Surface Transportation Board

Performance and Accountability Report
Fiscal Year 2023

MESSAGE FROM THE CHAIRMAN

November 6, 2023

The Fiscal Year (FY) 2023 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 2023, 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 also 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 2023, and the Board's financial statements and processes remain sound.

In summary, the Board made notable progress toward achieving its mission and improving its administrative processes during FY 2023. We will continuously strive to use resources wisely and ensure that the agency is responsive to its stakeholders and the public.

Sincerely,

Martin J. Oberman

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) 2023. 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 2024, based on the STB's FY 2022-FY 2026 Strategic Plan, and reports the STB's FY 2023 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. For 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 dispute 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 seven offices. The seven 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)

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.

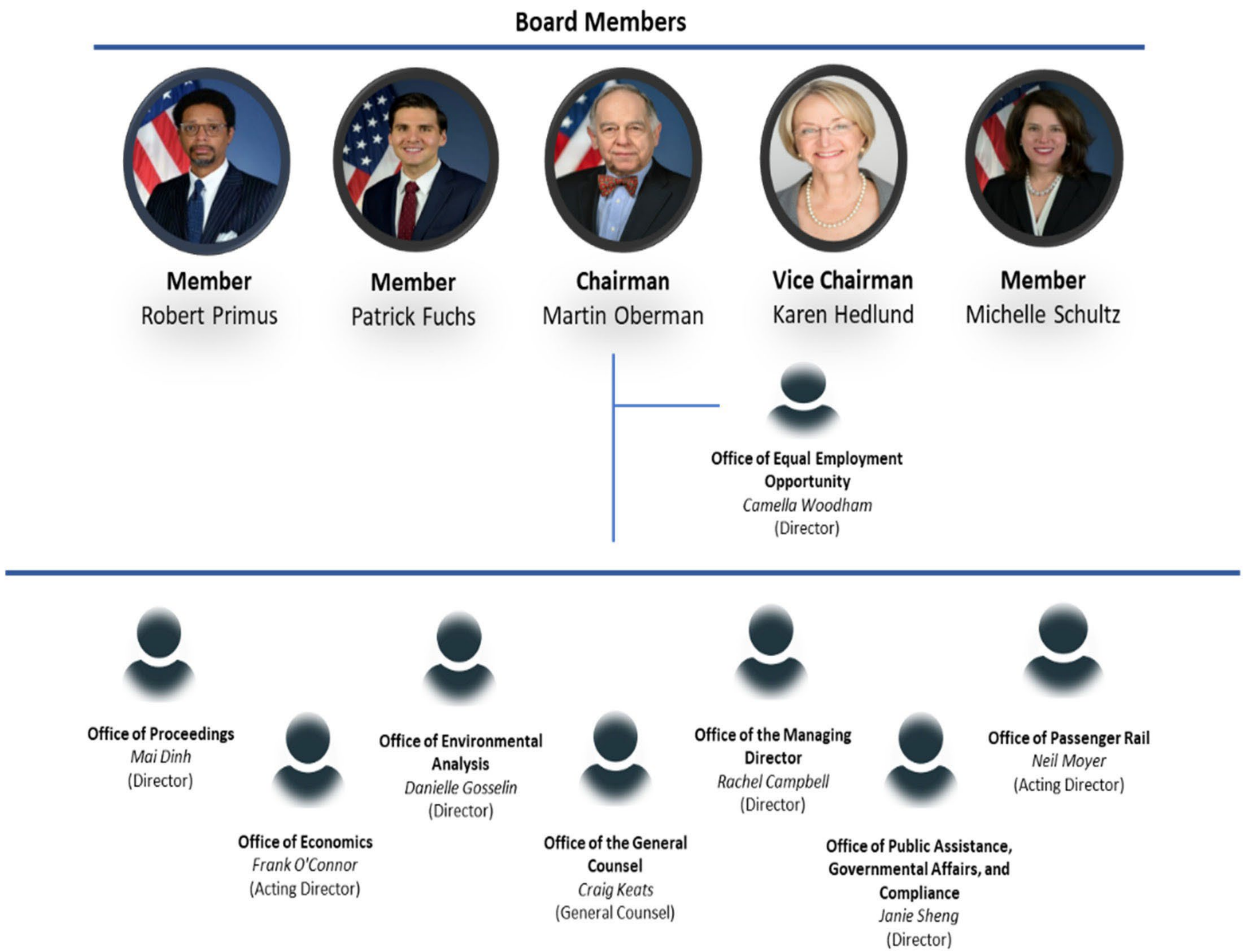
The Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)

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.

The Office of Passenger Rail (OPR)

OPR supports the Board in its efforts to meet its responsibilities under the Passenger Rail Investment and Improvement Act of 2008. The Office provides the Board with expertise related to passenger rail that includes legal and policy guidance, engineering, data analysis, and rail operations. The Board has authority to investigate when an Amtrak train's on-time performance averages less than 80% for any two consecutive calendar quarters. The "on-time performance" of Amtrak trains is a quarterly metric established and reported by the Federal Railroad Administration (FRA). Such an investigation is mandatory upon receipt of an eligible complaint or may be started on the Board's own initiative. OPR performs data analysis of FRA's quarterly metrics. The Office also plays a central role in investigations and formal proceedings related to on-time performance.

STB Office Organization Chart
(as of 9/30/2023).



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 fiscal years 2022-2026.[1] 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: Promote and protect the public interest in surface transportation matters.

Strategic Objectives-

- Remedy competitive and other regulatory concerns, where appropriate, by determining reasonable rates and practices for users of the national rail network and other transportation modes within the Board's jurisdiction;
- Evaluate certain railroad licensing actions for consistency with the public interest, considering the potential effects on shippers, consumers, the rail network, the environment, railroad employees, and the public at large;
- Promote consistent, fluid, and efficient service that fulfills the needs of customers and the public in an ever-changing economy; and
- Consider potential environmental and historic impacts in agency decision-making, consistent with applicable laws and regulations, and impose mitigation conditions as appropriate.

Second strategic goal: Foster a competitive and sound surface transportation system that provides reliable service at reasonable rates.

Strategic Objectives-

- Uphold the common carrier obligation;
- Preserve and enhance competition, including through regulation, where appropriate;
- Provide accessible and transparent rate review processes;
- Provide oversight of passenger rail service in order to carry out statutory directives;
- Monitor the service and operations of carriers and take appropriate action where conditions warrant; and

[1] Strategic Plan Fiscal Years 2022-2026, (STB decided February 28, 2023) (Board Member Fuchs dissenting).

- Monitor revenue adequacy and promote a climate that encourages carriers to invest in present and future capacity needs.

Third strategic goal: Provide an accessible, data-driven, and time- and cost-efficient regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations effectively.

Strategic Objectives-

- Provide well-defined formal and informal dispute resolution processes to enable parties to make informed decisions about how to best resolve their disputes;
- Reach timely adjudicatory decisions by adhering to appropriate internal and external deadlines; and
- Conduct environmental reviews necessary to support the Board's decisions in a timely and cost-effective manner.

Fourth strategic goal: Employ a skilled and diverse workforce, encourage innovative leadership at all levels of STB, and apply best practices in a collaborative and well-supported environment.

Strategic Objectives-

- Foster a workplace culture that is inclusive, equitable, and accessible by developing and employing a skilled workforce that is representative of people from diverse backgrounds at all levels of the agency;
- Encourage innovative leadership at all levels of the STB that creates a culture of inclusion and, among other things, is attentive to our changing work environment; and
- Apply best practices in a collaborative and well-supported environment, incorporating data-driven decision-making.

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.

Strategic Performance Goals & Measures

GOAL 1	Promote and protect the public interest in surface transportation matters.			
	Performance Goal 1.0.1: Promptly and fairly resolve disputes consistent with the public interest.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
	Performance Measure 1.0.1.1: Proportion of cases and disputes in which the Board issues decisions within applicable deadlines	*75%*	*Exceeded*	*75%*
	Performance Measure 1.0.1.2: Proportion of court filings timely filed and accepted	*95%*	*100%*	*95%*
	Performance Measure 1.0.1.3: Number of substantive judicial filings made	*N/A*	*21*	*N/A*
	Performance Measure 1.0.1.4: Proportion of court decisions that fault the STB for failing to address issues raised	*≤25%*	*33.3%*	*≤25%*
	Performance Measure 1.0.1.5: Proportion of court decisions that set aside agency rulings	*≤25%*	*33.3%*	*≤25%*
	Performance Measure 1.0.1.6: Number of defensibility assessments completed	*N/A*	*168*	*N/A*
	Performance Goal 1.0.2: Promulgate rules and policy statements, employing notice-and-comment procedures as appropriate.			
	Performance Measure 1.0.2.1: Proportion of rulemakings with publicly stated deadlines that are completed in the timeline identified in the Regulatory Agenda	*Baseline*	*60%*	*60%*
	Performance Goal 1.0.3: Provide for transparency and public participation in Board decisions and policymaking to the extent practicable.			
	Performance Measure 1.0.3.1: Proportion of FOIA requests responded to within 20 business days as required by statute (excluding statutorily-authorized extensions)	*95%*	*99%*	*95%*
	Performance Measure 1.0.3.2: Number of collaborative meetings hosted to discuss emerging challenges and industry trends with various stakeholder groups	*Baseline*	*164*	*100*

Objective 1.1: Remedy competitive and other regulatory concerns, where appropriate, by determining reasonable rates and practices for users of the national rail network and other transportation modes within the Board's jurisdiction.			
Performance Goal 1.1.1: Provide rate case processes that fairly and efficiently resolve rate disputes.	***FY23 Target***	***FY23 Actual***	***FY24 Target***
Performance Measure 1.1.1.1: Complete rulemakings to update procedures for small rate disputes in FY23	***Achieve***	***Achieved***	***Achieve***
Performance Measure 1.1.1.2: Number of rate and unreasonable practice cases/disputes brought before the Board	***N/A***	***1***	***N/A***
Objective 1.2: Evaluate certain railroad licensing actions for consistency with the public interest, considering the potential effects on shippers, consumers, the rail network, the environment, railroad employees, and the public at large.			
Performance Goal 1.2.1: Ensure compliance with applicable statutory and regulatory requirements.	***FY23 Target***	***FY23 Actual***	***FY 24 Target***
Performance Measure 1.2.1.1: Proportion of licensing actions resolved through Director Order in which the Order is timely published, or parties are informed of deficiencies	***Baseline***	***99%***	***95%***
Performance Goal 1.2.2: Consider potential economic, environmental, and operational impacts in agency decision-making.	***FY23 Target***	***FY23 Actual***	***FY24 Target***
Performance Measure 1.2.2.1: Number of economic and operational research projects conducted	***Baseline***	***81***	***81***
Performance Measure 1.2.2.2: Number of categorical exclusions	***N/A***	***164***	***N/A***
Performance Measure 1.2.2.3: Number of Environmental Impact Statements prepared	***N/A***	***12***	***N/A***
Performance Measure 1.2.2.4: Number of Environmental Assessments prepared	***N/A***	***28***	***N/A***
Objective 1.3: Promote consistent, fluid, and efficient service that fulfills the needs of customers and the public in an ever-changing economy.			

	FY23 Target	FY23 Actual	FY24 Target
Performance Goal 1.3.1: Through the Rail Customer and Public Assistance Program, provide an informal venue for the private-sector resolution of disputes, and assist Board stakeholders seeking guidance in complying with Board decisions and regulations.			
Performance Measure 1.3.1.1: Number of RCPA inquiries received	*N/A*	*1,492*	
Performance Measure 1.3.1.2: Proportion of informal inquiries and complaints from stakeholders and the public responded to by RCPA within 3 days of receipt	*Baseline*	*95%*	*95%*
Performance Goal 1.3.2: Monitor the surface transportation network and gather industry information and data to allow the Board to intervene when necessary or prudent.			
Performance Measure 1.3.2.1: Proportion of weekly rail service metrics published within 48 hours of receipt	*90%*	*100%*	*90%*
Performance Measure 1.3.2.2: Proportion of weekly rail service metrics analyzed and provided to the Board within 3 business days of receipt	*75%*	*100%*	*75%*
Objective 1.4: Consider potential environmental and historic impacts in agency decision-making, consistent with applicable laws and regulations and impose mitigation conditions as appropriate.			
Performance Goal 1.4.1: Conduct timely and thorough environmental and historic preservation reviews consistent with NEPA, NHPA, and other laws and regulations.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 1.4.1.1: Proportion of environmental reviews concluded within the FY which adhered to applicable regulatory timelines	*80%*	*86%*	*80%*
Performance Goal 1.4.2: Consult with other Federal agencies, state and local agencies, tribes, and other interested parties.			
Performance Measure 1.4.2.1: Total number of cooperating agencies involved in environmental and historical review processes	*N/A*	*11*	*N/A*
Performance Measure 1.4.2.2: Total number of tribes with which government-to-government consultation is conducted	*N/A*	*13*	*N/A*
Performance Measure 1.4.2.3: Number of cases in which a NHPA Section 106	*N/A*	*2*	*N/A*

Memorandum of Agreement (MOA) or Programmatic Agreement (PA) is executed			
Performance Goal 1.4.3: Provide the opportunity for public participation in the environmental and historic review processes for specific cases before the Board.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 1.4.3.1: Total number of public meetings held during environmental and historic reviews	*N/A*	*15*	*N/A*
Performance Measure 1.4.3.2: Total number of comments (oral and written) received during environmental and historic reviews	*N/A*	*564*	*N/A*

GOAL 2

Foster a competitive and sound surface transportation system that provides reliable service at reasonable rates.

Performance Goal 2.0.1: Collect and publish rail service data permitting the public to better understand trends in traffic volumes, rates, and the financial health of the rail industry.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 2.0.1.1: Proportion of monthly, quarterly, and annual statistical reports published within 30 days of receiving all needed inputs	*100%*	*100%*	*100%*
Performance Measure 2.0.1.2: Proportion of waybill requests timely processed	*Baseline*	*100%*	*100%*

Objective 2.1: Uphold the common carrier obligation.

Performance Goal 2.1.1: Enforce the common carrier obligation through the formal adjudication of service complaints.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 2.1.1.1: Number of service complaints brought before the Board	*N/A*	*3*	*N/A*
Performance Goal 2.1.2: Facilitate the common carrier obligation through informal dispute resolution of service complaints.			
Performance Measure 2.1.2.1: Number of informal dispute resolutions relating to the common carrier obligation supported	*N/A*	*145*	*N/A*

	FY23 Target	FY23 Actual	FY24 Target
Objective 2.2: Preserve and enhance competition, including through regulation where appropriate.			
<u>Performance Goal 2.2.1:</u> Evaluate policies and implement rules to adjust to changes in the industry.			
Performance Measure 2.2.1.1: Number of research projects supporting policy evaluation or rulemakings	*Baseline*	*48*	*48*
Objective 2.3: Provide accessible and transparent rate review processes.			
<u>Performance Goal 2.3.1:</u> Conduct public hearings and listening sessions on matters of economic import, including, when applicable, rate procedures.			
Performance Measure 2.3.1.1: Number of public events convened on matters of economic import	*Baseline*	*2*	*2*
Objective 2.4: Provide oversight of passenger rail service in order to carry out statutory directives.			
<u>Performance Goal 2.4.1:</u> Monitor the On-Time Performance (OTP) and delays of Amtrak's routes and trains as they provide passenger service over the nation's rail network.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 2.4.1.1: Administratively establish the Office of Passenger Rail in FY23	*Achieve*	*Achieved*	*Achieve*
Performance Measure 2.4.1.2: Proportion of quarters in which quarterly data is analyzed and provided to the Board within 10 business days of posting by the FRA	*75%*	*50%*	*75%*
<u>Performance Goal 2.4.2:</u> Enforce OTP through efficient adjudication of OTP complaints and Board-initiated investigations, when appropriate.			
Performance Measure 2.4.2.1: Proportion of non-"grant stamp" decisions related to PRIIA Section 213 in which a plan and deadline for completion is established	*100%*	*100%*	*100%*

Performance Measure 2.4.2.2: Proportion of non-“grant stamp” decisions related to PRIIA Section 213 in which established deadlines are achieved	***Baseline***	***80%***	***75%***
Objective 2.5: Monitor the service and operations of carriers and take appropriate action where conditions warrant.			
<u>Performance Goal 2.5.1:</u> Investigate changes in service metrics and/or reports from stakeholders.	***FY23 Target***	***FY23 Actual***	***FY24 Target***
Performance Measure 2.5.1.1: Number of Class 1 Railroads audited by the STB within the FY	***7***	***7***	***7***
<u>Performance Goal 2.5.2:</u> Issue service letters, perform site visits, and hold meetings and hearings to ensure accountability and service reliability.			
Performance Measure 2.5.2.1: Number of service letters issued	***N/A***	***0***	***N/A***
Objective 2.6: Promote a climate that encourages carriers to invest in present and future capacity needs.			
<u>Performance Goal 2.6.1:</u> Engage and communicate with stakeholders regarding the investment, maintenance, and development of the surface transportation system.	***FY23 Target***	***FY23 Actual***	***FY24 Target***
Performance Measure 2.6.1.1: Proportion of recordations entered into the Board's public database within one business day	***90%***	***Exceeded***	***90%***
Performance Measure 2.6.1.2: Total number of major infrastructure investments reported by Class 1 railroads	***N/A***	***13***	***N/A***
Performance Measure 2.6.1.3: Proportion of depreciation studies timely completed	***Baseline***	***100%***	***100%***

GOAL 3	Provide an accessible, data-driven, and time- and cost-efficient regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations effectively.			
	Performance Goal 3.0.1: 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.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
	Performance Measure 3.0.1.1: Proportion of quarterly reports timely provided to Congress on status of rate reasonableness cases, formal complaints, informal complaints, and pending regulatory proceedings	*100%*	*100%*	*100%*
	Performance Measure 3.0.1.2: Publish Semi-annual Regulatory Agenda	*Achieve*	*Achieved*	*Achieve*
	Objective 3.1: Provide well-defined formal and informal dispute resolution processes to enable parties to make informed decisions about how to best resolve their disputes.			
	Performance Goal 3.1.1: Offer alternative dispute resolution services that facilitate private sector solutions to problems.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
	Performance Measure 3.1.1.1: Number of formal alternative dispute resolutions initiated	*N/A*	*1*	*N/A*
	Performance Measure 3.1.1.2: Number of informal dispute resolutions initiated	*N/A*	*145*	*N/A*
	Performance Goal 3.1.2: Hold conferences, hearings, and oral arguments and provide adequate guidance to the parties as to the methods the Board intends to use to adjudicate disputes.			
	Performance Measure 3.1.2.1: Number of conferences, hearings, and oral arguments hosted	*Baseline*	*3*	*3*
	Objective 3.2: Reach timely adjudicatory decisions by adhering to appropriate internal and external deadlines.			
	Performance Goal 3.2.1: Establish internal timelines and deadlines for work products needed to support Board decisions.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
	Performance Measure 3.2.1.1: Proportion of weeks in which the Board is provided with a weekly internal deadline report	*90%*	*96%*	*90%*

GOAL 4

Employ a skilled and diverse workforce, encourage innovative leadership at all levels of STB, and apply best practices in a collaborative and well-supported environment.

Performance Goal / Measure	FY23 Target	FY23 Actual	FY24 Target
Performance Goal 4.0.1: Ensure that Board members and staff are properly trained on and abide by applicable ethics rules.	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 4.0.1.1: Proportion of STB employees who complete required annual ethics training	*100%*	*100%*	*100%*
Performance Measure 4.0.1.2: Proportion of employee's ethics inquiries responded to within 48 hours	*80%*	*99%*	*80%*
Objective 4.1: Develop and employ a skilled and diverse workforce community reflecting diversity, equity, inclusion, and accessibility (DEIA).			
Performance Goal 4.1.1: Employ a diverse workforce community	*FY23 Target*	*FY23 Actual*	*FY24 Target*
Performance Measure 4.1.1.1: Proportion of positions filled within 80 days of SF52 submission	*Baseline*	*50%*	*60%*
Performance Measure 4.1.1.2: Proportion of STB staff with a reportable disability	*12%*	*18.25%*	*12%*
Performance Measure 4.1.1.3: Proportion of STB staff with a targeted reportable disability	*2%*	*2.38%*	*2%*
Performance Measure 4.1.1.4: Schedule A hiring authority used to hire candidates with disabilities for positions	*Y/N*	*Y*	*Y*
Performance Measure 4.1.1.5: Submit annual State of Agency brief to Chairman	*Achieve*	*Not Achieved*	*Achieve*
Performance Measure 4.1.1.6: Number of Reasonable Accommodation requests where processing time exceeds 20 days	*≤1*	*1*	*≤1*
Objective 4.2: Encourage innovative and inclusive leadership at all levels of STB that, among other things, addresses our changing work environment.			
Performance Goal 4.2.1: Analyze Federal Employee Viewpoint Results and other agency	*FY23 Target*	*FY23 Actual*	*FY24 Target*

surveys to identify management practices that would improve employee satisfaction.			
Performance Measure 4.2.1.1: OPM Employee Engagement Index	***73%***	***84%***	***73%***
Performance Measure 4.2.1.2: Number of items identified as strengths from Federal Employee Viewpoint survey results	***75***	***80***	***75***
Objective 4.3: Apply best practices in a collaborative and well-supported environment incorporating data-driven decision-making.			
<u>Performance Goal 4.3.1:</u> Ensure agency data is consistent and accessible across the agency to form the basis for data-based decision-making.	***FY23 Target***	***FY23 Actual***	***FY24 Target***
Performance Measure 4.3.1.1: Proportion of data stored in the cloud environment	***Baseline***	***90%***	***95%***
<u>Performance Goal 4.3.2:</u> Implement recommendations from Data Maturity Assessment efforts to apply Data Management best practices.			
Performance Measure 4.3.2.1: Number of Data Governance Board meetings in which the Data Advisory Group reports on progress on priority goals for data modernization	***2***	***1***	***2***

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 2023, 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.[2]

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 2023.

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. 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

[2] 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.

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.

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.[3] There is also a Three-Benchmark methodology for smaller cases, under which a challenged rate is evaluated using three benchmark figures and a

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

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.[4]

The Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's established rate reasonableness methodologies can quickly exceed the value of the case. Recently, therefore, the Board established two new rate review options: a "final offer" rate review option, adopted in *Final Offer Rate Review*, Docket No. EP 755, and an option for voluntary arbitration, adopted in *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765.

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 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 2023, 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 2023, 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.

[4] 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.

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 the Office of Passenger Rail, which is responsible for investigating and analyzing issues regarding Amtrak on-time performance. The office assumed these duties on October 1, 2022.

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.

Compliance with Laws

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.

Antideficiency Act (ADA)

The ADA prohibits an officer or employee of the U.S. Government from:

- Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- Involving the federal government in any obligation to pay money before funds have been appropriated for that purpose unless otherwise allowed by law;
- Accepting voluntary services for the U. S., or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- Making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by Agency regulations.

There were no known ADA violations in FY 2023 at the STB.

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 2023.

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 2023, while late payments resulted in interest charges of $12.00 (on total payments of $4.9 million), less than .000002 % of total dollars disbursed for FY 2023.

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.

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 2023.

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 2023, 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 2023.

Chairman's Statement of Assurance

This statement provides the Surface Transportation Board's (STB's or Board's) fiscal year (FY) 2023 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, 2023***.

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, 2023.

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, 2023.

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 2023, the STB documented and assessed internal controls over two business processes:

- Human Resources /Time and Attendance– Test of Design and Test of Effectiveness
- Procure to Pay– 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 (OIG) conducted the FY 2023 audit of the STB's information security program and practices, as required by the FISMA. Based on the audit report results, the OIG did not identify any new recommendations for remediation in FY 2023. The Board's FISMA maturity rating remained at "Consistently Implemented" in four domains, "Defined" in two domains, and "Ad-Hoc" in one domain. One domain moved from "Consistently Implemented" to "Managed and Measurable," and one domain moved from "Consistently Implemented" to "Defined."

Three FY 2021 FISMA audit recommendations have been closed in FY 2023 and only a few remain open. The Board will continue to work on implementing solutions to address the remaining FY 2021 recommendations.

Martin J. Oberman
Chairman

Dated: November 6, 2023

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 2023 include issuing 370 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.

FY 2023 Activities and Accomplishments

Rates and Competition

During FY 2023, the Board continued to move forward in reforming its rate review processes. As discussed further below under "Rulemakings," in December 2022 the Board issued two final rules establishing new streamlined approaches for shippers and railroads to resolve smaller rate disputes: a voluntary arbitration program and an entirely new procedure for rate challenges known as Final Offer Rate Review (FORR). The Board also denied reconsideration of its 2022 final rule establishing a streamlined approach for pleading market dominance in rate reasonableness proceedings.

Rail Mergers

In FY 2023, the Board spent significant staff time and resources continuing its consideration of the application by Canadian Pacific Railway Limited to acquire control of Kansas City Southern, and through it, the Kansas City Southern Railway Company (KCSR) and its railroad affiliates.

Culminating this extensive review, the Board on March 15, 2023, issued its decision approving the merger and the resulting common control by Canadian Pacific of Canadian Pacific's U.S. railroad subsidiaries, KCSR, and KCSR's railroad affiliates. The Board made its approval subject to numerous conditions, including conditions to preserve existing rail service options at affected gateways on commercially reasonable terms, conditions to reasonably address the expected environmental impacts of the merger, and a robust seven-year oversight condition.

Passenger Rail

On-Time Performance Investigations

The Board created the Office of Passenger Rail (OPR) effective October 1, 2022. Among other things, the new office created comprehensive plans related to on-time performance investigation processing and resource allocation. This includes creating a staffing strategy to assist the Board in on-time performance investigations and quarterly on-time performance data analysis.

In addition, the Board renewed its 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. OPR remains the point of contact and the project owner of the Volpe collaboration.

On February 14, 2022, the Federal Railroad Administration (FRA) published the Quarter 4, FY 2021 Amtrak on-time performance data. Since then, FRA continues to regularly release quarterly Amtrak on-time performance data. As FRA's quarterly on-time performance data becomes available, OPR analyzes the data and provides the Board with observations about trends and OPR's assessment.

On December 8, 2022, Amtrak filed a complaint and petition for an on-time performance investigation regarding the Sunset Limited route, in *Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*. On July 11, 2023, the Board instituted an investigation and propounded document requests and interrogatories to Amtrak and various other railroads. OPR is the main office responsible for coordinating the Board's investigation.

Rail Service Oversight and Monitoring

During FY 2023, 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. 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, the largest U.S. railroads, 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 response to the extensive problems described at the hearing, the Board issued an order requiring those four carriers to file service recovery plans that would specifically describe their key remedial initiatives and promote a clearer vantage point into operating conditions on the rail network. On October 28, 2022, the Board extended the collection of key performance indicators such as velocity, terminal dwell, first-mile/last-mile (FMLM) service (i.e., industry spot and pull), operating inventory, and trip plan compliance in order to continue to monitor the railroads' progress.

The Board also held an in-person public hearing on December 13 and 14, 2022, with Union Pacific Railroad Company (UP) pertaining to the substantial increase in its use of embargoes as a method of reducing rail traffic congestion. UP's use of embargoes to control congestion had increased from a total of 5 in 2017 to more than 1,000 in 2022. The Board received numerous reports that shippers were suffering supply chain problems as a result of the embargoes that are hampering their operations.

The Board noted that UP carries nearly 27 percent of the nation's freight served by rail and nearly 11 percent of all long-distance freight volume. Therefore, disruptions in UP's service levels have a significant detrimental impact on the supply chain and the nation's economy. The Board closely monitors UP's usage of embargoes, and it noticed a disturbing upward trend in their usage in recent years. Following the December hearing, the Board on May 15, 2023, issued an order directing UP to provide additional documents and data related to its use of embargoes.

In addition to monitoring rail service by conducting the above broad-based inquiries in its Ex Parte dockets, the Board also addressed a number of service complaint cases filed by individual shippers. Those cases are discussed under Service, Rate, and Other Complaint Cases, below.

Finally, the Board, through the Rail Customer and Public Assistance (RCPA) program of the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), 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 *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765, the Board issued the following decisions in FY 2023:
On December 19, 2022, the Board adopted a final rule establishing a new voluntary arbitration program for small rate disputes.

On January 24, 2023, the Board denied a request by four Class I railroads to stay the 20-day deadline under the new rule for Class I carriers to inform the Board whether they will participate in the new arbitration program.

On February 14, 2023, the Board denied a second request by four Class I railroads to stay the new rule's "opt-in" requirement.

In *Final Offer Rate Review*, Docket No. EP 755, the Board adopted a final rule to establish a new procedure for challenging the reasonableness of railroad rates in smaller cases. Under this rate review procedure, known as "Final Offer Rate Review," the Board would decide on an expedited procedural schedule, an eligible unreasonable rate case by selecting either the complainant's or the defendant's final offer.

In *Market Dominance Streamlined Approach*, Docket No. EP 756, the Board in January 2023 denied two petitions seeking reconsideration of the Board's decision in FY 2022 adopting a final rule that established a streamlined approach for pleading market dominance in rate reasonableness proceedings.

In a notice of proposed rulemaking issued on September 7, 2023, in Docket No. EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*, the Board proposed new regulations that would provide for the prescription of reciprocal switching agreements to address inadequate rail service, as determined using objective standards based on a carrier's original estimated time of arrival, transit time, and first-mile and last-mile service. That decision also closed Docket No. EP 711 (Sub-No. 1).

Service, Rate and Other Complaint Cases

In *Omaha Public Power District v. Union Pacific Railroad Company*, Docket No. NOR 42173, a case in which Omaha Public Power District (OPPD) is challenging the reasonableness of a rate assessed by Union Pacific Railroad Company (UP) for transporting 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 denied an appeal of a decision of the Director of the Office of Proceedings that granted in part a motion to compel discovery. Later, the Board granted the parties' joint request to hold the proceeding in abeyance pending settlement negotiations.

In *Borough of Dumont, N.J. v. CSX Transportation, Inc., ABC Corporations, & XYZ Individuals*, Docket No. NOR 42174, the Board granted CSX Transportation, Inc.'s motion to dismiss with prejudice a complaint filed by the Borough of Dumont, N.J., alleging violations of New Jersey state and common law, and denied as moot the Borough's request to hold the proceeding in abeyance.

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 (UP) to deliver certain trains to Foster Poultry Farms' facilities in Traver and Turlock, Cal. Thereafter, on July 1, 2022, the Board directed UP to continue to carry out its specific service commitments to Foster Farms, participate in weekly technical conferences with the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), and file daily service status reports, until July 17, 2022. On July 20, 2022, the Board denied Foster 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. On December 29, 2022, Foster Farms filed a new petition for emergency service, and the Board responded the next day, ordering UP to deliver certain specific train sets of animal feed to Foster Farms in order to avert a potential significant loss of livestock in California. After receiving further reports from the parties, the Board on February 14, 2023, denied as moot Foster Farms' December request for a second emergency service order but held the record open until August 14, 2023.

In *Navajo Transitional Energy Company—Ex Parte Petition for Emergency Service Order*, Docket No. NOR 42178, the Board on June 23, 2023 issued a preliminary injunction requiring BNSF Railway Company (BNSF) to transport 4.2 million tons of coal from Navajo Transitional Energy Company, LLC's (NTEC) Spring Creek mine in Montana to the Westshore Terminals export facility in British Columbia, Canada during 2023. The Board also required BNSF to transport an additional one million tons during 2023 as train sets and crews become available. The Board further ordered weekly status reporting by the parties during the pendency of the proceeding with respect to the number of trains moved, BNSF's efforts to obtain additional crews, and both parties' efforts to obtain additional train sets. On August 14, 2023, the Board denied BNSF's request to stay the "additional one million tons" portion of the June 23 preliminary injunction.

In a separate but related docket, *Navajo Transitional Energy Company v. BNSF Railway*, Docket No. NOR 42179, NTEC filed a complaint and petition for declaratory order alleging that BNSF has breached its common carrier obligation, failed to provide adequate car service, and engaged in unreasonable practices with respect to the transportation of NTEC's coal between Spring Creek and Westshore. On June 30, 2023, the Board adopted a procedural schedule for consideration of this complaint case. On August 7, 2023, the Board denied an appeal of the scheduling decision but modified the schedule and appointed an administrative law judge to resolve discovery disputes.

Declaratory Orders

In *The Wenger Group, Inc., and Esbenshade, Inc.—Petition for Declaratory Order and Injunctive Relief—Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695, two shippers sought to enjoin a planned temporary cessation of freight service over an Amtrak-owned line. They also sought a declaration that the planned cessation of service would amount to a violation of the common carrier obligation. On May 18, 2023, the Board granted the request of a third shipper, Kellogg Company, to intervene in the case. Ultimately, the parties reached settlement as to all three shippers, and all three moved for voluntary dismissal. Accordingly, on July 20, 2023, the petition was dismissed, and the proceeding closed.

In *Wisconsin Central Ltd.—Petition for Declaratory Order—Interchange with Soo Line Railroad Company*, Docket No. FD 36397, the Board denied the request of Soo Line Railroad Company to strike the post-remand brief of Wisconsin Central, Ltd., and solicited public comments regarding the broad legal issues presented by this proceeding.

In *Rail Line Abutting Landowners—Verified Petition for Declaratory Order*, Docket No. FD 36623, the Board declined a request for a declaratory order to determine the status of a rail line owned by the Massachusetts Bay Transportation Authority.

In *Maryland Department of Natural Resources—Petition for Declaratory Order*, Docket No. FD 36606, the Maryland Department of Natural Resources requested that the Board declare whether a previous owner of a rail line had consummated the abandonment authority granted by the Board's predecessor agency. The Board found that the abandonment was timely consummated and therefore that the Board lacked jurisdiction over the line.

In *CSX Transportation, Inc.—Petition for Declaratory Order and Cease and Desist Order*, Docket No. FD 33388 (Sub-No. 102), the Board granted a motion filed by CSX Transportation, Inc., to withdraw its petition and amended petition for declaratory and cease-and-desist orders in connection with a labor dispute between CSXT and a union representing rail employees.

In *The City of North Chicago, Ill.—Petition for Declaratory Order*, Docket No. FD 36619, the Board declined to issue a declaratory order relating to a dispute concerning an easement for a water main that crosses under the rail property of 2nd & Main, LLC, in North Chicago, Ill.

In *North County Transit District—Petition for Declaratory Order*, Docket No. FD 36433, the Board declined to issue a declaratory order regarding the applicability of certain laws and regulations related to a proposed bluff stabilization project and held the proceeding in abeyance with respect to the applicability of certain laws and regulations related to petitioner's proposed fencing project.

In *Ballard Terminal Railroad Company, L.L.C.—Petition for Declaratory Order*, Docket No. FD 36261, the Board granted Ballard Terminal Railroad Company's motion to withdraw its petition for declaratory order on the ground that the preemption issues raised in the petition had already been decided in state court.

In *U S Rail Corporation—Construction and Operation Exemption—Brookhaven Rail Terminal*, Docket No. FD 35141, et al., in a decision encompassing several dockets pertaining to rail-related activities on a parcel of land in Brookhaven, N.Y., the Board denied in part a petition for declaratory order concerning those activities and directed the parties to provide additional information on the remaining issue raised in the petition.

In *The State of South Dakota Acting by and Through Its Department of Transportation—Petition for Declaratory Order,* Docket No. FD 36697, the Board granted the State of South Dakota's petition for an order declaring that Dakota Southern Railway's operating rights pursuant to a modified certificate of public convenience and necessity over a segment of state-owned rail line are terminated and issued a notice of interim trail use for the line.

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 et al., the Board issued the following significant decisions in FY 2023:

On October 19, 2022, the Board denied a motion filed by the Commuter Rail Division of the Regional Transportation Authority to strike certain evidence from the record.

On March 3, 2023, the Board approved both the appointment of Ronald L. Batory as successor trustee of the independent voting trust and the related assumption agreement.

On March 15, 2023, the Board approved, with certain conditions, Canadian Pacific Railway Limited's application to acquire control of Kansas City Southern, and through it, of the Kansas

City Southern Railway Company (KCSR) and its railroad affiliates, and the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates. The decision imposed numerous conditions, including conditions to preserve existing rail service options at affected gateways on commercially reasonable terms, conditions to reasonably address the expected environmental impacts of the merger, and a robust seven-year oversight condition.

On September 1, 2023, the Board issued two decisions, one clarifying the reporting requirements and certain other aspects of the March 15 approval decision and the other instituting a proceeding to implement the Board's oversight condition

Other Transactions
In *California High-Speed Rail Authority—Construction Exemption—in Merced, Madera, and Fresno Counties, Cal.*, Docket No. FD 35724, et al., the Board authorized the California High-Speed Rail Authority to proceed with an addition to the Merced to Fresno section and a modification to the Fresno to Bakersfield section of the proposed California High Speed Rail System, subject to environmental conditions. The Board previously had authorized construction of these two sections in Docket Nos. FD 35724 and FD 35724 (Sub-No. 1), respectively.

In *Norfolk Southern Railway Company and the Cincinnati, New Orleans and Texas Pacific Railway Company—Acquisition—Trustees of The Cincinnati Southern Railway*, Docket No. FD 36699, et al., the Board accepted an application and a related verified notice of exemption, both filed on May 1, 2023, by Norfolk Southern Railway Company (NSR), on behalf of itself and its wholly owned subsidiary, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) (collectively, Applicants). The Application seeks Board approval for NSR to acquire from the Trustees of the Cincinnati Southern Railway, and to operate, approximately 338.2 miles of rail line between Cincinnati, Ohio, and Chattanooga, Tenn., known as the Cincinnati Southern Railway. The Board found that the Application was complete. The Board also issued the preliminary determination, based on the evidence presented in the Application, that the Transaction is a minor transaction.

In *WeDriveU, Inc.—Acquisition of Control—Transaction Corporate Shuttle, Inc.*, Docket No. MCF 21102, on November 10, 2022, the Board tentatively approved and authorized WeDriveU to acquire direct control of an interstate passenger motor carrier, TransAction Corporate Shuttle, Inc. Thereafter, however, on December 6, 2022, the Board approved WeDriveU, Inc.'s voluntary request to dismiss its application without prejudice.

In *Revolution Rail Holding Company, LLC—Acquisition Exemption—Saratoga and North Creek Railway, LLC.*, Docket No. FD 36612, the Board permitted an exemption to acquire a rail line to become effective.

In *Aberdeen Carolina and Western Railway Company—Acquisition Exemption—Norfolk Southern Railway Company*, Docket No. FD 36648, the Board granted a request to waive a 60-day advance notice requirement and allowed Aberdeen Carolina and Western Railway Company to acquire from Norfolk Southern Railway Company and operate approximately 104 miles of rail in North Carolina on or after December 15, 2022.

In *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, And Mitsubishi UFI Financial Group, Inc.—Control Exemption—Delta Southern Railroad, Inc.*, Docket No. FD 36642, the Board lifted the abeyance order and denied Lake Providence Port Commission's request to reject the notice of exemption.

In *Transdev Group, S.A.—Acquisition of Control—First Transit Topco Inc.*, Docket No. MCF 21103, the Board in January 2023 approved and authorized, subject to the filing of opposing comments, Transdev group, S.A. to acquire control of interstate passenger motor carrier First Transit Topco Inc.

In *Kanawha River Railroad, L.L.C.—Lease Renewal and Operation Exemption with Interchange Commitment—Norfolk Southern Railway Company*, Docket No. FD 36028 (Sub-No. 1), the Board waived a 60-day advance notice requirement and allowed Kanawha River Railroad, L.L.C., to enter into an amended lease agreement with Norfolk Southern Railway Company and continue to operate on nine segments of rail line totaling 309.45 miles in West Virginia and Ohio on or after January 18, 2023.

In *New York, Susquehanna & Western Railway Corp.—Acquisition & Operation Exemption—Onondaga County Industrial Development Agency*, Docket No. FD 36715, the Board waived a 60-day advance notice requirement and allowed the New York, Susquehanna, and Western Railway Corporation to acquire from Onondaga County Industrial Development Agency and continue to operate approximately 10 miles of rail line, known as the Jamesville Cluster, in New York.

In *Red River Valley & Western Railroad—Acquisition & Operation Exemption—Rail Line of BNSF Railway*, Docket No. FD 36719, the Board waived a 60-day advance notice requirement and set the effective date for a notice of exemption for Red River Valley & Western Railroad Company to acquire and operate a 0.4-mile rail line in Casselton, N.D.

In *Avalon Motor Coaches, LLC—Acquisition of Control—Wynne Transportation, LLC*, Docket No. MCF 21105 TA, the Board in January 2023 permitted Avalon Motor Coaches, LLC (Avalon), to operate properties of Wynne Transportation, LLC (Wynne), on an interim basis pending determination of a related application for Avalon to acquire Wynne.

In that related docket, *Avalon Motor Coaches, LLC—Acquisition of Control—Wynne Transportation, LLC*, Docket No. MCF 21105, the Board in February 2023 tentatively approved and authorized, subject to the filing of opposing comments, Avalon Motor Coaches, LLC, an interstate passenger motor carrier, to purchase and assume substantially all the shuttle services of another interstate passenger motor carrier, Wynne Transportation, LLC. No such comments were filed.

In *Van Pool Transportation LLC—Acquisition of Control—Local Motion, Inc.*, Docket No. MCF 21104, the Board in February 2023 tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC, an interstate passenger motor carrier, to acquire control of another interstate passenger motor carrier, Local Motion, Inc. No such comments were filed.

In *BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, Docket No. FD 36377 (Sub-No.7), the Board partially revoked the exemption for BNSF Railway's trackage rights over certain Union Pacific Railroad Company lines in California, to permit the trackage rights arrangement to expire on the date agreed by the parties.

In *James Riffin—Acquisition and Operation Exemption—in York County, Pa.*, Docket No. FD 36548, the Board granted James Riffin's motion to withdraw one rail line segment and a portion of another segment from a previously filed notice of exemption to operate and acquire two rail line segments. The Board also denied his petition to reconsider the Board's rejection of the notice of exemption as to a third rail line segment.

In *Massachusetts Bay Transportation Authority—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, Docket No. FD 36669, the Board found that the Massachusetts Bay Transportation Authority (MBTA) does not need Board authority to acquire certain rail assets owned by CSX Transportation, Inc. The Board therefore granted MBTA's motion to dismiss its notice of exemption seeking such authority.

In *Savage Tooele Railroad Company—Construction and Operation Exemption—Line of Railroad in Tooele County, Utah*, Docket No. FD 36616, Savage Tooele Railroad Company (STR) filed a petition for exemption to construct and operate approximately 11 miles of rail line in Utah. The Board denied STR's request that the Board preliminarily address the transportation merits of the proposed transaction before the environmental review process is complete.

In *Kelsian USA Inc.—Acquisition of Control—AAAHI Topco Corporation*, Docket No.

MCF 21106, the Board in April 2023 tentatively approved and authorized, subject to the filing of opposing comments, Kelsian USA Inc. to acquire from AAAHI Holdings LLC the motor carrier assets and direct control of AAAHI Topco Corporation, the owner of several motor carriers.

In *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY Inc.*, Docket No. FD 35692, et al., the Board denied a request to reopen and require that an easement be returned to its earlier owner. In Docket No. AB 1316X, the Board denied an appeal of a decision of the Director of the Office of Proceedings and lifted an abeyance order to allow that earlier owner to proceed with the abandonment of the line.

In *Paul Didelius—Continuance in Control Exemption—Rainier Rail LLC*, Docket No. FD 36659, et al., the Board (1) made effective a notice of exemption for Rainier Rail LLC to acquire and operate certain rail lines in the state of Washington; (2) permitted Paul Didelius, a noncarrier individual, to continue in control of Rainier Rail LLC upon its becoming a Class III rail carrier; and (3) made effective a notice of exemption for Rainier Rail to merge with WRL LLC, another railroad owned by Didelius.

In *Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Company*, Docket No. FD 22218, a case involving a request to revise the conditions governing certain BNSF trackage rights, the Board granted Union Pacific Railroad Company's unopposed petition to reopen this proceeding, provided a period for discovery, assigned and authorized an administrative law judge to address any discovery disputes, directed the parties to participate in Board-sponsored mediation, and directed the parties to propose a procedural schedule if mediation is unsuccessful.

In *Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company*, Docket No. FD 36486 (Sub-No. 5), the Board partially revoked an exemption for Grainbelt Corporation's local trackage rights over a BNSF Railway line in Oklahoma and Texas to permit the trackage rights arrangement to expire on the date agreed by the parties.

In *Grenada Railroad, LLC—Acquisition and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC*, Docket No. FD 36700, the Board granted a request for partial waiver of a 60-day advance notice requirement and allowed Grenada Railroad, LLC, to acquire and operate approximately 228 miles of rail line in Mississippi from the North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC, on or after May 28, 2023.

In *Van Pool Transportation LLC—Acquisition of Control—Royal Coach Lines, Inc.*, Docket No. MCF 21107, the Board in June 2023 tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC to acquire control of interstate passenger motor carrier Royal Coach Lines, Inc. No such comments were filed.

In *Terry W. Fischer & TKRG Holdings—Acquisition of Control—Royal Coach Tours*, Docket No. MCF 21109, the Board in August 2023 tentatively approved and authorized, subject to the filing of opposing comments, Terry W. Fischer and TKRG Holdings to acquire control of Royal Coach Tours, an interstate motor passenger carrier.

In *Savannah Industrial Transportation—Operation Exemption—in Effingham County, Ga.*, Docket No. FD 36489, the Board found that the owner of a line built in 2020 without Board authority intended the line to be operated as common carrier rail line for which Board authority should have been obtained before construction. The Board held in abeyance a request for operating authority over the line and ordered the line's owner to file for construction authority after the fact, while allowing existing shippers to receive service in the meantime.

In *New Jersey Transit Corp.—Acquisition Exemption—Norfolk Southern Railway Co. in the Counties of Morris and Warren, N.J.*, Docket No. FD 36676, the Board in July 2023 found that the New Jersey Transit Corporation did not need Board authority to acquire certain rail assets owned by Norfolk Southern Railway Company in New Jersey because the transaction did not constitute the sale of a rail line. The Board therefore granted N.J. Transit's motion to dismiss its notice seeking such authority.

In *Academy Express LLC—Purchase of Certain Assets of James River Bus Lines*, Docket No. MCF 21108, the Board tentatively approved and authorized Academy Express LLC and Franmar Leasing LLC to acquire certain assets of James River Bus Lines.

In *Colorado Pacific Rio Grande Railroad, LLC—Petition for Exemption—Acquisition & Operation of Line of Railroad in Costilla County, Colorado*, Docket No. FD 36694, the Board granted Colorado Pacific Rio Grande Railroad, LLC, after-the-fact authority to acquire and operate 1.53 miles of rail line in Costilla County, Colo., known as the Blanca Spur.

In *Norfolk Southern Railway Company—Acquisition—Trustees of the Cincinnati Southern Railway*, Docket Nos. FD 36699 et al., the Board authorized Norfolk Southern Railway Company to acquire from the Trustees of the Cincinnati Southern Railway and operate the Cincinnati Southern Railway, a 338-mile rail line between Cincinnati, Ohio, and Chattanooga, Tenn. The decision also authorized the Cincinnati, New Orleans and Texas Pacific Railway Company, a wholly owned subsidiary of Norfolk Southern, to continue to operate the line.

On September 28, 2023, in *Pan Am Southern LLC—Temporary Overhead Trackage Rights—Boston & Maine Corp*., Docket No. FD 36726, the Board waived a regulatory requirement in order to allow Pan Am Southern to immediately exercise temporary overhead trackage rights over a rail line of Boston & Maine Corp. in Massachusetts to relieve congestion.

Abandonments/Discontinuances

In *Wolf Creek Railroad, LLC—Abandonment Exemption—in Gibson County, Tenn.*, Docket No. AB 1322X, the Board allowed Wolf Creek Railroad LLC to abandon an approximately 10-mile railroad line within the Milan Army Ammunition Plant in Gibson County, Tenn.

In *Alabama Railroad, LLC—Abandonment Exemption—Escambia, Conecuh, and Monroe Counties, Ala.*, Docket No. AB 1324, the Board permitted Alabama Railroad, LLC, to abandon approximately 47.5 miles of rail line in Escambia, Conecuh, and Monroe Counties, Ala., subject to conditions.

In *R.J. Corman Railroad Property, LLC—Abandonment Exemption—in Scott, Campbell, and Anderson Counties, Tenn.*, Docket No. AB 1296X, the Board partially granted a petition to reopen because the Board determined that exercising the abandonment authority previously granted in this docket would isolate, or "strand," a connecting rail line from the interstate rail network. The Board also provided guidance on next steps in the case.

In *South Carolina Central Railroad Company, LLC—Abandonment Exemption—in Darlington County, S.C.*, Docket No. AB 312 (Sub-No. 5X), the Board permitted South Carolina Central Railroad Company to abandon approximately two miles of rail line over six railroad tracks in Hartsville, Darlington County, S.C., subject to environmental and standard employee protective conditions.

In *Montana Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Mont.; Bonner and Kootenai Counties, Idaho; and Spokane County, Wash.*, Docket No. AB 575 (Sub-No. 2X) the Board granted an exemption for Montana Rail Link to discontinue service over approximately 656.47 miles of non-contiguous rail line and to discontinue trackage rights service over approximately 66.47 miles of rail line in Montana, Idaho, and Washington, subject to standard employee protective conditions. Later, in a separate decision, the Board denied a petition to stay the effective date of the exemption.

In *CSX Transportation, Inc.—Abandonment Exemption—in Mason County, Ky.*, Docket No. AB 55 (Sub-No. 791X), the Board waived a regulatory provision that would have resulted in the expiration of CSX Transportation's authority to abandon its dock and loadout/conveyor belt in Mason County, Ky., and accepted its late-filed notice of consummation.

In *Snohomish County—Adverse Abandonment—GNP RLY, Inc., in Snohomish County, Wash.*, Docket No. AB 1331, the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority but were either unnecessary here or would be difficult or impossible for Snohomish County to comply with, should it file an application for adverse abandonment.

In *City of Peoria, Ill.—Discontinuance of Service Exemption—in Peoria County, Ill.*, Docket No. AB 1066 (Sub-No. 3X), the Board granted the City of Peoria, Ill., authority to discontinue rail service over an approximately 1.1-mile portion of a rail line on behalf of the Central Illinois Railroad Company.

In *City of Tacoma, Department of Public Utilities, d/b/a Tacoma Rail—Discontinuance of Service Exemption—in Pierce County, Wash.*, Docket No. AB 1239 (Sub-No. 3X), et al., the Board allowed Tacoma Rail and Tacoma Rail Mountain Division, two separate departments of the City of Tacoma, Wash., to discontinue rail service over approximately 3.5 miles of rail line in Thurston County, Wash., subject to standard employee protective conditions.

In *Norfolk Southern Railway Company—Abandonment Exemption—in the City of Greensboro, N.C.*, Docket No. AB 290 (Sub-No. 404X), the Board clarified its regulatory authority over a railbanked line in North Carolina, explained the Board's procedures for determining whether a portion of a right-of-way can be removed from such a line, and gave the railroad additional time to respond to a petition from the City of Greensboro.

In *Growth Resources of Wellsboro Foundation—Abandonment Exemption—in Tioga County, Pa.*, Docket No. AB 1320X, et.al, the Board lifted the abeyance orders in Docket Nos. AB 1320X and AB 1325X and allowed the notices of exemption in those dockets to be published in the Federal Register. The Board also found that a notice of exemption published in Docket No. FD 35595 in 2012 was void ab initio insofar as it purported to transfer ownership of a certain rail line to Wellsboro & Corning Railroad, LLC, and corrected certain other information contained in that notice.

In *Cleveland & Cuyahoga Railway—Discontinuance of Service Exemption—in Cuyahoga County, Ohio*, Docket No. AB 1333X, the Board allowed Cleveland & Cuyahoga Railway to discontinue service over 10.4 miles of rail line in Cuyahoga County, Ohio, subject to standard employee protective conditions.

In *Great Redwood Trail Agency—Adverse Abandonment—Mendocino Railway in Mendocino County, Cal.*, Docket No. AB 1305 (Sub-No. 1), the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority but either would be unnecessary or would be difficult or impossible for the Great Redwood Trail Agency to comply with should it file an application for adverse abandonment.

In *Elkhart & Western Railroad--Discontinuance of Trackage Rights Exemption—in Marshall & Fulton Counties, Ind.*, Docket No. AB 1329X, the Board allows Elkhart & Western Railroad discontinue service over approximately 11.7 miles of rail line in Marshall and Fulton Counties, Ind., subject to standard employee protective conditions and denied a motion to compel discovery.

In *Housatonic Railroad—Discontinuance of Service—Dutchess & Putnam Counties, N.Y.*, Docket Nos. AB 733 (Sub-No. 1X) et al., the Board denied Metro-North Commuter Railroad's request for a notice of interim trail use for a 41-mile rail line owned by Metro-North but outlined the procedure by which Metro-North could pursue interim trail use/rail banking for the line. The Board also denied as unnecessary Metro-North's petition to acquire the residual common carrier rights and obligations for the line from its former trackage rights tenant, Housatonic Railroad.

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 the parties, on November 21, 2022, informed the Board that they had agreed to settlement terms that, when fully implemented, will lead to a complete resolution of this proceeding. The proceeding involves an application by Amtrak to operate additional trains over certain lines of the CSX and Norfolk Southern rail systems. To allow the parties additional time needed to effectuate those terms, the Board granted the Parties' request to hold the proceeding in abeyance but required that a status report be filed by June 30, 2023, if the settlement terms were not fulfilled. Subsequently, the Board granted a request from the parties to continue to hold the proceeding in abeyance. If the parties do not notify the Board that settlement terms have been fulfilled, a progress report is due on or by October 31, 2023.

Throughout FY 2023, 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.

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 2023, OEA worked on 12 EISs and 28 EAs in rail projects, comprising rail line constructions, rail line abandonments and a major merger. During FY 2023, 164 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 environmental reviews for rail constructions in Nevada and California. The Board is also monitoring environmental mitigation in rail construction cases in Alaska and Utah.

Environmental Assessments

The EAs addressed 11 rail line construction cases that would provide passenger service, 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 17 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 2023 to conduct Board-sponsored mediations with Board staff. This partnership has greatly enhanced the Board's mediation services offered to our stakeholders. In FY 2023, the Board held two mediations. 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 2023, RCPA handled 1,492 inquiries from stakeholders, of which approximately 145 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.

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 2023, the Office of the General Counsel (OGC) handled a variety of cases on behalf of the Board:

In the area of new-carrier entry, the reviewing court vacated and remanded a Board decision authorizing, 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 court found that the Board's environmental analysis of certain cumulative and indirect impacts under NEPA was not adequate; that the Board did not consider the financial viability of the project; and that, in its decision under the exemption procedures, the Board did not sufficiently weigh the environmental harm associated with the project against its transportation benefits. *Eagle County, Colo. v. Surface Transportation Board*, Nos. 22-1019, et al. (D.C. Cir. Aug. 18, 2023). The proponent of the project, the Seven County Coalition, has filed a petition for rehearing *en banc* arguing that the court's opinion conflicts with prior D.C. Circuit precedent and with precedent in other circuits.

In the area of combinations and mergers, the Board successfully defended its decision finding that Norfolk Southern Railway Company had not been authorized to acquire control over the Norfolk & Portsmouth Belt Line Railroad Company in the context of a major 1982 consolidation, nor had it obtained control through later corporate-family exemptions that did not mention the Belt Line. *Norfolk Southern Railway Co.—Pet. for Dec. Order*, Docket No. FD 36522 (STB served June 17, 2022). Although the Board's decision should have been challenged in the U.S. District Court for the Eastern District of Virginia, which had referred the matter to the Board, the D.C. Circuit accepted the petition for review and took jurisdiction over the matter. The D.C. Circuit affirmed the Board's ruling in all respects. *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir. Jun. 30, 2023). Norfolk Southern has indicated that it may seek further review in the Supreme Court. The Board also answered a parallel complaint by Norfolk Southern in the Eastern District of Virginia. *See Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 2:22-cv-00385-EWH-LRL (E.D. Va.).

In the area of abandonment and its associated environmental and historical review, the Board successfully defended a challenge to its interlocutory order finding that Consolidated Rail Corporation did not violate Section 110(k) of the National Historic Preservation Act. *Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J.*, AB 167 (Sub-No. 1189X) (STB served Aug. 22, 2022). Various interests sought review of the decision in the D.C. Circuit. The court granted the motion filed by the Board and United States to dismiss the petition for lack of jurisdiction because the decision is not a final agency order. *City of Jersey City, et al v. STB*, No. 22-1270 (D.C. Cir. Jan. 6, 2023).

In the area of service, the reviewing court denied a request by BNSF to stay a portion of a Board injunction (in *Navajo Transitional Energy Company—Ex Parte Petition for Emergency Service Order*, Docket No. NOR 42178) ordering the carrier to provide certain levels of service to Navajo Transitional Energy Company. *BNSF Railway Co. v. Surface Transportation Board*, No. 23-60402 (5th Cir. Aug. 30, 2023). Briefing has moved forward on the "merits" of the matter.

In the area of combinations and mergers, the Board is defending its decision approving the combination of Canadian Pacific and Kansas City Southern, which was the first merger of Class I carriers approved by the Board in over 25 years. *Can. Pac. Ry.—Control—Kansas City S.*, FD 36500 (STB served Mar. 15, 2023). Competing rail carrier Union Pacific, Chicago-area commuter rail system Metra, and a coalition of Chicago-area municipalities are seeking review of the decision in the D.C. Circuit. *Union Pac. R.R. Co., et al. v. Surface Transportation Board, et al.*, Nos. 23-1125, 23-1131, 23-1165, and 23-1274 (D.C. Cir.). A briefing schedule has not yet been set, as the progression of the case has been complicated by the pendency of petitions for agency reconsideration by Metra and by CSX Transportation.

In the area of rates, the Board is defending its decision adopting "Final Offer Rate Review" procedures, which give shippers a practical way to seek rate relief through accelerated procedural schedules, flexible rate reasonableness standards, and "final offer" procedures for selecting the rate that will be prescribed for the future. The railroad industry sought review of the decision in the Eighth Circuit. *Union Pacific Railroad Company and the Association of American Railroads v. Surface Transportation Board*, Nos. 22-3648 & 23-1325 (8th Cir.). The Board filed its brief on June 16, 2023. Oral argument has not yet been set in the matter.

In the area of rates, the Board's decision adopting arbitration procedures for small rate cases has been challenged in court by railroad interests. The arbitration program, which followed the contours but not all the details of a program that the rail industry recommended, would have postponed FORR's application for a period of at least five years, but only if all Class I railroads opted into the program; because only one railroad did so, the program is currently inoperable. *Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disputes*, EP 765 (STB served Dec. 19, 2022). The court case is currently in abeyance as the Board considers administrative petitions for reconsideration. *Grand Trunk Corp. and Illinois Central Railroad Co. v. Surface Transportation Board*, No. 22-3289 (7th Cir.)

In the area of rates, Western Coal Traffic League has filed a petition for a writ of mandamus in the D.C. Circuit asking the court to direct the Board either to initiate rulemakings on revenue adequacy issues or to issue an order closing out its informational proceedings in *Hearing on Revenue Adequacy*, Docket No. EP 761, and *Railroad Revenue Adequacy*, Docket No. EP 722. The Board instituted proceedings and held hearings on general revenue adequacy issues, but it has not proposed any rules. The Board filed its brief responding to the petition on August 24, 2023. *In re: Western Coal Traffic League*, No. 23-1126 (D.C. Cir.).

In addition, Western Coal Traffic League has filed a petition for review of the Board's decision in *Railroad Cost of Capital—2022*, EP No. 558 (STB served Aug. 3, 2023). The Board's ministerial ruling in that case calculated the railroad industry's cost of capital for the year 2022. Consistent with numerous prior decisions calculating the industrywide cost of capital, the Board also declined to entertain in this docket Western Coal's challenges to the methodology used. Instead, as it has done many times before, it stated that Western Coal should file a petition for rulemaking if it wishes to challenge the methodology.

The Board continued to defend in court its decisions regarding BNSF Railway Company's terminal trackage rights in *Kansas City Southern Railway Company v. Surface Transportation Board*, 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. The OGC also 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 held quarterly in-person meetings during FY 2023 on December 6-7, 2022, March 15-16, 2023, June 20-21, 2023, and September 26-27, 2023.

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 27 voting members (as of September 20, 2023) of RETAC represent a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the petroleum production industry, the private railcar industry, the renewable energy industry, and labor. RETAC typically holds meetings twice per year. RETAC met in-person on October 26, 2022, and again on April 26, 2023.

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, as of September 20, 2023, composed of 12 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 15, 2023.

The Board is also in the process of forming a fourth advisory committee: the Passenger Rail Advisory Committee (PRAC). PRAC will provide advice and guidance to the Board on issues surrounding railroad passenger services and transportation. PRAC's 18 members will include representatives from Amtrak; commuter rail operators; intercity passenger rail operators other than Amtrak; states that fund or are served by intercity passenger rail service; Class I, II, and III railroad operators; rail labor; rail passenger advocates; and rail shipper advocates. PRAC will meet at least twice per year and is expected to be formed early in FY 2024.

Workload Summary

Workload Category	FY 2023 (actual as of 09/30/2023)	FY 2024 Estimate	FY 2025 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	145	120	120
Mediations	2	6	6
Audits	7	10	10
Decisions			
Complaints			
Rate	7	12	16
Non-Rate	34	25	30
Declaratory Orders	25	20	25
Ex Parte Proceeding Decisions			
Rulemakings	14	25	25
Other	32	22	22
Licensing			
Applications/Petitions	63	100	100
Notices of Exemption	154	185	190
Other (incl. grant stamps)	12	26	40
Non-Rail Decisions	12	10	10
Other	17	25	25
Defensibility Assessments	152	160	160
Depreciation Studies	9	10	10
Economic Statistical Reports	31	27	27
Environmental			
Categorical Exclusions	164	170	170
Environmental Assessments	28	30	35
Environmental Impact Statements	12	13	13
Ethics Reviews	155	160	160
Fee Waiver Decisions	4	12	15
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	8	9	10
Filings	1,799	2,300	2,400
FOIA Requests	119	100	100
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Investigations (pursuant to 49 U.S.C. § 24308(f))	1	1	1
Judicial Review	21	25	25
Outreach & Communication			
Conferences	32	20	20
Environmental Meetings	15	16	16
Ex Parte Meetings	0	20	20

Stakeholder Meetings	289	200	200
Public Forum			
Hearings	2	3	3
Listening Sessions	0	3	3
Oral Arguments	1	3	3
Other	2	0	0
Rail Service Data Reports	384	384	384
Recordations	1,184	1,400	1,500
Section 5 Collaborative Discussions	18	20	20
Technical Conferences	2	2	2
Waybill Requests	150	125	125
Paperwork Reduction Act Requests and Submissions to OMB	24	16	18

FY 2023 Administrative Accomplishments

Information Technology

During FY 2023, 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 maturity rating for FY 2023 continues to be Level 3, "Consistently Implemented," while the Board continues to make improvements to specific areas of the cybersecurity program. No new recommendations were issued for FY 2023. Three (3) of the FY 2021 recommendations were closed during the FY 2023 FISMA assessment. The Board continues to work to resolve the five remaining open recommendations from FY 2021.

In FY 2023, the Board continued to strengthen its cybersecurity posture by investing in new technologies, processes, and capabilities to meet FISMA requirements and Office of Management and Budget (OMB) regulations, as well as the current needs of its IT modernization efforts. The STB continues to expand its cybersecurity capabilities by continuing to leverage the Department of Homeland Security Continuous Diagnostics and Mitigation Program resources as it automates its continuous security monitoring of the STB's network. Additionally, the Board has invested in its Security Operations Center and audit logging capabilities by utilizing shared services offerings from the Department of Justice.

The benefits of the Board's ongoing IT modernization efforts were evident as the agency continued to operate in a hybrid work environment. Utilizing collaboration tools, staff were able to continue to navigate this new environment with no loss in productivity. Without the continued investments in the Board's IT architecture and infrastructure, this hybrid approach would not have been possible. The Board has completed work to transition to new solutions for managed data services over a secure, highly redundant, and high-capacity fiber optic telecommunications platform. Larger modernization efforts in FY 2023 include upgrading the Board's servers, expanding the use of multi-factor authentication to support a Zero Trust Architecture, finessing the new cloud-based backup solution, and continuing the migration of content from the Board's data center in Washington, D.C., to the cloud. In FY 2023, the Board initiated migration of data to the new data warehouse in the cloud and began efforts to build a new website in a hosted environment. Going forward, the Board expects to build on this foundation for data management and an upgraded website and continue to support the evidence-based decision-making, data analytics, and data visualization goals of the Board.

The Board also continues to mature its internal risk management process and procedure controls. The Board is leveraging outside consultants to mature its enterprise risk management program. The Board's Risk Management Committee continues to meet to assess organizational risk and identify ways to mitigate that risk. At least once per year, the Board reviews and updates its Risk Profile to ensure enterprise risk is considered and addressed.

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 utilizes 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. USA Performance has allowed Human Resources to improve the development of its performance plans, the tracking and monitoring of employees' performance, and the signature process, all electronically.

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 10 vacancies during FY 2023. The STB hired two paid interns for the Summer of FY 2023, via the Pathways Intern Program. The STB also received approval from OPM to utilize Direct Hire Authority for the Transportation Industry Analyst series, 2110. As mandated by Congress, the STB established the Office of Passenger Rail. The STB also requested an additional SES allocation for this office, which was approved by OPM.

Facilities Management

In FY 2023, the Section of Facilities Management consistently ensured the provision of secure and suitable office spaces for all new and existing employees. They maintained an ample supply of safety equipment and implemented all necessary precautions to guarantee the well-being of staff when they returned to the office on their scheduled in-office days. The section continues to work in collaboration with property management staff to properly identify and address all safety and office operational related issues.

The section maintained an onsite presence to facilitate the receipt and transmission of all correspondence to ensure the Board stayed in compliance with current rules, guidelines and policies. The Board continued to encourage electronic submissions for all filings and other documentation in accordance with OMB/NARA memo M-23-07, and the facilities team promptly and efficiently sent mail notifications of Board decisions to those who had not opted for electronic filing. Furthermore, the section effectively oversaw on-site support for the Board's virtual and hybrid hearings that took place in FY 2023.

Facilities Management continued to maintain responsibility for the day-to-day operation and administration of the agency's telecommunications system, as well as the Automated Emergency Defibrillators located through-out the agency. The Facilities section plays a vital role in handling building emergencies, evacuation procedures, sustainment, and continuity, as well as logistics for personnel services and health services support.

Financial Services

The Section of Financial Services (SFS or Financial Services) continued to provide excellent customer service to our internal and external customers. SFS leveraged our Shared Service Provider, DOT's Enterprise Services Center (ESC), to submit the monthly Governmentwide Treasury Account Symbol (GTAS) and Central Accounting Reporting System (CARS) reporting to the U.S. Department of the Treasury (Treasury), Bureau of the Fiscal Service (BFS) in a timely manner.

Financial Services collaborated with all STB offices to ensure large and small procurements were processed and met agency needs. To assist with this task, the Section of Financial Services implemented the Fraxion Spend Management software suite to enhance transparency and improve efficacy within the procurement business process. 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, which included updating the agency's performance measures. In addition, Financial Services ensured that necessary IT contracts were awarded including a new interagency agreement with the Department of Justice to provide the Board with cybersecurity monitoring and incident response. The SFS leveraged the procurement system to track and efficiently expend 97% of agency FY 2023 funds to benefit its mission.

Financial Services developed, justified, and presented the FY 2024 budget request estimates for approval by the Board and submission to Congress, and the submission of the FY 2025 budget request estimates to OMB and Congress, and also 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.

Work Environment

Having successfully carried out its mission and protected its workforce during COVID-19 and the return to office, the STB has reached a steady state of teleworking, balancing the flexibility of work at home with meaningful in-office work. The Board continued leveraging online collaboration tools, cloud-based software, and cybersecurity to make the hybrid work environment stronger, which enabled 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 in this document. The STB continues to evaluate its future of work state and its physical space requirements.

2022 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: 8th out of 30 small agencies. Our overall employee engagement score was 84, an increase of 4.8 points since last year. 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. This includes agency efforts related to diversity and inclusion.

The STB continues to make progress pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) and the Federal Data Strategy. 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 2023, the Board continued its data efforts including its use of data science and analytical tools, including pilots for data transformation, and a data warehouse. In addition, the Board matured its CKAN Enterprise Data Catalog architecture. The Board has continued to use a database for the analysis of incoming data from the Class I Railroads which has proved very useful in ongoing Board monitoring.

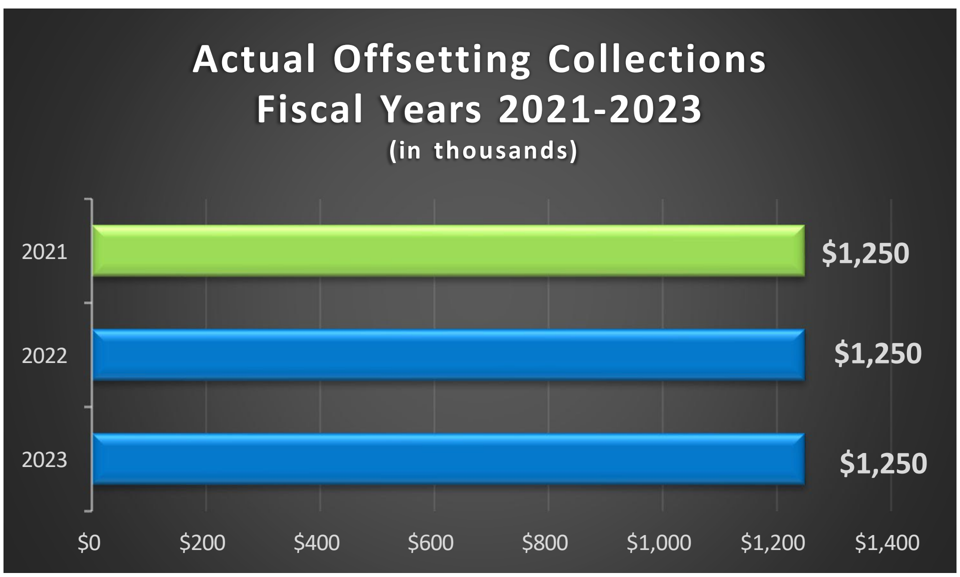
Financial Information

Financial Performance Overview

The STB's financial condition as of September 30, 2023, 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.

Source of Funds

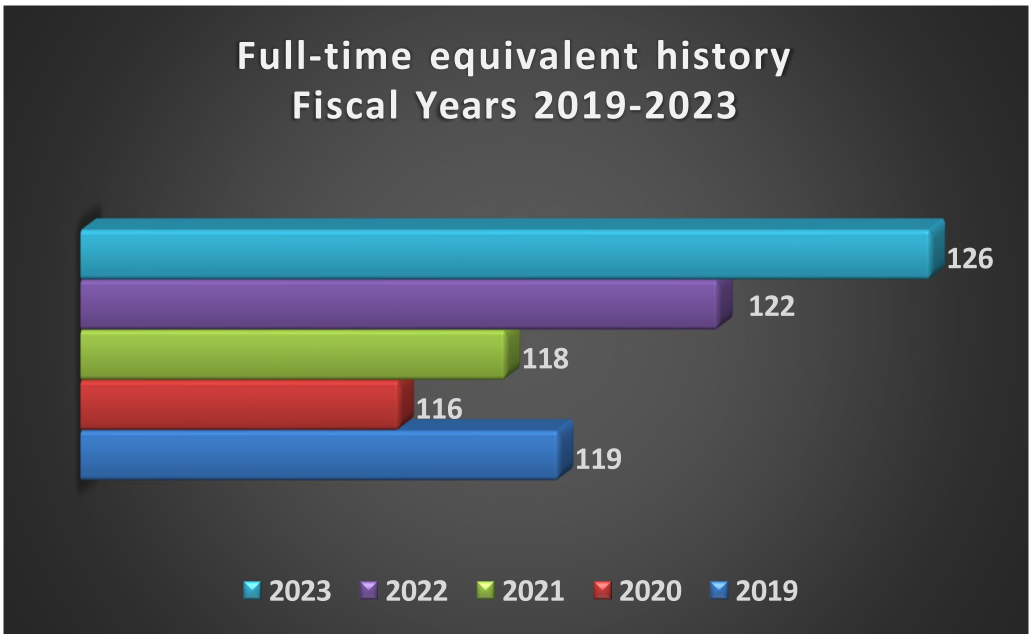
The STB has single-source funding, called Salaries and Expenses, funded by an annual appropriation available for commitments and obligations incurred during the year in which the authority was granted. Congress approved an FY 2023 appropriation for the STB in the amount of $41,429,000 through P.L. 117-328 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.

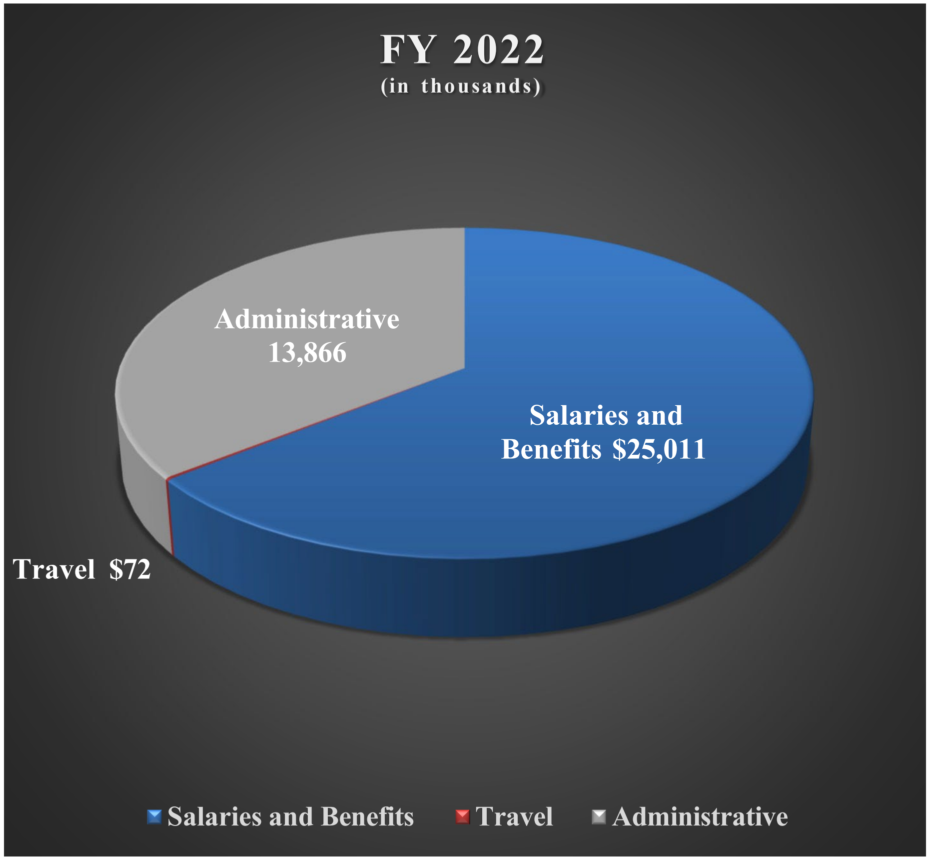
Full-Time Equivalent History

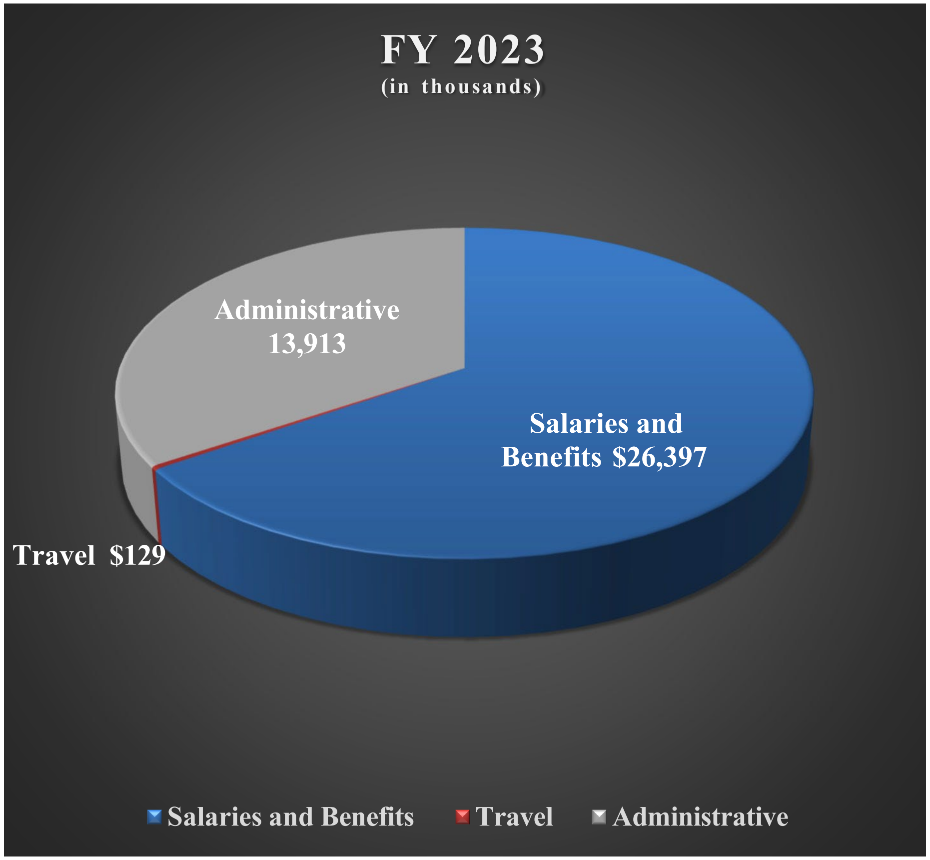
The STB's Full-Time Equivalent (FTE) level is largely driven by its annual appropriation amount. While the STB continues to make progress in its staffing levels, there were also several retirements and separations in FY 2023, resulting in a lower-than-expected FTE level. The STB continues to develop an appropriate mix of staffing and contractor support to ensure effective accomplishment of its mission.



Uses of Funds by Expense Category

During FY 2023, obligations against the STB's appropriation totaled $40,439 (in thousands), representing 98.0% of the available funding level. The funds were allocated as follows: 65.3% for salaries and benefits, 34.3% for administrative expenses (e.g., rent; government and commercial contracts; communications and subscriptions; equipment; and IT and non-IT services), and 0.3% 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 2023 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 $18,391, a decrease of $481, relative to fiscal year 2022. This was caused by decreased Fund Balances with Treasury ($887), and General Property, Plant, and Equipment ($561); and offset by increased advances and prepayments ($967).

Liabilities (in thousands): Total liabilities decreased by $692. This decrease was attributed to lower intragovernmental and other than intragovernmental accounts payable.

Net Position (in thousands): The Board's net position on the Balance Sheet and the Statement of Changes in Net Position was $11,963, an increase of $211.

Summary of the Statement of Net Cost (in thousands)
The STB's net cost of operations during fiscal year 2023 was $40,166, an increase of $2,660 relative to the previous fiscal year. The increase in net cost of operations was primarily due to a reduction in the realization of earned revenue from user fees.

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 fiscal year 2023, total budgetary resources were $45,985. This represents an increase of $2,095 from the fiscal year 2022 total budgetary resources of $43,890. The increase in total budgetary resources was primarily caused by increased new obligations and upward adjustments of $2,144, offset by a decrease in the expired unobligated balance by $190. In concert with the previously mentioned items, net outlays were $39,583. This represented an increase of $2,995 relative to fiscal year 2022.

Report QC2024004
November 14, 2023

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's **Audited Financial** Statements for Fiscal Years 2023 and 2022

Quality Control Review of the Independent Auditor's Report on the Surface Transportation Board's Audited Financial Statements for Fiscal Years 2023 and 2022

Required by the Accountability of Tax Dollars Act of 2002

QC2024004 | November 14, 2023

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, 2023, and September 30, 2022; provide an opinion on those financial statements; report on internal control over financial reporting; and report on 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 6, 2023, and related documentation, and inquired of its 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 ten 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, 2023

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 2023 and 2022.

We contracted with the independent public accounting firm Allmond & Company, LLC (Allmond), to audit STB's financial statements as of and for the fiscal years ended September 30, 2023, and September 30, 2022; provide an opinion on those financial statements; report on internal control over financial reporting; and report on 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

Allmond's report on its audit of STB's financial statements for fiscal year 2023, dated November 6, 2023, 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] GAO, *Financial Audit Manual*, volume 1 (GAO-22-105894), May 2023; volume 2 (GAO-22-105895), May 2023; and volume 3 (GAO-21-105127), June 2023.
[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 weakness[3] and three 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 ten recommendations (see attachment 1).

Significant Deficiencies

Control activities performed to review and approve the interim financial statements and footnotes were not adequately designed and implemented. Allmond identified mathematical errors in STB's footnotes to the financial statements. Allmond also found that balances reported in the footnotes did not always agree with the same balances reported in other footnotes or with the financial statements. Allmond found no evidence the footnotes to the financial statements were reviewed by STB management at the interim reporting period.

Employee benefit election forms were not maintained per Office of Personnel Management (OPM) requirements. Allmond identified instances where STB was not able to produce employees' benefit election forms. 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.

Internal controls over the monitoring and review of open obligations need improvement. Allmond identified instances in which the full balance of undelivered orders was no longer valid and should have been de-obligated. Allmond found that STB's review process relating to open obligations is insufficient, resulting in the failure to complete closeout procedures timely, including the de-obligation of funds for completed contracts.

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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 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.

[4] A significant deficiency is a deficiency, or 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.

Recommendations

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

1. 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.

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 management's review and certification of the financial statements and footnotes should be clearly documented and indicate what was reviewed, when the review was performed, and who performed the review for each reporting period.

6. STB should perform a review of 100 percent of employee benefit elections and Official Personnel Folders to ensure they are complete and accurate.

7. STB should develop policies and procedures that include the performance of periodic reviews of employees' Official Personnel Folders to ensure that they are complete and accurate.

8. 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.

9. STB should obtain replacement documentation for employee forms and other documentation that have been determined to be incomplete or irretrievable from databases and other electronic sources following management's initial and periodic routine reviews.

10. STB should implement and enforce its existing policies and procedures requiring the periodic review of all open obligations to ensure that closeout of completed contracts, including the de-obligation of funds and return of the balances for any advanced payments, is performed regularly and timely.

Quality Control Review

We performed a QCR of Allmond's report and related documentation and inquired of its 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 03, 2023, and received STB's response dated November 6, 2023 (see attachment 2).

Actions Required

We consider all ten of Allmond's recommendations open and resolved pending completion of the corrective action plans.

We appreciate the cooperation and assistance of STB's representatives and Allmond. If you have any questions about this report, please call 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, 2023

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

A/C ALLMOND & COMPANY, LLC CERTIFIED PUBLIC ACCOUNTANTS
7501 FORBES BOULEVARD, SUITE 200
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(301) 918-8200
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Independent Auditor's 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, 2023 and 2022; the related statements of net cost, changes in net position, and budgetary resources 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, 2023 and 2022 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. 24-01, *Audit Requirements for Federal Financial Statements*. Our responsibilities under those standards and OMB Bulletin No. 24-01 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

Management is responsible for (1) the preparation and fair presentation of the financial statements in accordance with U.S. generally accepted accounting principles; (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 (1) obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and (2) 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 of the financial statements conducted in accordance with GAAS, generally accepted government auditing standards (GAGAS), and OMB Bulletin No. 24-01 will always detect a material misstatement or material weakness 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. 24-01, we exercise professional judgment and maintain professional skepticism throughout the audit, identify and assess risks of material misstatement of the financial statements, whether due to fraud or error, and 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 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 over financial reporting. 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 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. These procedures consisted of (1) inquiring of management about the methods used to prepare the RSI and (2) comparing the RSI 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*, *Summary of Significant Performance Results*, *Agency Oversight and Mission Challenges, Program Performance Information*, and *Required Other Information* sections but does not include the financial statements and our auditor's 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, we considered STB's internal control over financial reporting, consistent with our 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. Given these limitations, during our 2023 audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

During our fiscal year 2023 audit, we identified deficiencies in STB's internal control over financial 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 2023 financial statements. Although the significant deficiencies in internal control did not affect our

[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.

opinion on STB's fiscal year 2023 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 a deficiency in STB's internal control over financial reporting that we do not consider to be a material weakness or significant deficiency that, nonetheless, warrants management's attention. We have communicated this matter to STB management and, where appropriate, will report on it 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 and OMB audit guidance.

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, 2023, 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 internal control over financial reporting 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 2023 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.

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 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 provisions of 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 auditor's 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.

Agency Comments

We provided STB with a draft of our report on November 3, 2023, and received STB's response on November 6, 2023. STB's response to our report was not subjected to the auditing procedures that we applied to our audit of the financial statements and, therefore, we express no opinion on the response.

Allmond & Company, LLC

Lanham, MD
November 6, 2023

Interim Financial Statement Footnotes Were Not Prepared in Accordance with U.S. Generally Accepted Accounting Principles (GAAP) and Office of Management and Budget (OMB) Circular A-136 Requirements (2023-01)

CONDITION

Internal control 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, 2023, we identified the following conditions:

- Note 11 – 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 ($43 million) and Rounding Differences ($1 million) in the footnote did not agree with the source documentation ($44 million and $0, respectively).
- Note 13 – Reconciliation of Net Cost to Net Outlays (Budget to Accrual Reconciliation) included the following errors:
  - the column and row totals were not mathematically correct;
  - Intragovernmental and Other than Intragovernmental Net Cost was reported as $8,600 (thousand) and $19,921 (thousand), equaling $28,045 (thousand) in error. The correct amounts should have been $8,605 (thousand), $19,440 (thousand), equaling $28,045 (thousand). The differences were $5 (thousand) and $481 (thousand), respectively.
  - Total Outlays and Total Budgetary Outlays did not agree with the amounts on the Statement of Budgetary Resources.
- One instance in which the prior year comparative information reported in the current year footnotes did not agree with the prior year footnote.
- Balances reported in footnotes did not always agree with the same balances reported in other footnotes or with the financial statements.
- The Financial Audit Manual (FAM) Volume 3 Federal Financial Reporting Checklist that was adopted by STB to evidence review and approval of the financial statements and footnotes was not signed at interim and review comments provided by the CFO were for the financial statements only. As such, there was no evidence that the footnotes to the financial statements were reviewed.
- As a corrective action plan was not implemented during FY 2023, the conditions identified during the FY 2021 and FY 2022 audits may reoccur because the root cause of those conditions has not been addressed.

CRITERIA

Office of Management and Budget (OMB) Circular A-136, Section II.3.8.25. Note 25: Statement of Budgetary Resources, subsection G, States, "Agencies should explain, pursuant to SFFAS 7, paragraph

79(g), 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) 2022) SBR and the actual amounts from "Detailed Budget Estimates by Agency" found in the Appendix of the Budget (i.e., the FY 2022 amounts in the FY 2024 Budget)."

Statement of Federal Financial Accounting Standards (SFFAS) 7, as amended by SFFAS 53, and OMB Circular A-136, Section II.3.8.31. Note 31: Reconciliation of Net Cost to Net Outlays (Budget to Accrual Reconciliation) require agencies to "disclose a reconciliation of net cost to net outlays as required by SFFAS7…. Entities should explain significant line items in the reconciliation and are strongly encouraged to follow the [Treasury Financial Manual] TFM crosswalk."

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

- An appropriate corrective action plan was not developed and implemented during FY 2021, FY 2022, or FY 2023.
- 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 in the financial statement footnotes.
- Based on management's internal review comments, it is unclear whether the review process was completed for all financial statements and footnotes.

EFFECT

- Increased risk of material misstatement, errors, and omissions in the financial statements and other required footnote disclosures.

RECOMMENDATIONS

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's review and certification of the financial statements and footnotes should be clearly documented and indicate what was reviewed, when the review was performed, and who performed the review for each reporting period.

MANAGEMENT RESPONSE

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

General Comments

We will begin addressing this recommendation so that there will be evidenced improvements in the 4th quarter FY 2023 financial statements.

AUDITOR RESPONSE

We will perform follow up procedures during the FY 2024 audit to determine if corrective actions have been fully implemented.

Employee Benefits Election Forms Not Maintained in Employees' Official Personnel Folders (OPFs) per Office of Personnel Management (OPM) Requirements (2023-02)

CONDITION

Corrective action relating to the maintenance of employees' personnel records was not implemented to prevent, detect, or correct errors in employees' payroll records. During our review of 113 payroll transactions selected from the population of all employees paid during the period of October 1, 2022 through September, 2023, we noted the following exceptions:

- One (1) instance in which the agency was not able to provide the Thrift Savings Plan (TSP) election form or equivalent documentation for the employee and pay period selected.
- Four (4) instances in which the agency was not able to provide the Federal Employees Health Benefits (FEHB) Program Standard Form (SF) 2809 election form or equivalent documentation for the employees and pay periods selected.
- Two (2) instances in which the agency was not able to provide the employee's Federal Employees' Group Life Insurance (FEGLI) Program SF-2817 election form or equivalent documentation for the employees and pay periods selected.
- Within the seven (7) exceptions listed above, there were six (6) instances in which missing documentation was identified during the FY 2021 or FY 2022 audits and corrective action was not taken.

CRITERIA

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."

The GAO *Standards for Internal Control in the Federal Government*, Section 10.03 Design of Appropriate Types of Control Activities, *Appropriate Documentation of Transactions and Internal Control*, states, "Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are 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."

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.

- The potential effects of these conditions 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.

RECOMMENDATIONS

We recommend that:

- STB should perform a review of 100% of employee benefit elections and Official Personnel Folders (OPFs) to ensure they are complete and accurate.

- STB should develop policies and procedures that include the performance of periodic reviews of employees' Official Personnel Folders to ensure that 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 have been determined to be incomplete or irretrievable from databases and other electronic sources following management's initial and periodic routine reviews.

MANAGEMENT RESPONSE

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

General Comments

Human Resources (HR) will address the recommendations to ensure progress and improvements in maintaining employees' eOPFs.

AUDITOR RESPONSE

We will perform follow up procedures during the FY 2024 audit to determine if corrective actions have been fully implemented.

Improvement Needed in the Internal Controls Over the Monitoring and Review of Open Obligations (2023-03)

CONDITION

Improvements are needed in the controls over the monitoring and review of open obligations. We selected a statistical sample of 26 undelivered order transactions from the population of undelivered orders paid and unpaid as of September 30, 2023. We identified the following errors:

- Five (5) instances in which the full balance of the undelivered order was no longer valid and should have been de-obligated.

CRITERIA

Federal Acquisition Regulation (FAR) 4.804-1 – *Closeout by the office administering the contract* – states:

"(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows: (1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations; (2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion….., (4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

Surface Transportation Board A-123 Process Documentation, Services of Financial Services, Procure to Pay, Contract Closeout, states, "The contract close-out process is applicable to all completed contracts, purchase orders, and Interagency Agreements.

1. Files for any firm-fixed price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.
2. Files for all other contracts or purchase orders should be closed within 2 months of the month in which the requestor receives evidence of physical completion."

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 Level
- Segregation of Duties."

CAUSE

- STB's review process relating to open obligations is insufficient, resulting in the failure to complete closeout procedures timely, including the de-obligation of funds, for completed contracts.

EFFECT

- The known amount of the overstatements is $271,437.79; the projected amount of the overstatement is $636,114.95. The total overstatement is estimated at $906,552.74.
- The failure to de-obligate prior year completed contracts and reimbursable agreements results in the overstatement of Obligations Brought Forward, Oct 1 and the understatement of Recoveries of Prior Year obligations on the Statement of Budgetary Resources.
- The failure to close-out obligations for which there was an advance to the other party results in the overstatement of Advances and Prepayments and the unnecessary retention of the agency's funds by the other party.
- Over- or under- recording of obligations prevents STB from knowing the precise status of its appropriations for budgetary purposes and significantly increases the risk of Antideficiency Act violations.

RECOMMENDATION

We recommend that STB implement and enforce its existing policies and procedures requiring the periodic review of all open obligations to ensure that closeout of completed contracts, including the de-obligation of funds and return of the balances for any advanced payments, is performed regularly and timely.

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

While the Agency was able to deobligate contracts for the closing fund (FY18), Management will conduct quarterly reviews with Agency Contracting Officer Representatives (CORs) to ensure deobligations are done on a more timely basis.

AUDITOR RESPONSE

We will perform follow up procedures during the FY 2024 audit to determine if corrective actions have been fully implemented.

The following table provides the fiscal year (FY) 2023 status of all recommendations included in the Independent Auditor's Report on STB's FY 2022 Financial Statements (November 6, 2022).

FY 2022 Finding	FY 2022 Recommendation	FY 2023 Status
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)	**Recommendations:** Improve controls relating to the preparation and review of the financial statements and footnotes. Specifically, we recommended that management should:	
	1. 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.	Open
	2. 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.	Open
	3. 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) intra-governmental 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.	Open
	4. Ensure that the 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.	Open

Employee Benefits Election Forms Were Not Maintained in Electronic Official Personnel Folders (eOPFs) per Office of Personnel Management (OPM) Requirements (2022-02)	Improve controls relating to the availability and retention of documentation to support employee benefit elections. Specifically, we recommended that management should: 1. Perform routine reviews of employee benefit elections and Official Personnel Folders (OPFs) to ensure they are complete and accurate. 2. 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. 3. Obtain replacement documentation for employee forms and other documentation that has been determined to be incomplete or irretrievable from databases and other electronic sources.	 Open Open Open

Attachment 2. Agency Response

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

November 6, 2023

Mr. Jason Allmond, Managing Member
Allmond & Company, LLC
7501 Forbes Boulevard, Suite 200
Lanham, Maryland 20706

Re: Fiscal Year 2023 Financial Statement Audit Report

Dear Mr. Allmond:

Thank you for the opportunity to provide comments to the Fiscal Year 2023 Financial Statement Audit Report, "Surface Transportation Board Audit Report September 30, 2023."

The Surface Transportation Board (STB or Board) has reviewed the Fiscal Year 2023 Financial Statement Audit Report, and we concur with the audit opinion and reports on internal controls and compliance with applicable provisions of laws and regulations. The Board 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 the 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,

Kimberly S. Jackson

Kimberly S. Jackson
Chief Financial Officer

Attachment 3. STB's Financial Statements and Notes

Principal Financial Statements

Surface Transportation Board

Balance Sheet

As of September 30, 2023 and 2022 (in thousands)

		2023		2022
Assets:				
Intragovernmental:				
Fund Balance with Treasury (Note 2)	$	15,106	$	15,993
Advances and prepayments (Note 4)		2,667		1,700
Total Intragovernmental		17,773		17,693
Other than Intragovernmental:				
Accounts Receivable, Net (Note 3)		-		-
General Property, Plant, and Equipment, Net (Note 5)		618		1,179
Total other than intra-governmental		**618**		**1,179**
Total Assets	**$**	**18,391**	**$**	**18,872**
Liabilities:				
Intragovernmental:				
Accounts Payable	$	649	$	736
Other liabilities (without reciprocals) (Note 6):				
Other unfunded employment related liability		83		97
Employer Contributions and Payroll Taxes Payable		81		74
Other liabilities (Note 7)				
Employer Contributions and Payroll Taxes Payable		268		247
Unfunded FECA Liability		49		47
Total Intragovernmental		1,130		1,201
Liabilities other than intragovernmental:				
Accounts Payable		333		1,196
Federal employee [and veteran] benefits payable (Note 6)				
Unfunded leave		1,972		1,972
Actuarial FECA Liability		562		296
Employer contributions and payroll taxable		52		47
Other liabilities (Note 7)				
Accrued funded payroll and leave		1,115		1,023
Liability for Non-Fiduciary Deposit Funds and Undeposited Collections		-		-
Other Liabilities Without Related Budgetary Obligations		1,264		1,385
Total other than intra-governmental		**5,298**		**5,919**
Total Liabilities	**$**	**6,428**	**$**	**7,120**
Net position:				
Unexpended appropriations - Funds other than those from Dedicated Collections	$	15,273	$	14,367

Cumulative results of operations - Funds other than those from Dedicated Collections		(3,310)		(2,615)
Total Net Position		11,963		11,752
Total Liabilities and Net Position	**$**	**18,391**	**$**	**18,872**

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

Surface Transportation Board

Statements of Net Cost

For the years ended in 2023 and 2022 (in thousands)

	2023	2022
Program Costs:		
Program A:		
Gross Costs	$ 40,840	$ 38,754
Less: Earned Revenue	674	1,248
Net Program Costs	40,166	37,506
Net program expenses including Assumption changes	40,166	37,506
Net Cost of Operations (Notes 13 and 14)	**$ 40,166**	**$ 37,506**

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 2023 and 2022 (in thousands)

		2023	2022
Unexpended Appropriations:			
Beginning Balances	$	14,367	18,373
Adjustments: (+/-)		-	-
Beginning Balances, As Adjusted		14,367	18,373
Appropriations received		40,756	37,902
Other Adjustments (+/-)		(2,060)	(5,280)
Appropriations used		(37,790)	(36,628)
Net Change in Unexpended Appropriations		906	(4,006)
Total Unexpended Appropriations - Ending		15,273	14,367
Cumulative Results from Operations:			
Beginning Balances		(2,615)	(2,759)
Adjustments: (+/-)		-	-
Beginning balances, as adjusted		(2,615)	(2,759)
Appropriations Used		37,790	36,628
Imputed Financing (Note 9)		1,683	1,021
Other (+/-)		(2)	1
Net Cost of Operations (+/-)		40,166	37,506
Net Change in Cumulative Results of Operations		(695)	144
Total Cumulative Results of Operations-Ending		(3,310)	(2,615)
Net Position	**$**	**11,963**	**11,752**

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

Surface Transportation Board

Statements of Budgetary Resources

For the years ended in 2023 and 2022 (in thousands)

		2023		2022
Budgetary Resources				
Unobligated balance from prior year budget authority, net (discretionary and mandatory)	$	4,556	$	4,738
Appropriations (discretionary and mandatory)		40,756		37,902
Spending authority from offsetting collections (discretionary and mandatory)		673		1,250
Total budgetary resources	$	45,985	$	43,890
Status of Budgetary Resources				
New obligations and upward adjustments (total) (Note 10)	$	41,149	$	39,005
Unobligated balance, end of year:				
Apportioned, unexpired accounts	$	343	$	202
Unexpired unobligated balance, end of year		343		202
Expired unobligated balance, end of year		4,493		4,683
Unobligated balance, end of year (total)		4,836		4,885
Total budgetary resources		45,985		43,890
Outlays, Net, and Disbursements, Net:				
Outlays, net (total) (discretionary and mandatory)	$	39,583	$	36,588
Distributed offsetting receipts (-)		(5)		(1,389)
Agency outlays, net (discretionary and mandatory)	$	39,578	$	35,199

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

Surface Transportation Board

Statement of Custodial Activity

For the years ended in 2023 and 2022 (in thousands)

	2023	2022
Total Custodial Revenue:		
Sources of Cash Collections:		
Miscellaneous Receipts	$ 5	$ 1,389
Total Cash Collections	5	1,389
Total Custodial Revenue	5	1,389
Disposition of Collections:		
Transferred to Others (by Recipient):		
Department of the Treasury	5	1,389
Total Disposition of Collections	5	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, 2023 and 2022 (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 seven 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, 2023, 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 as capitalized equipment laptops that were placed in service, and also classified laptops not placed in service as construction in progress since these assets require customization prior to being placed in service. During fiscal year 2023, the customization of these assets was completed, resulting in their placement 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 2023, 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 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 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
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 2022 to Treasury.

Activity and balances reported in the FY 2022 financial statements and footnotes have been reclassified to conform to updated guidance from the U.S. Department of Treasury for FY 2023 Reporting.

Note 2. Fund Balance with Treasury

STB's Fund Balance with Treasury account balances as of September 30, 2023 and 2022 (in thousands) were as follows:

Fund Balance with Treasury	2023	2022
Status of Fund Balance with Treasury		
Unobligated Balance		
Available	$ 342	$ 202
Unavailable	3,587	4,683
Obligated balance not yet disbursed	11,177	11,108
Total	**$ 15,106**	**$ 15,993**

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, 2023 and 2022.

STB's accounts receivable balances as of September 30, 2023 (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**	**$ -**

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**

Note 4. Advances, Prepayments, and Other Assets

STB's Advances, Prepayments, and Other Assets as of September 30, 2023 and 2022 (in thousands) were as follows:

Other Assets	2023		2022	
Intragovernmental				
Advances and Prepayments	$	2,667	$	1,700
Total Intragovernmental Other Assets	**$**	**2,667**	**$**	**1,700**
Total Other Assets	**$**	**2,667**	**$**	**1,700**

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. During FY 2023 laptops previously recognized as construction in progress were placed in service.

The general components of capitalized PP&E, net of accumulated depreciation, or amortization, consisted of the following as of September 30, 2023, and 2022 (in thousands), respectively:

Property, Plant, and Equipment as of September 30, 2023

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		1,190	$	212
Equipment	S/L	$ 50,000	3	$	505	$	156	$	349
Leasehold Improvements	S/L	$ 50,000	5	$	685		628	$	57
Total				**$**	**2592**	**$**	**1,974**	**$**	**618**

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		$	160		-	$	160
Total				**$**	**2,919**	**$**	**1,740**	**$**	**1,179**

Note 6. Liabilities Not Covered by Budgetary Resources

STB's Liabilities as of September 30, 2023 and 2022 (in thousands) were as follows:

Liabilities Not Covered by Budgetary Resources	2023	2022
Intragovernmental		
Covered by budgetary resources:		
Accounts payable	649	736
Accrued pay and benefits	349	321
Total intragovernmental covered by budgetary resources	**998**	**1,057**
Not Covered by budgetary resources:		
Unfunded FECA liability	$ 49	$ 47

Other Unfunded Employment Related Liability		83		97
Total intragovernmental not covered by budgetary resources		**132**		**144**
Not requiring budgetary resources:				
Custodial liabilities		-		-
Total intragovernmental not requiring budgetary		**-**		**-**
Total Intragovernmental	$	**1,130**	**$**	**1,201**
Other than intra-governmental (Non-Federal):				
Covered by budgetary resources:				
Accounts payable		333		1,196
FEVBP Employer contributions and payroll taxable		52		47
Accrued pay and benefits		1,115		1,023
Total other than intragovernmental covered by budgetary resources		**1,500**		**2,266**
Not Covered by budgetary resources:	$			
FEVBP Unfunded leave		1,972		1,972
FEVBP Actuarial FECA Liability		562		296
Other Liabilities Without Related Budgetary Obligations		1,264		1,385
Total other than intragovernmental not covered by budgetary resources		**3,798**		**3,653**
Total other than intra-governmental	$	**5,298**	**$**	**5,919**
Total liabilities not covered by budgetary resources	$	3,930	$	3,797
Total liabilities covered by budgetary resources	$	2,498	$	3,323
Total liabilities not requiring budgetary resources	$	-	$	-
Total Liabilities	**$**	**6,428**	**$**	**7,120**

Note 7. Other Liabilities

STB's Other Liabilities as of September 30, 2023 and 2022 (in thousands) were as follows:

Other Liabilities	**2023**	**2022**
	Total	Total
Intragovernmental		
Accrued Pay and Benefits	349	321
Current other Post-Employment Benefits Due and Payable	22	20
Non-current other Post-Employment Benefits Due and Payable	27	27
Unfunded employment related liability	83	97
Custodial liability	-	-
Total Intragovernmental	**481**	**465**

Other than intra-governmental:			
Accrued funded payroll and leave	1,115		1,023
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	1,143		1,264
Total other than intra-governmental	**2,379**	$	**2,408**
Total other liabilities	**2,860**	**$**	**2,873**

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 2023 and 2022, 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		
2024	$	3,014
2025	$	3,014
2026	$	3,014
2027	$	3,014
Thereafter (2028-2034)	$	19,591
Total Future Minimum Lease Payments	**$**	**31,647**

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 $1.68 million for FY 2023, and

$1.02 million for FY 2022.

Note 10. Status of Budgetary Resources - Net Adjustments to Unobligated Balance, Brought Forward, October 1

During the years ended September 30, 2023 and 2022, certain adjustments were made to the balance of unobligated budgetary resources available as of October 1, 2022 and 2021. 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, 2023 and 2022 are presented below (in thousands).

	September 30, 2023	September 30, 2022
Beginning Unobligated Balance, 10/1	$ 4,885	$ 9,402
Adjustments to Unobligated Balance brought forward, October 1	1,731	616
Other Adjustments to Unobligated Balance brought forward, October 1	(2,060)	(5,280)
Unobligated Balance from prior year budget authority, net	$ 4,556	$ 4,738

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

The reconciliation for the period ended September 30, 2022, is presented in the following table. The Budget with the actual amounts for the current year (i.e., FY 2023) 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 2024. (Dollars in Millions)

Surface Transportation Board	Budgetary Resources	New Obligations&		
Combined Statement of Budgetary Resources	44	39	1	37
Difference #1—Expired Funds	(5)	-	-	-
Difference #2—Rounding	-	-	-	-
Budget of the U.S. Government	**39**	**39**	**1**	**37**

Note 12. Undelivered Orders at End of Period

STB's Undelivered Orders at the end of September 30, 2023 and 2022 (in thousands) is:

Undelivered Orders	2023		2022	
Intragovernmental Undelivered Orders, Unpaid at the end of the period	$	2,108	$	1,700
Other than Intragovernmental Undelivered Orders, Unpaid at the end of the period	$	5,665	$	6,084
Intragovernmental Undelivered Orders, Paid at the end of the period	$	2,667	$	1,700

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, 2023 and 2022 (in thousands) is:

	Intragovernmental		Other than Intragovernmental		2023	
Net Operating Cost (SNC)	$	14,307	$	25,859	$	40,166
Components of Net Operating Cost Not Part of the Budgetary Outlays:						
Property, plant, and equipment depreciation expense	$	-	$	(561)	$	(561)
Increase/(Decrease) in Assets:						
Accounts receivable, net	$	-	$	-	$	-
Advances and Prepayments	$	967	$	-	$	967

Other Assets	$ -	$ -	$ -
(Increase)/Decrease in Liabilities:			
Accounts payable	$ 87	$ 863	$ 950
Federal employee and veteran benefits payable	$ -	$ (271)	$ (271)
Other Liabilities	$ (16)	$ 30	$ 14
Financing Sources:			
Imputed Cost	$ (1,683)	$ -	$ (1,683)
Total Components of Net Operating Cost Not Part of the Budget Outlays	$ (645)	$ 61	$ (584)
Components of the Budget Outlays That Are Not Part of Net Operating Cost:			
Acquisition of capital assets	$ 685	$ (685)	$ -
Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost:	$ 685	$ (685)	$ -
Misc Items			
Custodial/Non-exchange Revenue	$ 5	$ (4)	$ 1
Total Other Reconciling Items	$ 5	$ (4)	$ 1
Total Net Outlays			$ 39,583
Outlays, net	$ -	$ -	$ 39,583
Distributed offsetting receipts	$ -	$ (5)	$ (5)
Budgetary Agency Outlays, net			
Budgetary Agency Outlays, net	$ -	$ -	$ 39,578
Difference of Calculated vs. Actual Total Net Outlays	$ -	$ -	$ (5)

	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)

Note 14. Intragovernmental Costs and Exchange Revenues:

STB's Exchange Revenues at the end of September 30, 2023 and 2022 (in thousands) is:

As of September 30, 2023

	Intragovernmental		Other than Intragovernmental		Total	
Surface Transportation:						
Gross Costs	$	14,307	$	26,533	$	40,840
Less Earned Revenue	$	-	$	674	$	674
Net Program Costs	$	14,307	$	25,859	$	40,166
Net Cost of Operations	**$**	**14,307**	**$**	**25,859**	**$**	**40,166**

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**

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 2023 appropriated funding for the program is $41.429 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 2023, the STB Federal and non-Federal payment was $14 million, and payroll was $26.4 million for a combined total of

$40.4 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 $0.6 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 2023 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 2023, 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;
- 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 2023.

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 2023.

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**

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 30, 2023, and the new user fee rates took effect on September 29, 2023.

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—2023 Adjustment*, Docket No. EP 716 (Sub-No. 8), issued a final rule to adjust its existing civil monetary penalties for inflation for 2023. 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/2023/01/13/2023-00630/civil-monetary-penalties-2023-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	2023	$9,413
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	2023	$942
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each day violation continues.	1995	2023	$48
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	2023	$9,413
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	2023	$187-$942

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each day violation continues.	1995	2023	$94
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	2023	$942
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	2023	$187
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	2023	$187
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	2023	$1,288
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	2023	$12,883
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	2023	$32,208
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	2023	$25,767-$51,534

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	2023	$1,881
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	2023	$18,826
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	2023	$47,061
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	2023	$3,765
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	2023	$9,413
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	2023	$188,257
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	2023	$376
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For all subsequent violations.	1995	2023	$472

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	2023	$942
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	2023	$3,765
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	2023	$942
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	2023	$3,765
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	2023	$18,826
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	2023	$2,577
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	2023	$6,441
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	1995	2023	$9,413

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	2023	$3,765
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	2023	$942
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	2023	$14,960
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	2023	$12,883
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	2023	$9,413
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	2023	$942
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	2023	$187
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	2023	$187
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	2023	$1,881

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