. I understand.

Mr. MEADOWS. Another 90 days after that, assuming that we made real progress, we won't have to have another hearing. Assuming that you continue to give the documents the way that Mr. Palmer has asked for, the committee has asked for, and you have assured me, we won't have to have another hearing. I don't want another hearing. All I want you to do is fix the problem and make sure that our railroad workers have the safety net that they want and need and deserve and have paid for, and yet, the bad actors are rooted out.

From an employee standpoint, I am going to administer what I call the Forrest Jarrett test. He is a long—loves the rail, has retired, and it is his life. And so I'm going to look at it from his perspective from an employee standpoint. So I will have that balance.

But I have your assurances, is that correct?

Mr. SCHWARTZ. Yes.

Mr. MEADOWS. All right. So, with that, if there is no further business, without objection, this subcommittee stands adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

QUESTIONS FROM CHAIRMAN MEADOWS:***1. What is the RRB doing to minimize the risk of fraud in the medical examination process?***

In my statement submitted to the Subcommittee in advance of my testimony on May 1, 2015, I identified a number of program integrity initiatives, each of which is designed to strengthen our processes throughout our disability programs. Several of these initiatives focus specifically on the medical examination process.

Independent Medical Examinations (IMEs) are physical examinations performed to obtain objective medical evidence to make a disability determination. In the past, the RRB has obtained IMEs only when there is insufficient medical evidence, a conflict in findings from the reports of different treating doctors, or if the medical evidence is outdated. Effective July 2015, the RRB will expand the use of IMEs such that all disability applicants, with limited exceptions, will undergo an IME performed by physicians who specialize in the area of the claimed impairment and are unknown to the applicants.

Consultative medical opinions are rendered by contracted independent physicians who review all of the medical evidence in the applicants' files. To provide additional guidance and support to the disability claims examiners, a contracted independent physician is now onsite at our headquarters building at least two times per week. Disability claims examiners are encouraged to seek and obtain advice from the contractual physician while on site or by phone or email when necessary. This in-house medical presence provides examiners with valuable support, including assistance with interpreting medical reports or test results, reconciling conflicting medical reports or test results, determining the limiting effects of impairments, and providing residual functional capacity assessments as part of the disability adjudication process. The on-site physicians can have input as to whether the applicant qualifies for a disability annuity. Also, contracted independent physicians are providing our disability examiners with more extensive training and knowledge on medical conditions and interpretation of medical evidence.

The Board is also creating a quality assurance unit. The responsibilities of this unit will include the assessment of the quality of medical evidence and the accuracy of disability determinations. The unit will be multidisciplinary and include individuals with extensive disability review knowledge. The unit will be independent of the agency's Disability Benefits Division, will produce a statistically valid measure of the overall initial disability determination accuracy, and will perform an assessment of fraud potential by looking at unusual patterns or indicators. The unit will also work with an independent medical contractor to evaluate whether the medical limitations identified in the disability file are supported by the medical evidence in the record.

To improve the effectiveness of our continuing disability review (CDR) process we have identified criteria to randomly select annuitants that we categorize as “higher-risk” to undergo a full medical CDR.

We are also strengthening our pre-payment fraud detection measures by enhancing fraud awareness training. As part of this effort, we will continue to provide refresher training for those responsible for making or reviewing disability decisions.

The Disability Advisory Committee (DAC), made up of physicians with expertise in occupational health, is tasked with reviewing the effectiveness of all contracted medical sources used during the disability adjudication process, which includes IMEs and consultative medical opinions. They will also assess the value of the RRB obtaining employer medical records. The DAC will be instrumental in helping the agency enhance the quality and effectiveness of our disability process. Further, we expect our DAC and Quality Assurance group to also assist with identifying additional recommendations to minimize the risk of fraud within our medical examination process.

Subsequent to the Subcommittee hearing, the Inspector General (IG) issued a memorandum to the Board which contains a series of recommendations aimed at improving program integrity within the disability program. Staff from the Board offices has met with IG staff to discuss these recommendations. Several components of his recommendations are being implemented or are under formal consideration by the Board. For example, another tool available to the RRB that would minimize the risk of fraud in the medical examination process and is included in the IG’s recommendations is the functional capacity examination (FCE). The FCE is available to claims examiners; however it has never been utilized by the agency. The use of FCEs is one of the items under consideration by the three Board members and I have encouraged my fellow Board members to expand its use.

I have urged my fellow Board members to join with me to engage in meaningful dialogue with the IG and his staff on his recommendations and any other measures the Board can implement to prevent improper payments and improve our disability program and will keep the Subcommittee apprised of the Board’s progress.

2. How will the new medical examination process ensure more rigorous medical review as compared to the process when the Long Island Rail Road (LIRR) fraud incident occurred, particularly with regard to the role of medical professionals?

Previously, disability examiners rating an occupational disability claim could rely on medical information, records and tests provided by an applicant’s treating physicians without ordering independent medical examinations. In cases where IMEs were ordered, they could be performed by general internists. As mentioned above, the new IME process

will require that comprehensive exams be performed by specialists throughout the country with expertise related to the claimed impairment.

The initiatives described in response to Question 1 will create a process that is much different and more comprehensive than what was used when the LIRR scheme surfaced. In addition, as stated in the response to Question 1, the FCE is another tool available that would ensure more rigorous medical review.

3. How will the RRB ensure that the results of the examination are a credible indicator of the functional capacity of a disability applicant?

Providing the disability examiner with key information, resources and training will give them the necessary tools to ensure that the results of examination information received is a credible indicator of the functional capacity of the disability applicant under review. To strengthen the current adjudicatory process, the examiner will be provided:

- A) comprehensive medical and non-medical information concerning the applicant's claimed impairment and its limitations on the ability to work,
- B) resources to allow for a reasoned interpretation of the medical information, and
- C) detailed training on how to review and interpret medical evidence and examination information assessing the functional capacity of the applicant in relationship to his or her ability to work.

To this end, the Board has either implemented, is in the process of implementing or is considering further implementation.

Under (A) above, the RRB has implemented the more stringent requirement that applicants be examined by medical specialists associated with the applicants' claimed impairment. Additionally, the RRB is gathering a broader array of medical and non-medical information concerning the applicant's claimed condition. For example, SSA's new rule requiring disability applicants to provide any and all treating sources will be incorporated into RRB's disability program. The RRB will also be seeking medical information from the applicant's employer concerning the claimed impairment. Further, the Board has implemented concurrent adjudication of (1) the occupational disability claim and (2) a review under Social Security rules and regulations for a period of disability (disability freeze) which is a total and permanent disability. Under concurrent adjudication, more stringent standards associated with a total and permanent disability will be applied to an applicant's claim at the outset. By including the requirement that most cases have a consultative medical opinion, a residual functional capacity assessment will be available to the examiner sooner in the adjudication process, which will provide the examiner with additional independent medical opinions on the claimant's impairment(s). Finally,

as support to both (A) and (B), the RRB has tasked the DAC with reviewing the quality of both the independently contracted medical examinations and contracted consultative medical opinions. This is the first time these contracts have been reviewed by medical professionals, and any recommendations received can be used either to amend existing contracts or as a basis for future contract awards.

Under (B) above, our examiners must have proper resources to assist in sound interpretation and application of medical evidence, and this includes competent and sound advice from medical professionals. We are in the process of reviewing our independent medical contractor and have also significantly increased the amount of time that the contractor will have a physician on our premises to assist the examiners in interpretation of medical evidence. Further, the DAC will also be reviewing the value and quality of this increased service.

Under (C) above, training is an extremely important component as it reinforces the examiners role and judgment in applying the medical information to a final disability determination. Besides fraud awareness training, examiners have received additional training in understanding medical terminology, medical conditions and medical evidence. Additionally, the RRB is seeking additional training from SSA, especially in the interpretation and application of medical evidence. The RRB is also carefully monitoring SSA's review of the treating physician rule which currently gives additional weight to a treating physician's assessment and opinion. Finally, the RRB's quality assurance unit will include further independent medical review of completed disability determinations for soundness of medical evidence and interpretation. Based on feedback received from the quality assurance reviews, additional, targeted training will be provided to the examiners.

As previously stated, I have encouraged our offices to continue to engage in meaningful dialogue with the IG and his staff on his recommendations and any other measures the Board can implement to prevent improper payments and improve the program.

4. *What is the duration of the new independent medical examination?*

Per the medical service examination contract, examination duration is different for each type of examination. The internal medical examination is completed in 30 minutes or more. The psychiatric examination is completed in 40 minutes or more. All orthopedic and neurological examinations are completed in 20 minutes or more. Depending on the involvement of the impairments(s), some examinations take longer.

5. During the hearing, Chairman Schwartz told the committee he does not have the legal ability to recoup an estimated \$275 million in fraudulent payments to LIRR workers. He subsequently testified that the RRB may have the legal basis to do so, but that there may be other impediments to recouping the fraudulent payments. Please provide clarification with respect to: Why the RRB has not taken action to recoup the estimated \$275 million in fraudulent payments? Whether the RRB has the legal basis to collect the estimated \$275 million in fraudulent payments? Why or why not? Whether the RRB has proven, or will the RRB be able to prove, whether the payments in question were in fact fraudulent? Please explain.

I have asked the Board’s General Counsel to identify and evaluate all legal issues that need to be addressed in regard to recovery of these payments, including specifically the questions raised above. I have advised the Inspector General that I have requested this legal analysis.

6. What is the average monthly annuity paid to recipients of the total and permanent disability program?

Total and Permanent Disability Annuitants in Current-Payment Status, March 2015			
	Under Full Retirement Age	Full Retirement Age and Over ¹	Total
Number of Annuitants	11,395	8,974	20,369
Monthly Average	\$1,883	\$1,480	\$1,706

¹ Disability annuities to those full retirement age and over are now payable as age annuities.

NOTE: Monthly averages exclude supplemental benefits.

Source: RRB—Bureau of the Actuary

7. According to a recent estimate from the RRB of the Inspector General (OIG), the RRB has fully and effectively implemented only 5 of the OIG’s 69 recommendations that came as a result of the OIG’s investigation into the LIRR fraud scheme and deficiencies in the occupational disability program. What is the status of the approximately 64 other recommendations that are not considered fully and effectively implemented by the OIG? Please work with the OIG to provide an accounting of the RRB’s responses to all of the OIG’s recommendations on this matter, as well as the RRB’s plans to address the OIG’s concerns.

On June 3, 2015 my staff met with the RRB Deputy Inspector General and OIG staff to provide them with the current status of each of the OIG's recommendations. Many of the recommendations have been agreed to by the Board, in whole or in part, and are in the process of being implemented. Several recommendations involve legal issues and have been referred to the RRB General Counsel for legal advice. Two recommendations have been sent to representatives of rail labor and rail management (the stakeholders) for their input. A number of items were reiterated in a recent memo from the Inspector General to the Board. Those recommendations along with several others are currently being formally considered by the Board members. A handful of items are moot. Very few have been entirely rejected.

I will continue to work with the Inspector General and his staff to be responsive to his recommendations. If you have specific questions regarding any of the recommendations, please let me know.

8. Chairman Schwartz committed to submit for the record a timeline for implementation of GAO's five recommendations. Please provide this timeline.

Rec		Status	Est Close Date
1	Explore options to obtain more timely earnings data to ensure that claimants are working within allowable program limits prior to being awarded benefits.	Partially Implemented	12/1/15
1.a	RRB meeting(s) with OMB on the usefulness of the NDNH for disability determinations		12/1/15
1.b	<i>The Work Number</i> subscription acquired and deployed		8/1/15
1.c	RRB incorporated <i>The Work Number</i> incorporated within its claims review process or provides ample evidence that all possible avenues to do so have been exhausted.		9/1/15
2	Revise the agency's policy concerning the supervisory review and approval of determinations to ensure that all Total and Permanent cases are reviewed by a second party.	Partially Implemented	5/21/15 ¹
2	RRB provides additional evidence of changes to the disability determination review process by providing, for example, a revised copy of the Disability Claims Manual (DCM) documenting the revised policy that all disability claims are to be reviewed by at least two (2) parties.		5/21/15
3	Strengthen oversight of the Temporary and Permanent 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.	Partially Implemented	12/31/15
3.a	RRB's quality assurance unit is staffed		9/1/15

¹ We are waiting for confirmation of closure from the Government Accountability Office.

3.b	Policies and procedures for reviewing the quality of medical evidence, accuracy of disability determinations, and adherence to established procedures have been developed.		6/15/15
3.c	Fully implemented process areas in need of improvement and subject matter for training.		12/31/15
Rec		Status	Est Close Date
4	<i>Develop performance goals to track the accuracy of disability determinations.</i>	Partially Implemented	4/20/16
4.a	Performance goals for tracking the accuracy of disability determinations have been developed		5/1/15 ²
4.b	Performance goals for tracking the accuracy of disability determinations have been published publicly		9/15/15
4.c	Performance goals for tracking the accuracy of disability determinations have been fully implemented		4/20/16
5	<i>Develop procedures to identify and address cases of potential fraud before claims are approved, requiring annual training on these procedures for all agency personnel, and regularly communicating management's commitment to these procedures and to the principle that fraud awareness, identification, and prevention is the responsibility of all staff.</i>	Partially Implemented	1/31/16
5.a	Analysis of RRB's fraud prevention and detection policies and procedures		7/14/15
5.b	develops and documents procedures to identify and address cases of potential fraud before claims are approved		12/31/15
5.c	Provides annual training on procedures for all agency personnel		1/31/16
5.d	Regularly communicates management's commitment to these procedures and to the principle that fraud awareness, identification, and prevention is the responsibility of all staff in both headquarters and the field.		12/31/15

Source: RRB – Senior Executive Officer

² We are waiting for confirmation of closure from the Government Accountability Office.

9. *As discussed in the hearing, for the years 1960, 1970, 1980, 1990, 2000, 2005, and 2010-2014, please provide the following:*

a. *The total number of disability applicants;*

<u>Calendar Year</u>	<u>Total Disability Applicants *</u>
2008	3,631
2009	3,427
2010	3,428
2011	3,094
2012	2,736
2013	2,838
2014	2,273

* Prior to mid-2000s the RRB's Bureau of the Actuary did not track and/or report on disability applications. In the mid-2000s as a result of information requests, the RRB started informally tracking disability applications.

The RRB is currently working to develop an Application Tracking System that will be used to formally provide statistical data on the status of applications, approvals, denials, etc.

* All counts are based on the official filing date of the application.

Source: RRB – Programs/Policy & Systems

b. The number of disability applicants broken down by occupational disability and total and permanent disability;

Since historical data is unavailable from the Bureau of the Actuary on disability applications, we are providing data for disability awards. Awards on a calendar year basis are not available prior to 1970.

The RRB is currently working to develop an Application Tracking System that will be used to formally provide statistical data on the status of applications, approvals, denials, etc.

Number of Employee Disability Awards in Calendar Year

Calendar year	Occupational ¹			Total and permanent	Total
	No Freeze	Freeze	Total		
1970	1,500	3,600	5,100	2,200	7,300
1980	1,200	2,700	3,900	1,900	5,800
1990	1,400	1,600	3,100	1,400	4,500
2000	1,200	2,500	3,700	1,000	4,700
2005	700	2,200	3,000	1,300	4,200
2010	300	1,700	2,000	1,200	3,200
2011	300	1,600	1,900	1,200	3,100
2012	200	1,400	1,700	1,100	2,800
2013	200	1,100	1,300	900	2,200
2014	200	800	1,100	800	1,900

¹ Disability annuitants are categorized as occupational based on their eligibility and not on their level of impairment. Those with a disability freeze meet the social security definition of disability and have impairments sufficient to qualify for a total and permanent disability. The No Freeze counts include employees for whom the disability freeze status has not yet been determined.

Detail may not add to totals due to rounding.

Source: RRB—Bureau of the Actuary (April 2015 Retirement Master Benefit Files and dormant files)

c. *The percentage of those individuals eligible for benefits that applied for disability benefits;*

Due to the unavailability of historical application data, the table below shows the percentage of those individuals eligible for disability benefits that were awarded disability benefits. Employment data for 2014 is not yet available.

Calendar year	Active employees in year		Disability annuitants who last worked for a railroad employer during that year ¹		Disability annuities awarded in year ³	Ratio to eligible employees
	Total	Eligible on the basis of years of railroad service for a disability annuity ²	Number	Percent of eligible employees		
1960	1,177,000	N/A	10,300	N/A		
1961	1,069,700	776,000	9,700	1.2%		
1970	813,000	516,300	7,600	1.5%	7,300	1.4%
1980	633,600	329,100	4,800	1.4%	5,800	1.8%
1990	340,900	267,200	4,300	1.6%	4,500	1.7%
2000	283,300	188,200	4,400	2.4%	4,700	2.5%
2005	263,500	196,400	3,300	1.7%	4,200	2.2%
2010	247,400	187,400	2,300	1.2%	3,200	1.7%
2011	257,700	188,300	2,000	1.1%	3,100	1.6%
2012	259,000	187,400	1,600	0.9%	2,800	1.5%
2013	260,200	187,300	1,300	0.7%	2,200	1.2%

¹ Disability annuitants are categorized by year last worked in order to relate each eligible group directly with those who became disabled from that eligible group. Eligibility for total and permanent disability for employees with 10 or more years of railroad service is effectively maintained until normal retirement age, while eligibility for occupational disability requires a current connection with the railroad industry. Data is from the April 2015 Retirement Master Benefit File (RMBF) and dormant files. Counts include annuitants who are now in suspense or terminated due to death or recovery from disability.

² Includes employees with insufficient years of service for an occupational disability.

³ Number of disability annuities awarded in calendar year. Awards on a calendar year basis are not available prior to 1970. An employee's year last worked in the railroad industry may have been in a prior year. Data is from the April 2015 RMBF and dormant files.

NOTE: Active employees in year are total number who worked at least one day in the year.

Source: RRB-Bureau of the Actuary

d. The percentage of those individuals eligible for occupational disability benefits that applied for occupational disability benefits;

Due to the unavailability of historical application data, the table below shows the percentage of those individuals eligible for occupational disability benefits that were awarded occupational disability benefits. Employment data for 2014 is not yet available.

Calendar Year	Active employees in year			Occupational disability annuitants ¹ who last worked for a railroad employer during that year: ²						Occupational disability annuities awarded in year: ³			Ratio to eligible employees			
	Total	Eligible on the basis of years of railroad service for an occupational disability	N/A	No			Percent of eligible employees			No	Frozen	Total	No	Frozen	Total	
				Frozen	Frozen	Total	Frozen	Frozen	Total							
1960	1,177,000	N/A	3,500	3,600	7,100	N/A	N/A	N/A								
1961	1,069,700	402,500	2,800	3,800	6,600	0.7%	1.0%	1.6%								
1970	813,000	380,300	1,600	4,500	6,000	0.4%	1.2%	1.6%	1,500	3,600	5,100	0.4%	1.0%	1.3%		
1980	633,600	206,800	1,200	2,500	3,700	0.6%	1.2%	1.8%	1,200	2,700	3,900	0.6%	1.3%	1.9%		
1990	340,900	129,300	1,400	1,500	2,900	1.1%	1.2%	2.2%	1,400	1,600	3,100	1.1%	1.3%	2.4%		
2000	283,300	146,500	1,100	2,800	3,900	0.8%	1.9%	2.6%	1,200	2,500	3,700	0.8%	1.7%	2.5%		
2005	263,500	114,600	700	2,100	2,800	0.6%	1.9%	2.4%	700	2,200	3,000	0.6%	2.0%	2.6%		
2010	247,400	86,100	300	1,600	1,800	0.3%	1.8%	2.1%	300	1,700	2,000	0.4%	1.9%	2.3%		
2011	257,700	79,900	300	1,400	1,700	0.3%	1.8%	2.1%	300	1,600	1,900	0.4%	2.0%	2.3%		
2012	259,000	74,200	200	1,100	1,300	0.3%	1.5%	1.8%	200	1,400	1,700	0.3%	1.9%	2.2%		
2013	260,200	70,000	200	900	1,100	0.3%	1.3%	1.6%	200	1,100	1,300	0.3%	1.6%	1.9%		

¹ Disability annuitants are categorized as occupational based on their eligibility and not on their level of impairment. Those with a disability freeze meet the social security definition of disability and have impairments sufficient to qualify for total and permanent disability. The No Freeze counts include employees for whom the disability freeze status has not yet been determined.

² Disability annuitants are categorized by year last worked in order to relate each eligible group directly with those who became disabled from that eligible group. Eligibility for total and permanent disability for employees with 10 or more years of railroad service is effectively maintained until normal retirement age, while eligibility for occupational disability requires a current connection with the railroad industry. Data is from the April 2015 Retirement Master Benefit File (RMBF) and dormant files. Counts include annuitants who are now in suspense or terminated due to death or recovery from disability.

³ Number of occupational disability annuities awarded in calendar year. Awards on a calendar year basis are not available prior to 1970. An employee's year last worked in the railroad industry may have been in a prior year. Data is from the April 2015 RMBF and dormant files.

NOTE: Active employees in year are total number who worked at least one day in the year. Detail may not add to totals due to rounding.
Source: RRB-Bureau of the Actuary

e. The percentage of those individuals eligible for total permanent disability benefits that applied for total and permanent disability benefits;

Due to the unavailability of historical application data, the table below shows the percentage of those individuals eligible for total and permanent disability benefits that were awarded total and permanent disability benefits. Employment data for 2014 is not yet available.

Calendar Year	Active Employees in Year Eligible on the basis of years of railroad service for a total & permanent disability		Total and permanent disability annuitants who last worked for a railroad employer during that year ¹		Total and Permanent disability annuities Awarded in year ²	Ratio to eligible employees
	Total		Number	Percent of eligible employees		
1960	1,177,000	N/A	3,200	N/A		
1961	1,069,700	776,000	3,100	0.4%		
1970	813,000	516,300	1,500	0.3%	2,200	0.4%
1980	633,600	329,100	1,000	0.3%	1,900	0.6%
1990	340,900	267,200	1,400	0.5%	1,400	0.5%
2000	283,300	188,200	600	0.3%	1,000	0.5%
2005	263,500	196,400	600	0.3%	1,300	0.6%
2010	247,400	187,400	400	0.2%	1,200	0.6%
2011	257,700	188,300	400	0.2%	1,200	0.6%
2012	259,000	187,400	300	0.2%	1,100	0.6%
2013	260,200	187,300	200	0.1%	900	0.5%

¹ Disability annuitants are categorized by year last worked in order to relate each eligible group directly with those who became disabled from that eligible group. Eligibility for total and permanent disability for employees with 10 or more years of railroad service is effectively maintained until normal retirement age, while eligibility for occupational disability requires a current connection with the railroad industry. Data is from the April 2015 Retirement Master Benefit File (RMBF) and dormant files. Counts include annuitants who are now in suspense or terminated due to death or recovery from disability.

² Number of total and permanent disability annuities awarded in calendar year. Awards on a calendar year basis are not available prior to 1970. An employee's year last worked in the railroad industry may have been in a prior year. Data is from the April 2015 RMBF and dormant files.

NOTE: Active employees in year are total number who worked at least one day in the year.

Source: RRB-Bureau of the Actuary

f. For each of the above, please provide the percentage of applications approved and the percentage of applications denied.

*Occupational disability counts
(allowance vs. denial)*

Fiscal Year	Allowance %	Denial %
FY 2006	98.44%	1.56%
FY 2007	98.64%	1.36%
FY 2008	98.85%	1.15%
FY 2009	98.39%	1.61%
FY 2010	98.99%	1.01%
FY 2011	98.63%	1.37%
FY 2012	98.66%	1.34%
FY 2013	98.39%	1.61%
FY 2014	98.17%	1.83%

*Total and permanent disability counts
(allowance vs. denial)*

Fiscal Year	Allowance %	Denial %
FY 2006	72.68%	27.32%
FY 2007	74.86%	25.14%
FY 2008	76.97%	23.03%
FY 2009	77.33%	22.67%
FY 2010	76.28%	23.72%
FY 2011	80.63%	19.37%
FY 2012	82.96%	17.04%
FY 2013	81.89%	18.11%
FY 2014	77.24%	22.76%

Note: In the mid-2000s as a result of information requests, the RRB started informally computing application allowances and denials.

The RRB is currently working to develop an Application Tracking System that will be used to formally provide statistical data on the status of applications, approvals, denials, etc.

Source: RRB—Programs/Policy & Systems

10. As discussed in the hearing, please provide the percentage of disability applicants approved at the RRB compared to national disability benefits approval rates for the years 2000, 2005, and 2010-2014.

***Data for 2013 and 2014 is not yet available from SSA. RRB first started computing application approvals and denials for Fiscal Year 2006. SSA data is for Calendar Year. RRB is by Fiscal Year.

Years	2006	2007	2008	2009	2010	2011	2012	2013	2014
<u>SSA Disability Allowance Rate for all adjudicative levels - Workers^a</u>									
	56.5%	57.6%	58.5%	57.5%	56.2%	55.2%	51.8%	***	***
<u>RRB Disability Allowance as a percentage of allowance and denials</u>									
All	91.4%	92.1%	92.7%	91.8%	91.6%	92.4%	93.3%	92.5%	89.3%
Total & Permanent	72.7%	74.9%	77.0%	77.3%	76.3%	80.6%	83.0%	81.9%	77.2%

a) Rate determined by dividing medical allowances by all medical decisions for that year.

Sources:

U.S. Social Security Administration
Annual Statistical Report on the Social Security Disability Insurance Program, 2013
SSA Publication No. 13-11823; Released: December 2014
Table 60. Outcomes at all adjudicative levels, by year of application, 1992-2012

RRB-Programs/Policy & Systems

a. How do these numbers compare across different industries, such as law enforcement and manufacturing?

Occupational disability is distinct from the concept of disability for all work and is specifically designed for railroad workers. However, Board staff has scheduled a conference call with the Social Security Administration for Monday, June 8, 2015 to develop comparable data for applicants across different industries and different occupational groups that have similarities with the railroad community e.g. steel workers, law enforcement, blue collar occupations, etc. The RRB will provide an update to the Subcommittee subsequent to the staff's meeting on the comparable disability data we gather.

QUESTIONS FROM REPRESENTATIVE PALMER

1. ***The RRB's occupational disability program might be outdated. Rep. Palmer asked in his letter for the RRB to answer whether the program should be limited to a time certain. In the response and in the hearing, instead of answering the inquiry, you indicated the need to address this matter with certain stakeholders. Please provide a timeframe for your plans to meet with stakeholders to address this matter. Please provide any correspondences related to setting up the stakeholder meeting and a date on which you might be able to fully respond to the question.***

Attached are letters I sent to W. Dan Pickett, President, Brotherhood of Railroad Signalmen and Chairman, Railroad Retirement Committee and to Edward R. Hamburger, President and Chief Executive Officer, Association of American Railroads asking if they would let me know by June 15, 2015 of their availability to meet and discuss the above question. Alternatively, I have requested their written comments on this question.

2. ***Please provide the correct number of disability fraud referrals [sic] cases made to the Inspector General and explain why in your original response you included unemployment cases, which are not disability cases.***

First, let me apologize for the inclusion of unemployment cases in the earlier response. While we were trying to provide an overall picture of the number and types of referrals, in retrospect our answer was non-responsive since your question was limited to "disability referrals."

The Board's Director of Programs advises that effective April 1, 2015, we have implemented a tracking system to document referrals to the OIG and two disability fraud referrals have been made to the Inspector General since that date. The Director of Programs also advises that he has a record of 21 disability fraud referrals prior to initiation of the tracking system.

My staff has verified the accuracy of these numbers with the Office of Inspector General.

3. ***It is unclear from your response to Rep. Palmer and from your answers at the hearing how many individuals are added to the occupational disability annuity each year. Please provide the number of people who have been added annually for the years 2010-2014. Include in your response the number of applicants for occupational disability. Please provide numbers for each year separately.***

The same disability application is used for both occupational and total & permanent (T&P) award decisions. We are unable to classify an initial disability application as occupational or T&P because that application is used to apply for both disability awards.

Calendar Year	Occupational Disability Beneficiaries Added ¹		
	No Freeze	Freeze	Total
2010	312	1,663	1,975
2011	306	1,561	1,867
2012	239	1,422	1,661
2013	218	1,110	1,328
2014	220	839	1,059

¹ A disability freeze indicates the employee meets social security total disability standards. The No Freeze counts include employees for whom the disability freeze status has not been determined.

Note: Prior to mid-2000s the RRB's Bureau of the Actuary did not track and/or report on disability applications. In the mid-2000s as a result of information requests the RRB started informally tracking disability applications.

The RRB is currently working to develop an Application Tracking System that will be used to formally provide statistical data on the status of applications, approvals, denials, etc.

Source: RRB-Bureau of the Actuary (April 2015 Retirement Master Benefit File)

- 4. At the hearing, you were asked whether it makes sense for an individual not in railroad employment for 16 years to remain eligible to claim an occupational disability because of a retained connection to the railroad industry. You did not provide an adequate response. Please explain why this is a possibility and whether you believe it should be eliminated or adjusted.**

This question relates to the "current connection" provision found in 45 U.S.C. sec. 231(o). Essentially, the current connection requirement bars occupational disability annuity eligibility for those individuals who have left the industry for a consecutive period of more than 18 months and opted for other employment. Thus, elimination of the current connection requirement entirely would result in an increase in the number of eligible claimants by including those former railroad employees who left the industry and otherwise meet the eligibility requirements.

Because self-employment does not break a current connection, the circumstance described in your question could occur although it would be rare. Nevertheless, I have asked the Board's General Counsel to advise if the Board could address your concern under our current regulatory framework or, if not, what changes would need to be made in the law or regulations to address your concerns.