Surface Transportation Board

Performance and Accountability Report
Fiscal Year 2022

MESSAGE FROM THE CHAIRMAN

November 6, 2022

The Fiscal Year (FY) 2022 Performance and Accountability Report for the Surface Transportation Board (STB or Board) has been prepared to provide a complete and reliable reflection of the Board's performance and financial data. During FY 2022, the Board continued to achieve its strategic goals and support its mission as detailed in this Report.

The Board has remained focused on fulfilling its core mission—the efficient, timely, and sound resolution of surface transportation issues and disputes subject to its jurisdiction. The STB successfully carried out its mission and protected its workforce during COVID-19 and continued to do so as staff returned to the office during FY 2022. The Board continued to mature its data management and analytics in support of evidence-based decision making. The STB's cybersecurity program has continued to mature with no new findings in 2022, and the Board's financial statements and processes remain sound.

In sum, the Board made notable progress toward achieving its mission and improving its administrative processes during FY 2022. We will continuously strive to use resources wisely and ensure that the agency is responsive to its stakeholders and the public.

Sincerely,

Martin Oberman
Chairman

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Introduction

This Performance and Accountability Report (PAR) serves as a progress report wherein the Surface Transportation Board (STB, Board, or agency) demonstrates accountability by presenting performance and financial information for Fiscal Year (FY) 2022. The PAR enables the President, Congress, and the public to assess the Board's activities and accomplishments relative to its mission and the resources entrusted to it. The PAR describes the specific performance goals and strategies the Board will take through FY 2023, based on the STB's FY 2018 – FY 2022 Strategic Plan, and reports the STB's FY 2022 achievements of those performance goals. The PAR also serves as the STB's annual report on its activities.

The PAR satisfies the following legislation:

- *The Surface Transportation Board Reauthorization Act of 2015* (STB Reauthorization Act), Pub. L. No. 114-110, requires the STB to submit an annual report on its activities.
- *The Federal Manager's Financial Integrity Act of 1982* (FMFIA) requires continuous evaluations and reporting of the adequacy of systems of internal accounting and administrative controls.
- *The Chief Financial Officers Act of 1990* provides for the production and submission of complete, reliable, timely, and consistent financial information for use by the Executive Branch of the government and Congress in the financing, management, and evaluation of Federal programs.
- *The Inspector General Reform Act of 2008* amends the Inspector General Act of 1978 to enhance the independence of Inspectors General, to create a council of the Inspectors General on Integrity and Efficiency, and for other purposes.
- *The Government Management Reform Act of 1994* requires the submission of audited financial statements.
- *The Reports Consolidation Act of 2000* authorizes agencies to consolidate several reports to provide performance, financial, and other related data in a more useful manner.
- *The Government Performance and Results Modernization Act of 2010* (GPRA Modernization Act) requires an annual report that measures the performance results of the agency against the established agency goals.
- *The Payment Integrity Information Act of 2019* provides for estimates and reports of improper payments by Federal agencies.
- *The Digital Accountability and Transparency Act of 2014* (DATA Act) amends the Federal Funding Accountability and Transparency Act of 2006, requiring the establishment of government-wide data standards for spending information.

How This Report is Organized

Management's Discussion and Analysis provides an overview of the STB's financial results; a high-level discussion of program performance; management assurances on internal controls and financial management systems compliance; and other management information, initiatives, and issues.

Program Performance Information describes the Board's strategic goals and targets and provides its accomplishments in meeting those goals during the fiscal year.

Financial Information provides financial details, including a message from the Chief Financial Officer, the independent auditor's report, and the audited financial statements.

Required Other Information includes an analysis of programs identifying improper payments, a summary of the financial statement audit, and required supplementary information.

The PAR is posted on the STB's website: www.stb.gov.

Management's Discussion and Analysis

Mission Statement

The STB is an independent economic regulatory agency that seeks to promote a balanced, competitive, and responsive surface transportation system, primarily the interstate rail network, and that addresses the needs of the network for the benefit of the general public.

History

The bipartisan Board was established in 1996 as the successor to the Interstate Commerce Commission (ICC). The Board was administratively aligned with the Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114-110, which established the Board as a fully independent agency on December 18, 2015. The STB Reauthorization Act also expanded the Board's membership from three to five Board members.

Responsibilities

In carrying out its mission, the STB engages in a variety of activities on a day-to-day basis. With regard to formal proceedings, the Board processes legal filings; conducts the appropriate economic, environmental, and legal analysis; researches and prepares draft decisions; conducts a voting process; issues decisions; and defends agency actions that are challenged in court.

Outside of formal proceedings, the Board facilitates informal disputes resolution and works with governmental entities, the public, and the media to provide information about the agency and its processes. The Board also collects and analyzes service-related, economic, and financial data, producing studies and analytical tools that are useful to both the agency and the public at large. As an independent agency, Board employees also handle important administrative functions, including information technology and security, facilities, and human resources.

While a majority of the Board's work involves freight railroads, the STB's involvement with passenger rail matters has increased. The STB also performs certain oversight of the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions).

Organizational Structure

Board Members

The Board consists of five members nominated by the President and confirmed by the Senate. The Board's vice chairmanship rotates among the members on an annual basis. Since January 11, 2021, the Board has a full complement of five members. Each member has a term of five years, unless they are filling an unexpired term. If a member leaves the STB before the end of his or her term, a successor may be appointed to the vacant seat for the remainder of that term. The Board's governing statute permits a member to serve up to one year after the expiration of that member's term unless a successor is appointed.

STB Office Overview

In addition to the offices of the Board members, the staff of the STB is organized into six offices.[1] The six offices are comprised of attorneys, economists, and financial, transportation, and environmental analysts with expertise in the rail industry, as well as HR specialists, paralegals, IT specialists, and contractors providing support to ensure the STB has the capabilities to meet its statutory responsibilities.

The Office of Economics (OE)

OE provides economic, cost, financial, and engineering analyses for the Board. OE also makes available to the public a variety of statistical and financial analyses of the railroad industry. OE manages the Board-prescribed Uniform System of Accounts and cost accounting systems. OE also audits Class I carriers to ensure their compliance with these systems and uses the data provided by carriers to develop and disseminate the Uniform Railroad Costing System.

The Office of Environmental Analysis (OEA)

OEA assists the Board in meeting its responsibilities under the National Environmental Policy Act (NEPA), and other related Federal statutes. NEPA requires the Board to consider potential environmental impacts before making its final decision in certain cases. OEA conducts an independent environmental review of cases filed with the Board and prepares any necessary environmental documentation. OEA also conducts public outreach to inform the public about proposals before the Board and invites public comments on related environmental matters. It also provides technical advice and environmental recommendations to the Board on pending matters, as appropriate.

The Office of the General Counsel (OGC)

[1] The Board voted to create a seventh office, the Office of Passenger Rail, effective October 1, 2022.

OGC provides legal counsel to the Board. In that role, OGC evaluates and advises on the defensibility of the agency's decisions and defends those decisions when challenged in court. OGC also advises the Board on various mission-related matters, including the Freedom of Information Act, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, and records management. Finally, OGC assists both the Department of Justice in ancillary litigation related to transportation matters and other matters of government-wide interest.

The Office of the Managing Director (OMD)

OMD provides a wide range of administrative services in support of the Board's mission, including human resource management, financial services, IT support, cybersecurity, the Privacy Act, and facilities management. It heads the Board's Privacy and Risk Management programs, as well as houses the Board's Chief Data Officer, who is responsible for guiding the agency's compliance with the Foundations for Evidence-Based Policymaking Act of 2018.

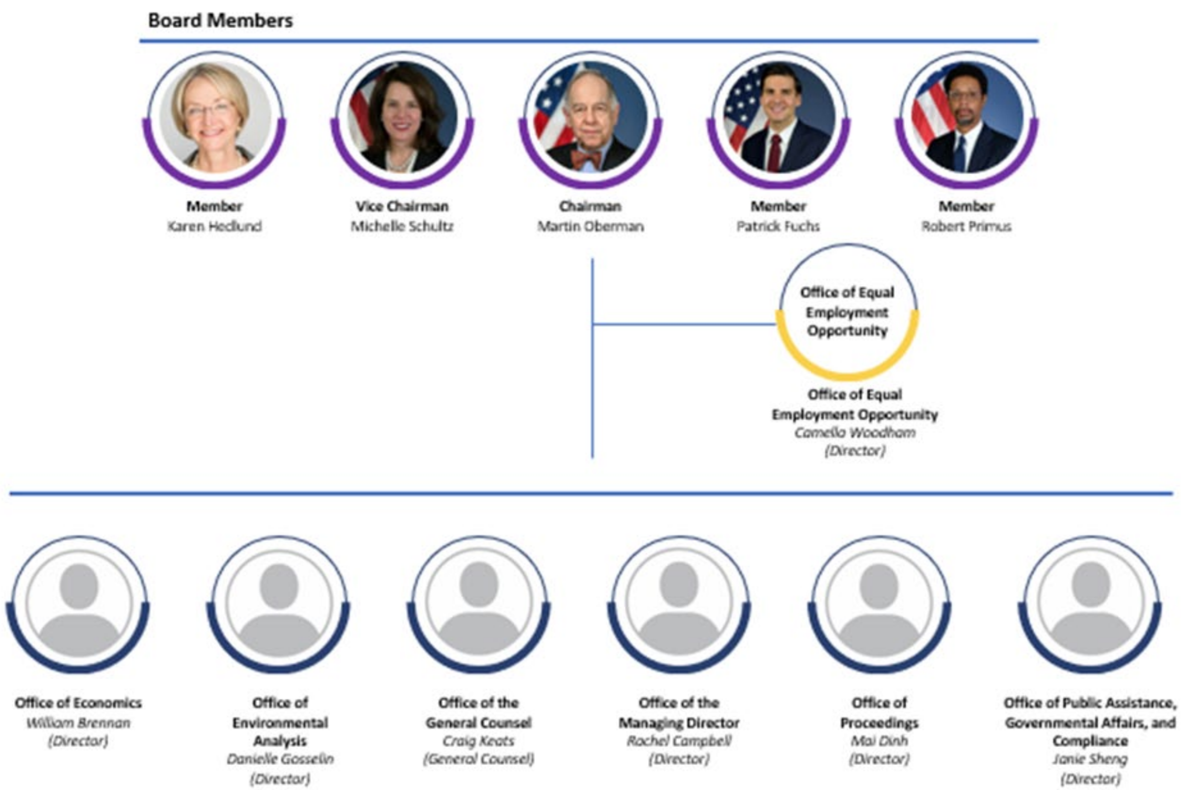
The Office of Proceedings (OP)

OP has primary responsibility for managing the public record in formal cases (or proceedings) before the Board, which includes making recommendations regarding the resolution of issues presented in those cases and drafting the decisions issued by the Board. Specifically, OP oversees the Board's caseload, providing legal and policy recommendations (in conjunction with other Board offices, as needed) to the Board members for resolving the issues presented, and preparing drafts of decisions. OP also performs administrative services for the Board, including receiving and processing formal filings from the public; administering the Board's voting process; coordinating with the Federal Register for publication of decisions; and tracking the Board's casework. In addition, OP maintains a database for recording and perfecting secured transactions involving vessels and railroad rolling stock.

The Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)

OPAGAC serves as the STB's principal point of contact for the U.S. Congress, Federal agencies, foreign, state and local governments, interested stakeholders, the public, and the media. OPAGAC's mission is to aid the public, to disseminate accurate information concerning the agency and its work, and to help the public understand the law and the agency's decisions. This office is responsible for external operations including governmental affairs, communications, and compliance. It is also responsible for monitoring rail operations, service analysis, maintaining tariffs, the monitoring and analysis of certain passenger rail matters, and mediation coordination. OPAGAC is also responsible for the management of the Rail Customer and Public Assistance program, which assists interested stakeholders and the public by answering questions pertaining to Board regulations and procedures and facilitating informal private-sector dispute resolution of rail operational and service-related issues and other matters.

STB Office Organization Chart
(as of 9/30/2022)



Summary of Significant Performance Results

Strategic Goals

This section provides a summary of the Board's strategic plan, goals, and objectives. The Board's performance measures, discussed in *Program Performance Information*, are based on these goals.

The STB's Strategic Plan defines its mission, goals, and progress measurements that demonstrate whether the Board has achieved its mission. The STB's Strategic Plan was most recently updated for FYs 2018-2022. [2] That document provides a blueprint for the agency to plan, implement, and monitor work needed to achieve the Board's mission. It also establishes strategic goals, long-term strategies, and performance expectations, and it provides a basis for the agency's annual performance budget and its PAR.

The work that the Board conducts to carry out its responsibilities is guided by the following four strategic goals:

First strategic goal: Protect and further the public interest in surface transportation matters.

Strategic Objectives-

- Promote and ensure reasonable transportation rates and practices for users of freight railroads, non-energy pipelines, household goods movers, motor carriers acting collectively, and those providing or receiving service in the noncontiguous domestic water trades;
- Ensure that railroad restructurings (mergers, acquisitions, constructions, and abandonments) are consistent with the public interest and that any resulting economic, environmental, or operational harm is minimized to the extent practicable;
- Promote efficient and reliable surface transportation service that is responsive to the needs of customers, with adequate capacity to meet the needs of a changing economy; and
- Ensure consideration of environmental concerns in agency decision-making consistent with existing laws and regulations.

Second strategic goal: Foster economic efficiencies through reliance, where possible, on marketplace factors to encourage the development and continuation of economically sound, efficient, and reliable surface transportation systems that have adequate capacity

[2] The STB has developed its 2022-2026 Strategic Plan, which will be available later this fall. It is the agency's third plan as a fully independent agency. It will serve as the primary management and communication tool to refine and guide the accomplishment of the STB's mission and vision, to present a mature and comprehensive set of strategic and management goals, and to provide a foundation for budgeting and performance management. The Board is also in the process of updating its performance measures.

to meet the needs of our economy.

Strategic Objectives-

- Encourage the efficient management and operation of surface transportation industries under the Board's jurisdiction;
- Promote a climate that encourages carriers to invest in needed additional capacity; and
- Minimize Federal regulatory control over surface transportation systems.

Third strategic goal: Provide a timely, efficient, and decisive regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations more effectively and with minimal regulatory costs.

Strategic Objectives-

- Ensure that there is sufficient transparency with respect to the Board's dispute resolution activities to enable parties to make informed decisions as to whether they should voluntarily settle their disputes or litigate before the Board;
- Ensure the timeliness of Board adjudicatory decisions by setting and adhering to appropriate processing timelines; and
- Ensure that the Board's decisions comport with the applicable statutes, precedents, and policies.

Fourth strategic goal: Ensure that the STB has the organizational structure, managerial leadership, and skilled workforce necessary to carry out the agency's strategic goals.

Strategic Objectives-

- Organize management, deploy staff, and track operational performance throughout the agency to ensure the achievement of the Board's strategic goals;
- Recruit, retain, and train staff with a focus on critical needs, skills shortages, and diversity; and
- Employ new technologies to improve the Board's operational efficiency.

Relationship Between Strategic Goals and Performance Goals

While the strategic goals broadly state the purposes for which the Board was created and shape how the Board achieves its mission, the Board's annual performance budget identifies budget program activities and establishes more specific performance goals. The performance goals establish check points by which the Board may determine how successful it has been in accomplishing its mission and its strategic goals.

The performance goals provide a system to evaluate the results of the Board's activities by setting objectives and establishing metrics to determine the Board's progress. Where possible, the performance goals incorporate objective measurements of the Board's activities. In instances where the goals do not lend themselves to objective measurement, intermediate outcome and process measurements are identified to assess the timeliness and responsiveness of Board actions.

Achieving Strategic Goals

Results

The STB has developed performance goals that promote its strategic goals and support its mission. Together, performance measures and targets under each strategic goal were designed to enhance and further those strategic goals each fiscal year. The Board and its staff have worked to achieve maximum return for the efforts given. The STB applies a combination of practical approaches and experience to develop creative resolutions to difficult surface transportation disputes and service issues and to achieve the strategic objectives and performance goals for each strategic goal.

External Factors that Could Affect the Achievement of Strategic Goals

The following factors could affect, or require changes to, the Board's goals:

- Changes in the Board's budget, staffing, resource limitations, and authorization;
- Changes in market demand and strategic direction in the surface transportation industries under the Board's jurisdiction;
- Nationwide or regional economic growth or recession;
- Major changes in the ability of surface transportation carriers to compete effectively or provide responsive and reliable service; and
- The impacts of ongoing homeland security activities or national emergencies on the surface transportation industry.

Annual Performance Measures

Summary of Strategic Goals, Objectives, and Performance Measures			
STRATEGIC GOAL 1: Protect the public interest in surface transportation matters.			
Performance Goal 1: Facilitate greater understanding among and between carriers, shippers, and other stakeholders by supporting and participating in the work of the National Grain Car Council, the Railroad-Shipper Transportation Advisory Council, and the Rail Energy Transportation Advisory Committee.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Facilitate formal outreach efforts to promote effective compliance programs by hosting a minimum of seven collaborative meetings a year to discuss emerging challenges and industry trends with various stakeholder groups.	Met	Meet	Meet
Performance Goal 2: Encourage the voluntary resolution of rail operational and service-related issues involving shippers, railroads, state and local governments, and the public by providing informal access to the Board through the RCPA.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Informal inquiries and complaints from stakeholders and the public are responded to by RCPA within 3 days of receipt.	Met	Meet	Meet
Performance Goal 3: Conduct responsive, impartial, and timely adjudications.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Use resources efficiently to issue timely Decisions that are responsive to the needs of the public and are consistent with applicable laws and precedent greater than 90% of the time.	Met	Meet	Meet
Performance Measure 2: Board decisions are responsive to the comments, evidence, and argument, such that court decisions fault the agency for failing to address issues raised less than 25% of the time.	Met	Meet	Meet
Performance Measure 3: Board decisions are substantively supported, such that court decisions set aside agency rulings as beyond the agency's authority, or arbitrary, capricious, or an abuse of discretion, less than 25% of the time.	Did Not Meet	Meet	Meet

Summary of Strategic Goals, Objectives, and Performance Measures (continued)			
Performance Goal 4: Ensure early and continuing opportunities for public participation and stakeholder input for projects that trigger review under NEPA and other related environmental laws by conducting public outreach, and informational meetings to inform and educate the public, and managing rail-related information databases for public use. Provide consistent, coordinated, and predictable environmental reviews and authorization processes for infrastructure projects.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Prepare environmental service lists and conduct public outreach through meetings, webinars, and websites, as appropriate, at least 80% of the time in cases requiring environmental review.	Met	Meet	Meet
Performance Goal 5: Ensure that the public, through efficient FOIA processing, can obtain information about the Board, the programs it administers, and the actions it takes.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: To promote transparency and public confidence in the Board's programs, Board staff will respond to requests under the FOIA, within the statutory time frame of 20 business days, excluding statutory-authorized extensions.	Met	Meet	Meet
STRATEGIC GOAL 2: Foster economic efficiencies through reliance, where possible, on marketplace factors to encourage the development and continuation of economically sound, efficient, and reliable surface transportation systems that have adequate capacity to meet the needs of our economy.			
Performance Goal 1: Collect and publish statistical data permitting the public to better understand trends in traffic volumes, rates, and the financial health of the rail industry.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Publish Monthly, Quarterly, and Annual Statistical Reports within 30 days of receiving all needed inputs.	Met	Meet	Meet
Performance Measure 2: Collect and publish rail service metrics within 24 hours of receipt.	Met	Meet	Meet

Summary of Strategic Goals, Objectives, and Performance Measures (continued)			
Performance Goal 2: Support the maintenance and development of adequate surface transportation systems to sustain the Nation's economic growth.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Recordations are entered into the Board's public database within one business day, at least 90% of the time.	Exceeded	Meet	Meet
Performance Measure 2: The Board issues licensing authority within the required statutory and/or regulatory timeframe, at least 95% of the time.	Met	Meet	Meet
STRATEGIC GOAL 3: Provide a Timely, Efficient, and Decisive Process			
Performance Goal 1: Make key, disclosable information from the Board's internal case monitoring and management system available to the public so that stakeholders can be informed about the expected timing for specific Board decisions.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Prepare, post, and provide delivery to Congress quarterly reports on status of rate reasonableness cases, formal complaints, informal complaints, and pending regulatory proceedings.	Met	Meet	Meet
Performance Measure 2: Publishes the Semi-annual Regulatory Agenda.	Met	Meet	Meet
STRATEGIC GOAL 4: Ensure Proper Agency Structure			
Performance Goal 1: Identify and alleviate current and future skills gaps by succession planning and by providing appropriate training to staff to prepare for impending retirements of senior staff.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: The Board will assess annually the training and development needs of staff, at least 90% of the time.	Met	Meet	Meet
Performance Goal 2: Ensure that Board members and staff are properly trained on, and abide by, applicable ethics rules, so that they can maintain the public's trust in impartial Board decisions issued without conflicts of interest.	**2022 Actual**	**2023 Target**	**2024 Target**
Performance Measure 1: Conduct yearly ethics training.	Met	Meet	Meet
Performance Measure 2: Provide initial response to employee's ethics inquiries within 48 hours, at least 80% of the time.	Met	Meet	Meet

Agency Oversight and Mission Challenges

Regulatory Responsibility and Oversight

The Board is charged with advancing the national transportation policy goals and promoting an efficient, competitive, safe, and cost-effective freight rail network.

While a majority of the Board's work involves freight railroads, the STB's involvement with passenger rail matters has increased. The STB also performs certain oversight of the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions). The STB also has certain regulatory authority over the National Railroad Passenger Corporation (Amtrak); its operations on other railroads' tracks; disputes over use; and cost allocation for Amtrak operations. The agency has wide discretion to tailor its regulatory approach to meet the Nation's changing transportation needs.

The STB is committed to vigilant oversight and the rendering of efficient, timely, and sound resolution of surface transportation issues and disputes. Where regulatory requirements can be eliminated or reduced, the Board applies its exemption authority to the maximum extent consistent with the law to streamline approval processes.

The Board's regulatory jurisdiction includes, among other things, railroad rate and practice reasonableness, mergers, line acquisitions, new rail line construction, and abandonments of existing rail lines. Because the economics of freight rail regulation affect the national transportation network and are important to our nation's economy. For this reason, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over rail mergers and consolidations, abandonments of existing rail lines, and new rail line constructions, exempting STB-approved transactions from federal antitrust laws and state and municipal laws. And, the Board has authority, which was provided under the STB Reauthorization Act, to investigate issues of national or regional significance on its own initiative.

To carry out its regulatory responsibilities, the Board primarily engages in three types of formal activities: adjudication, rulemaking, and licensing. First, the Board adjudicates disputes between shippers and railroads regarding the reasonableness of the carriers' rates and practices or related to other statutory or regulatory provisions. In some instances, the Board also adjudicates disputes between the carriers themselves, or between the carriers and local communities in which their lines are located.

Second, the Board conducts rulemaking proceedings, in which the agency proposes, modifies, or eliminates regulations to carry out the agency's mission. After issuing a notice of the proposed rulemaking, the Board receives comments from its stakeholders and other interested parties and, based on those comments, decides whether and how to adopt the proposed regulations. Third, the Board licenses rail line acquisition, construction, abandonment, or discontinuance of service, as well as rail carrier mergers and consolidations, to ensure that the transactions satisfy applicable statute and regulation.

Collaborative Discussions

In FY 2022, the Board continued to hold collaborative meetings pursuant to Section 5 of the STB Reauthorization Act, which permits a majority of the Board to hold a meeting that is not open to public observation to discuss official agency business, provided that certain conditions are met.[3]

Quarterly Reports

The Board has continued to prepare and post its quarterly reports on rate-review metrics, formal and informal rail service complaints, and unfinished regulatory proceedings. The reports can be viewed on the STB website, www.stb.gov.

Investigations

The STB Reauthorization Act provided a basic framework for the Board to conduct investigations on its own initiative. The STB established a three-stage process for conducting investigations: preliminary fact-finding, Board-initiated investigation, and formal Board proceeding. *Rules Relating to Board Instituted Investigations*, EP 731 (STB served May 16, 2016). No formal investigations were conducted in FY 2022.

Railroad Restructuring

Mergers and Consolidations

When two or more railroads seek to consolidate through a merger or common control arrangement, the Board's prior approval is required under 49 U.S.C. §§ 11323-25. By law, the STB's authorization generally exempts such transactions from all other laws (including antitrust laws) to the extent necessary for carriers to consummate an approved transaction.

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[3] In particular, no formal or informal vote or other official agency action may be taken at the meeting; each individual present at the meeting must be a member or an employee of the Board; and the General Counsel of the Board must be present at the meeting. In addition, after the meeting's conclusion, the Board must make available to the public a list of the meeting's participants and a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under 5 U.S.C. § 552b(c). The disclosure must be made two days after the meeting, unless the discussion directly relates to an ongoing proceeding before the Board, in which case the Board shall make the disclosure on the date of the final Board decision.

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption under 49 U.S.C. § 10502 from the full application procedures. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III (i.e., smaller) railroads whose lines would not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When Class I (i.e., larger) carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings.

Line Acquisitions

Board approval is required for a non-carrier or a Class II or Class III railroad to acquire or operate an existing line of railroad. The acquisition of an existing line by a Class I railroad is treated as a form of carrier consolidation under a separate procedure. Non-carriers or Class II or III railroads may seek exemptions under certain conditions, and there are expedited procedures for obtaining Board authorization under several class exemptions for certain types of transactions that generally require minimal scrutiny.

For non-connecting lines, Class II and Class III railroads may choose to use a class exemption, and Class III railroads may acquire and operate additional lines through a simple notification process. Such acquisitions resulting in a carrier having at least $5 million in annual net revenues require additional advance notice of the proposed transaction.

Non-carriers may acquire rail lines under a class exemption. Required notification, together with the Board's ability to revoke class exemptions in certain transactions, prevent exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public interest, and help preserve rail service in many areas of the country.

Trackage Rights

Trackage rights arrangements allow a railroad to operate its trains over the track of another railroad, which may or may not continue to provide service over the line at issue. Such arrangements can improve the operating efficiency for the carrier acquiring the rights by providing alternative, shorter, and faster routes. Local trackage rights may introduce new competition, thus giving shippers service options. The Board's prior approval is required for trackage rights arrangements. The Board maintains a class exemption for the acquisition or renewal of trackage rights through a mutual carrier arrangement. A separate class exemption also exists for temporary trackage rights for overhead operations that are limited to one year in duration.

Leases by Class I Carriers

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease.

Line Constructions

New rail line construction requires Board authorization. Carriers may seek Board authorization by filing either an application or a petition for exemption. A simple notification procedure is available for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, and for joint track relocation projects that do not disrupt service to shippers.

The agency can compel a railroad to permit a new line to cross its tracks if doing so would not interfere with the operation of the existing line and if the owner of the existing line is compensated. If railroads cannot agree to terms, the Board can prescribe appropriate compensation.

Line Abandonments

Railroads must obtain Board approval to abandon a rail line, or to discontinue all rail service over a line that will remain part of the interstate rail network. Abandonment or discontinuance authority may be sought by the operating rail carrier itself, or an "adverse" abandonment or discontinuance action may be brought by an entity opposing a line's continued operation.

The agency maintains a class exemption providing a streamlined notification procedure for the abandonment of lines over which there has been no traffic in two consecutive years that could not have been rerouted over other lines.

Preservation of Rail Lines

The Board administers three programs designed to preserve railroad service or rail rights-of-way, as discussed below.

1) **Offer of Financial Assistance**
   If the Board finds that a railroad's abandonment proposal should be authorized, and the railroad receives an offer—known as an Offer of Financial Assistance—by another party to acquire or subsidize continued rail operations on the line to preserve rail service, the Board may require the line to be sold for that purpose or operated under subsidy for one year. Where parties cannot agree on a purchase price, the Board is authorized to set the price at fair market value, and the offeror may either agree to that price or withdraw its offer.

2) **Feeder Line Development Program**
   When railroad service is inadequate for a majority of shippers transporting traffic over a particular line, or the line has been designated in a carrier's system diagram map as a candidate for abandonment, the Board can compel the carrier to sell the line to a party that will provide service.

3) **Trail Use/Railbanking**
   The Board administers the National Trails System Act's "railbanking" program allowing railroad rights-of-way approved for abandonment to be preserved for the future restoration of rail service and for interim use as recreational trails. When a railroad and a trail sponsor agree to negotiate for interim trail use, the agency may issue a Certificate of Interim Trail Use (issued in an abandonment application proceeding) or a Notice of Interim Trail Use (issued in an abandonment exemption proceeding) allowing the parties to negotiate a trail use agreement. If a trail use agreement is reached, the right-of-way remains under the agency's jurisdiction.

Liens on Rail Equipment

Liens on rail equipment intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,157 rail liens in FY 2022.

Railroad Rates and Related Matters

Cost of Capital

Each year, the Board determines the after-tax, composite cost of capital for the freight railroad industry (i.e., the STB's estimate of the average rate of return needed to persuade investors to provide such capital) and uses that cost-of-capital figure for a variety of regulatory purposes. It is used in maximum reasonable railroad rate cases, feeder line applications, rail line abandonments, trackage rights cases, rail merger reviews, URCS, and, more generally, in annually evaluating the adequacy of individual railroads' revenues and in the annual Railroad Revenue Adequacy determination.

Common Carriage or Contract Carriage

Under Federal law, railroads have a common carrier obligation to provide transportation or service upon reasonable request. A railroad can provide that transportation or service either under rate and service terms agreed to under contract with a shipper or under common-carriage rate and service terms stated in a carrier's tariffs. Rate and service terms established by contract are not subject to Board regulation, except for limited protection against discrimination involving agricultural products.

Railroads are also required to file with the Board summaries of all contracts for the transportation of agricultural products within seven days of the contracts' effective dates. Summaries, which must contain specific information contained in 49 C.F.R. pt. 1313, are available on both the STB's and the individual carrier's websites.

Rate Disclosure Requirements: Common Carriage

A railroad's common-carriage rates and service terms must be disclosed upon request, and advance notice must be given for rate increases or changes in service terms. Rates and service terms for agricultural products and fertilizer must also be published. These regulatory requirements generally do not apply in instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for certain agricultural products, intermodal traffic, boxcar traffic, and other miscellaneous commodities.

Rate Challenges: Market-Dominance Determination

The Board has jurisdiction over complaints challenging the reasonableness of a common-carriage rate only if a railroad has "market dominance" over the traffic involved. Market dominance refers to an absence of effective competition from other railroads or transportation modes for a specific movement to which a rate applies.

By law, the Board cannot find that a railroad has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage of less than 180 percent. The Board's URCS is used to provide a measurement of a railroad's systemwide average variable costs of performing various rail services.

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing.

Rate Challenges: Rate-Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board has historically used constrained market pricing (CMP) principles. These principles limit a railroad's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize the need for pricing flexibility, but they also impose constraints on a railroad's ability to charge higher rates on "captive" traffic (traffic with no alternative means of transportation). One CMP constraint is the stand-alone cost (SAC) test. Under this constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetical new, optimally efficient railroad (a stand-alone railroad) tailored to serve a selected traffic group that includes the complainant's traffic.

A rate could also be challenged under a simplified version of SAC, known as Simplified SAC, which can be used in any rate case.[4] There is also a Three-Benchmark methodology for smaller cases, under which a challenged rate is evaluated using three benchmark figures and a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified SAC or Three-Benchmark methodology but with limits on the relief available if the Three-Benchmark methodology is used. The maximum recovery for Three-Benchmark cases is $4 million, indexed for inflation.[5]

Because smaller shippers have informed the Board that no methodology is viable for them, the Board has proposed a final offer rate review option in *Final Offer Rate Review*, Docket No. EP 755, along with a possible option for arbitration. The Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. The Board has also heard from shippers and other interested parties that the agency's current options for challenging the reasonableness of rates do not meet their need for expeditious resolution at a reasonable cost. The Board invited parties, through a supplemental notice of proposed rulemaking, to comment on certain modifications to the proposed rate reasonableness procedure, as well as other issues.

Railroad Service

General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and connecting carriers and the reasonableness of a railroad's rules and practices. Among its broad remedial powers, the Board may compel a railroad to permit

[4] No case has ever been litigated to completion under this methodology.

[5] Five Three-Benchmark cases have been filed with the Board. The Board issued a decision on the merits in four of those cases. One case settled after the evidentiary record was complete but before the Board ruled on the merits.

alternative service by another railroad, perform switching operations for another railroad, or provide access to its terminal for another railroad. If the Board determines that there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service, it can issue temporary service orders during rail service emergencies by directing a railroad to operate, for a maximum of 270 days, the lines of a carrier that has ceased operations. Finally, the Board has authority to address the reasonableness of a rail carrier's rules and practices.

Board/Stakeholder Discussions

Except for discussions of matters pending before the Board and rulemaking proposals to which the Board's ex parte communication prohibitions apply, the agency welcomes informal stakeholder meetings with the Board members and staff to discuss general service, transportation, and other issues of concern. During FY 2022, the Board continued to foster industry dialogue about railroad service through meetings of the Board's Advisory Committees, as discussed in the Annual Performance Report section.

Communications Between Railroads and Their Customers

During FY 2022, the Board continued to encourage railroads to establish regular communications with their customers as a productive way of preventing and addressing rail service concerns. In addition, RCPA continued to facilitate communication between railroads and their customers in their dispute resolution work, while regularly monitoring the rail industry's operating performance in order to identify service disruptions.

Rail Labor Matters

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard employee protective conditions address wage and salary protection and changes in working conditions. Such employee protection provides procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to arbitrators' expertise.

Environmental Review

Under NEPA, the Board must consider the environmental impacts of its actions before making final decisions in certain cases filed before it. OEA assists the Board in its decision-making process by furthering the purposes of NEPA—informing the decision makers of the likely environmental impacts as a result of their actions and providing the public with the opportunity to participate in the environmental review process.

OEA ensures the Board's compliance with the regulations of the President's Council on

Environmental Quality and the Board's regulations implementing NEPA. It determines whether certain cases filed with the Board are categorically excluded from environmental review or may require either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). In conducting environmental reviews on behalf of the Board for various rail line proposals, OEA strives to achieve an efficient, cost-effective, inclusive, and legally defensible process. The Board typically conducts environmental reviews for rail line construction proposals, abandonments, and mergers.

Financial Condition of Railroads

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a Uniform System of Accounts for railroads to use for regulatory purposes. The Board requires Class I railroads to submit reports containing financial and operating statistics, including employment and traffic data. Based upon information submitted by carriers, the Board compiles, among other things, monthly and quarterly employment reports, and annual wage statistics of Class I railroads, as well as quarterly rail fuel surcharges reports. This information is posted on the STB's website.

The Board publishes quarterly rail cost adjustment factor (RCAF) indices to reflect changes in costs incurred by the rail industry. These indices include an unadjusted RCAF (reflecting cost changes experienced by the railroad industry, without reference to changes in rail productivity) and a productivity-adjusted RCAF (reflecting national average productivity changes, as originally developed and applied by the ICC, based on a five-year moving average). Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes but is calculated as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.

Amtrak and Passenger Rail

The Board has certain regulatory authority involving Amtrak, which has the right to operate over other railroads' track. The Board has authority to address disputes between Amtrak and railroads or regional transportation authorities concerning shared use of tracks and other facilities (including disputes concerning Amtrak's statutory right of preference over freight transportation), and to set the terms and conditions of shared use if the parties fail to reach voluntary agreements.

During an emergency, the Board may require a rail carrier to provide facilities, on terms prescribed by the Board, to enable Amtrak to conduct its operations. The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. The *Passenger Rail Investment and Improvement Act of 2008* (PRIIA) and the *Fixing America's*

Surface Transportation Act of 2015 (FAST Act) expanded the Board's jurisdiction over passenger rail. PRIIA authorizes the STB to institute investigatory action under certain circumstances and, if appropriate, to award damages or other relief and to identify reasonable measures to improve performance on passenger rail routes. The FRA and Amtrak developed new on-time performance metrics and standards, and the FRA now publishes quarterly on time performance metrics. The Board established an Office of Passenger Rail effective as of October 1, 2022, that will be responsible for investigating and analyzing issues regarding Amtrak on-time performance.

Under certain circumstances, the Board may be called upon to set terms for access to Amtrak equipment, service, and facilities by non-Amtrak passenger railroads, and, upon request, the STB provides mediation services to assist dispute resolution regarding commuter-rail access to freight rail services and facilities. The Board also has jurisdiction over certain non-Amtrak passenger services, including over a passenger railroad operating in "a State and a place in the same or another State as part of the interstate rail network." Excluded from this jurisdiction, however, is "mass transportation provided by a local government authority."

Motor Carriage

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval.

Household Goods Carriage

Household goods motor carriers are required to publish tariffs and make them available to shippers and the Board upon request. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Regulations also require the Board to approve the terms by which household goods motor carriers may limit their liability for loss and damage of the goods.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations and for pooling arrangements between and among carriers. Such approval is commonly granted through a streamlined notice-of-exemption process that applies to transactions within a single corporate family. The agency can also require intercity bus carriers to provide through routes with other carriers.

Water Carriage

The Board has jurisdiction over transportation by or with a water carrier in the noncontiguous domestic trade, that is, transportation between the U.S. mainland and Alaska, Hawaii, and the U.S. territories of American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico.

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file tariffs with the Board containing their rates and service terms for such transportation. Tariffs are not required for transportation provided under private contracts between carriers and shippers or for transportation provided by freight forwarders.

Complaints

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade.

Pipeline Carriage

The Board regulates the interstate transportation by pipeline of commodities other than oil, gas, or water. Specifically, the Board regulates pipeline commodities such as coal slurry and anhydrous ammonia. Pipeline carrier rates and practices must be reasonable and nondiscriminatory.

Analysis of Systems, Control, and Legal Compliance

The STB fully recognizes that internal controls are fundamental to the systems and processes it uses to manage its operations and achieve its strategic goals. The Board strives to continually evaluate and improve its processes and procedures to ensure a strong system of internal controls.

Federal Managers' Financial Integrity Act

The FMFIA mandates that agencies establish controls to reasonably ensure that: (i) obligations and costs comply with applicable laws; (ii) assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted. This Act encompasses program, operational, and administrative areas as well as accounting and financial management. The FMFIA requires that the Chairman provide an assurance statement as to the adequacy of management controls and conformance of financial systems to government-wide standards. The assurance must acknowledge that the STB managers are held accountable for efficient and effective performance of their duties in compliance with applicable laws and regulations and for maintaining the integrity of their activities through controls.

The Chairman's assurance statement is provided in this report. This statement was based on various sources, including management knowledge gained from the daily operation of the STB's programs and reviews, discussions with the Managing Director and other Office Directors, agency financial statements, annual performance plans, and the DOT Office of Inspector General (OIG) audit reports.

The STB received an unmodified audit opinion for FY 2022.

Federal Financial Management Improvement Act

The Federal Financial Management Improvement Act of 1996 (FFMIA) requires that agencies establish and maintain financial management systems that substantially comply with Federal financial management system requirements, applicable Federal accounting standards, and the U.S. Standard General Ledger (USSGL). The Board can provide reasonable assurance that it complies with the objectives of FFMIA. The STB reviewed the Statements on Standards for Attestation Engagements (SSAE 18), Reporting on Controls at the Service Organization reports for the DOT Enterprise Service Center (ESC) and the Department of Interior—Interior Business Center, which are the Board's Federal shared-service providers for financial management and payroll systems. The shared-service providers' systems are compliant with Federal financial management system requirements, Federal accounting standards, and the USSGL.

Debt Collection Improvement Act of 1996

The Debt Collection Improvement Act enhances the ability of the government to service and collect debts. The Act centralized the collection of non-tax delinquent debt owed to the government. Federal agencies are required to refer delinquent accounts in excess of 180 days to the Department of Treasury (Treasury) for collection. The Bureau of Fiscal Services conducts the collection of delinquent debts through the Cross-Servicing Program and the Treasury Offset Program, where the names and taxpayer identification numbers (TIN) are matched against the TINs of recipients of government payments. The balance owed to the government is deducted or offset from the payment to the entity to satisfy the debt. The goal of the STB is to minimize the delinquent debt owed to the government.

Prompt Payment Act of 1982

This Act requires agencies to make timely payments to vendors for supplies or services rendered on behalf of the agency. Agencies are penalized when payments are made after the due date. Agencies shall take cash discounts when they are economically justified. The STB reported 99% of invoices were paid on time in FY 2022, while late payments resulted in interest charges of $4.00 (on total payments of $5.6 million), less than .000001% of total dollars disbursed for FY 2022.

Performance Measure Summary

The STB relies upon ESC for its financial accounting system. The agency acquires travel management, accounting, and financial services from ESC, and procurement services from DOT through the DOT Working Capital Fund. The Board verifies and reconciles all financial statements and reports prior to publication and has remained in compliance with all reporting thresholds.

USAspending Reconciliation

The Board, through ESC, implemented a plan to ensure data completeness and accuracy. Using control totals with financial statement data, samples of financial data were compared to actual award documents.

DATA Act Requirements

ESC implemented software that enabled the Board to comply with the requirement of the DATA Act to start capturing award information in financial systems effective January 1, 2017. The STB submitted timely files for DATA Act Reporting for FY 2022.

Inspector General Act of 1978 (as amended in 1988) and Inspector General Reform Act of 2008, Section 5(b) of the Inspector General Act of 1978

While the STB Reauthorization Act removed the requirement for DOT to provide administrative support to the Board, it provided authority to the DOT OIG to review the financial management, property management, and business operations of the Board, including internal accounting and administrative control systems, to determine the Board's compliance with applicable Federal laws, rules, and regulations. In FY 2022, the DOT OIG engaged an independent public accounting firm to audit the Board's financial statements. As further explained in the Financial Overview section of the report and mentioned above, the STB received an unmodified audit opinion for FY 2022.

Chairman's Statement of Assurance

This statement provides the Surface Transportation Board's (STB's or Board's) fiscal year (FY) 2022 Federal Managers' Financial Integrity Act of 1982 (FMFIA) assurance statement and summarizes noteworthy internal control and management efforts in support of that assurance.

This statement reflects the status for the year ended ***September 30, 2022***.

FMFIA (Public Law (P.L.) 97-255)

The management of STB is responsible for managing risks and maintaining effective internal control to meet the objectives of Sections 2 and 4 of FMFIA. The STB conducted its assessment of risk and internal control in accordance with the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*. Based on the results of the assessment, the STB can provide reasonable assurance that internal control over operations, reporting, and compliance were operating effectively as of September 30, 2022.

The objectives of Sections 2 and 4 of FMFIA are listed below:

(i) Obligations and costs are in compliance with applicable law,
(ii) Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation,
(iii) Revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets,
(iv) Audit findings are promptly resolved, and
(v) Financial management systems (if applicable) conform to principles, standards, and related requirements prescribed by the Comptroller General.

The STB is reporting no material weaknesses or financial system non-compliance for the year ended September 30, 2022.

OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control; Appendix A: Management of Reporting and Data Integrity Risk

STB management is responsible for establishing and maintaining effective internal control over reporting. The STB conducted its assessment of the effectiveness of the STB's internal control over reporting in accordance with the requirements of OMB Circular A-123, Appendix A. During FY 2022, the STB documented and assessed internal controls over two business processes:

- Financial Reporting – Test of Design and Test of Effectiveness
- Human Resources – Test of Design and Test of Effectiveness

A review was also performed on the annual Statement on Standards for Attestation Engagements 18 (SSAE 18) Service Organization Control (SOC) Type II Report from the Department of Transportation (DOT) Enterprise Services Center (ESC) to determine if the financial systems complied with Federal

Financial Management system requirements.

Based on the results of the assessments, the STB provides reasonable assurance that internal controls over reporting were operating effectively, and no material weaknesses were identified.

Government Charge Card Abuse Prevention Act (Charge Card Act) of 2012 (P.L. 112-194) and *OMB Circular A-123, Appendix B: A Risk Management Framework for Government Charge Card Programs*

The STB has reviewed the Purchase and Travel Card programs for compliance with the Charge Card Act and can provide reasonable assurance that appropriate policies and controls are in place to mitigate the risk of fraud and inappropriate charge card practices.

The STB also reviewed the Travel, Purchase, and Fleet Card programs for compliance with the OMB Circular A-123, Appendix B requirements. Based on the results of the evaluation, the STB can provide reasonable assurance that they are in compliance with OMB Circular A-123, Appendix B.

Federal Information Security Modernization Act of 2014 (FISMA) (P.L. 113-283)

The DOT Office of Inspector General's (OIG) conducted their FY 2022 audit on the STB information security program and practices, as required by Federal Information Security Modernization Act. Based on the audit report results, the OIG did not identify any new recommendations for remediation in FY 2022. The Board's FISMA security level improved to "Consistently Implemented," in most domains, with four FISMA functions moving from "Defined" to "Consistently Improved".

Nineteen (19) FY 2021 FISMA audit recommendations have been addressed and closed. Many of the recommendations from the FY 2021 audit were closed but a few remain open. There are no new recommendations from the FY 2022 audit, as the issues identified within each of the five function areas for FY 2022 were consistent with those identified in FY 2021.

The Board will continue to work on implementing solutions to address the remaining FY 2021 recommendations.

Martin J. Oberman

Martin Oberman
Chairman

Dated: November 6, 2022

Program Performance Information

Overview

The STB, through its strategic plan and performance budget, provided a performance plan to Congress pursuant to the GPRA Modernization Act. The Board's performance goals are organized to achieve its strategic goals. The Board's significant accomplishments in FY 2022 include issuing 378 decisions addressing rail licensing, unreasonable practice complaints, rate reasonableness, declaratory orders, ex parte proceedings, and other matters. In addition, the Board was active in court related work, defending the Board's decisions in courts of appeals, and in activities related to FOIA and ethics.

Annual Performance Report

FY 2022 Activities and Accomplishments

Rates and Competition

During FY 2022, the Board continued to move forward in reforming its rate review processes. In July 2020, the Board issued final rules adopting a streamlined market dominance process that could be used in rate review proceedings; during 2021 and 2022 it has been considering petitions to reconsider and modify those rules. The Board received supplemental comments on its proposed rules to establish a new rate review option for smaller cases (called "Final Offer Rate Review," or "FORR"). The Board also received comments on a proposed arbitration procedure for smaller cases. The Board is considering comments in each docket, which are described further below.

In *Omaha Public Power District v. Union Pacific Railroad Company*, Docket No. NOR 42173, Omaha Public Power District (OPPD) filed a complaint challenging the reasonableness of a rate assessed by Union Pacific Railroad Company (UP) for the transportation of unit trains of coal in shipper-supplied railcars to OPPD's power station in Omaha, Neb., from UP's interchange in Omaha with BNSF Railway Company. The Board granted a protective order to enable the case to move forward.

Rail Mergers

On November 23, 2021, the Board accepted for consideration the application of Canadian Pacific Railway Limited and various related entities (Canadian Pacific), and Kansas City Southern and its U.S. rail carrier subsidiaries (KCS), for Canadian Pacific to acquire control of KCS. As described in more detail below, during FY 2022 the Board has been building the record and carrying out its careful consideration of this major merger proposal. The draft Environmental Impact Statement was issued on August 5, 2022, and the Board's Office of Environmental Analysis (OEA) will be holding hearings in locations potentially affected by the pending merger throughout the Fall. The Board held a hearing at its headquarters from September 28-30, 2022. The Board expects this ongoing proceeding to continue to consume significant staff time and resources in FY 2023.

Additionally, in FY 2022 the Board concluded its consideration of the application of CSX Corporation and CSX Transportation, Inc. (CSXT) to acquire control of seven rail carriers owned by Pan Am Systems, Inc., and Pan Am Railways, Inc., a "significant" transaction under the Board's regulations. As described further below, on April 14, 2022, the Board approved that application, subject to conditions.

Passenger Rail

In August 2021, Chairman Oberman appointed a Passenger Rail Unit Development Coordinator, and an attorney to assist the Coordinator to develop plans to enhance the agency's passenger rail oversight efforts and to ensure it will fully meet its obligations to enforce new on-time performance requirements. The development team has created comprehensive plans related to on-time performance investigation processing and resource allocation. This includes planning the creation of a passenger rail office and identifying and hiring the key personnel and expertise needed to staff that office. The Board voted to create this office effective October 1, 2022.

In addition, the Board has entered into an interagency agreement with the U.S. Department of Transportation's Volpe National Transportation Systems Center to develop data tools to quickly analyze the FRA's on-time performance quarterly data.

On February 14, 2022, the FRA published the Quarter 4, Calendar 2021 Amtrak on-time performance data. In FY 2022 the FRA also released the Quarter 1 and Quarter 2, Calendar 2022 Amtrak on-time performance data. The development team has analyzed and continues to assess the on-time performance data.

Throughout FY 2022, OPAGAC also continued to monitor Amtrak's performance through publicly available information and responded to informal inquiries about Amtrak. OPAGAC staff also met regularly with Amtrak staff to discuss Amtrak's publicly available, monthly, on-time performance operating statistics.

Rail Service Oversight and Monitoring

During FY 2022, the Board continued its monitoring of rail service across the freight rail network. In particular, the Board continued to focus on the disruptive impact on rail service and operations caused by COVID-19. The Board maintained its frequent contact with stakeholders in an effort to monitor the adequacy of rail service in meeting demand growth as shippers continued to scale up production following pandemic related curtailments. Toward this end, the Chairman requested that Class I railroads provide detailed information about their respective preparedness to meet increased rail service demand, including expectations for volume growth, the availability of employee and equipment resources, and hiring plans for the balance of 2021 and going forward into 2022. The Board is also monitoring disruptions in the international intermodal supply chain, in particular container congestion at ports, rail ramps, and gateways.

By the first quarter of 2022, the Board had heard from a broad range of stakeholders about inconsistent and unreliable rail service. The Board also received reports from the Secretary of Agriculture and other stakeholders about the serious impact of these service trends on rail users, particularly with respect to shippers of agricultural and energy products. These reports were validated by the Board's weekly rail service performance data collected from the railroads. As a result, the Board determined that the service issues had reached a level that necessitated a public hearing. The Board held two days of public hearings, on April 26 and 27, 2022, on recent rail service problems and recovery efforts involving several Class I carriers and directed executive-level officials of BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company to appear.

Following the public hearing, in *Urgent Issues in Freight Rail Service—Railroad Reporting*, Docket No. EP 770 (Sub-No. 1), on May 6, 2022, and again on June 13, 2022, the Board required these four Class I carriers to develop service recovery plans, to provide additional information on their actions to improve service and communications with their customers, to report detailed service and employment data (including targets), and to participate in biweekly calls with Board staff.

In addition, after hearing concerns raised by shippers across numerous industries, in *First-Mile / Last-Mile Service*, Docket No. EP 767, the Board invited comments on first-mile / last-mile (FMLM) service, which is the movement of railcars between a local railroad serving yard and a shipper or receiver facility. Specifically, the Board requested information on possible FMLM service issues, the design of potential metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

In *Foster Poultry Farms–Ex Parte Petition for Emergency Service Order*, Docket No. FD 36609, the Board on June 17, 2022, granted Foster Poultry Farms' petition for an emergency service order and directed Union Pacific Railroad Company to deliver certain trains to Foster Poultry Farms' facilities in Traver and Turlock, Cal. Thereafter, on July 1, the Board directed UP to continue to carry out its specific service commitments to Foster Poultry Farms, participate in weekly technical conferences with the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), and file daily service status reports with the Board, until July 17, 2022. On July 20, 2022, the Board denied Foster Poultry Farms' request to extend the emergency service order further, as the record did not show that the emergency continued to exist, but kept the docket open for six months in the event that further action were to become necessary.

In addition, the Board, through OPAGAC's Rail Customer and Public Assistance (RCPA) program, continued its monthly calls with each Class I railroad to monitor rail service across the network and maintain awareness of positive and negative developments in the industry. These calls are informed by, among other things, the rail service performance data that the Class I railroads and the Chicago Transportation Coordination Office report to the Board on a weekly basis. RCPA reviews the data to identify performance trends and outliers and to make year-over-year and month-over-month comparisons in performance. RCPA also monitors and tracks carrier embargoes.

Rulemakings

In *Revisions to Regulations for Expedited Relief for Service Emergencies,* Docket No. EP 762, the Board in April 2022 issued a notice of proposed rulemaking to amend its emergency service regulations and solicited public comments. The proposed rule would: (1) amend procedures for parties seeking a Board order directing an incumbent carrier to take action to remedy a service emergency; (2) indicate that the Board may act on its own initiative to direct emergency service; (3) modify the informational requirements for parties in emergency service proceedings; (4) shorten the filing deadlines in emergency service proceedings and establish a timeframe for Board decisions; and (5) establish an accelerated process for certain acute service emergencies.

In *Final Offer Rate Review,* Docket No. EP 755, et al., in response to comments received on its previously issued notice of proposed rulemaking, the Board in November 2021 invited parties, through a supplemental notice of proposed rulemaking, to comment on certain modifications to the proposed rate reasonableness procedure, as well as other issues, and received supplemental comments.

In *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes,* Docket No. EP 765, in response to a joint petition for rulemaking filed by five Class I rail carriers, the Board issued a notice of proposed rulemaking in November 2021 with respect to a proposal to modify its regulations to establish a voluntary arbitration program for small rate disputes and solicited and received public comments.

In *Petition for Rulemaking—Railroad Consolidation Procedures— Exemption for Emergency Temporary Trackage Rights,* Docket No. EP 282 (Sub-No. 21), the Board in November 2021 adopted a final rule establishing a new class exemption for emergency temporary trackage rights. The final rule also made certain other related changes to the class exemptions for trackage rights and temporary trackage rights.

In *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads,* Docket No. EP 768, the Board in November 2021 opened a proceeding to consider a proposal by the North America Freight Car Association, The National Grain and Feed Association, The Chlorine Institute, and The National Oilseed Processors Association to adopt regulations governing railroads' use of private freight cars. In April 2022, the Board issued a further decision soliciting public comments on issues raised in the petition for rulemaking as well as on a number of specific related questions raised by the Board.

In *Reciprocal Switching,* Docket No. EP 711 (Sub-No. 1), the Board held a two-day public hearing on March 15 and 16, 2022, concerning the reciprocal switching regulations it previously had proposed in this proceeding. Following the hearing, the Board allowed supplemental written comments and extended the period for permitted ex parte communications with Board members.

In *URCS Data Reporting,* Docket No. EP 769, in April 2022 the Board instituted a rulemaking proceeding to codify a longstanding voluntary practice whereby Class I carriers, through the Association of American Railroads (AAR), have annually reported tare weight and loss and damage data for use in the Board's Uniform Railroad Costing System. In July 2022 the Board adopted a final rule providing that Class I carriers may choose to provide tare weight and loss and damage data to the Board through AAR or file it individually.

Unreasonable Practice and Other Complaint Cases

In *Sanimax USA, LLC v. Union Pacific Railroad Company,* Docket No. NOR 42171, the Board in November 2021 granted Sanimax USA LLC's request to partially revoke the relevant commodity exemptions to permit its case against Union Pacific Railroad Company to proceed, denied Union Pacific's motion to dismiss Sanimax's complaint, and set a procedural schedule. Thereafter, in February 2022, the Board clarified that it would consider granting relief only prospectively from the date the partial revocation took effect and that the partial revocation does not limit the rights of the parties to conduct discovery and develop a full record regarding prospective liability and relief.

In *BNSF Railway Company—Terminal Trackage Rights—Kansas City Southern Railway Company and Union Pacific Railroad Company,* Docket No. FD 32760 (Sub-No. 46), the Board granted, in part, the request of BNSF Railway Company (BNSF) to establish general principles the Board expects parties to include in any future operating plans for direct service by BNSF on the Rosebluff Lead, pursuant to terminal trackage rights granted in a 2016 decision in this proceeding. The Board also denied BNSF's request for an expedited process for resolving disputes over conditions of use.

Declaratory Orders

In *The Louisville and Jefferson County Riverport Authority—Petition for Declaratory Order,* Docket No. FD 36463, the Board denied a petition for declaratory order filed by the Louisville and Jefferson County Riverport Authority seeking a finding that its lessee, New Albany Main Street Properties, LLC, is operating as a common carrier on certain track without Board authority.

In *Protect Sudbury Inc —Petition for Declaratory Order,* Docket No. FD 36493, the Board denied a request for a declaratory order finding that a railroad line in Sudbury, Mass., has not been abandoned and that easement agreements related to the line are void.

In *Waste Management of Washington, Inc.—Verified Petition for Declaratory Order,* Docket No. FD 36511, the Board denied a request for a declaratory order concerning jurisdiction over certain waste collection services in the State of Washington because the issues were currently pending before a state court.

In *Norfolk Southern Railway Company – Petition for Declaratory Order,* Docket No. FD 36522, the Board, in response to questions referred from the U.S. District Court for the Eastern District of Virginia, found that the Interstate Commerce Commission did not authorize Norfolk Southern Corporation to control Norfolk & Portsmouth Belt Line Railroad Company.

In *Action Environmental Systems, LLC—Petition for Declaratory Order,* Docket No. FD 36559, the Board concluded that certain tracks located on property owned by Action Environmental Systems, LLC, in Bronx County, N.Y., are spur tracks excepted from Board licensing under 49 U.S.C. § 10906.

Licensing

Major and Significant Transactions

In *Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway us Inc.; Dakota, Minnesota & Eastern Railroad*

Corporation; and Delaware & Hudson Railway Company, Inc.—Control—Kansas City Southern; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company, Docket No. FD 36500, in addition to several procedural decisions, the Board issued the following decisions in FY 2022:

On November 23, 2021, the Board accepted for consideration the application filed on October 29, 2021, by Canadian Pacific Railway Limited and various related entities (Canadian Pacific), and Kansas City Southern and its U.S. rail carrier subsidiaries (KCS), for Canadian Pacific to acquire control of KCS.

On February 18, 2022, the Board found that, based on the current record, it could not determine that the anticipated responsive applications that may be filed by BNSF Railway Company and Canadian National Railway Company would be "minor" transactions. The Board also clarified and waived certain filing requirements for responsive applications.

On March 16, 2022, the Board directed applicants to address an apparent inconsistency in certain data submitted to the Board, provided an opportunity for other parties to reply to applicants' submission, and suspended the procedural schedule. The decision also explained the service requirements for the sub-docketed proceedings.

In April 2022, the Board found that an environmental analysis would be conducted using the baseline traffic density data to be resubmitted by applicants; directed applicants to file an amended exhibit and resubmit the underlying workpapers; and permitted other parties to file amended comments and responsive applications.

On July 1, 2022, the Board accepted for consideration responsive applications filed by Canadian National Railway Company and Norfolk Southern Railway Company.

On July 22, 2022, the Board scheduled a public hearing to be held on September 28-30, 2022, at the Board's Washington, D.C., headquarters.

On August 5, 2022, OEA issued a Draft Environmental Impact Statement.

On September 13, 2022, the Board granted in part and denied in part a motion by the Applicants to strike certain evidence filed on July 12, 2022, by BNSF Railway Company, Canadian National Railway Company, and CSX Transportation, Inc.

In *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc.,* *Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company,* Docket No. FD 36472, et al., the Board in December 2021 affirmed its earlier preliminary conclusion that an environmental and historic review is not required for this proceeding and also announced that a public hearing would be held in January. That two-day hearing was held on January 13-14, 2022.

On April 14, 2022, the Board approved, subject to conditions, the main transaction in this docket, allowing CSX Corporation and CSX Transportation, Inc. (CSXT) to acquire control of seven rail carriers owned by Pan Am Systems, Inc., and Pan Am Railways, Inc., and to merge six of those railroads into CSXT. The Board also approved six related transactions, allowing Norfolk Southern Railway Company to acquire trackage rights over certain lines of four other railroads; allowing Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, to replace Springfield Terminal as the operator of Pan Am Southern LLC; and allowing SMS Rail Lines of New York, LLC, to discontinue service and terminate its lease of a rail line between Delanson, N.Y., and Voorheesville, N.Y.

Other Transactions

In *Grand Elk Railroad, Inc.—Acquisition Exemption—Lines of Wisconsin Central Ltd.,* Docket No. FD 36503, et al., Watco Holdings, Inc., and two of its subsidiaries filed for a series of exemptions in furtherance of the acquisition of approximately 652 miles of rail line in Wisconsin and Michigan. On December 20, 2021, the Board permitted the exemptions to become effective.

In *Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, La.,* Docket No. FD 36447, the Board acknowledged the parties' reports that discovery issues have been resolved and ordered Board-sponsored mediation in an effort to resolve disputes relating to the line at issue.

In *Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.,* Docket No. FD 36544, in November 2021 the Board found that the Commonwealth of Virginia, acting by and through its Virginia Passenger Rail Authority (VPRA), does not need Board authority to acquire certain real property and trackage on a rail line owned by CSX Transportation, Inc. The Board therefore granted VPRA's motion to dismiss its petition seeking that authority.

In *Seven County Infrastructure Coalition—Rail Construction & Operation Exemption—In Utah, Carbon, Duchesne, and Uintah Counties, Utah,* Docket No. FD 36284, the Board in December

2021 granted final approval of Seven County Infrastructure Coalition's petition for exemption to construct and operate a new rail line in Utah, subject to certain environmental mitigation conditions.

In *California High Speed Rail Authority—Construction Exemption—in Merced, Madera, and Fresno Counties, Cal.,* Docket No. FD 35724, et al., at the request of the California High Speed Rail Authority, in February 2022 the Board reopened two previously authorized rail line construction proceedings concerning portions of the proposed California High Speed Rail System, to consider an addition to the Merced to Fresno section of the project and a modification to the Fresno to Bakersfield section of the project.

In *BNSF Railway Company—Lease Exemption—Union Pacific Railroad Company,* Docket No. FD 36560, the Board permitted BNSF Railway Company to lease from Union Pacific Railroad Company an approximately 25-mile rail line in Colorado.

In *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP Rly Inc.,* Docket No. FD 35692, in response to a request that it reopen and reverse its prior rulings that an easement that would facilitate rail service should be held by GNP RLY Inc., the Board concluded that before determining the appropriate course of action it would await the conclusion of certain pending state court proceedings in which ownership of the easement was being considered.

In *San Jacinto Transportation Company, Inc.—Operation Exemption—SJRE-Railroad Series,* Docket No. FD 35996, the Board vacated the operation exemption of San Jacinto Transportation Company, Inc. (SJT), for a rail line in Harris County, Tex. The Board found that SJT's verified notice contained materially misleading information about the line and that the exemption is therefore void ab initio. The Board also denied as moot a petition for declaratory order that asked the Board to find that SJT is not a common carrier.

In *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada Railroad, LLC and Florida, Gulf & Atlantic Railroad, LLC,* Docket No. FD 36566, the Board denied a petition to reject the verified notice of exemption and a request to stay the effectiveness of the exemption pending state court litigation. The Board found that failure to disclose the litigation did not make the verified notice false or misleading and that the verified notice was not otherwise deficient. The Board allowed the exemption to take effect immediately.

In *South Dakota Railway Company—Notice of Interim Trail Use and Termination of Modified*

Rail Certificate, Docket No. FD 31874, the Board, in March 2022, allowed a railbanked right-of-way in South Dakota to be shortened and clarified that the removed portion of that right-of-way is no longer part of the interstate rail network. In June 2022, the Board denied a request from the National Association of Reversionary Property Owners to terminate a notice of interim trail use on the line.

In *Virginia Passenger Rail Authority—Acquisition and Operation of Certain Assets of Norfolk Southern Railway Company in Montgomery and Roanoke Counties, and The Cities of Salem and Roanoke, Va.,* Docket No. FD 36588, the Board determined that the Commonwealth of Virginia, acting by and through its Virginia Passenger Rail Authority (VPRA), does not need Board authority to acquire certain real property, equipment, fixtures, and improvements on a rail line owned by Norfolk Southern Railway Company (NSR) or to obtain an easement for passenger rail purposes on a connecting NSR rail line. The Board therefore dismissed VPRA's petition seeking such authority.

In *Great Walton Railroad Company d/b/a Hartwell Railroad Company—Acquisition Exemption—Hartwell Railroad Company,* Docket No. FD 36599, the Board authorized Great Walton Railroad Company d/b/a Hartwell Railroad Company to acquire control of Hartwell Railroad Company.

In *Lake Providence Port Commission—Feeder Line Application—Line 0f Delta Southern Railroad Located in East Carroll and Madison Parishes, La.,* Docket No. FD 36447, on August 23, 2022, the Board allowed the Lake Providence Port Commission to file an amended feeder line application for a longer line than originally proposed. The Board also disposed of several motions and ordered the current line owner to provide certain information about the line.

In *Van Pool Transportation LLC—Acquisition of Control—Alltown Bus Service Inc.,* Docket No. MCF 21100, on July 14, 2022, the Board approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC to acquire control of interstate passenger motor carrier Alltown Bus Service Inc.

In *Van Pool Transportation LLC—Acquisition of Control—F. M. Kuzmeskus, Inc.,* Docket No. MCF 21099, on July 14, 2022, the Board approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC to acquire control of interstate passenger motor carrier F. M. Kuzmeskus, Inc.

In *Van Pool Transportation LLC—Acquisition of Control— DS Bus Lines, Inc.,* Docket No. MCF 21101, on August 19, 2022, the Board approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC to acquire indirect control of interstate passenger motor carrier DS Bus Lines, Inc.

Abandonments/Discontinuances

In *Great Redwood Trail Agency—Adverse Discontinuance of Lease & Operating Authority—Northwestern Pacific Railway Co., in Humboldt, Trinity and Mendocino Counties, Cal.,* Docket No. AB 1313*,* on March 3, 2022, the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for discontinuance authority because those provisions and requirements would be either unnecessary in this case or difficult or impossible for Great Redwood Trail Agency (formerly known as North Coast Railroad Authority) to comply with should it file an application for adverse discontinuance. In June, Great Redwood Trail Agency filed its application for third-party, or “adverse,” discontinuance of the operating authority of Northwestern Pacific Railway Company over a rail line in Mendocino, Trinity, and Humboldt Counties, Cal., and on September 23, 2022, the Board granted the application for adverse abandonment.

In *CSX Transportation, Inc.–Abandonment Exemption—in Davidson County, Tenn.,* Docket No. AB 55 (Sub-No. 805X)*,* the Board allowed CSX Transportation, Inc., to abandon approximately 2,262 feet of rail line in Nashville, Tenn., subject to standard employee protective conditions.

In *Central Texas & Colorado River Railway, LLC—Discontinuance Exemption—in McCulloch, San Saba, Mills, and Lampasas Counties, Tex.,* Docket No. AB 1272X, the Board allowed Central Texas & Colorado River Railway, LLC, to discontinue its operations over approximately 67.5 miles of track in McCulloch, San Saba, Mills, and Lampasas Counties, Tex. In addition, the Board concluded that it would no longer apply its recent precedent imposing labor protective conditions in entire-system discontinuances where the carrier owns the rail assets at issue.

In *Utah Railway Company—Discontinuance of Service Exemption—in Carbon and Emery Counties, Utah,* Docket Number AB 310 (Sub-No. 3X), the Board allowed Utah Railway Company to discontinue service over approximately 25.05 miles of rail line in Carbon and Emery Counties, Utah, subject to standard employee protective conditions.

In *New York State Department of Environmental Conservation—Adverse Abandonment—Saratoga and North Creek Railway in Town of Johnsburg, N.Y.*, Docket No. 1261, the Board denied a request to dismiss this proceeding and a request for expedited consideration.

In *City Utilities of Springfield, Mo.—Abandonment Exemption—in Greene County, Mo.*, Docket AB 1319X, the Board permitted the abandonment of approximately 1.24 miles of rail line in Greene County, Mo., subject to conditions.

In *North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.*, Docket No. AB 1305X, the Board lifted the abeyance and stay orders previously imposed and allowed a notice of exemption for abandonment filed by North Coast Railroad Authority to proceed. The Board also denied a motion for exemption from the offer of financial assistance regulations.

In *Colorado Landowners—Adverse Abandonment—Great Western Railway of Colorado, LLC, in Weld County, Colo.*, Docket No. AB 857 (Sub-No. 2), the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority because those provisions and requirements would be either unnecessary in this case or difficult or impossible for a group of landowners in Colorado to comply with should they file an application for adverse abandonment of the line at issue.

In *R. J. Corman Railroad Property, LLC—Abandonment Exemption—in Scott, Campbell, and Anderson Counties, Tenn.*, Docket No. AB 1296X, the Board prohibited R. J. Corman Railroad Property from consummating its abandonment until further order of the Board in order to permit the Board to consider a pending petition seeking reconsideration of the abandonment exemption granted in this case.

In *Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J.*, Docket No. AB 167 (Sub-No. 1189X) et al., the Board concluded that Conrail did not engage in "anticipatory demolition" of historic properties in violation of Section 110(k) of the National Historic Preservation Act.

In *Consolidated Rail Corporation—Abandonment Exemption—in Schuylkill & Carbon Counties, Pa.,* Docket No. 167 (Sub-No. 1195X), because the Board could not conclude that the line at issue had previously been abandoned, it permitted the abandonment exemption in this docket to become effective.

In *Kansas & Oklahoma Railroad, L.L.C.—Discontinuance of Service Exemption—in Crowley, Pueblo, Otero, And Kiowa Counties, Colo.*, AB 853 (Sub-No. 4X), the Board allowed Kansas &

Oklahoma Railroad, L.L.C., to discontinue service over approximately 121.9 miles of rail line in Crowley, Pueblo, Otero, and Kiowa Counties, Colo., subject to standard employee protective conditions.

Amtrak

In *Application of The National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e)—CSX Transportation, Inc., and Norfolk Southern Railway Company*, Docket No. FD 36496, in addition to several procedural decisions, the Board issued the following decisions in FY 2022:

On January 28, 2022, the Board granted a request to intervene filed by the Alabama State Port Authority and its rail common carrier operating division, Terminal Railway Alabama State Docks (the Port), and resolved several other pending motions.

On February 1, 2022, the Board announced that a public hearing would be held, consisting of two phases: a public comment phase, followed by an evidentiary hearing limited to the four parties to this case (the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc., Norfolk Southern Railway Company, and the Port).

The public comment phase was held on February 15 and 16, 2022, and included testimony from federal, state, and local elected officials, other state and local interests, passenger rail supporters, rail carrier trade associations, shippers and shipper representatives, and others. The evidentiary hearing began on April 4, 2022 and continued for a number of additional days in April and May. At the conclusion of the most recent hearing session on May 12, the Chairman and other Board members discussed a number of evidentiary issues and invited the parties to submit additional evidence on those issues.

On June 10, 2022, the Board, among other things, ordered Board-sponsored mediation and extended the deadline for the parties to file supplemental evidence, and on July 22, 2022, the Board ruled on various evidentiary matters.

Uniform Railroad Costing System Update

The Uniform Railroad Costing System (URCS) is the STB's general-purpose costing system that estimates unit costs and total variable costs of rail shipments. In FY 2020, the Board awarded a contract to provide a report that explores alternatives to its existing costing methodology. The contractors delivered that report in March 2022. The Board is determining next steps in response to the report and any updates to URCS.

Environmental Review

The Board considers environmental impacts in its decision-making process under the National

Environmental Policy Act (NEPA) and related laws and regulations. By preparing the requisite environmental reviews and inviting the public to participate in the Board's environmental review process, the Board ensures its compliance with NEPA. The Board documents its NEPA findings by preparing Environmental Impact Statements (EISs) or Environmental Assessments (EAs), which assess the potential environmental impacts that could result from Board decisions.

During FY 2022, OEA worked on 17 EISs and 32 EAs in rail projects, comprising rail line constructions, rail line abandonments and a major merger. During FY 2022, 154 cases before the Board fell within a categorical exclusion from NEPA review. These cases included leases, operating exemptions, declaratory orders, rulemakings, transactions involving corporate changes, and certain acquisitions and discontinuances.

Environmental Impact Statements

The EISs addressed projects such as the proposed acquisition of KCS by Canadian Pacific. The Board served as a cooperating agency in 11 federal environmental construction reviews in Maryland, Nevada, and California. The Board is also monitoring environmental mitigation in a rail construction case in Alaska.

Environmental Assessments

The EAs addressed seven rail line construction cases that would provide rail service to various industrial complexes and port facilities, the divestiture of a rail line under a responsive application in the major Canadian Pacific/KCS merger case noted above, and 25 rail line abandonments. Finally, the Board has continued working towards completion of the National Historic Preservation Act requirements for a complex rail line abandonment in Jersey City, N.J.

Alternative Dispute Resolution

The Board has established arbitration and mediation rules to help parties informally resolve disputes and avoid costly litigation, and the Board actively encourages parties to use alternative dispute resolution. Mediation efforts have facilitated the settlement of cases and satisfactorily addressed other conflicts. Successful mediation settlements result in significant savings of litigation expenses to the parties, allow both sides to reach mutually satisfactory agreements, and make available the Board's limited staff resources to work on other matters.

The Board continued to engage the expertise of the Federal Mediation and Conciliation Service in FY 2022 to conduct Board-sponsored mediations with Board staff. This partnership has greatly enhanced the Board's mediation services offered to our stakeholders. In FY 2022, the Board held three mediations, one of which is ongoing and two of which did not reach a successful resolution. To date, there has not been an arbitration case filed under the Board's mediation and arbitration procedures.

Public Outreach and Informal Dispute Resolution

OPAGAC and RCPA continue to provide shippers, carriers, state and local governments, and members of the public with an accessible and effective resource for resolving certain disputes on an informal basis. RCPA works to resolve conflicts that might otherwise be submitted to the Board for adjudication, thereby conserving stakeholder and agency resources.

In FY 2022, RCPA handled 1,774 inquiries from stakeholders, of which approximately 250 pertained to shipper-railroad disputes. RCPA worked with parties to successfully resolve matters related to timely fulfillment of car orders, availability of rail resources, track maintenance, interchange operations, inter-carrier disputes, switching services, car storage, rates and charges, track lease agreements, and responsibility for spur track.

RCPA also informally assisted customers of household goods (HHG) moving companies to resolve service and rate disputes. The Federal Motor Carrier Safety Administration (FMCSA) has primary regulatory and enforcement jurisdiction in this area. RCPA maintained its informal engagement with FMCSA to discuss HHG trends and with the Federal Maritime Commission to discuss issues of common interest.

STB RCPA Inquiries FY 2022 (as of 9/30/2022)	
Commodity Group	**FY 2022**
Agricultural Products	101
Aggregates	3
Automobiles	5
Chemicals	61
Coal	15
Construction Materials	19
Forest Products	6
Hazardous Waste/Radioactive Waste	9
high/wide loads	3
Household Goods	129
Industrial Products	54
Intermodal	26
Metals and Minerals	25
Municipal Waste	9
Not Specified by Shipper	54
Passenger	34
Other	42
Toxic By Inhalation	3
N/A [*]	1,176

Total	1,774
* Includes inquiries regarding procedural assistance, informal legal or regulatory guidance, agency information, abandonment records, other records, tariff rule or rate questions, or other commercial or rail service disputes where an underlying commodity is not at issue.	

In addition to its dispute resolution function, OPAGAC also serves as a primary liaison between the public and the Board. OPAGAC fields inquiries from Board practitioners as well as from members of the broader public to provide those parties with a better understanding of the laws and regulations administered by the Board, as well as proceedings before the Board.

Court Actions and Other Legal Matters

In FY 2022, the Office of the General Counsel (OGC) handled a variety of cases on behalf of the Board:

In litigation involving allegations that certain carriers' rail fuel surcharges were coordinated in violation of federal antitrust laws, the U.S. Court of Appeals for the D.C. Circuit ruled on an appeal of a district court decision regarding the admissibility, under 49 U.S.C. § 10706(a)(3)(B)(ii), of evidence that a plaintiff seeks to introduce to demonstrate collusion The D.C. Circuit largely followed the analysis recommended by the Department of Justice (DOJ) and the Federal Trade Commission, which had consulted extensively with STB staff. The D.C. Circuit held that for evidence of a discussion between carriers to inadmissible under § 10706, it must concern specific, identifiable interline shipments involving those carriers, with only de minimis reference to non-interline traffic. *In Re Rail Fuel Surcharges Antitrust Litigation*, 34 F.4th 1 (D.C. Cir. 2022).

In a case brought against the Board (and its individual members) involving a "quiet title" claim related to the conversion of a rail line to interim trail use under the National Trails System Act, the U.S. District Court for the Middle District of Florida granted a motion to dismiss filed by the Board, along with the DOJ, without prejudice as to the plaintiffs amending their complaint in part, on January 11, 2021. Upon plaintiffs' filing of an amended complaint, the Board and DOJ filed a renewed motion to dismiss on March 12, 2021. The court granted the renewed motion to dismiss on January 25, 2022, finding that it lacked jurisdiction over plaintiffs' claims because they failed to properly allege a violation of the federal Quiet Title Act. *Grames, et al. v. Sarasota County, Florida, et al.*, 2022 WL 218486, No. 8:20-cv-00739-CEH-CPT (M.D. Fla. Jan. 25, 2022).

In a case involving a dispute between the U.S. subsidiaries of Canadian National and Canadian Pacific over an interchange location in the Chicago area, the Board (along with the DOJ) defended the STB's decision that Canadian National may not unilaterally designate Clearing Yard, located on the Belt Railway of Chicago, as the point of interchange under 49 U.S.C. § 10742. Section 10742 requires rail carriers to provide interchange facilities to connecting carriers. In December 2021, the Seventh Circuit vacated the Board's decision and remanded the matter to the Board. The court held that the Board had misinterpreted the statute by concluding that Section 10742 applies only if two carriers physically intersect, and that a carrier may designate as interchange points only points on its own line. *Wis. Cent. Ltd. v. STB*, 20 F.4th 292 (7th Cir. 2021).

In a case involving Bessemer & Lake Erie Railroad's (B&LE's) proposed acquisition of certain rail lines of CSX Transportation, Inc. (CSXT) in New York, B&LE filed an appeal with the Seventh Circuit (later joined by CSXT), challenging the Board's determination to approve the transaction, but only with certain conditions. OGC participated, on behalf of the Board, in an initial mediation session with the parties and a Circuit mediator, and briefing was suspended during the mediation process. *Bessemer & Lake Erie R.R. Co. v. STB*, No. 21- 1726 (7th Cir. filed Apr. 23, 2021). B&LE and CSXT subsequently informed the court that the carriers had terminated the purchase agreement at issue in the proceeding. On June 7, 2022, the court granted the parties' joint motion to dismiss of the appeal as moot.

In the area of new-carrier entry, a majority of the Board authorized, through an exemption, the construction and operation of a rail line in Utah. *Seven Cnty. Infrastructure Coal. —Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah*, FD 36284, (STB served Dec. 5, 2021). The Center for Biological Diversity, along with several other groups, filed a petition for review in the D.C. Circuit challenging the Board's decisions, as well as the Biological Opinion issued by the U.S. Fish and Wildlife Service, on which the Board relied. Eagle County, Colorado filed a separate petition for review of Board's decisions in the proceeding and the two appellate dockets were consolidated by the court. The Board's brief will be due in late October 2022. *Eagle County, Colo. v. Surface Transportation Board, et al.*, Case No. 22-1019; *Center for Biological Diversity, et al. v. Surface Transportation Board, et al.*, Case No. 22-1020.

The Board moved to dismiss, for lack of jurisdiction, a petition for review filed with the U.S. Court of Appeals for the D.C. Circuit. The petition challenged an order that the Board issued in response to a question referred to the Board by a district court. The Board's order found that the agency had not authorized Norfolk Southern Railway Company to control a partly-owned affiliate. *Norfolk Southern Railway Co.—Petition for Declaratory Order*, Docket No. FD 36522 (STB served June 17, 2022). In *Norfolk Southern Railway Co. v. STB*, No. 22-1209 (D.C. Cir.), the Board moved to dismiss Norfolk Southern's petition for review on the basis that a referring federal district court has exclusive jurisdiction to review the Board's order on referral.

The Board continued to defend in court its decisions regarding BNSF Railway Company's terminal trackage rights in *Kansas City Southern Railway Company v. STB*, Nos. 16-1308 and 20-1116 (D.C. Cir.). Two consolidated appeals are currently being held in abeyance, with the parties providing quarterly status reports to the Court, pending the resolution of the compensation-setting phase at the Board. In April 2022, KCS filed a third petition for review in the D.C. Circuit (No. 22-1069) challenging a recent Board decision setting forth "general service principles the Board expects parties to include in any future operating plan(s)" for the granted trackage rights and indicating that the parties remained responsible for attempting to establish conditions. The Board moved to dismiss KCS's new petition for review or, in the alternative, to consolidate it with the prior appeals and hold it in abeyance. On August 11, 2022, the Court granted the Board's alternative request and ordered that Case No. 22-1069 be consolidated with the two other appeals and held in abeyance pending further order of the Court.

The Board continued to assist the DOJ in the defense of numerous Fifth Amendment takings cases arising from the conversion or attempted conversion of rail lines to interim trail use under the National Trails System Act. *See, e.g.*, *Barlow v. United States*, No. 22-1381 (Fed. Cir.); *Behrens v. United States*, No. 22-1277 (Fed. Cir.); *Stimson Lumber v. United States*, No. 22-1201 (Fed Cir.); *Memmer v. United States*, No. 21-2133 (Fed Cir.); *Mitchum v. United States*, No. 22-325L (Fed. Cl.); *Ennis v. United States*, No. 21-87L (Fed. Cl.); *Agapion/Chapman Spring Garden v. United States*, Nos. 19-1942 & 19-1596 (Fed. Cl.); *Hippely v. United States*, No. 18-1070L (Fed Cl.); *Blevins v. United States*, No. 18-4372 (Fed. Cl.). Additionally, in a case involving the status of a former Union Pacific rail line in Kansas, a bank brought a quiet title claim against Union Pacific and the Board in Kansas state court. The bank agreed to voluntarily dismiss the Board from the case after negotiations with OGC, and the court issued a dismissal order on April 28, 2022. *Union State Bank v. Union Pacific R.R., et al.*, No. 2022-CV-000002 (Kan. Dist. Ct.).

The OGC continued to work on a wide variety of other legal matters, including matters involving FOIA, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, the National Historic Preservation Act, the National Trails System Act, and the Federal

Advisory Committee Act. It provided legal counsel on general personnel and ethics issues, issues related to COVID-19, and government contracting, and participated in the Administrative Conference of the United States. The OGC also houses the Board's Records Office, which manages the agency's compliance with the Federal Records Act and related authorities.

Advisory Committees

The Board has three transportation advisory councils, of which the Board members are ex-officio members. Established under the ICC Termination Act of 1995, the Railroad-Shipper Transportation Advisory Council (RSTAC) advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as railcar supply, railroad service, rates, and competitive matters. Its 15 appointed members consist of senior officials representing large and small shippers, large and small railroads, and one at-large representative. Along with the Board members, the Secretary of Transportation is also an ex-officio member. RSTAC typically holds meetings quarterly; however, due to the ongoing impacts of COVID-19 on the U.S. economy and the transportation network, RSTAC members held virtual meetings monthly with the Board Members and the FRA Administrator to report on the status of rail service and operations. RSTAC resumed quarterly, in-person meetings in May 2022.

The Rail Energy Transportation Advisory Committee (RETAC) was created in 2007 to provide advice and guidance to the agency on emerging issues concerning the rail transportation of energy resources such as coal, crude oil, ethanol, and other biofuels. The 25 voting members of RETAC represent a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the petroleum production industry, and the private railcar industry. RETAC typically holds meetings twice per year. RETAC met virtually on November 16, 2021, and in-person on April 20, 2022.

The National Grain Car Council (NGCC) assists the Board in addressing issues concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers, and the government. The NGCC, which meets once a year, is composed of 14 representatives from Class I railroads, seven from Class II and Class III railroads, 14 from grain shippers and receivers, and seven from private rail car owners and manufacturers. NGCC was held in person on August 25, 2022.

Workload Summary

Workload Category	FY 2022 (actual)	FY 2023 Estimate	FY 2024 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	250	200	200
Mediations	3	6	6
Audits	7	10	10
Decisions			
Complaints			
Rate	1	12	16
Non-Rate	5	25	30
Declaratory Orders	11	20	25
Ex Parte Proceeding Decisions			
Rulemakings	21	25	25
Other	19	22	22
Licensing			
Applications/Petitions	101	100	100
Notices of Exemption	166	185	190
Other (incl. grant stamps)	14	26	40
Non-Rail Decisions	3	10	10
Other	15	25	25
Defensibility Assessments	155	155	155
Depreciation Studies	10	10	10
Economic Statistical Reports	28	28	28
Environmental			
Categorical Exclusions	154	155	155
Environmental Assessments	32	35	35
Environmental Impact Statements	17	18	16
Ethics Reviews	139	140	140
Fee Waiver Decisions	8	12	15
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	11	8	8
Filings	2,117	2,300	2,400
FOIA Requests	91	90	80
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Judicial Review	7	10	10
Outreach & Communication			
Conferences	64	20	20
Environmental Meetings	40	35	35
Ex Parte Meetings	72	20	20
Stakeholder Meetings	473	200	200

Public Forum			
Hearings	4	2	3
Listening Sessions	0	2	3
Oral Arguments	0	2	3
Other	0	0	0
Rail Service Data Reports	384	384	384
Recordations	1,157	1,400	1,500
Section 5 Collaborative Discussions	29	30	30
Technical Conferences	3	2	2
Waybill Requests	151	125	125
Paperwork Reduction Act Requests and Submissions to OMB	13	15	15

FY 2022 Administrative Accomplishments

Information Technology

During FY 2022, the STB continued working to implement a cost-effective, risk-based cybersecurity program that is aligned with the National Institute of Standards and Technology security standards and guidelines. The Board's Federal Information Security Modernization Act (FISMA) security level has increased to "Consistently implemented." Nineteen recommendations from the FY 2021 audit were closed and six remain open. There are no new recommendations from the FY 2022 audit, as the issues identified within each of the five function areas for fiscal year 2022 were consistent with those identified in fiscal year 2021. In FY 2022, the Board began work on establishing a Zero Trust architecture.

The STB also continues to leverage resources of the Department of Homeland Security Continuous Diagnostics and Mitigation Program as it automates its continuous security monitoring of the STB's network.

The benefits of the Board's ongoing IT modernization efforts were evident as the agency continued its mandatory teleworking status in response to COVID-19. Staff was able to work remotely using STB-issued laptops with no loss in productivity. With the return to the STB offices, the Board completed a laptop refresh for most staff by the end of FY 2022 with the remaining laptops refreshed by early FY 2023. The new virtual server environment in the data center allows the Board to streamline the systems in use at the Board's datacenter and replace the older redundant tools with fewer, more efficient tools. Work on the transition to new managed data services continues with the first of two circuits expected in place around early December, 2022 and the second one early in Q2, FY 2023.

Other items include the completion of an IT Strategic Plan in alignment with the Board's new draft Strategic Plan and consolidation of support for the Board's mission critical Dynamic Case Management System (DCMS) and website. This consolidation initiates the efforts to migrate the website to a FedRAMP authorized web hosting platform and the development of an enhanced, better integrated, system with improved user experiences for all stakeholders.

Human Resources

The STB's most vital resource is its staff. Effective management of the Board's workforce is crucial to its ability to serve the public interest. Overall, the Board seeks to create and maintain a performance-based organization. The STB seeks to meet its evolving human capital needs by ensuring that its performance management system emphasizes accountability and staff development. The Board is committed to working with its managers, employees, and other stakeholders to ensure progress is made toward meeting its human capital goals.

Human Resources continues leveraging the resources of its personnel and payroll shared service provider, the Department of the Interior-Interior Business Center and relies upon FedTalent from the Office of Personnel Management (OPM) for its staff training needs.

Human Resources implemented OPM's Performance Management System (USA Performance) to manage its Senior Executive Service (SES) and Non-SES performance management programs. USA Performance enabled the STB to automate its performance appraisal process throughout the entire performance rating cycle. Human Resources looks to improve the development of its performance plans, the tracking and monitoring of employees' performance, and the electronic signature process as its appraisal program require.

With respect to recruiting activities, Human Resources continued its efforts to improve the turnaround time for reviewing application packages and worked with hiring managers on the development of their position descriptions. This was particularly beneficial to the agency given the active recruiting this year, filling 14 vacancies during FY 2022. The STB restarted its Pathways Internship Program, hiring three paid interns for the Summer of FY 2022. Also, HR worked to ensure the STB received full SES certification.

Human Resources continued to play an important role during COVID-19. Human Resources facilitated virtual on- and off-boarding of staff, as well as providing useful information regarding pay, leave, and other resources to Board staff as they continued 100% telework and then adjusted to re-entry into the workplace with maximum telework.

Facilities Management

During FY 2022 the Section of Facilities Management ensured office spaces had necessary safety precautions and met the needs of staff as they returned to the office. The section also managed onsite support for the Board's hearings, both virtual and hybrid, that occurred during FY 2022. The Board continued to request that all filings and other submissions be submitted electronically, and the facilities staff ensured that notice of all Board decisions made by mail to those who did not consent to electronic filing was completed timely and efficiently.

Financial Services

The Section of Financial Services (SFS or Financial Services) continued to modernize its processes as it completed its transition to a cloud-based procurement system including training staff and updating related policies and procedures to allow for a more knowledgeable and streamlined acquisition program.

Financial Services collaborated with all STB offices to ensure large and small procurements were processed and met agency needs. The Board continued its engagement with contractors for assistance in improving the Board's OMB Circular A-123 compliance, as well as updating the agency's strategic plan including updating its performance measures. In addition, Financial Services ensured that necessary IT contracts were awarded including a combined new award for the Board's case management system and website to allow further integration and improved efficiencies. Financial Services also ensured the Board obtained supplies and services necessary for the safety of staff in response to COVID-19 as the office returned to office. The SFS leveraged the procurement system to track and efficiently expend 99% of agency FY 2022 funds to benefit its mission.

Financial Services developed, justified, and presented the FY 2023 budget request estimates for approval by the Board and submission to Congress, and the submission of the FY 2024 budget request estimates to OMB and Congress, as well as prepared the required external financial statements for Congress, OMB, Treasury, and external stakeholders.

The SFS further leveraged ESC's Delphi eInvoicing System by implementing several workflows to better align vendor invoices with agency approving officials. The STB has been able to decrease approval time of invoices by over 50% and is able to track the status of invoices in real-time as well as run reports necessary reports and pull supporting documentation more readily as this process has been centralized.

Finally, Financial Services completed activities related to the Federal Governments transition to G-Invoicing to manage its intragovernmental transactions. This required significant coordination and effort with the STB's shared service provider and internal stakeholders to ensure a successful outcome, but the SFS was able to execute several intragovernmental transactions prior to yearend, eliminating the need for the paper forms.

COVID-19

The STB has successfully carried out its mission and protected its workforce during COVID-19 and continued to do so as staff returned to the office during FY 2022. The STB, after obtaining feedback from staff and holding internal meetings, updated its workplace policies and moved to a steady state of what the Office of Personnel Management considers maximum telework, which is two days in the office per pay period for most staff. The Board continued leveraging online collaboration tools, cloud-based software, and cybersecurity to make this transition easier and the hybrid work environment stronger, which allowed the agency to produce sound decisions, conduct informal dispute resolution, meet with stakeholders, and provide the resources needed to accomplish the agency's mission, including the initiatives highlighted below. The STB continues to evaluate its future of work state and its physical space requirements.

2021 Best Places to Work in the Federal Government rankings

The STB received an award from the Partnership for Public Service for its ranking in the Best Place to Work in the Federal Government: 5th out of 29 small agencies, which constitutes a substantial improvement over STB's ranking of 13th last year. Our overall employee engagement score was 79.2, an increase of 2.2 points since over last year. This year the STB was the #1 ranked small agency—and tied for the top score among agencies of any size and agency subcomponents—in the subcategory measuring whether employees felt their well-being was supported during COVID, with a score of 98.1. The STB will seek to empower, respect, and galvanize its workforce through policies that are consistent throughout the agency while being sufficiently flexible to address a variety of situations and the future of the Federal workforce.

Evidence Act

The STB relies on evidence-based decision-making to implement its Strategic Plan. Reliance on evidence-based decision-making is the responsibility of each Board office, from substantive matters of case adjudication and informal assistance regarding freight rail service to administrative matters concerning IT modernization and budgeting. As the agency continues to implement reforms to provide a more efficient and effective regulatory review process, it will endeavor to analyze new proposals against historical and other data to evaluate these reform initiatives. The agency will continue to evaluate its data collection and analysis capacity to support processes like agency operations, human capital management and development, and program administration, as well as to support mission-strategic areas. The Board's continued goal is to use its data as a strategic asset and to make evidence-based decisions to achieve its mission, serve the public, and steward resources while protecting security, privacy, and confidentiality.

The STB continues to make progress pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act). The STB has furthered its data and analytics maturity and developed a multi-year data strategy that will enable the Board to meet its mission more efficiently and effectively. During FY 2022, the Board continued its data efforts using data science and analytical tools. The Board piloted projects, including data transformation, a QuickSight Dashboard, and a data warehouse. In addition, the Board matured its CKAN Enterprise Data Catalog architecture. The Board stood up a database for the analysis of incoming data from the Class I Railroads which has proved very useful in ongoing Board monitoring.

Financial Information

Financial Performance Overview

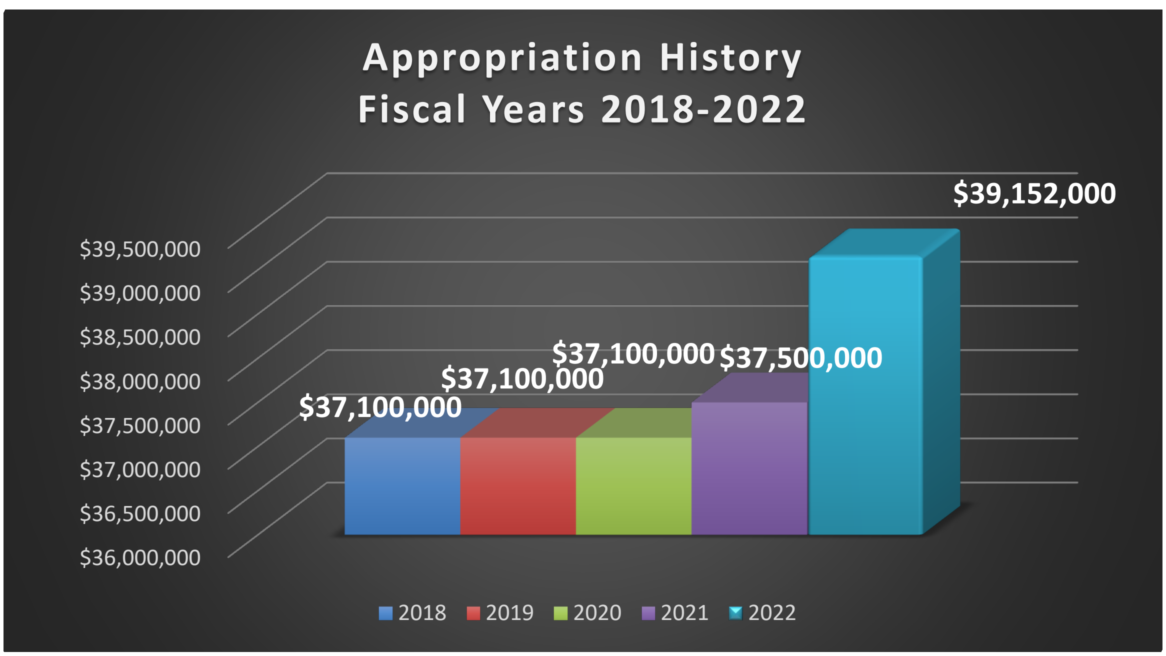
The STB's financial condition as of September 30, 2022, is sound. Internal controls are in place to ensure that funds are utilized efficiently and effectively, and that the Board's budget authority is not exceeded.

COVID-19

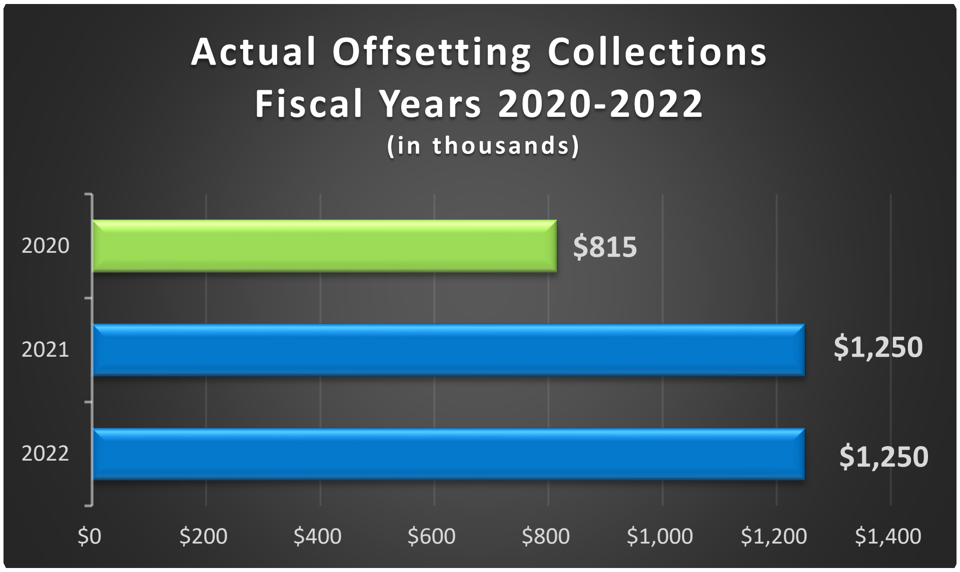
Similar to FY 2021, the financial impact of COVID-19 in FY 2022 to the Board was not significant, and the Board did not receive any additional budgetary resources in support of its response. The STB instead used available resources to ensure staff safety when onsite and to enable staff to continue working remotely.

Source of Funds

The STB has single-source funding, called Salaries and Expenses, funded by an annual appropriation available for commitments and obligations incurred during the year in which the authority was granted. Congress approved an FY 2022 appropriation for the STB in the amount of $39,152,000 through P.L. 117-103 which is an increase from the level appropriation funding from previous year.

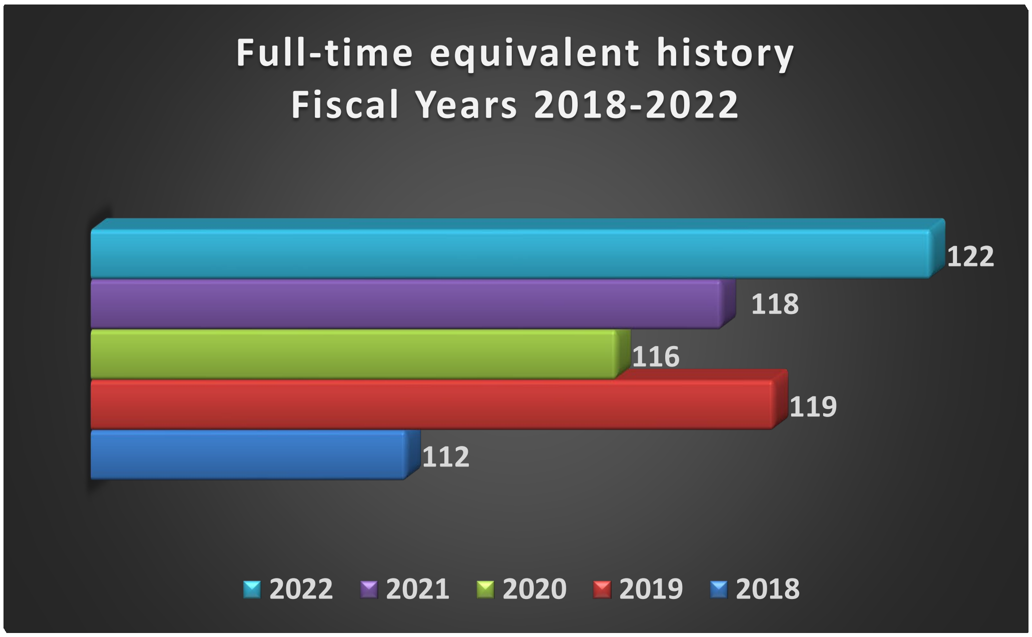


In accordance with the annual appropriations measures, the STB currently offsets up to $1,250,000 in remittances for user fees and penalties. The user fees and penalties are credited to the STB's appropriation and deposited at the Treasury for the STB operations.



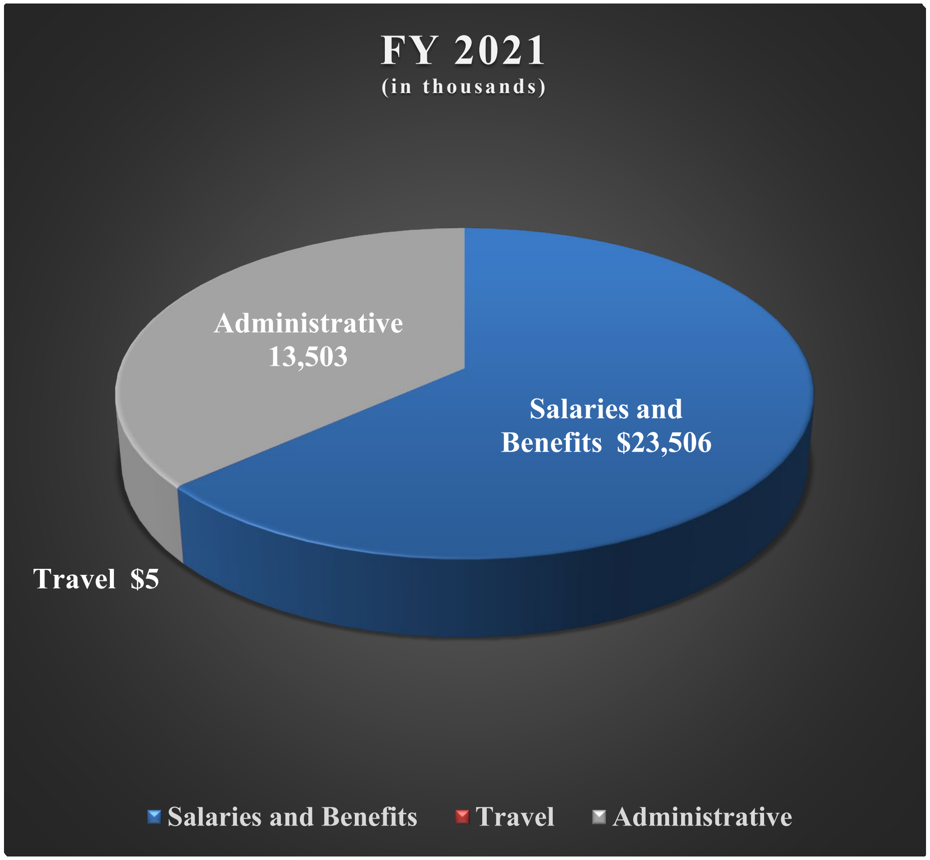
Full-Time Equivalent History

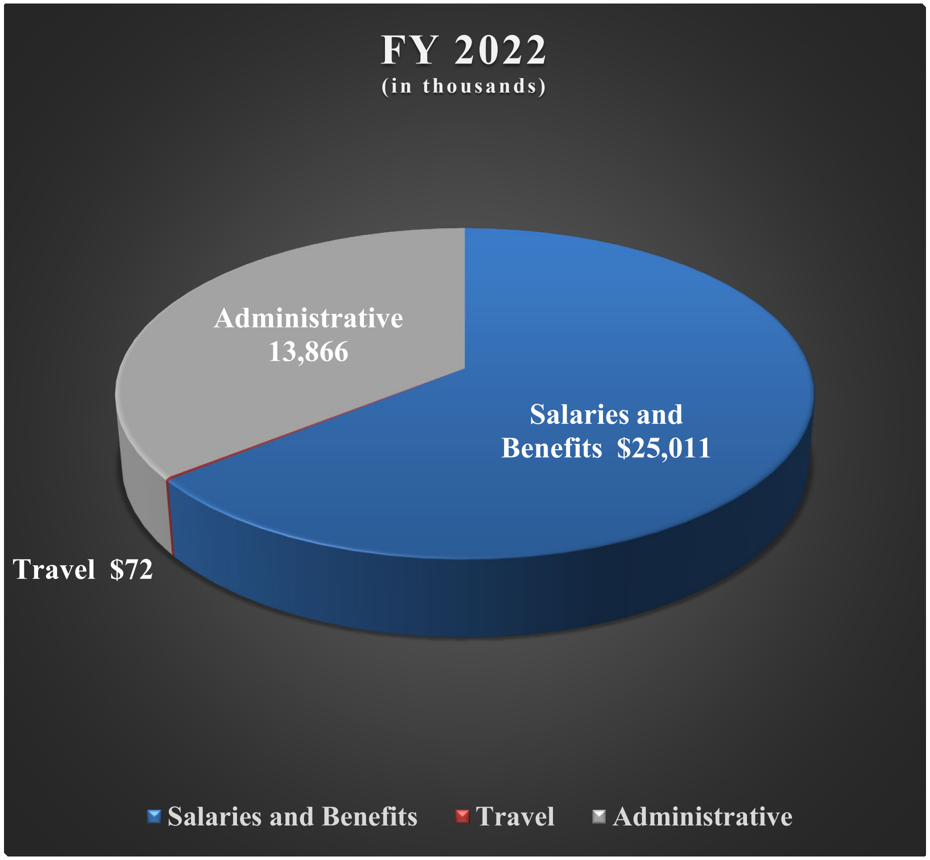
The STB's Full-Time Equivalent (FTE) level is largely driven by its annual appropriation amount. During FY 2022, all five Board member positions were filled. There were also several retirements and separations in FY 2022, resulting in a lower than projected FTE level. The STB continues to develop an appropriate mix of staffing and contractor support to ensure effective accomplishment of its mission.



Uses of Funds by Expense Category

During FY 2022, obligations against the STB's appropriation totaled $38,949 (in thousands), representing 99.5% of the available funding level. The funds were allocated as follows: 64.2% for salaries and benefits, 35.6% for administrative expenses (e.g., rent; government and commercial contracts; communications and subscriptions; equipment; and IT and non-IT services), and 0.2% for official travel expenses.





Overview of Financial Results

The STB's financial statements were audited by Allmond & Company LLC, under contract to the DOT OIG. The STB received an unmodified opinion on its FY 2022 financial statements.

Principal Financial Statements

The principal financial statements presented include:

- Balance Sheet – Presents the combined amounts the agency had to use or distribute (assets) versus the amounts the agency owed (liabilities), and the difference between the two (net position);
- Statement of Net Cost – Presents the annual cost of agency operations. The gross cost less any offsetting revenue is used to determine the net cost;
- Statement of Changes in Net Position – Reports the accounting activities that caused the change in net position during the reporting period; and
- Statement of Budgetary Resources – Reports how budgetary resources were made available and the status of those resources at fiscal year-end.

Limitations of the Financial Statements

The principal financial statements have been prepared to report the financial position and results of operations of the STB, pursuant to the requirements of 31 U.S.C. § 3515(b). While the statements have been prepared from the books and records of the agency in accordance with generally accepted accounting principles for Federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the recognition that they are for a component of the U.S. government, a sovereign entity.

Therefore, liabilities not covered by budgetary resources cannot be liquidated without the enactment of an appropriation, and the payment of all liabilities other than for contracts can be abrogated by the sovereign entity. Other limitations are included in the footnotes to the principal financial statements. The accompanying notes are an integral part of these statements.

Summary of the Balance Sheets and Statement of Changes in Net Position

Assets (in thousands): Total assets were $18,872, a decrease of $3,529 relative to FY 2021. This was caused by decreased Fund Balances with Treasury ($3,967), and Property, Plant, and Equipment ($34), offset by increased advances and prepayments ($472); and construction-in-progress ($160).

Liabilities (in thousands): Total liabilities increased by $333 from $6,787 to $7,120. The change was attributed to increased public accounts payable and other liabilities, respectively.

Net Position (in thousands): The Board's net position on the Balance Sheet and the Statement of

Changes in Net Position was $11,752, a decrease of $3,862.

Summary of the Statement of Net Cost (in thousands)

The STB's net cost of operations during FY 2022 was $37,506, a decrease of $2,233 over FY 2021. The decrease in net cost of operations was primarily due to decreased judgement fund costs.

Statement of Budgetary Resources (in thousands)

The Statement of Budgetary Resources provides information on budgetary resources made available to the Board and the status of these resources at the end of the fiscal year. For FY 2022, total budgetary resources were $43,890. This represents a decrease of $2,661 from FY 2021 total budgetary resources of $46,551. The total user fees collected in FY 2022 ($1,248) was marginally less than FY 2021 ($1,251).

Additionally, new obligations and adjustments were $39,005 and net outlays totaled $36,588 in FY 2022. This represents an increase in direct obligations ($1,856), and net outlays ($3,292) over FY 2021.

Report QC2023005
November 14, 2022

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2022 and 2021

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2022 and 2021

Required by the Accountability of Tax Dollars Act of 2002

QC2023005 | November 14, 2022

What We Looked At

We contracted with the independent public accounting firm Allmond & Company, LLC (Allmond), to audit the Surface Transportation Board's (STB) financial statements as of and for the fiscal years ended September 30, 2022, and September 30, 2021; provide an opinion on those financial statements; and report on internal control over financial reporting, compliance with laws, and other matters. The contract required the audit to be performed in accordance with U.S. generally accepted Government auditing standards; Office of Management and Budget audit guidance; and the Government Accountability Office's and Council of the Inspectors General on Integrity and Efficiency's *Financial Audit Manual*. We performed a quality control review (QCR) of Allmond's report, dated November 06, 2022, and related documentation, and inquired of Allmond's representatives.

What We Found

Our QCR disclosed no instances in which Allmond did not comply, in all material respects, with U.S. generally accepted Government auditing standards.

Our Recommendations

STB concurred with Allmond's seven recommendations. We agree with Allmond's recommendations and are not making any additional recommendations.

U.S. Department of Transportation
Office of Inspector General

November 14, 2022

The Honorable Martin J. Oberman, Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman:

I respectfully submit the results of our quality control review (QCR) of the independent auditor's report on the Surface Transportation Board's (STB) audited financial statements for fiscal years 2022 and 2021.

We contracted with the independent public accounting firm Allmond & Company, LLC, to audit STB's financial statements as of and for the fiscal years ended September 30, 2022, and September 30, 2021; provide an opinion on those financial statements; and report on internal control over financial reporting, compliance with laws, and other matters. The contract required the audit to be performed in accordance with U.S. generally accepted Government auditing standards; Office of Management and Budget audit guidance; and the Government Accountability Office's and Council of the Inspectors General on Integrity and Efficiency's *Financial Audit Manual*.[1]

Independent Auditor's Report

In its audit report, dated November 06, 2022, Allmond states that

- STB's financial statements[2] (see attachment 3) were fairly presented, in all material respects, in accordance with U.S. generally accepted accounting principles;

[1] *Financial Audit Manual*, volume 1 (GAO-22-105894), June 2022; volume 2 (GAO-22-105895), June 2022; and volume 3 (GAO-21-105127), June 2022.
[2] The financial statements are included in STB's Performance and Accountability Report. For STB's full Performance and Accountability Report, which includes these statements, related notes, and required supplementary information, go to https://www.stb.gov/about-stb/agency-materials/strategic-plan-and-pars/.

- it found no material weaknesses[3] and two significant deficiencies[4] in internal control over financial reporting based on the limited procedures performed; and

- there were no instances of reportable noncompliance with provisions of laws tested, or reportable other matters.

Allmond made seven recommendations (see attachment 1).

Significant Deficiencies

Control activities performed to review and approve the financial statements and footnotes were not adequately designed and implemented. Allmond found that STB was not compliant with Federal financial reporting presentation requirements for the Balance Sheet and several required footnotes. Allmond identified material misstatements in the footnotes due to mathematical errors.

Employee benefit election forms were not maintained per Office of Personnel Management (OPM) requirements. Allmond found that STB does not have control procedures to ensure that employees' benefit election forms are thoroughly and accurately documented in the electronic Official Personnel Folder, in accordance with OPM requirements.

Recommendations

Allmond made the following seven recommendations to help strengthen STB's internal controls:

1. STB management should review the current version of the Office of Management and Budget (OMB) Circular A-136 to independently verify that all required footnotes are included and bring any omissions to the service provider's attention so that errors or omissions can be corrected.

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[3] A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

[4] A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness yet important enough to merit attention by those charged with governance.

2. STB management should review the service provider's Financial Statement and Notes Review Checklist to verify that the checklist is up to date and includes all required elements per OMB and Treasury guidance and then complete the checklist independently. Alternatively, STB management should develop and complete its own review checklist based on current Treasury and OMB reporting requirements.

3. STB management should request its financial management service provider to:

    - Reevaluate the inclusion of account balances that were excluded in the Other Liabilities footnote, or

    - Disaggregate (i.e., separately report) intragovernmental other liabilities balances reported as a single line item on the balance sheet that are not included in the footnote so that the total amounts reported for Other Liabilities on the Balance Sheet and in the footnote agree.

4. STB management should ensure that its review process includes procedures to disaggregate material balances reported in the financial statements and footnotes, agree balances to source documents, agree the footnotes to the principal financial statements, and verify the mathematical accuracy of all statements and schedules included in the financial statement package.

5. STB should perform routine reviews of employee benefit elections and Official Personnel Folders (OPFs) to ensure they are complete and accurate.

6. STB should address missing or unavailable supporting documentation with its shared service provider to ensure that document retrieval tools are available and are working properly to allow retrieval of all stored documents.

7. STB should obtain replacement documentation for employee forms and other documentation that has been determined to be incomplete or irretrievable from databases and other electronic sources.

Quality Control Review

We performed a QCR of Allmond's report and related documentation, and inquired of the firm's representatives. Our review, as differentiated from an audit of the financial statements in accordance with U.S. generally accepted Government auditing standards, was not intended to enable us to express, and we do not express, an opinion on STB's financial statements or conclusions about the effectiveness of internal control over financial reporting, compliance with laws, or other matters. Allmond is responsible for its report and the conclusions expressed therein.

Our QCR disclosed no instances in which Allmond did not comply, in all material respects, with U.S. generally accepted Government auditing standards.

Agency Comments

Allmond provided STB with its draft report on November 04, 2022, and received STB's response dated November 06, 2022 (see attachment 2).

Actions Required

We consider all seven of Allmond's recommendations open and unresolved pending receipt of the corrective action plan.

We appreciate the cooperation and assistance of STB's representatives and Allmond. If you have any questions about this report, please contact me, or Ingrid Harris, Program Director.

Sincerely,

D. Dillard-Christian

Dormayne "Dory" Dillard-Christian
Assistant Inspector General for Financial Audits

cc: STB Chief Financial Officer

Attachment 1. Independent Auditor's Report

SURFACE TRANSPORTATION BOARD
AUDIT REPORT
SEPTEMBER 30, 2022

ALLMOND & COMPANY, LLC
Certified Public Accountants
7501 Forbes Boulevard, Suite 200
Lanham, Maryland 20706
(301) 918-8200

A/C
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CERTIFIED PUBLIC ACCOUNTANTS
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(301) 918-8200
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Independent Auditors' Report

Chairman, Surface Transportation Board
Inspector General, U.S. Department of Transportation

Report on the Financial Statements

Opinion

Pursuant to the Accountability of Tax Dollars Act of 2002, we have audited the accompanying financial statements of the Surface Transportation Board (STB), which comprise the balance sheets as of September 30, 2022 and 2021; the related statements of net cost, changes in net position, budgetary resources, and custodial activity for the fiscal years then ended; and the related notes to the financial statements (hereinafter referred to as the financial statements).

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Surface Transportation Board as of September 30, 2022 and 2021 and its net costs, changes in net position, budgetary resources, and custodial activity for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with U.S. generally accepted auditing standards (GAAS); the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 22-01, *Audit Requirements for Federal Financial Statements*. Our responsibilities under those standards and OMB Bulletin No. 22-01 are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the STB and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence that we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

STB management is responsible for (1) the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; (2) preparing, measuring, and presenting Required Supplementary Information (RSI) in accordance with U.S. generally accepted accounting principles; (3) preparing and presenting other information included in STB's Performance and Accountability Report and ensuring the consistency of that information with the audited financial statements and the RSI; and (4) designing, implementing, and maintaining effective internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, generally accepted government auditing standards (GAGAS), and OMB Bulletin No. 22-01 will always detect a material misstatement when it exists.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered to be material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, GAGAS, and OMB Bulletin No. 22-01, our responsibilities are to exercise professional judgment and maintain professional skepticism throughout the audit, to identify and assess risks of material misstatement of the financial statements, whether due to fraud or error, and to design and perform audit procedures that are responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements in order to obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. In addition, in making those risk assessments, we obtain an understanding of internal control relevant to an audit of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of STB's internal control. Accordingly, we express no such opinion.

An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements, and performing other procedures we consider necessary in the circumstances. We are required to communicate with those charged with governance regarding, among other matters, the planned scope of and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the financial statement audit.

Required Supplementary Information (RSI)

U.S. generally accepted accounting principles issued by the Federal Accounting Standards Advisory Board (FASAB) require that the information in the RSI be presented to supplement the financial statements. Such information is the responsibility of management and, although not a part of the financial statements, is required by FASAB, which considers it to be an essential part of financial reporting for placing the financial statements in appropriate operational, economic, or historical context. We have applied certain limited procedures to the RSI in accordance with U.S. generally accepted government auditing standards, which consisted of inquiries of management about the methods of preparing the RSI and comparing the information for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during the audit of STB's financial statements, in order to report omissions or material departures from FASAB guidelines, if any, identified by these limited procedures. We did not audit and we do not express an opinion or provide any assurance on the RSI because the limited procedures we applied do not provide sufficient evidence to express an opinion or provide any assurance.

Other Information

STB's other information contains a wide range of information, some of which is not directly related to the financial statements. This information is presented for purposes of additional analysis and is not a required part of the financial statements or the RSI. Management is responsible for the other information included in STB's Performance and Accountability Report. The other information comprises the *Message from the Chairman*, *Program Performance Information*, and *Required Other Information* sections but does not include the financial statements and our auditors' report thereon. Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Report on Internal Control over Financial Reporting

In connection with our audits of STB's financial statements as of and for the years ended September 30, 2022 and 2021, we considered STB's internal control over financial reporting, consistent with the auditor's responsibilities discussed below.

Results of Our Consideration of Internal Control over Financial Reporting

Our consideration of internal control was for the limited purpose described below, and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies[1] or to express an opinion on the effectiveness of STB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of STB's internal control over financial reporting. Given these limitations, during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses; however, material weaknesses or significant deficiencies may exist that have not been identified.

During our fiscal year 2022 audit, we identified deficiencies in STB's internal control over financial

1 A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention by those charged with governance.

reporting that we consider to be significant deficiencies. These deficiencies are described in the accompanying *Exhibit I, Findings and Recommendations,* to this report. We considered these significant deficiencies in determining the nature, timing, and extent of our audit procedures on STB's fiscal year 2022 financial statements. Although the significant deficiencies in internal control did not affect our opinion on STB's fiscal year 2022 financial statements, misstatements may occur in unaudited financial information reported internally and externally by STB because of these significant deficiencies.

In addition, we also identified deficiencies in STB's internal control over financial reporting that we do not consider to be material weaknesses or significant deficiencies that, nonetheless, warrant management's attention. We have communicated these matters to STB management and, where appropriate, will report on them separately.

Basis for Results of Our Consideration of Internal Control over Financial Reporting

We performed our procedures related to STB's internal control over financial reporting in accordance with U.S. generally accepted government auditing standards.

Responsibilities of Management for Internal Control over Financial Reporting

STB management is responsible for designing, implementing, and maintaining effective internal control over financial reporting relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for Internal Control over Financial Reporting

In planning and performing our audit of STB's financial statements as of and for the fiscal year ended September 30, 2022, in accordance with U.S. generally accepted government auditing standards, we considered STB's internal control relevant to the financial statement audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of STB's internal control over financial reporting. Accordingly, we do not express an opinion on STB's internal control over financial reporting. We are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses. We did not consider all internal controls relevant to operating objectives, such as those controls relevant to preparing performance information and ensuring efficient operations.

Definition and Inherent Limitations of Internal Control over Financial Reporting

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition, and (2) transactions are executed in accordance with provisions of applicable laws, including those governing the use of budget authority, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent, or detect and correct, misstatements due to fraud or error.

Intended Purpose of Report on Internal Control over Financial Reporting

The purpose of this report is solely to describe the scope of our consideration of STB's internal control over financial reporting and the results of our procedures, and not to provide an opinion on the effectiveness of STB's internal control over financial reporting. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering internal control over financial reporting. Accordingly, this report on internal control over financial reporting is not suitable for any other purpose.

Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

In connection with our audits of STB's financial statements, we tested compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements consistent with our auditor's responsibilities discussed below.

Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our tests for compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements disclosed no instances of noncompliance for fiscal year 2022 that would be reportable under U.S. generally accepted government auditing standards. However, the objective of our tests was not to provide an opinion on compliance with laws, regulations, contracts, and grant agreements applicable to STB. Accordingly, we do not express such an opinion.

Basis for Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

We performed our tests of compliance in accordance with U.S. generally accepted government auditing standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for Tests of Compliance section below.

Responsibilities of Management for Compliance with Laws, Regulations, Contracts, and Grant Agreements

STB management is responsible for complying with laws, regulations, contracts, and grant agreements applicable to STB.

Auditor's Responsibilities for Tests of Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our responsibility is to test compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements applicable to STB that have a direct effect on the determination of material amounts and disclosures in STB's financial statements, and to perform certain other limited procedures. Accordingly, we did not test compliance with all laws, regulations, contracts, and grant agreements applicable to STB. We caution that noncompliance may occur and not be detected by these tests.

Intended Purpose for Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

The purpose of this report is solely to describe the scope of our testing of compliance with selected provision of applicable laws, regulations, contracts, and grant agreements, and the results of that testing, and not to provide an opinion on compliance. This report is an integral part of an audit performed in accordance with

U.S. generally accepted government auditing standards in considering compliance. Accordingly, this report on compliance with laws, regulations, contracts, and grant agreements is not suitable for any other purpose.

STB's Response to Findings

STB's responses to the findings identified during our audit are described immediately following the auditors' recommendations in Exhibit I. STB's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

Allmond & Company, LLC

Lanham, MD
November 6, 2022

Interim Financial Statement Footnotes Were Not Prepared in Accordance with U.S. Generally Accepted Accounting Principles (GAAP) and OMB Circular A-136 Requirements (2022-01)

CONDITION:

Corrective action relating to the preparation and review of the financial statements and footnotes was not properly designed and implemented to prevent, detect, or correct errors and omissions. During our review of STB's financial statements and footnotes for the interim reporting period ended June 30, 2022, we identified the following conditions:

- Material balances reported in the Intragovernmental and Other than Intragovernmental Other Liabilities sections of the Balance Sheet were not disaggregated.
- Material balances in Note 6 – Liabilities Not Covered by Budgetary Resources were not disaggregated so that the totals presented in the footnote agreed with the Balance Sheet.
- The balances reported for Total Intragovernmental Other Liabilities and Total Other Intragovernmental Liabilities in Note 7 – Other Liabilities were not complete and did not agree with the Balance Sheet.
- The Inter-Entity Costs footnote disclosure was omitted in error.
- Note 10 – Statement of Budgetary Resources vs. Budget of the United States Government was not mathematically correct and the balances reported for Combined Statement of Budgetary Resources ($46 million) and Differences due to Expired Funds ($11 million) in the footnote did not agree with the source documentation ($47 million and $9 million, respectively, with a $1 million difference due to rounding).
- Note 12 – Reconciliation of Net Cost to Net Outlays (Budget to Accrual Reconciliation) included the following errors:
    - the column and row totals were not mathematically correct;
    - the $7,157 difference for Accounts Receivable (rounded to $7,000) was reported as $7,157,000, resulting in a $7,150,000 overstatement;
    - the ($678,000) difference for Other Liabilities was entered as $678,000, resulting in a $1,356,000 overstatement;
    - +/- $82,000 differences in the Total Accounts Payable and Other Liabilities lines that is attributable to the $60,000 and $22,000 inter-period differences for the Federal (F) attribute of general ledger accounts 2213 and 2225, was assigned to the incorrect line in the reconciliation.

CRITERIA:

Office of Management and Budget (OMB) Circular A-136 (June 2022), *Financial Reporting Requirements,* Section II.3.2.3. Assets, states, "Separate line items for other liabilities are appropriate if the amounts are material to the Balance Sheet….Items not separately reported must be disclosed along with any additional information necessary to understand the liabilities."

OMB Circular A-136 Section II.3.8.25. Note 25: Inter-Entity Costs states, "Pursuant to SFFAS 4, as amended, paragraph 113A, reporting entities should disclose that only certain inter-entity costs are recognized for goods and services that are received from other federal entities at no cost or at a cost less than the full cost. An illustrative disclosure that reflects unreimbursed costs that are required to be imputed by GAAP is shown [in this section of the Circular]. Entities should also disclose the general nature of other imputed costs recognized in their financial statements in addition to the information [included in this section of the Circular]."

OMB Circular A-136, Section II.3.8.26. Note 26: Statement of Budgetary Resources, subsection G, States, "Agencies should explain material differences that exist between the Statement of Budgetary Resources (SBR) and the Budget of the U.S. Government, including:

1. The budgetary resources, new obligations, upward adjustments (total), and net outlay amounts from the prior year (i.e., fiscal year (FY) 2021) SBR and the actual amounts from "Detailed Budget Estimates by Agency" found in the Appendix of the Budget (i.e., the FY 2021 amounts in the FY 2023 Budget)."

Statement of Federal Financial Accounting Standards (SFFAS) 7, as amended by SFFAS 53, and OMB Circular A-136, Section II.3.8.32. Note 32: Reconciliation of Net Cost to Net Outlays (Budget to Accrual Reconciliation) require agencies to "disclose a reconciliation of net cost to net outlays….following the guidance in the [Treasury Financial Manual] TFM….Entities should ensure that the note explains the purpose, nature, and significant line items in the reconciliation."

The Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government*, Principle 10.01: Design Control Activities, states, "Management should design control activities to achieve objectives and respond to risks. The following attributes contribute to the design, implementation, and operating effectiveness of this principle:

- Response to Objectives and Risks
- Design of Appropriate Types of Control Activities
- Design of Control Activities at Various Levels
- Segregation of Duties."

CAUSE:

- STB's control activities performed to review and approve the financial statements and footnotes were not adequately designed and implemented to prevent or detect and correct errors and omissions in the financial statements and footnotes.

EFFECT:

- STB was not in compliance with federal financial reporting presentation requirements for the Balance Sheet and several required footnotes.
- Material misstatements in Notes 10 and 12 due to mathematical errors.

RECOMMENDATION:

We recommend that:

- STB management should review the current version of OMB Circular A-136 to independently verify that all required footnotes are included and bring any omissions to the service provider's attention so that errors or omissions can be corrected.
- STB management should review the service provider's Financial Statement and Notes Review Checklist to verify that the checklist is up to date and includes all required elements per OMB and Treasury guidance and then complete the checklist independently. Alternatively, STB management should develop and complete its own review checklist based on current Treasury and OMB reporting requirements.
- STB management should request its financial management service provider to:
  - Reevaluate the inclusion of account balances that were excluded in the Other Liabilities footnote, or
  - Disaggregate (i.e., separately report) intragovernmental other liabilities balances reported as a single line item on the balance sheet that are not included in the footnote so that the total amounts reported for Other Liabilities on the Balance Sheet and in the footnote agree.
- STB management should ensure that its review process includes procedures to disaggregate material balances reported in the financial statements and footnotes, agree balances to source documents, agree the footnotes to the principal financial statements, and verify the mathematical accuracy of all statements and schedules included in the financial statement package.

MANAGEMENT RESPONSE:

Management concurs with the condition and will consider the recommendation provided when determining if a corrective action plan should be developed once the audit concludes.

General Comments

The STB or Board concurs with the overall condition. The STB continues to work with its shared service provider to automate the financial statements and footnotes to reduce unintended errors and to better the review process including STB specific checklists. While not available for Interim testing, this automation was piloted at fiscal year-end and allowed STB staff to focus on its regular review against OMB Circular

A-136 and the Financial Audit Manual checklist. The STB will review the recommendations and adopt necessary processes to ensure STB's control activities are in operating effectively to prevent or detect and correct errors and omissions in the financial statements and footnotes.

AUDITOR RESPONSE:

We will perform follow up procedures during the FY 2023 audit to determine if corrective actions have been fully implemented.

Employee Benefits Election Forms Not Maintained in Electronic Official Personnel Folders (eOPFs) per Office of Personnel Management (OPM) Requirements (2022-02)

CONDITION:

Corrective action regarding the maintenance of employees' personnel records was not implemented to prevent, detect, or correct errors in employees' payroll records. During our review of 120 payroll transactions selected from the population of all employees paid during the period of October 1, 2021 through September 30, 2022, we noted the following testwork exceptions:

- Three (3) instances in which we were not able to inspect and verify the employees' Thrift Savings Plan (TSP) elections because the agency was not able to provide the TSP election forms or equivalent documentation for the employees and pay periods selected.
- Five (5) instances in which we were not able to inspect and verify the employee's Federal Employees Health Benefits (FEHB) Program election because the agency was not able to provide the Standard Form (SF) 2809 FEHB election form or equivalent documentation for the employees and pay periods selected.
- Three (3) instances in which we were not able to inspect and verify the employee's Federal Employees' Group Life Insurance (FEGLI) Program election because the agency was not able to provide the SF-2817 FEGLI election form or equivalent documentation for the employees and pay periods selected.
- Within the eleven (11) exceptions listed above, there were three (3) instances in which missing documentation was identified during the prior year audit and corrective action was not taken.

CRITERIA:

The Government Accountability Office's (GAO's) *Standards for Internal Control in the Federal Government*, states, "Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination… All documentation and records should be properly managed and maintained."

Electronic Code of Federal Regulations, Title 5-Administrative Personnel, Chapter 1- Office of Personnel Management, Subchapter B-Civil Service regulations, Part 293-Personnel records, Subpart A-Basic Policies on Maintaining Personnel records, Section 293.103. Recordkeeping Standards states that:

> "(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency.
>
> (b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain."

U.S. Office of Personnel Management Operating Manual – The Guide to Personnel Recordkeeping, Update 13, June 1, 2011, Chapter 1: General Personnel Recordkeeping Policies, Electronic Records, states, "The purpose of the electronic Official Personnel Folder (e-OPF) and the paper Official Personnel Folder (OPF) is to document the employment history of individuals employed by the Federal Government. The electronic Official Personnel Folder must be complete; that is, when combined with any other documents the agency chooses to retain in paper, or is required by law or regulation to be maintained in paper, it must contain all the information."

OPM requires that each agency ensure that electronic Official Personnel Folder systems:

- Be thoroughly documented.
- Be able to produce legible paper copies of all records.
- Have access controls to ensure a high level of security and confidentiality.
- Allow correction and removal of erroneous records under strict authorization controls.
- Include backup and disaster recovery procedures."

The Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government*, Principle 10.01: Design Control Activities, states, "Management should design control activities to achieve objectives and respond to risks. The following attributes contribute to the design, implementation, and operating effectiveness of this principle:

- Response to Objectives and Risks
- Design of Appropriate Types of Control Activities
- Design of Control Activities at Various Levels
- Segregation of Duties."

CAUSE:

- STB does not have control procedures in place to ensure that employees' benefit election forms are thoroughly and accurately documented in the electronic Official Personnel Folder (e-OPF) in accordance with OPM requirements.
- STB does not have control procedures in place to ensure that employees' benefit election forms are updated in the electronic Official Personnel Folder (e-OPF) when employees change their benefit elections.

EFFECT:

- STB's document availability and retention policies and procedures do not comply with OPM requirements.
- The failure to verify and maintain employees' official personnel records increases the risk for misstatements in payroll expense and related liabilities; in addition, incorrect amounts could be withheld from employees pay.

- The potential effects of this issue include:
  - Potential non-compliance with 5 U.S. Code (USC) Chapter 84, Subchapter III – Thrift Savings Plan, the Federal Employee Group Life Insurance Act, and Federal Employees Health Benefits Act of 1959 (P.L. 86-382).
  - Potential misstatements of the financial statements and footnotes relating to payroll expenses and liabilities.
- Incorrect health, life, and retirement benefits information in the eOPF can negatively affect employees in the event of a loss or claim and cause incorrect amounts to be withheld from their pay.

RECOMMENDATION:

We recommend that:

- STB should perform routine reviews of employee benefit elections and Official Personnel Folders (OPFs) to ensure they are complete and accurate.
- STB should address missing or unavailable supporting documentation with its shared service provider to ensure that document retrieval tools are available and are working properly to allow retrieval of all stored documents.
- STB should obtain replacement documentation for employee forms and other documentation that has been determined to be incomplete or irretrievable from databases and other electronic sources.

MANAGEMENT RESPONSE:

Management concurs with the condition and will consider the recommendation provided when determining if a corrective action plan should be developed once the audit concludes.

General Comments

The STB agrees with the overall condition and continues to address this by updating its procedures and working with its shared service providers for use of available tools.

With respect to the eleven (11) exceptions listed, the STB has identified and provided the necessary forms, equivalents, or employee confirmations of benefits as follows:

- Employee TSP election forms or equivalent were provided for each of the 3 identified instances;
- Employees confirmed that the FEHB election was accurate for 3 of the instances, and FEHB election forms or equivalent were provided for the remaining 2 instances;

- Employees confirmed that the FEGLI Program election was correct: as it came from the transferring agency that set the election up and which was carried over and maintained by the employee (2 instances), or was waived (1 instance).

In order to ensure that benefit elections are timely and accurate, the Board annually notifies staff, in writing, of the Federal Benefits Open Season and requests that any elections or changes are completed before the period ends. In addition, employees' biweekly Leave and Earnings Statements expressly state that "Employee is Responsible for Verification of Pay, Deductions, and Leave." The STB will review the recommendations and adopt necessary processes to ensure employees' personnel records are properly managed and maintained. The STB will cure any identified missing documentation.

AUDITOR RESPONSE:

We received additional documentation from STB following the conclusion of our audit fieldwork. As such, we did not have the opportunity to determine whether the documentation provided would have addressed the exceptions noted. We will perform follow up procedures during FY 2023 to determine if corrective action has been fully implemented.

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

November 6, 2022

Mr. Jason Allmond, Managing Member
Allmond & Company, LLC
7501 Forbes Boulevard, Suite 200
Lanham, Maryland 20706
Re: Fiscal Year 2022 Financial Statement Audit Report

Dear Mr. Allmond:

Thank you for the opportunity to provide comments to the Fiscal Year 2022 Financial Statement audit report, "Surface Transportation Board Audit Report September 30, 2022."

The Surface Transportation Board (STB or Board) agrees with the conclusions made in the report and is pleased that its continued efforts to mature the Board's financial program have been successful. The STB will evaluate and update its internal controls to address deficiencies communicated in a separate letter. The STB would like to thank Allmond & Company, LLC, Department of Transportation Office of the Inspector General, and the Board's shared service providers for their hard work and dedication throughout the year.

Sincerely,

Adil Gulamali

Adil Gulamali
Chief Financial Officer

Principal Financial Statements

Surface Transportation Board

BALANCE SHEETS

As of September 30, 2022 and 2021 (in thousands)

	2022		2021	
Assets:				
Intragovernmental:				
Fund Balance with Treasury (Note 2)	$	15,993	$	19,960
Advances and prepayments (Note 4)		1,700		1,228
Total Intragovernmental		17,693		21,188
Other than Intragovernmental:				
Accounts Receivable, Net (Note 3)		-		-
General Property, Plant, and Equipment, Net (Note 5)		1,179		1,213
Total other than intra-governmental		**1,179**		**1,213**
Total Assets	**$**	**18,872**	**$**	**22,401**
Liabilities:				
Intragovernmental:				
Accounts Payable	$	736	$	930
Other liabilities (without reciprocals) (Note 6):				
Other unfunded employment related liability		97		113
Employer Contributions and Payroll Taxes Payable		74		66
Other liabilities (Note 7)				
Employer Contributions and Payroll Taxes Payable		247		212
Unfunded FECA Liability		47		64
Total Intragovernmental		1,201		1,385
Liabilities other than intragovernmental:				
Accounts Payable		1,196		646
Federal employee [and veteran] benefits payable (Note 6)				
Unfunded leave		1,972		1,998
Actuarial FECA Liability		296		293
Employer contributions and payroll taxable		47		43
Other liabilities (Note 7)				
Accrued funded payroll and leave		1,023		916
Liability for Non-Fiduciary Deposit Funds and Undeposited Collections		-		-
Other Liabilities Without Related Budgetary Obligations		1,385		1,506
Total other than intra-governmental		**5,919**		**5,402**
Total Liabilities	**$**	**7,120**	**$**	**6,787**
Net position:				

Unexpended appropriations - Funds other than those from Dedicated Collections	$ 14,367	$ 18,373
Cumulative results of operations - Funds other than those from Dedicated Collections	(2,615)	(2,759)
Total Net Position	11,752	15,614
Total Liabilities and Net Position	**$ 18,872**	**$ 22,401**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Net Cost

For the years ended in 2022 and 2021 (in thousands)

	2022	2021
Program Costs:		
Program A:		
Gross Costs	$ 38,754	$ 40,990
Less: Earned Revenue	1,248	1,251
Net Program Costs	37,506	39,739
Net program expenses including Assumption changes	37,506	39,739
Net Cost of Operations (Notes 13 and 14)	**$ 37,506**	**$ 39,739**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Changes in Net Position

For the years ended in 2022 and 2021 (in thousands)

		2022	2021
Unexpended Appropriations:			
Beginning Balances	$	18,373	17,275
Adjustments: (+/-)		-	-
Beginning Balances, As Adjusted		18,373	17,275
Appropriations received		37,902	36,250
Other Adjustments (+/-)		(5,280)	(802)
Appropriations used		(36,628)	(34,350)
Net Change in Unexpended Appropriations		(4,006)	1,098
Total Unexpended Appropriations - Ending		14,367	18,373
Cumulative Results from Operations:			
Beginning Balances		(2,759)	(2,681)
Adjustments: (+/-)		-	-
Beginning balances, as adjusted		(2,759)	(2,681)
Appropriations Used		36,628	34,350
Imputed Financing (Note 9)		1,021	5,311
Other (+/-)		1	
Net Cost of Operations (+/-)		37,506	39,739
Net Change in Cumulative Results of Operations		144	(78)
Total Cumulative Results of Operations-Ending		(2,615)	(2,759)
Net Position	**$**	**11,752**	**15,614**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statements of Budgetary Resources

For the years ended in 2022 and 2021 (in thousands)

	2022	2021
Budgetary Resources		
Unobligated balance from prior year budget authority, net (discretionary and mandatory)	$ 4,738	$ 9,050
Appropriations (discretionary and mandatory)	37,902	36,250
Spending authority from offsetting collections (discretionary and mandatory)	1,250	1,251
Total budgetary resources	$ 43,890	$ 46,551
Status of Budgetary Resources		
New obligations and upward adjustments (total) (Note 10)	$ 39,005	$ 37,149
Unobligated balance, end of year:		
Apportioned, unexpired accounts	$ 202	$ 487
Unexpired unobligated balance, end of year	202	487
Expired unobligated balance, end of year	4,683	8,915
Unobligated balance, end of year (total)	4,885	9,402
Total budgetary resources	43,890	46,551
Outlays, Net, and Disbursements, Net:		
Outlays, net (total) (discretionary and mandatory)	$ 36,588	$ 33,296
Distributed offsetting receipts (-)	(1,389)	-
Agency outlays, net (discretionary and mandatory)	$ 35,199	$ 33,296

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Statement of Custodial Activity

For the years ended in 2022 and 2021 (in thousands)

	2022		2021	
Total Custodial Revenue:				
Sources of Cash Collections:				
Miscellaneous Receipts	$	1,389	$	-
Total Cash Collections		1,389		-
Total Custodial Revenue		1,389		-
Disposition of Collections:				
Transferred to Others (by Recipient):				
Department of the Treasury		1,389		-
Total Disposition of Collections		1,389		
Net Custodial Activity	**$**	**-**	**$**	**-**

The accompanying notes are an integral part of these financial statements.

Surface Transportation Board

Notes to Financial Statements

As of September 30, 2022 and 2021 (in thousands)

Note 1. Significant Accounting Policies

A. Reporting Entity

The Surface Transportation Board (STB, Board, or agency) exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users. The STB is primarily charged with the economic oversight of the Nation's freight rail system. The bipartisan Board was established in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law No. 114-110, which established the Board as a fully independent agency on December 18, 2015.

The STB is authorized to have five Board Members, one of which serves as the Chairman. The STB staff is divided into six offices, in addition to an Equal Employment Opportunity office.

B. Basis of Presentation

The financial statements have been prepared from our accounting records in conformity with generally accepted accounting principles for Federal entities, and Office of Management and Budget (OMB) Circular No. A-136, Financial Reporting Requirements, as revised. Accounting principles generally accepted for Federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB). The American Institute of Certified Public Accountants recognizes FASAB as the official accounting standards setting body for the U.S. government. Unless noted otherwise, all amounts are presented in dollars.

The following is a list of the financial statements presented by the agency:

- The Balance sheet presenting its financial position;
- Statement of Net Cost with its operating results;
- Statement of Changes in Net Position with the changes in its equity accounts;
- Statement of Budgetary Resources with the sources, status and uses of resources; and
- Statement of Custodial Activity with the sources of collections held in custody until transferred to other entities.

C. Basis of Accounting

The STB transactions are recorded in accordance with an accrual basis of accounting and a budgetary basis of accounting. The STB revenues are recognized when earned under the accrual basis of accounting, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The STB's use of budgetary accounting facilitates compliance with legal requirements on the use of Federal funds.

D. Fund Balance with Treasury

The STB's Fund Balance with Treasury is the aggregate amount of the agency's funds with Treasury in expenditure and receipt accounts. Appropriated funds recorded in expenditure accounts are available to pay for the agency's operational expenses.

E. Accounts Receivable

Accounts receivable consists of amounts owed to the STB by the general public and in limited situations from other Federal agencies. Amounts due from Federal agencies are considered fully collectible. An allowance for uncollectible accounts receivable from the public is established when, based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay.

F. Property, Equipment, and Software

The STB's portfolio of assets as of September 30, 2022, includes furniture, equipment, and leasehold improvements. The STB leases its office space via an Occupancy Agreement (OA) with General Services Administration (GSA), which became effective on February 23, 2019, and ends on February 22, 2034. The work completed for the OA resulted in the Board recognizing leasehold improvements. In accordance with the Board's policy regarding property, equipment, and software, capital assets are recorded at original acquisition cost and are depreciated or amortized using the straight-line method over their estimated useful lives.

The STB capitalizes assets when an individual acquisition costs $50,000 or more. Capitalized assets are depreciated once they are placed in service. During fiscal year 2022, the STB recognized capitalized equipment, laptops that were placed in service, and also classified the laptops not placed in service as construction-in-progress since these assets require customization prior to being placed in service.

Description	Useful Life (years)
Leasehold Improvements	5
Office Furniture	5
Computer/AV Equipment (e.g., laptops)	3
Office Equipment/IT equipment (e.g., servers)	5
Software	7

The STB expenses maintenance and repair costs as incurred. Property, equipment, and commercial software acquisitions that do not meet the capitalization criteria are expensed upon receipt. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, equipment, and software.

G. Advances

The STB has advances with other Federal agencies that require funds be provided upfront. While advances are generally prohibited by law, some exceptions include reimbursable agreements and payments to contractors. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

H. Liabilities

Liabilities represent the amount of funds likely to be paid by the STB as a result of transactions or events that have already occurred.

Liabilities covered by budgetary resources are liabilities funded by a current appropriation or other funding source. These consist of accounts payable and accrued payroll and benefits. Accounts payable represent amounts owed to another entity, other than employees, for goods received and for services rendered. Accrued payroll and benefits represent payroll costs earned by employees during the fiscal year which are not paid until the next fiscal year.

Liabilities not covered by budgetary resources are liabilities that are not funded by any current appropriation or other funding source. These liabilities consist of accrued annual leave, unfunded actuarial Federal Employees' Compensation Act (FECA), and the amounts due to Treasury for collection and accounts receivable of civil penalties.

I. Employee Leave

STB employees (except Board members) accrue annual and sick leave as it is earned. The STB ensures that those obligations are reported in the financial statements and the accrual associated with the earned leave is reduced as leave is taken. Accrued annual leave is reflected as a liability not covered by budgetary resources. Sick leave and other categories of non-vested leave are expensed when taken.

J. Retirement Plans

STB employees participate in the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Federal Employees Retirement System-Revised Annuity Employees (FERS-RAE) or the Federal Employees Retirement System-Further Revised Annuity Employees (FERS-FRAE).

K. Estimates

Management is required to make certain estimates and assumptions with respect to the reported amounts in the financial statements. Actual results could differ from those estimates.

L. Contingencies

The STB recognizes contingent liabilities in its balance sheet and statement of net cost when the liabilities are both probable and can be reasonably estimated. In FY 2022, STB management was not aware of any unasserted claims and assessments that, if asserted, would have at least a reasonable probability of an unfavorable outcome.

M. Imputed Costs

Goods and services are received from other federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed by the STB as imputed costs in the Statement of Net Cost, and are offset by imputed revenue in the Statement of Changes in Net Position. Such imputed costs and revenues relate to employee benefits and claims to be settled by the Treasury Judgment Fund. However, unreimbursed costs of goods and services other than those identified above are not included in our financial statements.

N. Classified Activities

Accounting standards require all reporting entities to disclose that accounting standards allow certain presentations and disclosures to be modified, if needed, to prevent the disclosure of classified information.

O. Changes in Prior Year Reporting
Activity and balances reported in the FY 2021 financial statements and footnotes have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2022 Reporting.

STB had custodial collections that were incidental to the primary mission of the organization. These collections are the result of user fees that exceed the spending authority appropriated to the STB for current fiscal year. The collections were deposited into the Treasury General Fund on September 30, 2022. The STB also updated its processes for collection of user fees in excess of $1,250,000 as authorized by Congress to collect. This included setting up a miscellaneous receipts fund with the Department of Treasury to move over the excess funds collected for FY 2021 and FY 2022 to Treasury.

Note 2. Fund Balance with Treasury

STB's Fund Balance with Treasury account balances as of September 30, 2022 and 2021 (in thousands) were as follows:

Fund Balance with Treasury	2022		2021	
Status of Fund Balance with Treasury				
Unobligated Balance				
Available	$	202	$	487
Unavailable		4,683		8,915
Obligated balance not yet disbursed		11,108		10,558
Total	$	**15,993**	$	**19,960**

Note 3. Accounts Receivable

The STB's Accounts Receivable is primarily made up of debts due to the Board from current and former STB staff for payroll or other related items. The STB updated its procedures and closed all its credit accounts. Historical experience indicates that the majority of the receivables are collectible. There are no material uncollectible accounts as of September 30, 2022 and 2021.

STB's accounts receivable balances as of September 30, 2022 (in thousands) were the following:

Intragovernmental Accounts Receivable	Gross Amounts Due		Allowance for Uncollectible Accounts		Net Amount Due	
Accounts Receivable	$	-	$	-	$	-
Receivable from Custodian - Other than the General Fund of the US Govt.	$	-	$	-	$	-
Transfers Receivable	$	-	$	-	$	-
Subtotal Intragovernmental Accounts Receivable	$	-	$	-	$	-
Other than intragovernmental:						
Accounts Receivable	$	0	$	0	$	0
Accrued Interest	$	2	$	2	$	-

Subtotal Other than Intragovernmental Accounts Receivable	$ 2	$ 2	$ 0
Total Accounts Receivable	**$ 2**	**$ 2**	**$ 0**

STB's accounts receivable balances as of September 30, 2021 (in thousands) were the following:

Intragovernmental Accounts Receivable	Gross Amounts Due	Allowance for Uncollectible Accounts	Net Amount Due
Accounts Receivable	$ -	$ -	$ -
Receivable from Custodian - Other than the General Fund of the US Govt.	$ -	$ -	$ -
Transfers Receivable	$ -	$ -	$ -
Subtotal Intragovernmental Accounts Receivable	$ -	$ -	$ -
Other than Intragovernmental:			
Accounts Receivable	$ 1	$ 1	$ -
Accrued Interest	$ 2	$ 2	$ -
Subtotal Other than Intragovernmental Accounts Receivable	$ 3	$ 3	$ -
Total Accounts Receivable	**$ 3**	**$ 3**	**$ -**

Note 4. Advances, Prepayments, and Other Assets

STB's Advances, Prepayments, and Other Assets as of September 30, 2022 and 2021 (in thousands) were as follows:

Other Assets	2022	2021
Intragovernmental		
Advances and Prepayments	$ 1,700	$ 1,228

Total Intragovernmental Other Assets	**$**	**1,700**	**$**	**1,228**
Total Other Assets	**$**	**1,700**	**$**	**1,228**

Note 5. General Property, Plant, and Equipment

General Property, Plant, and Equipment (PP&E) is reported at acquisition cost. The capitalization threshold is established at $50,000 or more and a useful life of two or more years. For non-capitalized purchases, items are capitalized when the individual useful lives are at least two years and have an individual value of $1,000 or more. Acquisitions of PP&E that do not meet the capitalization criteria are recorded as operating expenses. General PP&E consists of items that are used by the STB to support its mission. Depreciation or amortization on these assets is calculated using the straight-line method with no salvage value. Depreciation or amortization begins the day the asset is placed in service. Maintenance, repairs, and minor renovations are expensed as incurred. Expenditures that materially increase values, change capacities, or extend useful lives are capitalized.

The estimated useful life of assets such as office furniture, office equipment, telecommunications equipment, and audio/visual equipment is five years, and the estimated useful life of information technology equipment is three years. The STB does not have restrictions on the use or convertibility of general PP&E. In FY 2019, the STB recognized leasehold improvements and furniture purchases after its new agreement with GSA went into effect and overall construction was completed. The STB in FY 2021 recognized catch up depreciation for additional capitalized amounts related to its leasehold improvement. the STB recognized laptops placed in service as capitalized assets; laptops not yet placed in service were recognized as construction in progress.

The general components of capitalized PP&E, net of accumulated depreciation, or amortization, consisted of the following as of September 30, 2022 and 2021 (in thousands), respectively:

Property, Plant, and Equipment as of September 30, 2022

Class of Property	Depreciation/ Amortization Method	Capitalization Threshold for Individual Purchases	Service Life (Years)	Acquisition Cost	Accumulated Depreciation/ Amortization	Net Book Value
Furniture and Fixtures	S/L	$ 50,000	5	$ 1,402	909	$ 493
Equipment	S/L	$ 50,000	3	$ 672	340	$ 332

Leasehold Improvements	S/L	$ 50,000	5	$	685	491	$	194
Construction-In-Progress	N/A	N/A	N/A	$	160	-	$	160
Total				**$**	**2,919**	**$ 1,740**	**$**	**1,179**

Note 5. General Property, Plant, and Equipment (continued)

Property, Plant, and Equipment as of September 30, 2021

Class of Property	Depreciation/ Amortization Method	Capitalization Threshold for Individual Purchases	Service Life (Years)	Acquisition Cost	Accumulated Depreciation/ Amortization	Net Book Value
Furniture and Fixtures	S/L	$ 50,000	5	$ 1,402	629	$ 773
Equipment	S/L	$ 50,000	3	$ 328	$ 219	$ 109
Leasehold Improvements	S/L	$ 50,000	5	$ 685	354	$ 331
Total				**$ 2,415**	**$ 1,202**	**$ 1,213**

Note 6. Liabilities Not Covered by Budgetary Resources

STB's Liabilities as of September 30, 2022 and 2021 (in thousands) were as follows. FY 2021 activity and balances reported below have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2022 Reporting.

Liabilities Not Covered by Budgetary Resources	2022	2021
Intragovernmental		
Covered by budgetary resources:		
Accounts payable	736	930
Accrued pay and benefits	321	278
Total intragovernmental covered by budgetary resources	**1,057**	**1,208**
Not Covered by budgetary resources:		
Unfunded FECA liability	$ 47	$ 64
Other Unfunded Employment Related Liability	97	113
Total intragovernmental not covered by budgetary resources	**144**	**177**
Not requiring budgetary resources:		
Custodial liabilities	-	-
Total intragovernmental not requiring budgetary resources	**-**	**-**
Total Intragovernmental	$ **1,201**	**$ 1,385**
Other than intra-governmental (Non-Federal):		
Covered by budgetary resources:		

Accounts payable	1,196	646
FEVBP Employer contributions and payroll taxable	47	43
Accrued pay and benefits	1,023	916
Total other than intragovernmental covered by budgetary resources	**2,266**	**1,605**
Not Covered by budgetary resources:	$	
FEVBP Unfunded leave	1,972	1,998
FEVBP Actuarial FECA Liability	296	293
Other Liabilities Without Related Budgetary Obligations	1,385	1,506
Total other than intragovernmental not covered by budgetary resources	**3,653**	**3,797**
Total other than intra-governmental	**$ 5,919**	**$ 5,402**
Total liabilities not covered by budgetary resources	$ 3,797	$ 3,974
Total liabilities covered by budgetary resources	$ 3,323	$ 2,813
Total liabilities not requiring budgetary resources	$ -	$ -
Total Liabilities	**$ 7,120**	**$ 6,787**

Note 7. Other Liabilities

STB's Other Liabilities as of September 30, 2022 and 2021 (in thousands) were as follows. FY 2021 activity and balances reported below have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2022 reporting.

Other Liabilities	**2022**	**2021**
	Total	Total
Intragovernmental		
Accrued Pay and Benefits	321	278
Current other Post-Employment Benefits Due and Payable	20	39
Non-current other Post-Employment Benefits Due and Payable	27	25
Unfunded employment related liability	97	113
Custodial liability	-	-
Total Intragovernmental	**465**	**455**
Other than intra-governmental:		
Accrued funded payroll and leave	1,023	916
Liability for Non-Fiduciary Deposit Funds and Undeposited Collections	-	-
Current Other Liabilities Without Related Budgetary Obligations	121	121
Non-current Other Liabilities Without Related Budgetary Obligations	1,264	1,385

Total other than intra-governmental	**2,408** $	**2,422**
Total other liabilities	**2,873 $**	**2,877**

Note 8. Leases

The STB has a cancellable operating lease for its building via an operating agreement (OA) with GSA that became effective on February 23, 2019, and ends on February 22, 2034. The OA includes incentives from the Lessor that will be treated as deferred rent and amortized over the life of the lease (not included in the chart below). In addition, the OA includes allowances granted by the Lessor that are amortized and included in the STB's future rent costs. The STB's actual cash outlay for rental payments for its building was approximately $3.0 million during FYs 2022 and 2021, respectively.

Future payments are based on the average rent expense per year less amortized lease abatements per year and are as follows (in thousands):

Fiscal Year		
2023	$	3,014
2024	$	3,014
2025	$	3,014
2026	$	3,014
Thereafter (2027-2034)	$	22,602
Total Future Minimum Lease Payments	**$**	**$34,658**

Note 9. Inter-Entity Costs

Goods and services are received from other Federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed by STB are recognized as imputed costs in the Statement of Net Cost and are offset by imputed revenue in the Statement of Changes in Net Position. Such imputed costs and revenues relate to employee benefits. However, unreimbursed costs of goods and services other than those identified above are not included in our financial statements. The STB's inter-entity costs was approximately $1.02 million for FY 2022, and $5.31 million for FY 2021.

Note 10. Budgetary Resources

STB Budgetary Resources as of September 30, 2022 and 2021 (in thousands) are:

Budgetary Resources	Direct	Reimbursable	2022
Category A	$0	-	$ 0
Category B	$39,005	-	$ 39,005
Total	**$39,005**	**-**	**$ 39,005**

Budgetary Resources	Direct	Reimbursable	2021
Category A	$52	-	$ 52
Category B	37,097	-	$ 37,097
Total	**$37,149**	**-**	**$ 37,149**

Note 11. Statement of Budgetary Resources vs. Budget of The United States Government

The reconciliation for the period ended September 30, 2021, is presented in the following table. The Budget with the actual amounts for the current year (i.e., FY 2022) will be available at a later date. The STB's Budget Appendix can be found on the OMB Website (https://www.whitehouse.gov/omb/budget/) and is expected to be available in February 2023. (Dollars in Millions)

Surface Transportation Board	Budgetary Resources	New Obligations& Upward Adjustments (Total)	Distributed Offsetting Receipts	Net Outlays
Combined Statement of Budgetary Resources	46	37	0	33
Difference #1-- Expired Funds	(9)	(1)	-	-
Difference #2—Rounding	-	-	0	-
Budget of the U.S. Government	**37**	**36**	**0**	**33**

Note 12. Undelivered Orders at End of Period

STB’s Undelivered Orders at the end of September 30, 2022 and 2021 (in thousands) is:

Undelivered Orders	2022		2021	
Intragovernmental Undelivered Orders, Unpaid at the end of the period	$	1,700	$	2,541
Public Undelivered Orders, Unpaid at the end of the period	$	6,084	$	5,205
Intragovernmental Undelivered Orders, Paid at the end of the period	$	1,700	$	1,228

Note 13. Budget and Accrual Reconciliation

The Board notes that budgetary and financial accounting information differ. Budgetary accounting is used for planning and control purposes and relates to both the receipt and use of cash, as well as reporting the Federal deficit. Financial accounting is intended to provide a picture of the government's financial operations and financial position, so it presents information on an accrual basis. The accrual basis includes information about costs arising from the consumption of assets and the incurrence of liabilities.

The reconciliation of net outlays, presented on a budgetary basis, and the net cost, presented on an accrual basis, provides an explanation of the relationship between budgetary and financial accounting information. The reconciliation serves not only to identify costs paid for in the past and those that will be paid in the future, but also to assure integrity between budgetary and financial accounting. The STB's Budget and Accrual Reconciliation as of September 30, 2022, and 2021 (in thousands) is:

	Intragovernmental		Other than Intragovernmental		2022	
Net Operating Cost (SNC)	$	13,621	$	23,885	$	37,506
Components of Net Operating Cost Not Part of the Budgetary Outlays:						
Property, plant, and equipment depreciation expense	$	-	$	(539)	$	(539)
Increase/(Decrease) in Assets:						
Accounts receivable, net	$	-	$	-	$	-
Advances and Prepayments	$	471	$	-	$	471
(Increase)/Decrease in Liabilities:						
Accounts payable	$	193	$	(550)	$	(357)

Federal employee and veteran benefits payable	$ -	$ 21	$ 21
Other Liabilities	$ (11)	$ 14	$ 3
Financing Sources:			
Imputed Cost	$ (1,021)	$ -	$ (1,021)
Total Components of Net Operating Cost Not Part of the Budget Outlays	$ (368)	$ (1,054)	$ (1,422)
Components of the Budget Outlays That Are Not Part of Net Operating Cost:			
Acquisition of capital assets	$ -	$ 504	$ 504
Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost:	$ -	$ 504	$ 504
Misc Items			
Custodial/Non-exchange Revenue	$ 1,389	$ (1,389)	$ -
Total Other Reconciling Items	$ 1,389	$ (1,389)	$ -
Total Net Outlays			$ 36,588
Outlays, net	$ -	$ -	$ 36,588
Distributed offsetting receipts	$ (1,389)	$ -	$ (1,389)
Budgetary Agency Outlays, net			
Budgetary Agency Outlays, net	$ -	$ -	$ 35,199
Difference of Calculated vs. Actual Total Net Outlays	$ -	$ -	$ (1,389)

	Intragovernmental	Other than Intragovernmental	2021
Net Operating Cost (SNC)	$ 18,544	$ 21,200	$ 39,739
Components of Net Operating Cost Not Part of the Budgetary Outlays:			
Property, plant, and equipment depreciation expense	$ -	$ (604)	$ (604)
Increase/(Decrease) in Assets:			
Accounts receivable, net	$ -	$ (1)	$ (1)
Advances and Prepayments	$ (1,003)	$ -	$ (1,003)
Other Assets	$ -	$ -	$ -
(Increase)/Decrease in Liabilities:			

Accounts payable	$ (87)	$ 172	$ 85
Federal employee and veteran benefits payable	$ -	$ 110	$ 110
Other Liabilities	$ 5	$ 30	$ 35
Financing Sources:			
Imputed Cost	$ (5,311)	$ -	$ (5,311)
Total Components of Net Operating Cost Not Part of the Budget Outlays	$ (6,396)	$ (292)	$ (6,688)
Components of the Budget Outlays That Are Not Part of Net Operating Cost:			
Acquisition of capital assets	$ -	$ 244	$ 244
Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost:	$ -	$ 244	$ 244
Misc Items			
Custodial/Non-exchange Revenue	$ -	$ -	$ -
Total Other Reconciling Items	$ -	$ -	$ -
Total Net Outlays			$ 33,296
Outlays, net	$ -	$ -	$ 33,296
Distributed offsetting receipts	$ -	$ -	$ -
Budgetary Agency Outlays, net			
Budgetary Agency Outlays, net	$ -	$ -	$ 33,296
Difference of Calculated vs. Actual Total Net Outlays	$ -	$ -	$ -

Note 14. Intragovernmental Costs and Exchange Revenues:

STB's Exchange Revenues at the end of September 30, 2022 and 2021 (in thousands) is:

As of September 30, 2022

	Intragovernmental	Other than Intragovernmental	Total
Surface Transportation:			
Gross Costs	$ 13,621	$ 25,133	$ 38,754
Less Earned Revenue	$ -	$ 1,248	$ 1,248
Net Program Costs	$ 13,621	$ 23,885	$ 37,506
Net Cost of Operations	**$ 13,621**	**$ 23,885**	**$ 37,506**

As of September 30, 2021

	Intragovernmental	Other than Intragovernmental	Total
Surface Transportation:			
Gross Costs	$ 18,544	$ 22,446	$ 40,990
Less Earned Revenue	$ -	$ 1,251	$ 1,251
Net Program Costs	$ 18,544	$ 21,195	$ 39,739
Net Cost of Operations	**$ 18,544**	**$ 21,195**	**$ 39,739**

Note 15. Status of Budgetary Resources- Net Adjustments to Unobligated Balance, Brought Forward, October 1

During the years ended September 30, 2022 and 2021, certain adjustments were made to the balance of unobligated budgetary resources available as of October 1, 2021 and 2020. These adjustments include, among other things, recoveries and downward adjustments to undelivered and delivered orders that were obligated in a prior fiscal year. The adjustments during the years ended September 30, 2022 and 2021 are presented below (in thousands).

	September 30, 2022	September 30, 2021
Beginning Unobligated Balance, 10/1	$ 9,402	$ 8,839
Adjustments to Unobligated Balance brought forward, October 1	616	-
Other Adjustments to Unobligated Balance brought forward, October 1	(5,280)	348
Unobligated Balance from prior year budget authority, net	$ 4,738	$ 9,187

Required Other Information

Summary of Financial Statement Audit and Management Assurances

Table 1: Summary of Financial Statement Audit

Audit Opinion: Unmodified

Restatement: No

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Material Errors in Year-end Financial Statements	0	0	0	0	0
Accounting Errors Made in Recording Advances in Interim Statements	0	0	0	0	0
Accounting Errors Impacted the Financial Statements	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0

Table 2: Summary of Management Assurances

Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)

Statement of Assurance: Unmodified

Material Weaknesses	**Beginning Balance**	**New**	**Resolved**	**Consolidated**	**Reassessed**	**Ending Balance**
Material Errors in Year-end Financial Statements	0	0	0	0	0	0
Accounting Errors Made in Recording Advances in Interim Statements	0	0	0	0	0	0
Accounting Errors Impacted the Financial Statements	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0

Payment Integrity

The information presented in this report complies with guidance provided in the *Payment Integrity Information Act of 2019*; OMB Circular A-136, and Appendix C to OMB Circular A-123, M-21-19, *Requirements for Payment Integrity Improvement*.

The guidance requires agencies to assess every Federal program with annual outlays greater than $10 million dollars, at least triennially, for improper payment risk, measure the accuracy of payments annually, and initiate program improvements to ensure payment integrity. On November 20, 2009, Executive Order 13520, *Reducing Improper Payments and Eliminating Waste in Federal Programs*, was issued for the purpose of intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal government, while continuing to ensure that the right people receive the right payment for the right reason at the right time. The supporting website, https://paymentaccuracy.gov/, contains the following information:

- Current and historical rates and amounts of improper payments for Federal agencies;
- Why improper payments occur; and
- What agencies are doing to reduce and recover improper payments.

Program Review

The STB has only one program for budget purposes. The FY 2022 appropriated funding for the program is $39.152 million. All the agency's transactions are either employee payroll and benefits, intra-governmental, or non-Federal transactions.

The STB does not maintain its own financial management system but uses a shared service provider, ESC, to process all accounting transactions and the DOI processes payroll and benefits. ESC is subject to external audit in accordance with the Standards for Attestation Engagements (SSAE) 18, *Attestation Standards: Clarification and Recodification*. The STB examines the SSAE No. 18 audit results annually to determine if the shared service provider's internal controls are operating effectively. The Board also evaluates the internal controls required to supplement the shared service provider's controls as outlined in the SSAE 18.

Intra-governmental transactions, accounts payables, and payments to agency employees are reviewed as part of the agency's internal control program under OMB Circular A-123, Appendix A, *Internal Control over Financial Reporting* and Appendix C, *Requirements for Payment Integrity Improvement*.

Based on OMB Circular A-123, the STB's program was reviewed to identify those activities that were susceptible to significant improper payments. For FY 2022, the STB Federal and non-Federal payment was $13.9 million, and payroll was $25.0 million for a combined total of $37.0 million. The Payment Integrity Information Act defines “significant” as either (1) improper payments that exceed both $10 million and 1.5% of program disbursements; or (2) improper payments in excess of $100 million. Significant improper payments in the STB’s program needed to exceed both $0.5 million (1.5% improper payment rate) and $10 million of all non-Federal payments and payments to Federal employees. No material improper payments were identified by the STB in FY 2022 for significant improper payment reporting.

In addition, the following risk factors, likely to contribute to improper payments, were applied to the STB’s appropriated funds.

1. Any new programs or activity in the agency.
2. Complexity of the activity with respect to correct payments amounts.
3. Volume of payments made annually.
4. Recent major changes in activity funding, authority, practice, or procedures.
5. Level, experience, and quality of training for personnel responsible for certifying that payments are accurate.
6. Inherent risks of improper payments due to the nature of agency operations.
7. Significant deficiencies in the audit reports of the agency that included Inspector General audit findings or external financial audit findings.
8. Results from prior improper payment work.

In FY 2022, zero (-) improper payments were discovered. The STB will continue evaluating its programs based on identified risk factors to prevent improper payments from occurring, but the overall risk is low/not significant.

Improper Payments Strategy

The Payment Integrity Information Act requires agencies to conduct payment recapture audits with respect to each program and activity of the agency with expenditures of $1 million or more annually, if conducting such audits would be cost-effective. The STB addresses proper management of payments by:

- preventing payment errors through documented processes and internal controls; and
- detecting overpayment and underpayments through control testing.

Due to the STB’s limited staffing levels for its accounting and financial reporting functions, such support services are provided under contract with ESC. Coordinating with ESC has greatly enhanced the STB's capabilities for identification of improper payments using detailed internal controls at both the STB and ESC. The STB obtains contracting support from DOT, which follows established pre-enrollment, pre-award, and pre-payment processes for all acquisition awards. Pre-enrollment procedures include cross referencing applicants against the GSA System for Award Management (SAM) exclusion records. ESC reviews Federal and commercial databases to verify past performance, Federal government debt, integrity, and business ethics. For prepayment processes, ESC verifies an entity against both SAM and the Internal Revenue Service's Taxpayer Identification Number Match Program before establishing the entity as a vendor in its core financial accounting system.

Recapture of Improper Payments Reporting

The Payment Integrity Information Act of 2019 requires agencies to conduct recovery audits with respect to each program and activity of the agency that expends $1 million or more annually, if conducting such audits would be cost-effective.

Once the STB has identified an improper payment with a non-Federal vendor, it is STB's policy to aggressively correct the improper payment. Upon research and analysis of supporting documentation, the vendor is contacted for resolution (in the case of underpayment to the agency). If the contract is ongoing, the Board will offset the amount to be recovered on the next billing. For all other contracts, the vendor is contacted, and a receivable is established for collection. If the vendor does not provide payment, the debt is entered into the Treasury Offset Program. If an improper payment is identified as an overpayment to the STB, the vendor is promptly paid.

The table below shows the result of improper payments (in millions of dollars) identified during FY 2022.

Reason for Improper Payment	Overpayment	Underpayment	Total Amount Overpayment Recaptured	Total Amount Underpayment Paid
Failure to verify vendor invoice amount	$ 0.0	$ 0.0	$ 0.0	$ 0.0
Administrative processing	0.0	0.0	0.0	0.0
Total	**$ 0.0**	**$ 0.0**	**$ 0.0**	**$ 0.0**

The following table shows cumulative overpayments (in millions of dollars) through FY 2022.

Reason for Improper Payment	Overpayment	Underpayment	Total Amount Overpayment Recaptured	Total Amount Underpayment Paid
Failure to verify vendor invoice amount	$ 0.0	$ 0.0	$ 0.0	$ 0.0
Administrative processing	0.0	0.0	0.0	0.0

Total	**$ 0.0**	**$ 0.0**	**$ 0.0**	**$ 0.0**

Fraud Reduction

OMB Circular A-123 and the U.S. Government Accountability Office (GAO) Standards for Internal Control in the Federal Government call for agencies to adhere to leading practices for managing fraud risk. Standards require agencies to take a closer look at fraud risks (GAO principle 8 shown below) and to identify fraud risk factors and programs with increased susceptibility for fraud. The STB continues to comply with this requirement.

Control environment	Risk assessment	Control activities	Communication & Information	Monitoring activities
1. Demonstrates commitment to integrity and ethical values 2. Exercises oversight responsibilities 3. Establishes structure, authority, and responsibility 4. Demonstrates commitment to competence 5. Enforces accountability	6. Define objectives and risk tolerances 7. Identifies, analyzes, and responds risk 8. Assesses fraud risk 9. Identifies and analyzes and responds to change	10. Designs control activities 11. Selects and develops general controls for the system 12. Deploys and implements control activities	13. Uses relevant, quality information 14. Communicates internally 15. Communicates externally	16. Performs ongoing monitoring activities 17. Evaluates issues and remediates deficiencies

Biennial Review of User Fees

Agencies are required by the Chief Financial Officers Act of 1990 to conduct biennial reviews of fees and other charges that they impose, and to revise, as necessary, to recover program and administrative costs incurred. The STB is required to update its user fees at least annually. The STB published notice of its final rule on August 24, 2022, and the new user fee rates took effect on September 23, 2022.

Civil Monetary Penalty Adjustment for Inflation

To fulfill the reporting requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Board in *Civil Monetary Penalties—2022 Adjustment*, Docket No. EP 716 (Sub-No. 6), issued a final rule to adjust its existing civil monetary penalties for inflation for 2022. The inflation adjustment required by the statute results in the adjustments to the civil monetary penalties within the jurisdiction of the Board shown in the following table. The publication of the decision in the Federal Register may be viewed at: https://www.federalregister.gov/documents/2022/01/14/2022-00639/civil-monetary-penalties-2022-adjustment

Statutory Authority	U.S. Code Citation	Penalty (Name or Description)	Year Enacted	Latest Year of Adjustment (Via Statute or Regulation)	Current Penalty Level ($ Amount or Range)
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	1995	2022	$8,736
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b).	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each day violation continues.	1995	2022	$45
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	1995	2022	$8,736
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	1995	2022	$174-874

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each day violation continues.	1995	2022	$87
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e)(1)	For each violation under §§ 11141-11145.	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e)(2)	For each violation under § 11144(b)(1).	1995	2022	$174
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(e) (3-4)	For each violation of reporting requirements, for each day.	1995	2022	$174
Motor and Water Carrier Civil Penalties					
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day.	1995	2022	$1,195
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c).	1995	2022	$11,957
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(a)	For each violation related to transportation of passengers.	1995	2022	$29,893
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	1995	2022	$23,915-$47,829

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	1995	2022	$1,746
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	1995	2022	$17,473
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	1995	2022	$43,678
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule.	1995	2022	$3,494
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14901(e)	Minimum penalty for each additional violation.	1995	2022	$8,736
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	1995	2022	$174,724
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect.	1995	2022	$349
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For all subsequent violations.	1995	2022	$438

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations.	1995	2022	$3,494
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702.	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations.	1995	2022	$3,494
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) & (b).	1995	2022	$17,473
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation.	1995	2022	$2,392
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation.	1995	2022	$5,978
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	1995	2022	$8,736

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	1995	2022	$3,494
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	2005	2022	$13,885
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14916(c)(1)	Maximum penalty for each violation under § 14916(a) by knowingly authorizing, consenting to, or permitting unlawful brokerage activities.	2012	2022	$11,957
Pipeline Carrier Civil Penalties					
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day.	1995	2022	$8,736
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(1) & (4)	For each recordkeeping violation under § 15722, each day.	1995	2022	$874
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(2) & (4)	For each inspection violation liable under § 15722, each day.	1995	2022	$174
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16101(b)(3) & (4)	For each reporting violation under § 15723, each day.	1995	2022	$174
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information.	1995	2022	$1,746

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