



Surface Transportation Board

Performance and Accountability Report Fiscal Year 2018



MESSAGE FROM THE CHAIRMAN

November 14, 2018

The Fiscal Year (FY) 2018 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 2018, the Board continued to promote its strategic goals and support its mission as detailed in this Report.

The STB became fully independent less than three years ago upon enactment of the Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110. While the Board has been focused on the successful fulfillment of its core mission—the efficient, timely, and balanced resolution of surface transportation issues and disputes subject to its jurisdiction—the Board has also been intent on meeting its new administrative demands. Although a material weakness was discovered in the Board's financial reporting, the Board quickly took corrective action and updated its procedures. The Board is also working to address seven recommendations provided in its recent FY 2018 Federal Information Security Management Act audit and is firmly committed to advancing to the next security maturation level.

In sum, during FY 2018, the STB made notable progress toward achieving its mission and is committed to further improving its administrative processes. The Board will continuously strive to use resources wisely and ensure that the Board is responsive to its stakeholders and the public.

Sincerely,

A handwritten signature in black ink that reads "Ann Begeman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ann Begeman
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, management, and financial information for Fiscal Year (FY) 2018. 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 2022 based on the STB's FY 2018–FY 2022 Strategic Plan, and reports the STB's FY 2018 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) requires the STB to submit an annual report on its activities.
- *The Federal Manager's Financial Integrity Act of 1982* 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 the 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 Improper Payments Elimination and Recovery Act of 2010* 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 progress of 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.

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

The PAR may be reviewed on the STB's website: www.stb.gov.

Management's Discussion and Analysis

Mission Statement

The STB 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.

History

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 STB Reauthorization Act, 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

The STB is primarily charged with the economic oversight of the nation's freight rail system. The economics of freight rail regulation impact the national transportation network and are important to our nation's economy. For this reason, Congress gave the STB sole jurisdiction over rail mergers and consolidations, exempting STB-approved transactions from federal antitrust laws and state and municipal laws. The Board also has exclusive authority to determine whether certain railroad rates and practices are reasonable.

While a majority of the Board's work involves freight railroads, the STB also performs certain oversight of passenger rail matters, 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 is comprised of five members nominated by the President and confirmed by the Senate for five-year terms. Ann Begeman is serving as Chairman and Deb Miller is serving as Vice Chairman. As of September 30, 2018, there are three vacant seats on the Board. Each member serves a term of five years, unless appointed to fill an unexpired term. If a member departs the STB before the end of his or her term, a successor can be appointed to the vacant seat for the remainder of the departing member's 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 five Board members' offices, the staff of the STB is organized into six offices. The six offices are comprised of attorneys, paralegals, and economists; financial, transportation, and environmental analysts with expertise in the rail industry; and human resource specialists, IT specialists, and contractors providing support to ensure the STB has the capabilities to meet its statutory responsibilities.

The Office of Public Assistance, Governmental Affairs, and Compliance (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 news media. OPAGAC's mission is to aid the public in participating in matters before the STB, to disseminate information concerning the agency and its work, and to help the public understand the Board's role and the agency's decisions. This office is responsible for external functions including governmental affairs, communications, and compliance, as well as internal functions such as rail operations analysis, monitoring and analysis of certain passenger rail matters, tariffs, the Board's library, records management, and mediation coordination. OPAGAC is also responsible for the management of the Rail Customer and Public Assistance (RCPA) program, which assists 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 wherever possible.

The Office of Economics (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. The office 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 Rail Costing System. OE also provides the Carload Waybill Sample

to parties who meet the rules for release of waybill data codified at 49 C.F.R § 1244.9. All parties requesting data have access to the public use waybill file, which is created from the confidential waybill sample file.

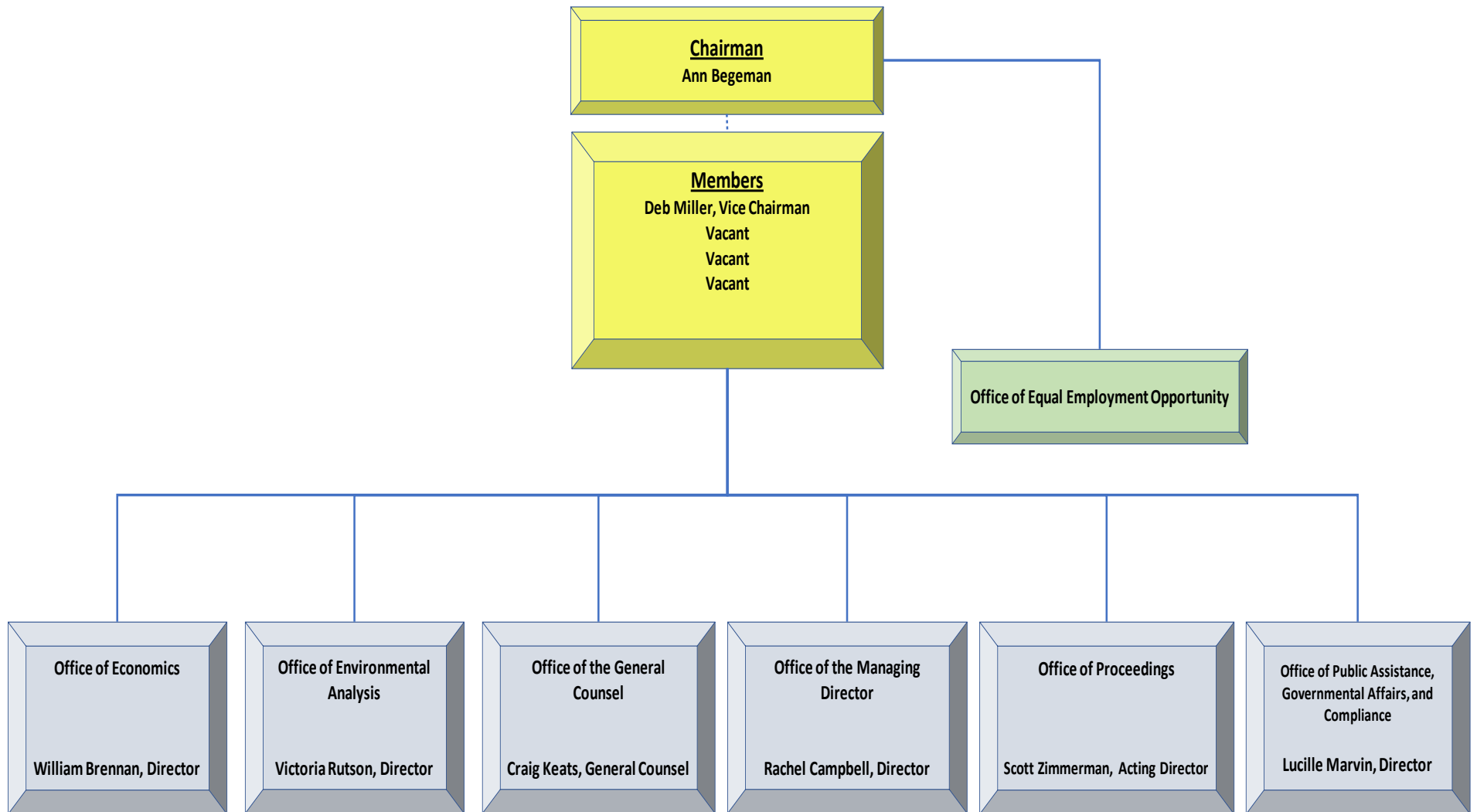
The Office of the General Counsel (OGC) is the legal counsel to the Board and provides two main services: enhancing the defensibility of the agency's decisions and defending those decisions in court. The OGC also advises the Board on various mission-related matters, including government ethics requirements and matters involving the Freedom of Information, Privacy, Paperwork Reduction, Sunshine, and Equal Employment Opportunity Acts. Finally, the OGC assists both the Department of Justice in responding to ancillary litigation related to Board proceedings and the Solicitor General in transportation-related Supreme Court litigation.

The Office of Proceedings (OP) has primary responsibility for managing the public record in formal cases (or proceedings) filed with the Board, making legal and policy recommendations (in conjunction with other Board offices) regarding the resolution of issues presented in those cases, and preparing the decisions issued by the Board. OP also performs administrative services for the Board, including receiving and processing formal filings from the public, administering the Board's voting process, serving as a clearinghouse for final decisions, coordinating with the Federal Register for publication of decisions, and tracking the Board's casework to provide timely resolution of pending matters. In addition, OP maintains a database for recording and perfecting secured transactions involving interstate rail equipment.

The Office of Environmental Analysis (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; prepares any necessary environmental documentation; conducts public outreach to inform the public about proposals before the Board and invites stakeholders' comments; and provides technical advice and recommendations to the Board on environmental matters.

The Office of the Managing Director (OMD) provides a wide range of administrative services in support of the Board's mission, including human resource management, financial services, IT support, and facilities management.

Surface Transportation Board Office—Organization Chart



Strategic Goals

Summary of Significant Performance Results

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.

Every four years, the STB updates its Strategic Plan as required by the GPRA Modernization Act, (Pub. L. No. 111-352). The STB's Strategic Plan defines its mission, goals, and progress measurements that demonstrate whether the Board has achieved its mission over a four-year period. During FY 2018, the STB updated its Strategic Plan for FYs 2018-2022. That document provides a blueprint for the agency to plan, implement, and monitor work needed to achieve the Board's mission for the next four years. It also establishes strategic goals, long-term strategies and performance expectations, and it provides a basis for the agency's annual budget and its PAR.

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

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

Strategic Objectives-

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

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

Strategic Objectives-

- Encourage the efficient management and operation of surface transportation

industries under the Board's jurisdiction;

- Promote a climate that encourages carriers to invest in needed additional capacity; and
- Minimize Federal regulatory control over surface transportation systems.

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

Strategic Objectives-

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

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

Strategic Objectives-

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

Relationship Between Strategic Goals and Performance Goals

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

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

Achieving Strategic Goals

Results

The STB has developed performance goals that promote its strategic goals and support its mission. Together, performance measures and targets under each strategic goal were designed to enhance and further those goals each fiscal year. The Board's talented staff has worked tirelessly to achieve maximum return for the efforts given. The STB applies a combination of practical approaches and experience to develop creative resolutions to difficult freight transportation 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 and resource limits, and authorization;
- Changes in market demand and strategic direction in the surface transportation industries under the Board's jurisdiction;
- Unanticipated nationwide or regional economic growth or recession;
- Major changes in the ability of surface transportation carriers to compete effectively and/or provide responsive and reliable service; and
- The impact of ongoing homeland security activities on the surface transportation industry.

Strategic Goals and Annual Performance Measures

Summary of Strategic Goals, Objectives, and Performance Measures			
STRATEGIC GOAL 1: Protect the public interest in surface transportation matters.			
Performance Goal 1: Facilitate greater understanding among and between carriers, shippers, and other stakeholders by supporting and participating in the work of the National Grain Car Council, the Railroad-Shipper Transportation Advisory Council, and the Rail Energy Transportation Advisory Committee.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Facilitate formal outreach efforts to promote effective compliance programs by hosting a minimum of seven collaborative meetings a year to discuss emerging challenges and industry trends with various stakeholder groups.	Met	Meet	Meet
Performance Goal 2: Encourage the voluntary resolution of rail operational and service-related issues involving shippers, railroads, state and local governments, and the public by providing informal access to the Board through the Rail Customer and Public Assistance Program.			
Performance Measure 1: Informal inquiries and complaints from stakeholders and the public are responded to by RCPA within 3 days of receipt.	Met	Meet	Meet
Performance Goal 3: Conduct responsive, impartial, and timely adjudications.			
Performance Measure 1: Use resources efficiently to issue timely Decisions that are responsive to the needs of the public and are consistent with applicable laws and precedent at least 90% of the time.	Met	Meet	Meet
Performance Measure 2: Board decisions are responsive to the comments, evidence, and argument, such that court decisions fault the agency for failing to address issues raised less than 25% of the time.	Met	Meet	Meet
Performance Measure 3: Board decisions are substantively supported, such that court decisions set aside agency rulings as beyond the agency’s authority, or arbitrary, capricious, or an abuse of discretion, less than 25% of the time.	Met	Meet	Meet

Summary of Strategic Goals, Objectives, and Performance Measures (continued)			
Performance Goal 4: Ensure early and continuing opportunities for public participation and stakeholder input for projects that trigger review under NEPA and other related environmental laws by conducting public outreach, and informational meetings to inform and educate the public, and managing rail-related information databases for public use. Provide consistent, coordinated, and predictable environmental reviews and authorization processes for infrastructure projects.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Prepare environmental service lists and conduct public outreach through meetings, webinars, and websites, as appropriate, at least 80% of the time in cases requiring environmental review.	Met	Meet	Meet
Performance Measure 2: Process environmental reviews and authorization decisions for major infrastructure projects within 2 years to the maximum extent practicable consistent with Executive Order No. 13807, greater than 80% of the time.	Met	Meet	Meet
Performance Goal 5: Ensure that the public, through efficient FOIA processing, can obtain information about the Board, the programs it administers, and the actions it takes.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Promote transparency and public confidence in the Board's programs, Board staff will respond to requests under the FOIA, within the statutory time frame of 20 business days, excluding statutory-authorized extensions.	Met	Meet	Meet
STRATEGIC GOAL 2: Foster economic efficiencies through reliance, where possible, on marketplace factors to encourage the development and continuation of economically sound, efficient, and reliable surface transportation systems that have adequate capacity to meet the needs of our economy.			
Performance Goal 1: Collect and publish statistical data permitting the public to better understand trends in traffic volumes, rates, and the financial health of the rail industry.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Publish Monthly, Quarterly, and Annual Statistical Reports within 30 days of receiving all needed inputs.	Met	Meet	Meet
Performance Measure 2: Collect and publish rail service metrics within 24 hours of receipt	Met	Meet	Meet

Summary of Strategic Goals, Objectives, and Performance Measures (continued)			
Performance Goal 2: Support the maintenance and development of adequate surface transportation systems to sustain the Nation’s economic growth.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Recordations are entered into the Board’s public database within one business day, at least 90% of the time.	Met	Meet	Meet
Performance Measure 2: The Board issues licensing authority within the required statutory and/or regulatory timeframe, at least 95% of the time.	Met	Meet	Meet
STRATEGIC GOAL 3: Provide a Timely, Efficient, and Decisive Process			
Performance Goal 1: Make key, disclosable information from the Board’s internal case monitoring and management system available to the public so that stakeholders can be informed about the expected timing for specific Board decisions.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Prepare, post, and provide to Congress quarterly reports on status of rate reasonableness cases, formal complaints, informal complaints, and pending regulatory proceedings.	Met	Meet	Meet
Performance Measure 2: Publishes the Semi-Annual Regulatory Agenda.	Met	Meet	Meet
STRATEGIC GOAL 4: Ensure Proper Agency Structure			
Performance Goal 1: Identify and alleviate current and future skills gaps by succession planning and by providing appropriate training to staff to prepare for impending retirements of senior staff.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: The Board will assess annually the training and development needs of staff, at least 90% of the time.	Met	Meet	Meet
Performance Goal 2: Ensure that Board members and staff are properly trained on, and abide by, applicable ethics rules, so that they can maintain the public’s trust in impartial Board decisions issued without conflicts of interest.	2018 Actual	2019 Target	2020 Target
Performance Measure 1: Conduct yearly ethics training.	Met	Meet	Meet
Performance Measure 2: Provide initial response to employee’s ethic inquiries within 48 hours, at least 80% of the time.	Met	Meet	Meet

Agency Mission Challenges and Oversight

Regulatory Responsibility and Oversight

The Board is charged with advancing the national transportation policy goals enacted by Congress¹ and promoting an efficient, competitive, safe, and cost-effective freight rail network.

While much of the agency’s work involves freight railroads, the Board also has certain oversight of passenger rail carriers, pipeline carriers, intercity bus carriers, household goods motor carriers, trucking companies involved in collective activities, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).² The STB also has certain regulatory authority over Amtrak; its operations on other railroads’ track; disputes over shared track use and facilities; 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 fair and timely decisions. 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.³

The Board’s regulatory jurisdiction includes, among other things, railroad rate reasonableness, mergers, line acquisitions, new rail line construction, and abandonments of existing rail lines. Because the economics of freight rail regulation impact the national network and are important to our national economy, Congress gave the STB sole jurisdiction over rail mergers and consolidations, exempting such transactions from federal antitrust laws and state and municipal laws. The STB also has exclusive authority to determine whether railroad rates and services are reasonable. The Board also 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 mission, the Board primarily engages in three types of formal activities: adjudication, rulemaking, and licensing. First, the Board adjudicates disputes between shippers and railroads on the reasonableness of the carriers’ rates and service

¹ 49 U.S.C. §§ 10101 (rail), 13101 (motor and water), 15101 (concerning pipelines).

² 49 U.S.C. §§ 13101-14914, 15101-16106.

³ 49 U.S.C. § 10502(a).

practices. In some instances, the Board also adjudicates disputes between the carriers themselves, or between the railroads and local communities in which their lines are located. Second, the Board conducts rulemaking proceedings, in which the agency proposes, modifies, or eliminates regulations that it believes 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 are in the public interest.

Collaborative Discussions

In FY 2018, 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, so long as certain conditions are met.⁴

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 the formal Board proceeding. *Rules Relating to Board Instituted Investigations*, EP 731 (STB served May 16, 2016). No formal investigations were conducted in FY 2018.

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

⁴ 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.

STB's authorization 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 from the full application procedures under 49 U.S.C. § 10502. 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 do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When 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).⁵

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, and help preserve rail service in many areas of the country.

⁵ 49 C.F.R. Parts 244 and 1106.

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 require Board approval to abandon a rail line, or to discontinue all rail service over a line that will still remain part of the national 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) Offers of Financial Assistance

If the Board finds that a railroad’s abandonment proposal should be authorized, and the railroad receives an offer by another party to acquire or subsidize continued rail operations on the line to preserve rail service—known as an Offer of Financial Assistance (OFA)—the agency 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 agency will set the price at fair market value, and the offeror will 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/Rail Banking

The Board administers the National Trails System Act’s “rail banking” 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 issues a Certificate of Interim Trail Use or a Notice of Interim Trail Use. If a trail use arrangement is reached, the right-of-way remains under the agency’s jurisdiction.

Liens on Rail Equipment

Liens on rail equipment intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,575 rail liens in FY 2018.

Railroad Rates

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 employed in maximum railroad-rate cases, feeder-line applications, rail-line abandonments, trackage-rights cases, rail merger reviews, the Board's Uniform Railroad Costing System (URCS), and, more generally, in annually evaluating the adequacy of individual railroad's revenues, and more generally in the Annual Railroad Revenue Adequacy decision.

Common Carriage or Contract Carriage

Under federal law, railroads have a common carrier obligation to provide rail service upon reasonable request. A railroad can provide that service either under rate and service terms agreed to in a transportation contract with a shipper or under openly available common-carriage rate and service terms. 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 the STB's and the individual carrier's website.

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 terms for agricultural products and fertilizer must also be published. These regulatory requirements 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 container traffic, boxcar traffic, and other miscellaneous commodities.

Rate Challenges: Market-Dominance Limitation

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 generally uses “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 that, to earn adequate revenues, railroads need pricing flexibility, including charging higher rates on “captive” traffic (traffic with no alternative means of transportation). The CMP guidelines also impose constraints on a railroad’s ability to do so. The most commonly used 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.

The Board has a methodology for “medium-sized” cases and for “small-sized” cases.⁶ Specifically, there is a simplified version of SAC (“Simplified-SAC”), which can be used in any rate case. There is also a modified version of the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified SAC or Three-Benchmark approach but with limits on the relief available if the Three-Benchmark procedure is used. The maximum recovery for Three-Benchmark cases is \$4 million, indexed for inflation.

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 service 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. To prevent the loss of necessary rail service, the Board 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

⁶ *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff’d sub nom*, *CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), and vacated in part on reh’g, *CSX Transportation, Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009); *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013, Dec. 3, 2014).

carrier's rules and practices.

Board/Stakeholder Discussions

Except for discussions of matters pending before the Board, and rulemaking proposals under which the Board's Ex Parte Communications rules are applicable, the agency welcomes informal stakeholder meetings with the Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2018, 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.

Dialogue between Railroads and Their Customers

During FY 2018, the Board continued to encourage railroads to establish a regular dialogue with their customers as a productive way of preventing and addressing rail customer-service concerns. In addition to RCPA dispute resolution work, RCPA staff regularly monitored the rail industry's operating performance to identify service issues before they became major problems.

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,⁷ 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 twin purposes of NEPA—informing the decisionmakers 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.

⁷ 42 U.S.C. §§ 4321-45.

OEA ensures the Board’s compliance with the regulations of the President’s Council on Environmental Quality⁸ and the Board’s regulations implementing NEPA.⁹ It determines whether certain cases filed with the Board are categorically excluded from environmental review or may require either an Environmental Assessment or an Environmental Impact Statement. In conducting environmental reviews for various rail line proposals on behalf of the Board, OEA strives to achieve an efficient, cost-effective, inclusive, and legally defensible process.

Environmental Review Process

The Board typically conducts environmental reviews for rail-line construction proposals, abandonments, and mergers. Cases handled by the Board during FY 2018 are summarized in the Annual Performance Report section of this report.

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 accounting system for railroads to use for regulatory purposes. The Board requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.¹⁰ Based upon information submitted by carriers, the Board compiles monthly and quarterly employment reports, annual wage statistics of Class I railroads, as well as quarterly rail fuel surcharges reports. The above information can be viewed on the STB website, www.stb.gov.

The Board publishes “rail cost adjustment factor” (RCAF) indices each quarter 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 5-year moving average).¹¹ Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes but is calculated as if a 5-year moving average had been applied consistently from the productivity adjustment’s inception in 1989.¹²

⁸ 40 C.F.R. §§ 1500-08.

⁹ 49 C.F.R. § 1105.

¹⁰ 49 U.S.C. §§ 11141-43, 11161-64; 49 C.F.R. §§ 1200-1201; 49 U.S.C. §§ 11145, 49 C.F.R. §§ 1241-1246, 1248.

¹¹ 49 U.S.C. §§ 10708, 1135.

¹² *Productivity Adjustment—Implementation*, 1 S.T.B. 739 (1996).

Positive Train Control (PTC) Reporting

In 2013, the Board adopted final reporting rules regarding PTC,¹³ an automated system designed to prevent train-to-train collisions and other accidents. Specifically, railroads must separately report information on capital and operating expenditures for PTC when submitting information for the Board’s annual Form R-1 reports (financial and statistical reports by Class I carriers). In this way, PTC expenses may be viewed both as components of, and separately from, other capital investments and expenses.

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 concerning shared use of tracks and other facilities (including disputes concerning Amtrak’s statutory right of preference over other railroads’ lines), and to set the terms and conditions of shared use if Amtrak and railroads or regional transportation authorities 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 2018 (PRIIA)¹⁴ expanded the Board’s jurisdiction over passenger rail. PRIIA authorizes the STB to institute enforcement or investigatory action under certain circumstances. Following investigatory action, the agency is to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and it can award damages and prescribe other relief in appropriate instances.

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.”¹⁵ Excluded from this jurisdiction, however, is “mass transportation provided by a local government authority.”¹⁶

¹³ *Reporting Requirements for Positive Train Control Expenses & Investments*, EP 706 (STB served Aug. 14, 2013).

¹⁴ Pub. L. 110-432, 122 Stat. 4848 (2008).

¹⁵ 49 U.S.C. § 10501(a)(2)(A).

¹⁶ 49 U.S.C. § 10501(c)(2)(A).

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 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.

Controls, Systems, and Legal Compliance

The STB fully recognizes that internal controls are fundamental to the systems and processes it uses to manage its operations and achieve its strategic goals. As noted in the following section, one material weakness was identified in the DOT Office of Inspector General (OIG) report “STB Audit of Financial Statements, as of and for the Years Ended September 30, 2018 and 2017.” The STB updated its processes to fully address the internal control deficiency and staff will review the Board’s internal processes more broadly with the goal of finding and correcting weaknesses in the way the Board operates as a federal agency.

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, audits of the financial statements, annual performance plans, and DOT OIG audit reports.

The STB received an unmodified (clean) audit opinion for FY 2018. During Board’s financial reporting material errors were identified in the FY 2018 financial statements and related footnote disclosures. These material errors were due to improper reporting of obligations and advances in related line items and footnotes. The STB corrected its statements and updated its processes to strengthen its internal control deficiencies.

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 U.S. Treasury for collection. The Bureau of Fiscal Services conducts the collection of delinquent debts through the Cross-Servicing Program and the U.S. 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 96% of invoices were paid on time in FY 2018., while eleven late payments resulted in interest charges of \$92.00 on total payments of \$2.87 million. The Board continues to work with Enterprise Services Center (ESC), the STB's shared service provider, to take proactive steps to increase the number of on-time payments to 100% and to prevent duplicate payments using ESC's Enterprise Data Quality software.

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 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.

USA Spending Reconciliation

The Board, through ESC, implemented a plan to ensure data completeness and accuracy. Using control totals with financial statement data, samples of financial data were compared to actual award documents. The review ensured that the prime Federal award financial data reported on USAspending.gov were correct at the reported percentage of accuracy.

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 has submitted timely files for Data Act Reporting for FY 2018.

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 the DOT OIG the authority 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 2018, the DOT OIG engaged an independent public accounting firm to audit the Board's financial statements. As explained in the Financial Overview section of the report, the STB received an unmodified (clean) audit opinion for FY 2018.

Chairman's Statement of Assurance

The Surface Transportation Board's (STB or Board) management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of Sections 2 and 4 of the *Federal Managers' Financial Integrity Act of 1982* (FMFIA). Management is also responsible for implementing practices that identify, assess, respond, and report on risks. This FMFIA assurance statement summarizes noteworthy internal control and management efforts in support of the statement of modified assurance for the Fiscal Year (FY) ended September 30, 2018.

STB management conducted its assessment of the effectiveness of its risk management framework and system of internal control for FY 2018 in accordance with *OMB Circular 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 it has effective internal controls over operations, financial reporting, and compliance with applicable laws and regulations as of September 30, 2018. However, due to a material weakness in controls over financial reporting, the STB is submitting a modified statement of assurance. The details of the material weakness are provided in the *Surface Transportation Board Audit of Financial Statements as of and for the Years Ended September 30, 2018 and 2017* issued by the Board's external auditors. To address the material weakness, the STB developed a corrective action plan, which included improved identification of outstanding advances. The STB will continue monitoring its obligations and implementing necessary oversight controls to ensure all obligations are processed timely and appropriately.

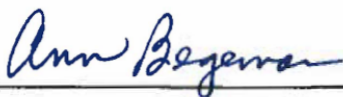
The *Federal Financial Management Improvement Act of 1996* (FFMIA) requires establishing and maintaining financial management systems that substantially comply with Federal financial management system requirements, applicable Federal accounting standards, and the U.S. Standard General Ledger (USSGL). The STB can provide reasonable assurance that it is compliant with the objectives of FFMIA. The STB uses a Federal shared services provider, the Enterprise Services Center (ESC) of the Department of Transportation (DOT), to process its financial data. The STB reviewed the DOT Office of Inspector General (OIG) *Quality Control Review of the Independent Service Auditor's Report on DOT's Enterprise Services Center (SSAE 18 SOC 1 – Type 2 Report)*. The system provided by the service center is compliant with Federal financial management system requirements, Federal accounting standards, and the USSGL.

STB management assessed its purchase and travel card programs for compliance with the *Government Charge Card Abuse Prevention Act of 2012* 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 assessed the purchase and travel card program as directed by the guidance provided in OMB Circular A-123 Appendix B. Based on the results of the assessment, the STB can provide reasonable assurance that it is in compliance with OMB Circular A-123 Appendix B.

STB management identified programs and activities susceptible to significant improper payments. The Board assessed the identified activities in accordance with the *Improper Payments Information Act of 2002*, as amended by the *Improper Payments Elimination and Recovery Act of 2010* and the *Improper Payments Elimination and Recovery Improvement Act of 2012*. Based on the STB's assessment, no improper payments were made.

The STB's FY 2018 Federal Information Security Management Act audit was conducted by the DOT OIG. It provided seven recommendations to the STB; the Board concurred with each recommendation. The STB is committed to addressing the recommendations issued in FY 2018, completing the remaining FY 2017 audit recommendations, and advancing to the next security maturation level.



Ann Begeman
Chairman

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 2018 include issuing 481 decisions addressing rail licensing, unreasonable practice complaints, rate reasonableness, declaratory orders, ex parte proceedings, and other matters. In addition, the Board was active in court related work, defending the Board's decisions in Courts of Appeals, and in activities related to FOIA and ethics.

Annual Performance Report

FY 2018 Activities and Accomplishments

Enhanced Communications with Stakeholders

The Board, in a final rule in *Ex Parte Communications in Rulemakings*, EP 739 (STB served Feb. 28, 2018), modified its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. The Board also adopted other changes to its ex parte rules to clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. The intent of the modified regulations is to enhance the Board's ability to make informed decisions through increased stakeholder communications while ensuring that the Board's record-building process in rulemaking proceedings remains transparent and fair.

Following issuance of the new rules, the Board issued a decision permitting ex parte communications in *Expanding Access to Rate Relief*, EP 665 (Sub-No. 2) (STB served Mar. 28, 2018). In *Railroad Revenue Adequacy*, EP 722 (STB served Mar. 28, 2018), the Board clarified that informal communications with stakeholders in that proceeding had been and would continue to be allowed.

The Board also launched two staff-led initiatives to explore significant regulatory issues and invited stakeholders to participate in information-gathering meetings. First, the Board formed a Rate Reform Task Force, which is reviewing the methodologies currently employed by the Board and is considering both new approaches and simplifications to the existing methodologies. The Task Force is reaching out to a broad cross-section of stakeholders and holding meetings to help identify new approaches that are less resource- and time-intensive for parties and the Board so the agency can comport with the most recent legislative direction to close the record in rate cases sooner and issue decisions in a more expeditious

manner.

Second, Board staff held informal meetings with interested persons to discuss and gather feedback on the adequacy of the Board's current regulations regarding emergency service and service inadequacies. The Board's existing directed service regulations are rarely used, even in times of rail service deterioration. Therefore, the Board staff held informal discussions to help the Board determine whether and how the agency's current directed service regulations could be modified to offer a more meaningful path to relief in times of serious rail service challenges.

Rail Service Oversight and Monitoring

During FY 2018, the Board continued its informal monitoring of rail service problems on the rail system of CSX Transportation, Inc. (CSX), and of service recovery efforts. The Board commenced this oversight during the summer of 2017 when it became concerned about the weekly service data reported by CSX. In addition, the Board began receiving complaints from CSX customers, Congressional offices, and industry stakeholders, who reported increased transit times, unreliable switching operations, inefficient car routings, poor communications from CSX customer service, and disruption to shippers' business operations. The Board's initial oversight actions included sending letters to CSX's President and Chief Executive Officer (CEO) (at the time, E. Hunter Harrison), establishing weekly calls between STB's staff and CSX's senior management, and requiring CSX to provide specific additional performance data on a weekly basis.

On October 11, 2017, the Board held a listening session in Washington, D.C., to hear in person from senior CSX executives on the company's plans to resolve service problems. The public forum also provided stakeholders with the opportunity to report on rail service challenges. Nearly 20 rail shippers and shipper trade associations participated in the listening session and described in detail the impact of subpar and unreliable rail service. Additionally, the Board members were able to hear from and directly question CSX's President and CEO and its Chief Operating Officer.

Following the listening session, the Board continued to monitor CSX's service and its recovery efforts. Board staff reviewed performance data submitted by CSX on a weekly basis and conducted weekly calls with CSX management. On December 14, 2017, the Board wrote to CSX's President and CEO to request updates on several key issues related to its service recovery. On February 1, 2018, the Board members met separately with CSX's new President and CEO, James Foote, about CSX's progress in restoring reliable service. At the end of the first calendar quarter of 2018, the STB discontinued its heightened oversight and the

additional reporting by CSX in recognition of CSX's improved weekly performance metrics during the quarter.

In March 2018, the Board wrote to all seven Class I railroads operating in the United States to request an update on each carrier's current service performance and outlook for the remainder of 2018. The letters were prompted by the Board's review of railroad service performance data, which is reported to the Board on a weekly basis, and concerns over declining rail service voiced by two major shipper trade associations. The Board also initiated informal monitoring of three carriers, including weekly calls between senior railroad management and staff of the Board's RCPA program office. Board members or staff also met with senior management of these railroads in the spring of 2018 to discuss the Board's concerns about service and learn about recovery efforts. These efforts are ongoing with one carrier.

On September 20, 2018, the Board wrote to Mr. Lance Fritz, the CEO of Union Pacific Railroad (UP), about UP's recent announcement of its plan to implement Unified Plan 2020, a new network operating plan that incorporates tenets of precision scheduled railroading. The Board requested that UP's senior management establish weekly calls with the Board's RCPA staff during the implementation process to keep the agency fully informed of UP's operating changes and impacts to customers and others. The calls are ongoing.

Rate Cases

On January 11, 2018, the Board issued a final decision in *Consumers Energy Co. v. CSX Transportation, Inc.*, Docket No. NOR 42142. The Board found that the complaining shipper did not have a feasible shipping alternative to the defendant railroad for the transportation at issue, and that the rate challenged by the complaining shipper had been demonstrated to be unreasonably high under the stand-alone cost constraint. Therefore, the Board prescribed maximum reasonable rates for future shipments and ordered the defendant railroad to pay reparations for past excessive charges. At the same time, however, the Board also found that the complaining shipper had not shown that the defendant railroad was revenue adequate under the revenue adequacy constraint. This case required significant Board resources. Both litigants filed petitions for technical corrections and for reconsideration of the January decision, which the Board addressed in a decision served August 2, 2018. The complaining shipper and the defendant railroad have each sought judicial review of the Board's decisions, which have been consolidated by the U.S. Court of Appeals for the District of Columbia Circuit. *See Consumers Energy Co. v. STB, et al.*, No. 18-1259 (D.C. Cir.).

In *Arizona Electric Power Cooperative, Inc. v. BNSF Railway*, Docket No. NOR 42113, the Board reinstated the rate prescription in this proceeding for 2016, using financial data that had been unavailable until earlier this year. The Board previously held this case in abeyance through 2018, to allow the asset markup resulting from the Berkshire Hathaway, Inc., acquisition of BNSF Railway Company (BNSF) to be fully reflected in the variable costs and rate prescription. Because the asset markup is now fully reflected in the variable costs, the Board removed this proceeding from abeyance and reinstated the rate prescription for 2017-2018.

Unreasonable Practice

In *National Railroad Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway*, Docket No. NOR 42134, the Board dismissed without prejudice the complaint of the National Railroad Passenger Corporation (Amtrak) requesting that the Board initiate an investigation of alleged substandard performance of the Illini/Saluki service on the lines of Canadian National Railway Company, between Chicago and Carbondale, Ill. The Board took this action because its final rules with respect to on-time performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 were vacated by the U.S. Court of Appeals for the Eighth Circuit in July 2017 and the U.S. Supreme Court denied petitions for certiorari in February 2018.

In *National Railroad Passenger Corp.— Investigation of Substandard Performance of the Capitol Ltd.*, Docket No. NOR 42141, the Board dismissed without prejudice the Amtrak complaint requesting that the Board initiate an investigation of alleged substandard performance of the Capitol Limited service on the lines of CSX, and Norfolk Southern Railway Company (NS) between Chicago, Ill., and Washington, D.C. The Board took this action because its final rules with respect to on-time performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 were vacated by the U.S. Court of Appeals for the Eighth Circuit in July 2017 and the U.S. Supreme Court denied petitions for certiorari in February 2018.

In *Central Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co.*, Docket No. NOR 42159, the Board prohibited Modesto and Empire Traction Company from, among other things, requiring prepayment for unit train switching and interchange services for rail traffic destined to the Modesto facility of Central Valley Ag Grinding, Inc. and Central Valley Ag Transport Inc. during the pendency of the complaint proceeding.

Petition for Enforcement

In *Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp.*, Docket No. FD 32760, the Board granted the petition for enforcement filed by BNSF and Mission Rail Industrial Park, LLC and directed Union Pacific Railroad Company (UP) to allow BNSF to provide rail service to Mission Rail Park.

Rulemakings

In *Revisions to the Cost of Capital Composite Railroad Criteria*, Docket No. EP 664 (Sub No. 3), the Board adopted final rules to update one of the screening criteria used to create the “composite railroad” for the Board’s annual cost-of-capital determination. This final rule requires a company’s stock to be listed on either the New York Stock Exchange (NYSE) or the Nasdaq Stock Market, rather than on either the NYSE or American Stock Exchange (AMEX), as the AMEX no longer exists.

In *Expediting Rate Cases*, Docket No. EP 733, the Board adopted final rules to modify its regulations pertaining to its rate case procedures pursuant to section 11 of the STB Reauthorization Act.

In *Ex Parte Communications in Informal Rulemaking Proceedings*, Docket No. EP 739, the Board modified its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. The Board also adopted other changes to its ex parte rules that would clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. The intent of the modified regulations is to enhance the Board’s ability to make informed decisions through increased stakeholder communications while ensuring that the Board’s record-building process in rulemaking proceedings remains transparent and fair.

In *Updating the Code of Federal Regulations*, Docket No. EP 746, the Board issued two decisions, each adopting final rules to replace certain obsolete or incorrect references in the Board’s regulations.

Finally, in *Payment, Filing, and Service Procedures*, Docket No. EP 747, the Board proposed updates and efficiencies to the agency’s payment, filing, and service procedures recommended by the Board’s Regulatory Reform Task Force. The proposed updates are intended to promote increased use of electronic filing and payment systems, reduce paper filing and service requirements on the Board and its stakeholders, and enhance the accessibility of information relating to proceedings and functions of the Board. Comments were due September 24, 2018.

Declaratory Order

In *Los Angeles County Metropolitan Transportation Authority—Petition for Declaratory Order*, Docket No. FD 36112, the Los Angeles County Metropolitan Transportation Authority (LACMTA) filed a petition for declaratory order asking the Board to confirm its status as a rail carrier providing transportation subject to the jurisdiction of the Board. LACMTA sought such clarification after the California State Board of Equalization had concluded that LACMTA is not a rail carrier providing transportation subject to the jurisdiction of the Board. The Board found that LACMTA continued to be a rail carrier within the Board’s jurisdiction.

In *Adrian & Blissfield Rail Road—Petition for Declaratory Order*, Docket No. FD 36148, Adrian & Blissfield Rail Road requested a declaratory order that the initiation of a Michigan state court condemnation proceeding by Consumers Energy Company was preempted under 49 U.S.C. § 10501(b). The Board denied the petition for declaratory order but provided guidance on the question of preemption for the court and the parties.

In *City of Sammamish, Wash.—Petition for Declaratory Order*, Docket No. FD 36161, the Board denied a request of Sammamish, Wash. (City), for an order declaring that the construction and use of a railbanked corridor for interim use as a recreational trail by King County, Wash. (County), “is not exempt from the City’s local land use and development regulations,” and that neither 49 U.S.C. § 10501(b), nor the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), authorizes the County to override these local public health and safety regulations in order to operate the trail.

In *Jimmy Lee Waneck —Petition for Declaratory Order*, Docket No. FD 36167, the Board denied a request to issue a declaratory order but provided guidance on the question of preemption concerning safety-related claims arising from a collision between a train and a bus at a railroad crossing. The defending carrier filed a petition for reconsideration, which the Board denied by a decision served in October 2018.

In *Commuter Rail Division of the Regional Transportation Authority—Petition for Declaratory Order—Status of Chicago Union Station*, Docket No. FD 36171, the petitioners asked that the Board declare that the agency retains jurisdiction over Chicago Union Station and that the Board has authority to prescribe terms for its use and to mediate related disputes. The Board denied the petition as premature but provided guidance on issues that the parties should address if a related petition is filed in the future.

Licensing

In *New England Central Railroad—Trackage Rights Order—Pan Am Southern LLC*, Docket No. FD 35842, the Board adopted modifications to a trackage-rights order governing the operations of Pan Am Southern LLC over a New England Central Railroad, Inc. (NECR) rail line. In a later decision, the Board denied a petition filed by NECR to reconsider the Board's original decision.

In *Grand Elk Railroad—Acquisition of Incidental Trackage Rights Exemption—Norfolk Southern Railway*, Docket No. FD 35187 (Sub-No. 1), et al., the Board denied the petition for exemption of Grand Elk Railroad (GDLK) in Docket No. FD 36127 and its petition for a Board order in Docket No. FD 36127 (Sub-No. 1). However, the Board reopened Docket No. FD 35187 (Sub No. 1), to authorize retroactively GDLK's acquisition of trackage rights in Grand Rapids, Mich., as of January 30, 2009. The Board also directed CSX to allow GDLK to provide service over CSX's line pending any subsequent determination of GDLK's right to access the line.

In *City of Fishers—Petition for Partial Revocation of Exemption*, Docket No. FD 36137, the Board found that the cities of Fishers and Noblesville, Ind., and Hamilton County, Ind., may pursue rail banking of a line of rail under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 without the need for revocation authority from the Board. Subsequently, in a related docket—Docket No. AB 290 (Sub-No. 117X)—three separate requests for interim trail use were filed, and a “motion for clarification” and a petition for preliminary injunction were also filed. Those matters are pending with the Board.

In *Delmarva Central Railroad—Change in Operator Exemption—Cassatt Management, LLC*, Docket No. FD 36196, the Board permitted Delmarva Central Railroad to assume operations on an expedited basis over a line of railroad on the Delmarva Peninsula that had been served by Cassatt Management, LLC, d/b/a Bay Coast Railroad. In a related matter, in *Buckingham Branch Railroad—Change in Operators Exemption—Cassatt Management, LLC*, Docket No. 36202, the Board similarly permitted Buckingham Branch Railroad Company to assume operations on an expedited basis over lines of railroad near Norfolk, Va., that had also been served by Cassatt Management, LLC, d/b/a Bay Coast Railroad.

In several bus cases, the Board tentatively approved and authorized acquisitions of properties, or control of one carrier by another, subject to opposing comments. In each case, no opposing comments were filed. Consequently, those transactions became effective by operation of law. *Sureride Charter Inc.—Acquisition of Control—McClintock Enterprises*, Docket No. MCF 21077; *National Express LLC—Acquisition of Control—Queen City*

Transportation, LLC, Docket No. MCF 21078; *Academy Bus, LLC—Purchase of Certain Assets of Daniel's Charters & Tours LLC*, Docket No. MCF 21079; *National Express Transit Corp.—Acquisition of Control—Aristocrat Limousine & Bus.*, Docket No. MCF 21080; and *Larry Ferguson—Acquisition of Control—C & H Bus Lines, Inc.*, Docket No. MCF 21081. All Aboard America! Holdings, Inc.—Acquisition of Control—Lux Bus America Co., Docket No. MCF 21082; National Express LLC—Acquisition of Control—Wise Coaches, Inc., Docket No. MCF 21083.

Abandonments/Discontinuances

In *CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, Ky.*, Docket No. AB 55 (Sub-No. 773X), the Board permitted CSX to end its common carrier rail service over approximately 1.6 miles of rail line in Harlan County, Ky., subject to standard employee protective conditions.

In *Norfolk Southern Railway—Abandonment Exemption—in Aurora, Portage County, Ohio*, Docket No. AB 290 (Sub-No. 394X), and *Cleveland Commercial Railroad—Discontinuance of Lease & Operation Authority—in Aurora, Portage County, Ohio*, Docket No. AB 1257X, the Board allowed NS to abandon, and Cleveland Commercial Railroad Company, LLC (CCR) to discontinue service over, a line of railroad in Portage County, Ohio, subject to historic preservation and public use conditions. The Board also denied a stay requested by the Ohio Association of Railroad Passengers. In a later decision, the Board denied the motions of the Ohio Association of Railroad Passengers to void and reject the NS and CCR verified notice of exemption.

In *Union Pacific Railroad—Abandonment & Discontinuance of Service Exemption—in Cerro Gordo County, Iowa*, Docket No. AB 33 (Sub-No. 327X), the Board granted an appeal of the November 20, 2017 decision of the Acting Director of the Office of Proceedings that rejected M&StL Group, LLC's notice of intent to file an offer of financial assistance (OFA) to purchase a rail line from UP, and found M&StL Group, LLC, preliminarily financially responsible. M&StL subsequently informed the Board that it would not be filing an OFA to purchase the rail line involved in this proceeding.

In *ABE Fairmont, LLC—Abandonment Exemption—in Fillmore County, Neb.*, Docket No. AB 1106 X, et al., the Board permitted BNSF Railway Company to discontinue its trackage rights over approximately 0.77 miles of rail line in Fillmore County, Neb., and for ABE Fairmont, LLC, to abandon its common carrier rail service over approximately 2.77 miles of rail line also in Fillmore County, Neb., subject to standard employee protective conditions. The Board also retroactively waived the notice of consummation requirement in Docket No.

AB 492 (Sub-No. 2X) for abandonment of 6.30 miles of rail line formerly owned by Fillmore & Western Railway Company.

In *Buckeye East Chicago Railroad—Abandonment Exemption—in Lake County, Ind.*, Docket No. AB 1247, the Board allowed Buckeye East Chicago Railroad LLC and Landisville Railroad, LLC to abandon and discontinue, respectively, approximately 1.34 miles of rail line in Lake County, Ind., subject to standard employee protective conditions.

In *Buckeye Hammond Railroad LLC—Abandonment Exemption—in Lake County, Ind.*, Docket No. AB 1249, the Board allowed Buckeye Hammond Railroad LLC to abandon approximately 1.29 miles of rail line in Lake County, Ind., subject to standard employee protective conditions.

In *Hartwell First United Methodist Church—Adverse Abandonment & Discontinuance—Great Walton Railroad, in Hart County, Ga.*, Docket No. AB 1242, the Board denied an application for adverse abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way.

In *Alloy Property Company—Adverse Abandonment—Chicago Terminal Railroad in Chicago, Ill.*, Docket No. AB 1258, the Board granted, subject to trail use, environmental, and labor protective conditions, the application by Alloy Property Company, LLC, for adverse abandonment.

Petitions for Reconsideration or Reopening

A party may file a discretionary appeal to the Board to reconsider or reopen a decision if (1) new evidence or changed circumstances are presented that have a material impact on the Board's action, or (2) material error occurred. In FY 2018, the Board issued decisions in response to petitions for reconsideration or reopening in a number of dockets, including:

New England Central Railroad—Trackage Rights Order—Pan Am Southern LLC, Docket No. FD 35842.

Canadian National Railway—Control—EJ&E West Co., Docket No. FD 35087 (Sub-No. 8).

City of Ozark, Ark.—Petition for Declaratory Order, Docket No. FD 36104.

Consumers Energy Company v. CSX Transportation, Inc., Docket No. NOR 42142.

Status of Agency Library, Docket No. EP 745.

Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Equity Capital, Docket No. 664 (Sub-No. 2).

Uniform Railroad Costing System Update

The Board continued its efforts to recode the Board's URCS to modernize it. The Board previously switched to new processes for creating the URCS Phase II worktables and has turned its attention to addressing URCS Phase III.

Environmental Review

The Board considers environmental impacts in its decision-making process under NEPA and related laws. 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 (EIS) and Environmental Assessments (EA), which assess the potential environmental impacts that could result from a Board decision. The EISs and EAs currently being prepared by the Board staff span the nation and vary in scope.

During FY 2018, the Board worked on 13 EISs and 26 EAs in rail projects, comprising rail line constructions and rail line abandonments. Some of these cases have not been formally filed with the Board, but the Board has begun the environmental reviews to ensure a streamlined approach to these infrastructure projects.

Environmental Impact Statements

The 13 EISs included construction of 800 miles of high-speed passenger track in California, construction of a new railway from Alberta, Canada to Alaska, and construction of 40 miles of superconducting MAGLEV track between Baltimore and Washington, D.C. The Board is also monitoring environmental mitigation in two completed rail construction cases in Alaska and in Texas.

Environmental Assessments

The Board moved forward with 26 EAs (seven rail line constructions and 19 rail line abandonments) in FY 2018. These EAs included 23 miles of new rail line construction in Berkeley County, S.C., 2,600 feet of new track to connect to a marine terminal in Galveston, Tex., and three miles of new rail line to serve an industrial park near the Port of Savannah, in GA. In addition, the Board has conducted oversight and monitoring for two joint-easement transactions in Illinois and in Indiana and Kentucky. 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.

Categorical Exclusions

In FY 2018, 84 cases before the Board fell within a categorical exclusion from NEPA review. These cases included acquisitions, leases, operating exemptions, declaratory orders, rulemakings, transactions involving corporate changes, and certain discontinuances.

Alternative Dispute Resolution

In recent years, the Board has developed and issued arbitration and mediation rules to encourage parties informally to help 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, however no parties have yet agreed to participate in Board-sponsored arbitration. Successful mediation settlements result in significant savings of litigation expenses to the parties, allow both sides to reach mutually satisfactory agreements, and free up the Board's limited staff resources to work on other matters. In FY 2018, the Board held five mediations, three of which reached successful resolution, and one of which is ongoing.

A number of STB employees received formal mediation training in September 2018. The Board's mediators are able to leverage their substantive work experience and their specialized training to provide stakeholders with an effective pathway for resolving disputes outside of litigation.

Public Outreach and Informal Dispute Resolution

Through the Board's RCPA program, the Board continues to provide shippers, state and local governments, and members of the public with an accessible and effective resource for resolving disputes with rail carriers on an informal basis. RCPA works to resolve conflicts that would otherwise be submitted to the Board for adjudication, thereby conserving stakeholder and agency resources.

During FY 2018, RCPA handled 1,432 inquiries from stakeholders, of which 237 pertained to shipper-railroad service 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; and responsibility for spur track.

RCPA also informally assisted customers of household goods (HHG) moving companies to resolve service and rate disputes.

Although the Federal Motor Carrier Safety Administration (FMCSA) has primary regulatory jurisdiction over HHG issues, RCPA maintained its informal engagement with FMCSA to discuss HHG trends. Also, an RCPA staff member serves on an HHG consumer protection working group established under the FAST Act of 2015.

In addition to its dispute resolution function, RCPA also serves as a liaison between the public and the Board. RCPA fields inquiries from Board practitioners as well as from members of the public to provide those parties with a better understanding of Board regulations, rules, and procedures.

STB RCPA Inquiries FY 2018	
Commodity Group	FY 2018
Aggregates	4
Agricultural Products	88
Automobile	4
Chemicals	39
Coal	3
Construction Materials	2
Empty Freight Cars	7
Forest Products	16
Hazardous Waste/Radioactive Waste	7
High/Wide Loads	1
Household Goods	80
Industrial Products	39
Intermodal	9
Metals and Minerals	12
Municipal Waste	1
Not Specified by Shipper	15
Passenger	32
TIH	2
Other	3
N/A ^a	1,068
Total	1,432
^a Includes inquiries regarding procedural assistance, informal legal or regulatory guidance, agency information, abandonment records, other records, tariff rule or rate questions, or other commercial or rail service disputes where the underlying commodity is not disclosed.	

Government Affairs

Canada Transportation Modernization Act, C-49

In May 2018, Canada enacted the Canada Transportation Modernization Act, known as C-49, requiring Class I carriers that conduct any operations in Canada to report to Transport Canada on a monthly basis extensive commercial and operational information. To the extent that C-49 requires information about cross-border movements, U.S. law (49 U.S.C. § 11904) generally prohibits railroads from disclosing certain commercially sensitive information without the consent of the shipper. STB staff engaged in extensive discussions with Canadian counterparts, staff at the U.S. State Department and the DOT, Congressional offices, and representatives of the affected U.S. railroads to explore possible solutions to the conflict of laws. These efforts will continue into FY 2019.

Court Actions

In FY 2018, the Office of the General Counsel (OGC) handled a variety of cases on behalf of the Board.

In an abandonment case, the D.C. Circuit summarily affirmed the Board's decision upholding an order of an administrative law judge (ALJ) finding that James Riffin had not complied with a discovery order and had been untruthful in his testimony to the ALJ. As a result, the ALJ sanctioned Riffin by striking his filings, prohibiting him from submitting further filings in the proceeding, and imposing attorneys' fees. *Riffin v. STB*, No. 17-1161 (D.C. Cir. Jan. 12, 2018).

In a rate reasonableness case, the 11th Circuit upheld the Board's decision finding that the shipper had failed to demonstrate that the rate charged by the railroad was unreasonable. The court found that the Board was not arbitrary and capricious in resolving certain operating plan and debt amortization disputes. *Sunbelt Chlor Alkali P'ship v. STB*, No. 16-15701 (11th Cir. Jan. 26, 2018).

In a case challenging a BNSF tariff that imposed higher per-carload rates for crude-oil transportation in unjacketed DOT-111 tank cars (versus other types of tank cars), the D.C. Circuit dismissed an appeal by the American Fuel & Petrochemical Manufacturers and vacated the Board's underlying decision, concluding that the case had become moot when the relevant use of the tank cars at issue was phased out by statute under the FAST Act of 2015. *Am. Fuel & Petrochem. Mfrs. v. STB*, No. 17-1112 (D.C. Cir. Apr. 2, 2018).

In a case involving compensation and other terms under a trackage rights agreement, the D.C. Circuit granted the Board's motion to dismiss New England Central Railroad's petition for review as premature because New England Central had a petition for reconsideration

pending before the Board. *New England Cent. R.R. v. STB*, No. 17-1279 (D.C. Cir. Apr. 3, 2018).

In cases involving a NS/Delaware & Hudson Railway (D&H) acquisition transaction and D&H's discontinuance of nearby unused trackage rights, the Third Circuit granted the Board's motions to dismiss, for lack of standing, appeals by Eric Strohmeyer and CNJ Rail Corporation. *Strohmeyer v. STB*, Nos. 16-4362 and 16-4435 (3d. Cir. Apr. 27, 2018).

In a case arising out of the 2008 acquisition by Canadian National of an Elgin, Joliet and Eastern line circling Chicago, the Seventh Circuit upheld a Board order declining a community's request that the Board reopen the proceeding authorizing the transaction in order to require the railroad to install a grade separation. *Vill. of Barrington v. STB*, No. 17-3586 (7th Cir. June 11, 2018).

In a case on remand brought by local residents seeking to regulate the types of activities conducted at a transload facility owned by a rail carrier, the First Circuit affirmed the Board's ruling that bagging, palletizing, shrink-wrapping, vacuuming, screening, and repelletizing wood pellets completing an interstate rail move are part of rail "transportation" and thus are within the STB's exclusive jurisdiction. *Del Grosso v. STB*, No. 17-1794 (1st Cir. Aug 6, 2018). During FY 2018, the Board also defended (or prepared to defend) in court its decisions in *Kansas City Southern v. STB*, No. 16-1308 (D.C. Cir.) (BNSF terminal trackage rights) and *Consumers Energy Co. v. STB, et al.*, No. 18-1259 (D.C. Cir.) (rate reasonableness).

Other Matters

The OGC continued to handle a wide variety of other legal matters, including matters involving the Freedom of Information Act, the Privacy Act, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, the National Historic Preservation Act, the Trails Act, the Federal Advisory Committee Act, the Federal Information Security Management Act, the Federal Information Technology Acquisition Reform Act, and the Federal Managers Financial Integrity Act. In addition, OGC also provided legal counsel on ethics issues and government contracting, and it participated in the Administrative Conference of the United States.

Advisory Committees

During FY 2018, the Board hosted meetings for 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 rail-car supply, 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. The Secretary of Transportation and the Board members are ex-officio members. RSTAC holds meetings quarterly.

The Board created the Rail Energy Transportation Advisory Committee (RETAC) in 2007 to provide advice and guidance to the agency. RETAC serves as a forum for discussing emerging issues concerning the rail transportation of energy resources such as coal, crude oil, ethanol, and other biofuels. The 25 voting members of RETAC represent a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the petroleum production industry, and the private railcar industry.

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

Amtrak and Passenger Rail

During FY 2018, the Board continued work on its passenger rail responsibilities under the PRIIA law. STB staff monitored Amtrak performance through publicly available information and responded to informal inquiries about Amtrak and PRIIA, as needed. Agency staff also met regularly with Amtrak staff to discuss Amtrak's publicly available monthly on-time performance operating statistics. Amtrak had previously brought two on-time performance cases under PRIIA before the Board, which the Board dismissed, without prejudice, after substantial litigation over the constitutionality of the PRIIA provision under which the Federal Railroad Administration/Amtrak regulations governing on-time performance were adopted. Section 207 of PRIIA was initially found unconstitutional by the U.S. Court of Appeals for the D.C. Circuit, which vacated the regulations. The Board then adopted its own on-time performance rules under section 213 of PRIIA, but those rules were set aside by the U.S. Court of Appeals for the Eighth Circuit in February 2018. In July 2018, the D.C. Circuit held that an important portion of PRIIA section 207 could be constitutional, but it did not reinstate the FRA/Amtrak on-time performance regulations.

Workload Summary

Workload Category	FY 2018 as of 9/30/2018	FY 2019 Estimate	FY 2020 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	237	240	245
Mediations	5	5	6
Audits	8	7	7
Decisions			
Complaints			
Rate	16	17	17
Non-Rate	30	33	33
Declaratory Orders	53	58	58
Ex Parte Proceeding Decisions			
Rulemakings	21	19	16
Other	22	24	24
Licensing			
Applications/Petitions	57	63	63
Notices of Exemption	185	202	202
Other (incl. Grant Stamps)	68	75	75
Non-Rail Decisions	9	10	10
Other	20	22	22
Defensibility Assessments	75	80	80
Depreciation Studies	9	10	10
Economic Statistical Reports	5	5	5
Environmental			
Categorical Exclusions	99	72	76
Environmental Assessments	26	26	29
Environmental Impact Statements	13	15	14
Ethics Reviews	117	105	105
Fee Waiver Determinations	11	12	12
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	6	8	8
Filings	1841	2,000	2,000
Freedom of Information Act (FOIA) Requests	32	40	40
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Judicial Review	9	10	10
Outreach & Communication			
Conferences	21	20	20
Environmental Meetings	19	26	23
Ex Parte Meetings	12	10	10

Stakeholder Meetings	85	60	60
Public Forum			
Hearings	0	1	1
Listening Sessions	1	0	0
Oral Arguments	0	0	0
Other	0	0	0
Rail Service Data Reports	44	52	54
Recordations	1575	1,600	1,600
Section 5 Collaborative Discussions	3	5	5
Technical Conferences	1	2	3
Waybill Requests	120	130	136

STB Administrative Accomplishments

Financial Services

The Section of Financial Services, headed by the Chief Financial Officer, provides the financial and procurement support to the Board.

The Section's most notable tasks and accomplishments are listed below:

- Assisted in the development, justification, and presentation of the FY 2019 budget request estimates for approval by the Board and submission to Congress, and the submission of the FY 2020 budget request estimates to Office of Management and Budget (OMB) and Congress.
- Advised the Board's Directors and senior leadership on the execution and control of appropriated funds. Collaborated with the Board's IT staff on development of IT cost projections and operational requirements to modernize the Board's IT capabilities.
- Ensured the Board's compliance with the Accountability of Tax Dollars Act of 2002 requirements to issue financial statements and provided information to DOT OIG to meet the independent audit requirements of the financial statements in accordance with Generally Accepted Government Auditing Standards.
- Established corrective action plans for weaknesses found in the FY 2017 financial audit and ensured that those items were remediated.
- Revised and updated the Board's procurement policy and converted purchase requests from paper files to electronic files.
- Ensured that user fee and miscellaneous receipt collections were properly recorded and deposited to provide financial resources for Board operations in accordance with the U.S. Department of Treasury's guidelines.
- Ensured that the procurement of services, supplies, and equipment were timely processed in accordance with Federal Acquisition Regulation regulations and small acquisition procedures.
- Provided internal control oversight of Board financial operations in accordance with OMB Circular A123, Management Accountability and Controls, to ensure that no waste, fraud, or abuse exists; and provided supporting documentation to the Board's internal control audit staff performing an internal control audit of the Board and its administration operations.
- Worked with the Board's accounts payable and receivable provider to ensure that the Board's accounting operations and fund management are in accordance with Generally Accepted Accounting Principles (GAAP) and the U.S. Treasury and fiscal guidelines. Prepared the required external financial statements for Congress, OMB,

U.S. Treasury, and external stakeholders.

Human Resources

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

HR's significant accomplishments for FY 2018 are listed below:

- Worked closely with senior management to develop a Federal Employee Viewpoint Survey (FEVS) initiative, analyzed FEVS results, and retained consultants from the Office of Personnel Management (OPM) to assist with employee engagement and action planning.
- Encouraged participation in FEVS and secured a response rate of 74.5%.
- Conducted hiring under a Delegated Examining Agreement with OPM.
- Ensured that OMB Memorandum 17-22 requirements were met through online and group, in-person supervisory training. HR also implemented group leadership training for both supervisors and non-supervisors.
- Obtained OPM's certification of STB SES Performance System, demonstrating compliance with OPM requirements.
- Began the major project of transitioning all HR information technology systems and applications from being part of the DOT to being independent STB systems, directly connecting to the personnel/payroll shared service provider, IBC, and to OPM. Ensured all HR specialists have OPM Delegated Examining Unit training.
- Ensured that human resources staff took OPM employee relations training on performance and conduct issues.
- Resolved employee relations issues, finding solutions that work for managers and employees.
- Engaged in a hiring surge during which, at its peak, included over a dozen pending recruitments with one or more recruitment in all non-member offices in the agency.

Information Technology

During FY 2018, the STB continued its efforts to address its first Federal Information Security Management Act (FISMA) audit as an independent agency by implementing new Cybersecurity policies and procedures, as well as adding capabilities to strengthen the STB's

information systems security posture. The Board added additional IT security personnel by hiring an Information Systems Security Manager and contracting for an Information Systems Security Officer to improve the Board's responsiveness to cybersecurity concerns. The STB has worked diligently to address each of the recommendations in its FY 2017 FISMA audit and will continue its efforts to ensure timely detection and reporting of cybersecurity incidents.

The Board also formalized its Risk Management Policy for the implementation of the risk management process and procedure controls within the STB. This policy requires STB-wide compliance with personnel security procedures in accordance with the National Institute of Standards and Technology (NIST).

In FYs 2019 and 2020, the Board will continue to strengthen its cybersecurity posture by investing in new technologies, processes, and capabilities to meet FISMA and OMB requirements, as well as current needs of its IT modernization efforts. Planned improvements include continuous security monitoring efforts of the STB's computer network, for which the STB will leverage resources of the Department of Homeland Security Continuous Diagnostics and Mitigation Program. In addition, IT staff will continue security and privacy controls assessments of STB's systems to ensure that security controls are applied correctly, operating as intended, and producing the desired outcome.

Additionally, the Board continued its efforts to replace its website and modernize its IT infrastructure. The new website will also be easier to maintain and update and more accessible through an intuitive and mobile-friendly user experience. The Board is replacing its older laptops and plans to upgrade to Windows 10. The Board implemented a service management application to better track help desk tickets and change management requests. In addition, the Board awarded a contract to replace its outdated case management system, which is a key system in managing the agency case docket and other significant work of the agency.

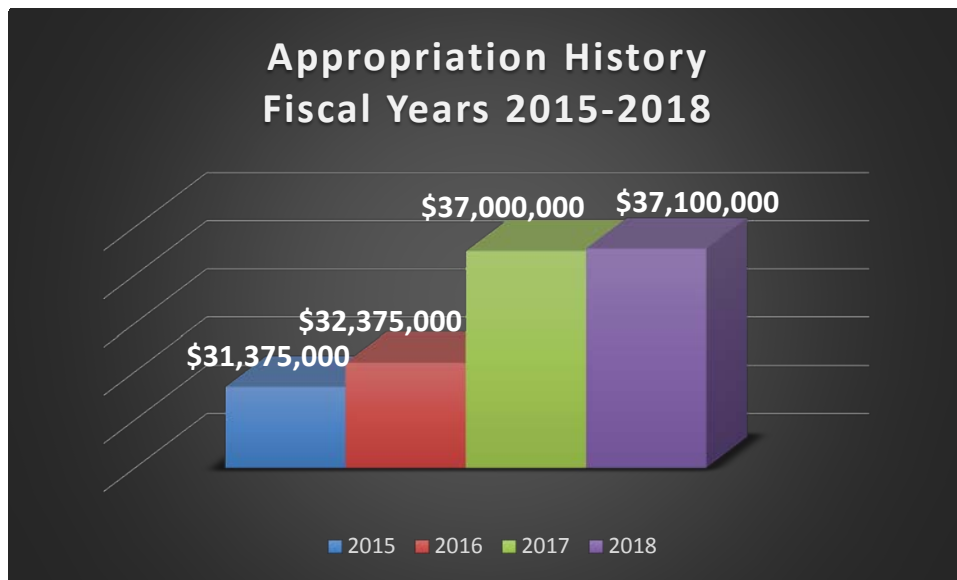
Financial Information

Financial Performance Overview

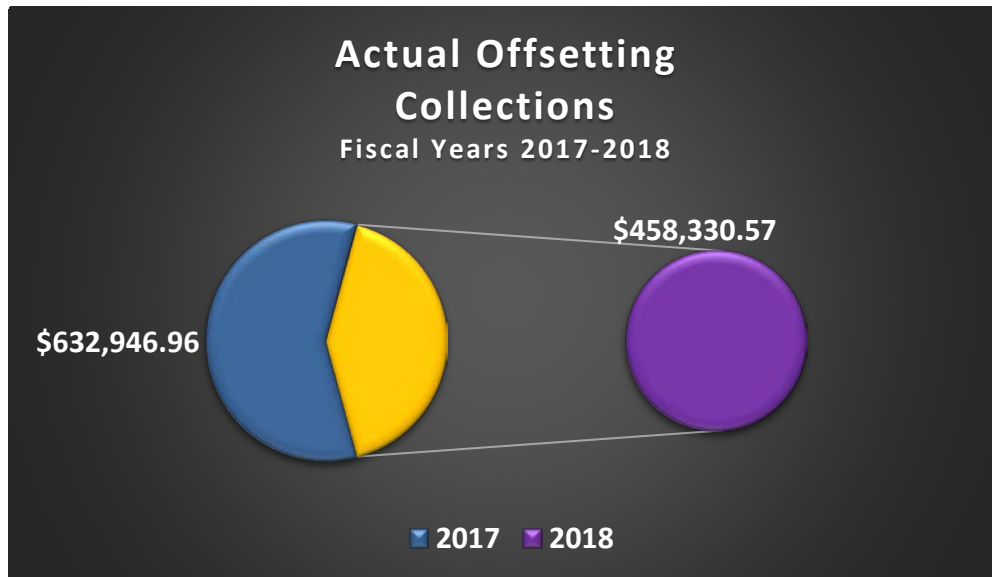
The STB's financial condition as of September 30, 2018, is sound. Internal controls are in place to ensure that funds are utilized efficiently and effectively, and that its budget authority is not exceeded.

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 fiscal year in which the authority was granted. Congress approved FY 2018 appropriations for the STB in the amount of \$37,100,000 through Pub. L. 115-141, an increase of \$100,000 over the FY 2017 final appropriation level.

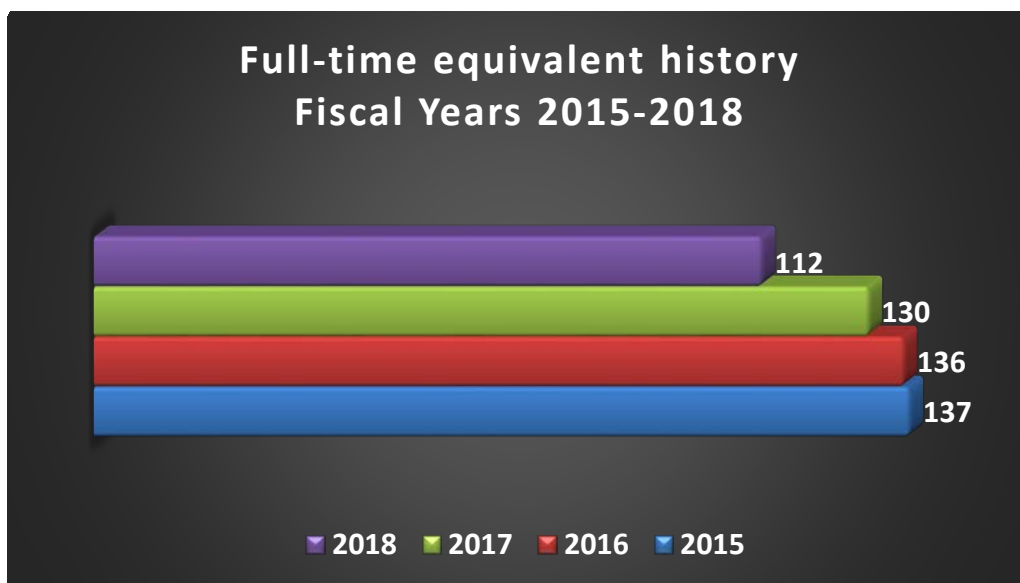


The STB can collect up to \$1,250,000 in remittances for user fees and penalties. The user fees are credited to the STB’s appropriations and deposited at the U.S. Treasury for the STB operations.



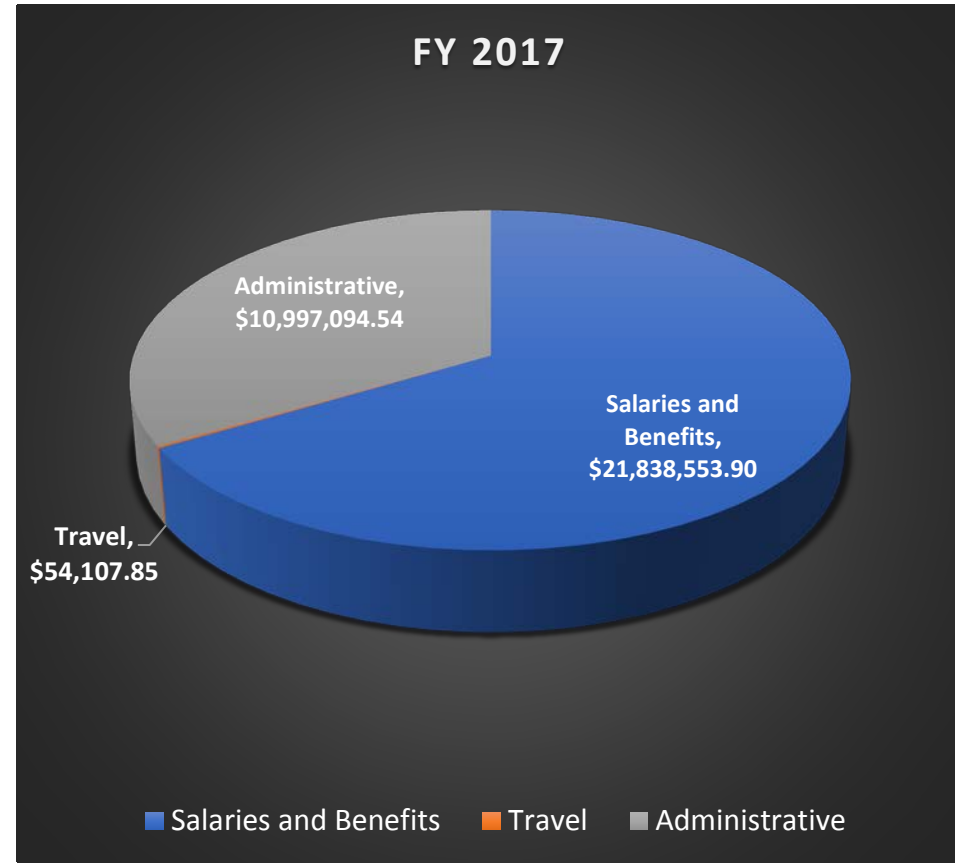
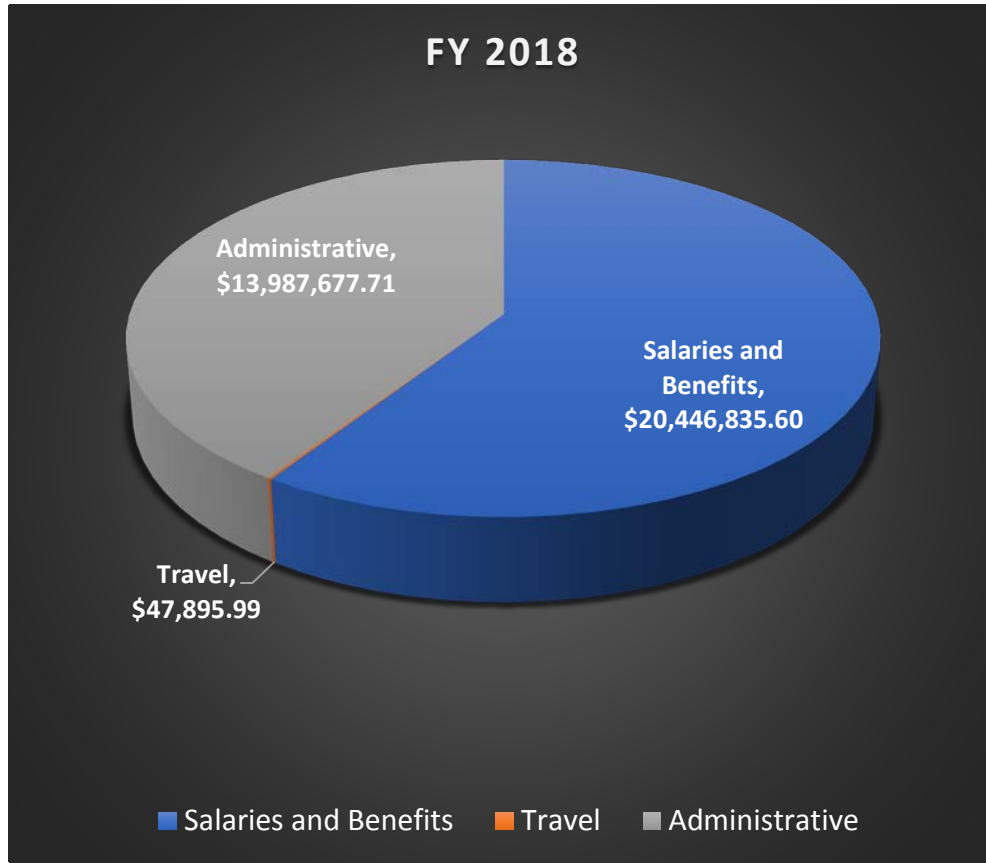
Full-Time Equivalent (FTE) History

The STB’s FTE level is largely driven by its annual appropriation level; however, during FY 2018, the Board had only two of its five Board member positions filled. The STB also experienced several retirements and separations in 2017, resulting in a lower than anticipated FTE level in 2018. 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 2018, obligations against the STB's appropriation totaled \$34,482,409, representing 92.9% of the funding level. The Board spent \$34.5 million as follows: 59.3% for salaries and benefits, 0.1% for official travel expenses, and 40.6% for administrative expenses (e.g., rent; government and commercial contracts; communications and subscriptions; equipment; and IT and non-IT services).



Overview of Financial Results

The STB received an unmodified opinion on its FY 2018 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 GAAP 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 realization 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 statements. The accompanying notes are an integral part of these statements.

The STB's financial statements were audited by Leon Snead, P.C., under contract to the DOT OIG.

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

Assets: At the end of FY 2018, the STB's balance sheet showed total assets of \$16.4 million, an increase of \$5.3 million over FY 2017. This was due to an increase in Fund Balance with Treasury of \$4.9 million and an increase in Plant, Property and Equipment of \$327,645.

Liabilities: At the end of FY 2018, the Board's total liabilities were \$3.9 million, a decrease of \$571,941 from FY 2017. The decrease is due to net decreases in overall accounts payable and employee-related payroll accounts.

Net Position: The Board's net position on the Balance Sheet and the Statement of Changes in Net Position at the end of FY 2018 was \$12.5 million, an increase of \$5.9 million more than FY 2017. This is the result of a \$5.3 million increase to unexpended appropriations and an offsetting \$554,776 decrease in cumulative results of operations.

Summary of the Statement of Net Cost

The STB's net cost of operations for FY 2018 was \$32.0 million, a decrease of \$70.8 million over FY 2017. The decrease in net cost of operations was primarily the result of no judgment fund costs in FY 2018.

Statement of Budgetary Resources

The Statement of Budgetary Resources provides information on budgetary resources made available to the Board and the status of these resources at the end of the fiscal year. For FY 2018, total budgetary resources were \$42.0 million. This represents an increase of \$4.2 million from the FY 2017 total budgetary resources of \$37.8 million. The STB was appropriated \$36.6 million in FY 2018 and \$36.4 million in FY 2017. The total user fees collected in FY 2018 was \$458,330 and in FY 2017 was \$632,946.

Additionally, direct obligations were \$35.9 million and net outlays totaled \$31.7 million this fiscal year. This represents an increase in direct obligations of \$2.5 million and an increase in net outlays of \$741,582 over FY 2017.



U.S. Department of
Transportation

Office of Inspector General
Washington, DC

November 15, 2018

The Honorable Ann D. Begeman
Chairman, Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Ms. Begeman:

I respectfully submit our report on our quality control review (QCR) of the independent auditor's report on the Surface Transportation Board's (STB) audited financial statements for fiscal years 2018 and 2017.

We contracted with the independent public accounting firm of Leon Snead & Company, PC (Leon Snead) to audit STB's financial statements as of and for the fiscal years ended September 30, 2018, and September 30, 2017, and to provide a report on internal control over financial reporting and compliance with laws and other matters. The contract required that the audit be performed in accordance with U.S. generally accepted Government auditing standards, Office of Management and Budget audit guidance, and the Governmental Accountability Office's and Council of the Inspectors General on Integrity and Efficiency's *Financial Audit Manual*¹.

Leon Snead's Report

In its audit of STB, Leon Snead reported

- that the financial statements² were fairly presented, in all material respects, in accordance with U.S. generally accepted accounting principles,
- that STB had one material weakness³ and one significant deficiency⁴ in internal control over financial reporting, and

¹ *Financial Audit Manual*, volumes 1, 2, and 3, GAO-18-601G, GAO-18-625G, and GAO-18-626G, June 2018.

² The financial statements are included in the Agency's Performance and Accountability Report (see attachment 3).

³ A material weakness is a deficiency, or a combination of deficiencies, 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.

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

Leon Snead provided five recommendations to address the material weakness and significant deficiency in internal controls over financial reporting (see attachment 1).

Material Weakness

Accounting errors impacted the financial statements. STB and its accounting service provider did not correctly account for expenses incurred against outstanding advances as of the June 30, 2018, financial statements and obligations incurred for year-end statements. The service provider incorrectly posted reported expenses to accounts payable instead of reducing the balance for the advances. These errors are similar to the material errors detected in the Agency's June 30, 2017, financial statements prepared by the same service provider. In addition, the service provider did not process a \$510,000 fiscal year 2018 obligation and thus it was omitted from the year-end financial statements and notes submitted for audit.

Significant Deficiency

Lack of processes to monitor and reconcile differences identified in Treasury reports on trading partner transactions. Neither STB nor its accounting service provider established a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity, as required by the U.S. Treasury's Bureau of Fiscal Services guidance. As of June 30, 2018, significant trading partner differences from Treasury reports were not reconciled or corrected.

Recommendations

Leon Snead made five recommendations to strengthen STB's accounting for advances, obligations, and processes for monitoring and reconciling intergovernmental activity with trading partners. Leon Snead recommended that STB

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

1. Discuss with Enterprise Services Center⁵ (ESC) officials the need to substantially strengthen its system of review over financial information processed for STB.
2. Require ESC to determine cause(s) for instances of incorrect and/or improper accounting and financial reporting of STB data, and to take appropriate corrective actions to address these continuing problems.
3. Ensure that the proper accounting procedures are in place and operating effectively for year-end financial statements when posting the costs incurred by contractors with advances.
4. Develop a STB policy that implements the Bureau of Fiscal Services guidance relating to interagency agreements; identifies the responsibilities for STB and its service provider; and establishes a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity and any identified differences.
5. Ensure that actions are taken prior to the end of the fiscal year to address the differences identified in the fiscal year 2018 trading partner report.

Quality Control Review

In connection with the contract, we performed a review of Leon Snead's report dated November 6, 2018, 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 or compliance with laws and other matters. Leon Snead is responsible for its report and the conclusions expressed therein. However, our review disclosed no instances in which Leon Snead did not comply, in all material respects, with U.S. generally accepted Government auditing standards.

⁵ The Enterprise Services Center provides accounting services to STB.

Agency Comments and OIG Response

On November 2, 2018, Leon Snead provided STB with its draft report, and received STB's response on November 6, 2018 (see attachment 2). STB agreed with the deficiencies that Leon Snead found.

STB concurred with Leon Snead's five recommendations, and indicated that it has or will be implementing corrective actions to address them. We agree with Leon Snead's recommendations and are not making any additional recommendations.

Actions Required

We consider Leon Snead's five recommendations resolved but open pending review during the fiscal year 2019 audit.

We appreciate the cooperation and assistance of STB's representatives and Leon Snead. If you have any questions about this report, please call me at (202) 366-1407, or George Banks, Program Director, at (202) 420-1116.

Sincerely,



Louis C. King
Assistant Inspector General for Financial and
Information Technology Audits

cc: STB Chief Financial Officer

Surface Transportation Board

Audit of Financial Statements

**As of and for the Years Ended
September 30, 2018 and 2017**

Submitted By

Leon Snead & Company, P.C.
Certified Public Accountants & Management Consultants

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Independent Auditor's Report

ACTING CHAIRMAN, SURFACE TRANSPORTATION BOARD INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

We have audited the accompanying financial statements of the Surface Transportation Board (STB), which comprise the balance sheet as of September 30, 2018 and 2017, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended. The objective of our audit was to express an opinion on the fair presentation of the financial statements. In connection with our audit, we also considered the STB's internal control over financial reporting, and tested the STB's compliance with certain provisions of applicable laws, regulations, and significant provisions of contracts.

SUMMARY

As stated in our opinion on the financial statements, we found that the STB's financial statements as of and for the years ended September 30, 2018 and 2017, are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America.

Our consideration of internal control would not necessarily disclose all deficiencies in internal control over financial reporting that might be material weaknesses under standards issued by the American Institute of Certified Public Accountants. Our testing of internal controls identified one material weakness and one significant deficiency in internal controls over financial reporting relating to: (1) general ledger posting errors, and (2) the need to develop policies and processes to review, reconcile and correct differences identified in GTAS¹, respectively.

Our tests of compliance with certain provisions of laws, regulations, and significant provisions of contracts disclosed no instance of noncompliance that is required to be reported under Government Auditing Standards and the Office of Management and Budget Bulletin 19-01, *Audit Requirements for Federal Financial Statements* (the OMB audit bulletin).

The following sections discuss in more detail our opinion on the STB's financial statements, our consideration of the STB's internal control over financial reporting, our tests of the STB's

¹ Governmentwide Treasury Account Symbol (GTAS) – A system used by agencies to report budget execution information and proprietary financial reporting information to the Department of the Treasury.

compliance with certain provisions of applicable laws and regulations, and management's and our responsibilities.

REPORT ON THE FINANCIAL STATEMENTS

We have audited the accompanying financial statements of the STB, which comprise the balance sheets as of September 30, 2018, and 2017, and the related statements of net cost, statements of changes in net position, and statements of budgetary resources, for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America. Such responsibility includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; standards applicable to financial statement audits contained in *Government Auditing Standards (GAS)*, issued by the Comptroller General of the United States; and the OMB audit bulletin. Those standards and the OMB audit bulletin require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's professional judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments in a Federal agency, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing opinions on the effectiveness of the STB's internal control or its compliance with laws, regulations, and significant provisions of contracts. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion on Financial Statements

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of STB as of September 30, 2018, and 2017, and the related net cost, changes in net position, and budgetary resources for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

OTHER MATTERS

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that Management's Discussion and Analysis (MDA) be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board (FASAB), which considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The performance measures and other accompanying information are presented for the purposes of additional analysis and are not required parts of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

OTHER AUDITOR REPORTING REQUIREMENTS

Report on Internal Control

In planning and performing our audit of the financial statements of the STB, as of and for the years ended September 30, 2018 and 2017, in accordance with auditing standards generally accepted in the United States of America, we considered the STB's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the STB's internal control. Accordingly, we do not express an opinion on the effectiveness of the STB's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph, and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Therefore, material weaknesses or significant deficiencies may exist that were not identified. During our audit, we identified one deficiency in internal control over financial reporting that we consider to be a material weakness. As discussed below, we also identified one deficiency in internal control that we consider to be a significant deficiency.

Because of inherent limitations in internal controls, including the possibility of management override of controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected. 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 a combination of deficiencies, in internal control, 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 that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Findings and Recommendations

1. Accounting Errors Impacted the Financial Statements

The STB and its accounting service provider had not correctly accounted for expenses incurred against outstanding advances in the June 30, 2018, financial statements, and obligations incurred for year-end financial statements. The errors noted in the June 30, 2018, interim financial statements were similar to the material errors we detected in the agency's June 30, 2017, financial statements prepared by the Department of Transportation, Enterprise Service Center (ESC)². We attributed this problem to ineffective controls at the service center and the need to strengthen the oversight of accounting operations at ESC by STB officials. We consider these problems to be a material weakness in internal control over financial reporting.

- a. During our audit of the June 30, 2018, interim financial statements, we identified approximately \$580,000 in advances that the agency's accounting records showed as outstanding. However, our review of records prepared by the STB showed that the agency had provided updated information on the aggregate amount of expenses incurred by each contractor³, on a quarterly basis, and the GL account 1410, Advances, should have been reduced by this amount.

When ESC received this cost information from the STB, it incorrectly posted the amounts as accruals to general ledger (GL) account 2110, Accounts Payable, instead of reducing

² ESC provides accounting and financial reporting for the STB.

³ STB advances are to other federal agencies, and historically STB has not received or received in a timely manner invoices supporting the value of goods and/or services provided by the contractors with advances.

the balance of GL account 1410, Advances⁴. This resulted in the overstatement of accounts payable and the overstatement of advances on the June 30, 2018, financial statements, and other related line items and footnotes.

FASAB SFFAS⁵ No. 1, Paragraph No. 59, provides that “Advances and prepayments should be recorded as assets. Advances and prepayments are reduced when goods or services are received, contract terms are met, progress is made under a contract, or prepaid expenses expire...”.

- b. STB officials advised us after the year-end financial statements were submitted for audit that an FY 2018 obligation for approximately \$510,000 was not processed by ESC to the general ledger and was omitted from the year-end financial statements and related footnote disclosures. STB provided revised year-end financial statements that corrected this error.

Recommendations

1. Discuss with ESC officials the need to substantially strengthen its system of review over financial information processed for the STB.
2. Require ESC to determine the cause(s) for the instances of incorrect and/or improper accounting and financial reporting of STB data, and to take appropriate corrective actions to address these continuing problems.
3. Ensure that the proper accounting procedures are in place and operating effectively for year-end financial statements when posting the costs incurred by contractors with advances.

Agency’s Response

STB officials concurred with the audit recommendations and provided the corrective actions the agency will have in place for FY 2018 year-end and for future financial reporting.

Auditor’s Comments

Since the agency agreed with the recommendations and provided corrective actions it intends to take, we have no additional comments.

⁴ ESC also posted other budgetary entries that related to the accounts without advances to correspond to its accounts payable postings. Other budgetary accounts would have been posted if the service provider had correctly posted the entries to advances.

⁵ Federal Accounting Standards Accounting Board (FASAB) issues accounting standards, under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB (the Principals) decide upon standards and concepts after considering the recommendations of FASAB. After agreement to specific standards and concepts, they are published in the Federal Register and distributed throughout the Federal Government.

2. Lack of Processes to Monitor and Reconcile Differences Identified in Treasury Reports on Trading Partner Transactions

Neither the STB nor its accounting service provider had established a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity, as required by the U.S. Treasury’s Bureau of Fiscal Services (BFS) guidance. Agency personnel believed that its accounting service provider, which is responsible for all GTAS submissions, would also be responsible for reviewing and correcting any errors and differences between trading partner transactions. The ESC advised that it is the agency’s responsibility to make these corrections. As a result, the differences reported by GTAS were not reviewed, reconciled, and corrected. Without a documented process regarding intragovernmental activity and reconciling identified differences, the agency’s financial information and related reports may continue to result in errors.

We obtained from the STB the June 2018 GTAS⁶ Report, “Intragovernmental Differences by Trading Partner Report”. The report lists 15 agencies, some with significant differences between what each agency has reported for “buy and sell” transactions⁷. For example, the report shows for several agencies the following:

Agency	Total Difference Listed
Department of Interior	\$812,540.64
Department of Labor	\$2,280.83
Department of Transportation	\$618,056.73

Our discussions with STB and ESC personnel disclosed that neither the ESC nor the STB review the report and attempt to reconcile/correct the differences identified. ESC personnel indicated that it is not their responsibility to monitor, reconcile and correct the IGT trading partners difference report; rather it is the STB’s responsibility. The acting CFO indicated that he needed to further study the issue to determine whether this work should be performed by the STB, or if the agency’s full-service contract with ESC would require the service center to complete the work.

As discussed in the BFS guidance, agencies are required to follow a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity. The guide further provides that “Agencies must ensure they are able to identify and track IGTs...Agencies must maintain accurate, detailed information on transactions as part of the accounting records, (and) this information assists agencies in identifying the correct postings to USSGL accounts and facilitates the reconciliation process....”

⁶ Government Treasury Account Symbol (GTAS) requires reporting monthly and is a system used by agencies to report budget execution information and proprietary financial reporting information to the Department of the Treasury.

⁷ BFS defines buy and sell transactions are exchange transactions related to goods and services procured and the associated business events with impacts to assets, revenue, liabilities, and expenses.

The BFS “Intragovernmental Transaction (IGT) Guide”⁸ guide provides mandatory reporting and actions for large material amounts for the governmentwide audit and provides overall guidance on the processes agencies should follow in the accounting for these financial events. The guide states that agencies “must follow a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity. Agencies adherence to the processes provides (in this guide) the required controls for IGT activity and allows agencies...to perform their financial statement reporting in an efficient manner.” The guide further provides that “Agencies must ensure they are able to identify and track IGTs...Agencies must maintain accurate, detailed information on transactions as part of the accounting records. This information assists agencies in identifying the correct postings to USSGL accounts and facilitates the reconciliation process....”

Recommendations

4. Develop a STB policy that:
 - implements the BFS guidance relating to interagency agreements;
 - identifies the responsibilities for the STB and its service provider; and
 - establishes a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity and any identified differences.
5. Ensure that actions are taken prior to the end of the fiscal year to address the differences identified in the FY 2018 report.

Agency’s Response

STB officials concurred with the audit recommendations and provided the corrective actions the agency will have in place for FY 2018 year-end and future reporting of financial statements.

Auditor’s Comments

Since the agency agreed with the recommendations and provided corrective actions it intends to take, we have no additional comments.

REPORT ON COMPLIANCE

As part of obtaining reasonable assurance about whether the agency’s financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and significant provisions of contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the STB. Providing an opinion on

⁸ This guide was incorporated into Appendix 10 of the Treasury Financial Manual (TFM), Chapter 4700, Agency Reporting Requirements for the Financial Report of the United States Government. The Treasury Financial Manual is applicable to all Executive Branch agencies.

compliance with certain provisions of laws, regulations, and significant contract provisions was not an objective of our audit and, accordingly, we do not express such an opinion.

In connection with our audit, we noted no instance of noncompliance that is required to be reported according to *Government Auditing Standards* and the OMB audit bulletin guidelines. No other matters came to our attention that caused us to believe that the STB failed to comply with applicable laws, regulations, or significant provisions of laws, regulations, and contracts that have a material effect on the financial statements insofar as they relate to accounting matters. Our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the STB's noncompliance with applicable laws, regulations, or significant provisions of laws, regulations, and contracts insofar as they relate to accounting matters.

Restricted Use Relating to Reports on Internal Control and Compliance

The purpose of the communication included in the sections identified as "Report on Internal Control" and "Report on Compliance" is solely to describe the scope of our testing of internal control over financial reporting and compliance, and to describe any material weaknesses, significant deficiencies, or instances of noncompliance we noted as a result of that testing. Our objective was not to provide an opinion on the design or effectiveness of the STB's internal control over financial reporting or its compliance with laws, regulations, or provisions of contracts. The two sections of the report referred to above are integral parts of an audit performed in accordance with *Government Auditing Standards* in considering the STB's internal control over financial reporting and compliance. Accordingly, those sections of the report are not suitable for any other purpose.

AGENCY'S RESPONSE

The STB's Chief Financial Officer (CFO) provided a response to the audit report dated November 6, 2018. The CFO advised that the STB has implemented corrective actions to address the report's findings and recommendations. The CFO's response has been included in this report, in its entirety, as an attachment.

The STB's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.



Leon Snead & Company, P.C.
November 6, 2018

Actions Taken on Prior Year's Audit Recommendation

Recommendation Number	Recommendation	Status
1.	STB and its accounting service provider should implement accounting processes for estimating and recording the value of goods and/or services provided by vendors for open obligations, with and without an advance.	Closed
2.	Develop written policies to: obtain invoices supporting the value of goods and services provided by vendors with advances so permanent reductions can be made to reduce the value of individual advances, close out advances where all services have been provided, and recoup all unused advance funding; including those currently outstanding.	Closed
3.	Strengthen monitoring controls of financial management operations performed by the agency's accounting service provider. Develop policies, procedures and review checklists to ensure that monitoring processes are performed consistently and documented as required by GAO internal control standards.	Closed
4.	Work with the accounting service provider to strengthen the service provider's quality control processes and obtain documented assurances that quality control reviews have been performed on financial statements presented to the agency for audit.	Closed
5.	Determine the reasons that abnormal general ledger account balances were not identified, researched, and corrected as appropriate, despite the assurances provided in response to the same issues reported in the FY 2017 financial statement audit report. Implement additional controls to ensure abnormal account balances are properly identified, researched, and appropriate corrective actions are taken.	Closed



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

November 6, 2018

Leon Snead, President
Leon Snead & Company, P.C.
416 Hungerford Drive, Suite 400
Rockville, MD 20850

Re: Fiscal Year (FY) 2018 Financial Statement Audit Report

Dear Mr. Snead:

Thank you for the opportunity to provide comments on the final FY 2018 Financial Statement Audit Report for the years ended September 30, 2018, and 2017. The Surface Transportation Board (Board or STB) has reviewed the report, and the Board concurs with the findings and recommendations. The STB has implemented necessary corrective actions to address each of the findings and recommendations in its Financial Statements, as discussed below.

1. Accounting Errors Impacted the Financial Statements

- a. As detailed in the Board's August 16, 2018 response, the STB, working with its accounting service provider, Enterprise Service Center (ESC), identified the cause of the improper reporting of advances. The Board then updated its processes for accounting for advances, which included improving the methods for identifying outstanding advances. These improved procedures, which were in place on September 30, 2018, facilitated the proper reporting of costs associated with advances in the Board's year-end financial statements for FY 2018. The STB has also discussed with ESC the need for ESC to strengthen supervisory reviews over financial information processed for the STB.
- b. The STB will continue monitoring its obligations, implementing necessary oversight controls, and continue working with ESC to ensure all obligations are processed timely and appropriately.

2. Lack of Processes to Monitor and Reconcile Differences Identified in Treasury Reports on Trading Partner Transactions

As detailed in the Board's August 16, 2018 response, the STB developed and implemented written policies and procedures, as of September 30, 2018, for monitoring and reconciling differences regarding intergovernmental Trading Partner transactions. This policy implements the U.S. Treasury's Bureau of Fiscal Services (BFS) guidance

relating to interagency agreements; identifies the responsibilities for the STB and its service provider; and establishes a standard set of processes that support the recording, reporting, reconciliation, and measurement of intergovernmental activity and any identified differences. The STB is working with BFS and each of its Trading Partners to reconcile material differences in its FY 2018 reporting and will continue to monitor transactions with its Trading Partners in all future reporting periods.

The STB is committed to being proactive in its reporting duties and will continue to review and enhance its policies and procedures to ensure conformity with accounting principles generally accepted in the United States of America.

Sincerely,

A handwritten signature in blue ink that reads "Adil Gulamali". The signature is written in a cursive style with a light blue background behind the text.

Adil Gulamali
Chief Financial Officer
Surface Transportation Board
adil.gulamali@stb.gov

Principal Financial Statements

Surface Transportation Board

BALANCE SHEETS

As of September 30, 2018, and 2017 (in thousands)

	2018	2017
Assets:		
Intragovernmental:		
Fund Balance with Treasury (Note 2)	\$ 13,865	\$ 8,946
Other (Note 4)	2,204	2,139
Total Intragovernmental	16,070	11,085
Assets with the Public		
Accounts Receivable, Net (Note 3)	2	4
General Property, Plant, and Equipment, Net (Note 5)	328	-
Total Assets	\$ 16,399	\$ 11,089
Liabilities:		
Intragovernmental:		
Accounts Payable	\$ 522	\$ -
Other	382	401
Total Intragovernmental	904	401
Liabilities with the Public:		
Accounts Payable	465	1,317
Federal Employee and Veteran Benefits (Note 6)	518	674
Other (Notes 7)	2,001	2,068
Total Liabilities	\$ 3,888	\$ 4,460
Net position:		
Unexpended Appropriations	\$ 14,320	\$ 8,994
Cumulative Results of Operations	(1,810)	(2,364)
Total Net Position	12,511	6,629
Total Liabilities and Net Position	\$ 16,399	\$ 11,089

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

Surface Transportation Board

Statements of Net Cost

As of September 30, 2018, and 2017 (in thousands)

	2018	2017
Program Costs:		
Program A:		
Gross Costs	\$ 32,416	\$ 103,355
Less: Earned Revenue	456	637
Net Program Costs	31,960	102,718
Net program expenses including Assumption changes	31,960	102,718
Net Cost of Operations (Note 8)	\$ 31,960	\$ 102,718

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

Surface Transportation Board

Statements of Changes in Net Position

As of September 30, 2018, and 2017 (in thousands)

	2018	2017
Unexpended Appropriations:		
Beginning Balances	\$ 8,994	\$ 3,000
Adjustments: (+/-)	-	-
Beginning Balances, As Adjusted	8,994	3,000
Appropriations received	36,642	36,367
Appropriations used	(31,315)	(30,374)
Total Budgetary Financing Sources	5,327	5,993
Total Unexpended Appropriations	14,320	8,994
Cumulative Results from Operations:		
Beginning Balances	(2,364)	(2,379)
Adjustments: (+/-)	-	-
Beginning balances, as adjusted	(2,364)	(2,379)
Budgetary Financing Sources:		
Appropriations Used	31,315	30,374
Other Financing Sources (Nonexchange):		
Imputed Financing	1,200	72,358
Total Financing Sources	32,514	102,732
Net Cost of Operations (+/-)	31,960	102,718
Net Change	555	15
Cumulative Results of Operations	(1,810)	(2,364)
Net Position	\$ 12,511	\$ 6,629

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

Surface Transportation Board

Statements of Budgetary Resources

As of September 30, 2018, and 2017 (in thousands)

	2018	2017
Budgetary Resources		
Unobligated balance from prior year budget authority	\$ 4,900	\$ 812
Appropriations	36,642	36,367
Spending authority from offsetting collections	458	633
Total budgetary resources	\$ 42,000	\$ 37,812
Net adjustments to unobligated balance brought forward, Oct 1	\$ 489	\$ 470
Status of Budgetary Resources		
New obligations and upward adjustments (total)	\$ 35,929	\$ 33,401
Unobligated balance, end of year:		
Apportioned unexpired accounts	\$ 2,101	\$ 4,110
Unexpired unobligated balance, end of year	2,101	4,110
Expired unobligated balance, end of year	3,969	301
Unobligated balance, end of year (total)	6,071	4,411
Total budgetary resources	42,000	37,812
Outlays, net:		
Outlays, net	\$ 31,723	\$ 30,982
Agency outlays, net	\$ 31,723	\$ 30,982

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

Surface Transportation Board

Notes to Financial Statements

As of September 30, 2018, and 2017 (in thousands)

Note 1. Significant Accounting Policies

A. Reporting Entity Including Changes Related to STB Reauthorization

The Surface Transportation Board (the Board) was created on January 1, 1996, by Public Law 104–88, the ICC Termination Act of 1995 (ICCTA). The Surface Transportation Board Reauthorization Act of 2015 (Public Law 114–110) established the Board as a wholly independent agency and expanded the Board's membership from three to five Board Members.

The Board is specifically responsible for the regulation of the rail and pipeline industries and certain non-licensing regulation of motor carriers and water carriers. The Board has regulatory jurisdiction over railroad rate reasonableness, mergers, line acquisitions, new rail line construction, abandonments of existing rail lines, and the conversion of rail rights-of-way into hiking and biking trails. While the majority of the Board's work involves freight railroads, the STB also performs certain oversight of passenger rail operations and the intercity bus industry, non-energy pipelines, and household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (freight shipping between mainland United States, Hawaii, Alaska, Puerto Rico, and other U.S. territories and possessions). The Board's responsibilities over the National Railroad Passenger Corporation (Amtrak), particularly Amtrak's relationships with the freight railroads, have grown in recent years. The STB reporting entity consists of the general fund and the user fee receipts fund. User fees not to exceed \$1,250,000 are credited to the appropriation as offsetting collections. STB does not own any non-entity assets.

Prior to the enactment of the Reauthorization Act in December 2015, the Board was administratively affiliated with the Department of Transportation and its financial information, including the year-end financial statements, was included in the DOT's consolidated financial statements. As a result of the Reauthorization law, the Board is now an independent agency, which necessitated a significant change in its financial reporting responsibilities. Before the Reauthorization Act, the STB was not required to prepare audited financial statements. As an independent agency, the STB is required to issue an audited set of financial statements in accordance with the Accountability of Tax Dollars Act of 2002. In FY 2018, the DOT Office of Inspector General engaged an independent public accounting firm to audit STB's financial statements. These audited financial statements are

presented in this report.

B. Basis of Presentation

The STB financial statements are presented to report the agency's financial position and operations. The statements are required by the Accountability of Tax Dollars Act of 2002, the Chief Financial Officers' Act of 1990, and the Government Management Reform Act of 1994. The financial statements have been prepared in accordance with the principles generally accepted in the United States of America as well as standards issued by the Federal Accounting Standards Advisory Board (FASAB); OMB Circular A-136, Financial Reporting Requirements, as amended; and STB accounting policies, which are summarized in this note. 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 the STB's financial position.
- The Statement of Net Cost with the agency's operating results.
- The Statement of Changes in Net Position with the changes in the agency's equity accounts.
- The Statement of Budgetary Resources with the sources, status and uses of STB resources.

C. Basis of Accounting

STB transactions are recorded in accordance with an accrual basis of accounting and a budgetary basis of accounting. 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. STB's use of budgetary accounting facilitates compliance with legal requirements on the use of federal funds.

D. Fund Balance with Treasury

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 consist of amounts owed to STB by the public associated with the user fees charged by the agency for certain filings. An allowance for uncollectible accounts receivable from the public is established after a management review of outstanding accounts and the determination that collection is unlikely to occur considering the debtor's ability to pay.

F. Property, Equipment, and Software

STB has depreciable assets as of September 30, 2018. These capitalized assets will be depreciated once placed in service. The following is the Board's policy regarding property, equipment and software: STB's property, equipment and software represent furniture, fixtures, equipment, and information technology hardware and software, recorded at original acquisition cost, and they are depreciated or amortized using the straight-line method over their estimated useful lives. STB's maintenance and repair costs are expensed as incurred with a capitalization threshold of \$50,000 for individual purchases. Property, equipment, and 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 for goods ordered and received and for services rendered except for employees. Accrued payroll and benefits represent payroll costs earned by employees during the fiscal year that 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 accrue annual and sick leave as it is earned. 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

STB recognizes contingent liabilities in balance sheet and statement of net cost when both probable and can be reasonably estimated. In FY 2018, 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.

Note 2. Fund Balance with Treasury

STB's Fund balance with Treasury account balances as of September 30, 2018, and 2017 (in thousands) were as follows:

Fund Balance with Treasury	2018	2017
Status of Fund Balance with Treasury		
Unobligated Balance		
Unobligated balance available in the current period	\$ 2,618	\$ 4,110
Unavailable	3,969	301
Obligated balance not yet disbursed	7,278	4,536
Total	\$ 13,865	\$ 8,947

Note 3. Accounts Receivable

The STB's accounts receivable is primarily made up of balances due to the Board from STB customers who submit filings to the Board. The accounts receivable is primarily made up of services provided to the public. Historical experience has indicated that the majority of the receivables are collectible. There are no material uncollectible accounts as of September 30, 2018 and 2017.

STB's accounts receivable balances as of September 30, 2018, and 2017 (in thousands) were the following:

Accounts Receivable	2018	2017
Total Public	\$ 2	\$ 4
Total Receivables	\$ 2	\$ 4

Note 4. Other Assets

STB's Other Assets as of September 30, 2018, and 2017 (in thousands) were as follows:

Other Assets	2018	2017
Intragovernmental		
Advances and Prepayments	\$ 2,204	\$ 2,139
Total Intragovernmental Other Assets	\$ 2,204	\$ 2,139
Total Other Assets	\$ 2,204	\$ 2,139

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. The capitalization policy was updated in FY 2017. 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.

The general components of capitalized property and equipment, net of accumulated depreciation, or amortization, consisted of the following as of September 30, 2018, and 2017 (in thousands), respectively:

Class of Property	Depreciation/Amortization Method	Capitalization Threshold for Individual Purchases	Service Life (Years)	Acquisition Cost	Accumulated Depreciation/Amortization	Net Book Value
Equipment	S/L	\$ 50,000	3	\$ 328	\$ -	\$ 328
Total				\$ 328	\$ -	\$ 328

Additional Disclosure

	Acquisition Cost	Accumulated Depreciation/Amortization	Net Book Value
Gross PP&E- Balance beginning of year	\$ -	\$ -	\$ -
Capitalized acquisitions from the public during current fiscal year	-	-	328
Balance end of year	\$ -	\$ -	\$ 328

Note 6. Liabilities Not Covered by Budgetary Resources

STB's liabilities as of September 30, 2018, and 2017 (in thousands) were the following:

Liabilities Not Covered by Budgetary Resources	2018	2017
Intragovernmental		
Unfunded FECA liability	\$ 146	\$ 147
Unfunded Employment Related Liability	81	97
Total Intragovernmental	\$ 228	\$ 244
Public (Non-Federal):		
Federal Employee and Veterans' Benefits Payable	\$ 518	\$ 674
Accrued Pay and Benefits	1,394	1,450
Other (Non-Federal) Liabilities	-	-
Total liabilities not covered by budgetary resources	\$ 2,139	\$ 2,368
Total liabilities covered by budgetary resources	\$ 1,749	\$ 2,092
Total Liabilities	\$ 3,888	\$ 4,460

Note 7. Other Liabilities

STB's Other liabilities as of September 30, 2018, and 2017 (in thousands) were the following:

Other Liabilities	Non-Current Liabilities	Current Liabilities	2018
Intragovernmental			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	\$155	\$ 155
Total Intragovernmental Covered by Budgetary Resources	-	\$155	\$ 155

Not Covered by Budgetary Resources:			
Federal Employees Compensation Act (FECA)			
2018 Bill (Non-Current)	\$66	- \$	66
2017 Bill (Current)	-	\$66	66
Quarter of FY 2018 (Non-Current)	14	- \$	14
Total FECA Liabilities	80	66 \$	146
Unfunded Employment Related Liability	-	81 \$	81
Total Intragovernmental Not Covered by Budgetary Resources	-	-	-
Total Intragovernmental Other Liabilities	80	302 \$	382
Public:			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	607	607
Total Public Covered by Budgetary	-	607 \$	607
Not Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	1,394	1,394
Total Public Not Covered by Budgetary	-	\$1,394 \$	1,394
Total Public Other Liabilities	-	\$2,001 \$	2,001

Note 7. Other Liabilities (cont.)

Other Liabilities	Non-Current Liabilities	Current Liabilities	2017
Intragovernmental			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	\$157 \$	157
Total Intragovernmental Covered by Budgetary Resources	-	\$157 \$	157
Not Covered by Budgetary Resources:			
Federal Employees Compensation Act (FECA)			
2018 Bill (Non-Current)	\$66	- \$	66
2017 Bill (Current)	-	\$66	66
Quarter of FY 2018 (Non-Current)	15	- \$	15
Total FECA Liabilities	81	66 \$	147
Uncleared Disbursements and Collections	-	97 \$	97
Total Intragovernmental Not Covered by Budgetary Resources	81	163	244
Total Intragovernmental Other Liabilities	81	320 \$	401
Public:			
Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	618	618
Total Public Covered by Budgetary	-	618 \$	618
Not Covered by Budgetary Resources:			
Accrued Pay and Benefits	-	1,450	1,450
Total Public Not Covered by Budgetary	-	1,450 \$	1,450
Total Public Other Liabilities	-	\$2,068 \$	2,068

Note 8. Intragovernmental Costs and Exchange Revenues

STB's Intragovernmental Costs and Exchange Revenues as of September 30, 2018, and 2017 (in thousands) were as follows:

Intragovernmental Costs and Exchange Revenues	Intragovernmental	With the Public	2018
Gross Costs	\$14,476	\$17,940	\$ 32,416
Less Earned Revenue	-	456	456
Net Program Costs	\$14,476	\$17,484	\$ 31,960

Intragovernmental Costs and Exchange Revenues	Intragovernmental	With the Public	2017
Gross Costs	\$83,365	\$19,990	\$ 103,355
Less Earned Revenue	-	637	637
Net Program Costs	\$83,365	\$19,353	\$ 102,718

Note 9. Leases

The STB has an operating lease for its building and no capital leases. The STB's rental payments for its headquarters building amounted to approximately \$3.8 million for FY 2018. In FY 2017, the STB signed a new 15-year operating lease with the General Services Administration (GSA), which will take effect in FY 2019, for the facility that houses its day-to-day mission operations that will take effect in FY 2019. While the leases with the GSA are cancellable, the STB's intention is to stay in the currently leased space and disclose the amounts that will be paid in the future to the GSA under the signed lease agreements. The Year 1 monthly rent under the new lease shall be fully abated for the first six months of the lease term. The lease also includes estimates for operating expense and real estate tax adjustments.

Future minimum lease payments under leases of commercial property due as of September 30, 2018, and 2017 (in thousands) are as follows:

Fiscal Year	
2019	\$ 3,295
2020	2,786
2021	2,786
2022	2,786
2023	2,786
Thereafter	29,098

Total Future Minimum Lease Payments	\$ 43,535
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Note 10. Budgetary Resources

STB Budgetary Resources as of September 30, 2018, and 2017 (in thousands) are:

Budgetary Resources	Direct	Reimbursable	2018
Category A	\$1,388	- \$	1,388
Category B	34,541	- \$	34,541
Total	\$35,929	- \$	35,929

Budgetary Resources	Direct	Reimbursable	2017
Category A	\$33,401	- \$	33,401
Total	\$33,401	- \$	33,401

Note 11. Undelivered Order at End of Period

STB's Undelivered Order at the end of September 30, 2018, and 2017 (in thousands) is:

Undelivered Orders	2018	2017
Intragovernmental Undelivered orders, Unpaid at the end of the period	\$ 2,198	\$ 2,444
Public Undelivered orders, Unpaid at the end of the period	\$ 3,848	\$ -
Intragovernmental Undelivered orders, Paid at the end of the period	\$ 2,204	\$ 2,139

Note 12. Reconciliation of Net Cost of Operations to Budget

Reconciliation of Net Cost of Operations to Budget	2018	2017
Resources Used to Finance Activities:		
Obligations Incurred	\$ 35,929	\$ 33,401
Less: Spending Authority from Offsetting Collections and Recoveries	947	1,103
Obligations Net of Offsetting Collections and Recoveries	34,982	32,298
Net Obligations	\$ 34,982	\$ 32,298
Other Resources		
Imputed financing from costs absorbed by others	1,200	72,358
Net Other Resources Used to Finance Activities	1,200	72,358
Total Resources Used to Finance Activities	\$36,182	\$104,656
Resources Used to Finance Items Not Part of the Net Cost of Operations:		
Change in budgetary resources obligated for goods, services, and benefits ordered but not yet provided	3,667	1,924
Resources that fund expenses recognized in prior periods	229	51
Resources that finance the acquisition of assets	328	-
Total Resources Used to Finance Items Not Part of the Net Cost of operations	\$4,224	\$1,975
Total resources Used to Finance the Net Cost of Operations	\$31,958	\$102,681

Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period:		
Components Requiring or Generating Resources in Future Periods:		
Increase in exchange revenue receivable from the public	(2)	(4)
Change in Other Liabilities (+/-)	-	40
Total Components of Net Cost of Operations That Will Require or Generate Resources in Future Components Not Requiring or Generating Resources:	\$ (2)	\$ 36
Other Expenses and Adjustments not Otherwise Classified Above (+/-)	4	-
Total Components of Net Cost of Operations That Will Not Require or Generate Resources	4	-
Total Components of Net Cost of Operations That Will Not Require or Generate Resources in Current Period	\$2	\$36
Net Cost of Operations	\$ 31,960	\$ 102,718

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	1	0	1	0	0
<i>Accounting Errors Made in Recording Advances in Interim Statements</i>	1	0	1	0	0
<i>Accounting Errors Impacted the Financial Statements</i>	0	1	1	0	0
<i>Total Material Weaknesses</i>	2	1	3	0	0

Table 2: Summary of Management Assurances

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

Statement of Assurance: Modified

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Material Errors in Year-end Financial Statements	1	0	1	0	0	0
<i>Accounting Errors Made in Recording Advances in Interim Statements</i>	1	0	1	0	0	0
<i>Accounting Errors Impacted the Financial Statements</i>	0	1	1	0	0	0
<i>Total Material Weaknesses</i>	2	1	3	0	0	0

Payment Integrity

The information presented in this report complies with guidance provided in the *Improper Payments Information Act of 2002* (IPIA) as amended by the *Improper Payments Elimination and Recovery Act of 2010* (IPERA) and the *Improper Payments Elimination and Recovery Improvement Act of 2012* (IPERIA); Office of Management and Budget (OMB) Circular A-136, and Appendix C of OMB Circular A-123, M-15-02, *Requirements for Effective Estimation and Remediation of Improper Payments*.

The guidance requires agencies to assess every Federal program and dollar for improper payment risk, measure the accuracy of payments annually, and initiate program improvements to ensure payment errors are reduced. 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.
- What agencies are doing to reduce and recover improper payments.

Program Review

The STB has only one program for budget purposes. The FY 2018 appropriated funding for the program is \$37.1 million. All of the agency's transactions are for employee payroll and benefits, and intra-governmental and 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 Department of Interior 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 Effective Estimation and Remediation of Improper Payments.

Based on OMB Circular A-123, all programs and activities were reviewed to identify those that were susceptible to significant improper payments. For FY 2018, the STB Federal and non-Federal payment was \$14 million, and payroll was \$20.5 million for a combined total of \$34.5 million. IPERA defines “significant” as either (1) improper payments that exceed both \$10 million and 1.5% of program disbursements; or (2) improper payments in excess of \$100 million. Significant improper payments in the STB’s program needed to exceed both \$ 0.5 million (1.5% improper payment rate) and \$10 million of all non-Federal payments and payments to Federal employees. No material improper payments were identified by the STB in FY 2018 for significant improper payment reporting.

In addition, the following risk factors, which are 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.

Of the eight risk factors listed above, factor number five was the main cause of improper payments discovered during annual internal control testing.

Improper Payments Strategy

IPERA requires agencies to conduct payment recapture 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. The STB addresses proper management of payments by:

- preventing payment errors through documented processes and internal controls; and

- detecting overpayment and underpayments through control testing

Due to the STB's limited staffing levels for its accounting functions 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 levels. 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 (TIN) Match Program before establishing the entity as a vendor in its core financial accounting system.

Do Not Pay (DNP) Initiative

In coordination with ESC, the STB has begun to review the SAM database prior to each acquisition award to ensure the vendor is registered to do business with the Federal government. ESC has engaged DNP Analytics Services to match the STB's vendor records with the Death Master File (DMF). The review identified high-risk vendor records possibly associated with deceased individuals and enabled the Board to classify vendor records into risk-based categories for further evaluation. ESC deactivated the highest risk vendor records, thereby decreasing the likelihood of improper payments to deceased individuals. ESC performs post-payment reviews to adjudicate conclusive matches identified by the DNP Business Center. The monthly adjudication process involves verifying payee information against internal sources, reviewing databases within the DNP Business Center, and confirming whether the STB applied appropriate business rules when the payments were made.

	Number of payments reviewed for improper payments	Dollars of payments reviewed for improper payments	Number of payments stopped	Dollars of payments stopped	Number of improper payments reviewed and not stopped	Dollars of improper payments reviewed and not stopped
Reviews with the DMF only	All agency payments submitted to shared service provider	\$ 2.87M	0	0	0	0
Reviews with all other databases ¹⁷	All agency payments submitted to shared service provider	\$ 2.87M	0	0	0	0

Recapture of Improper Payments Reporting

IPERA replaced the recovery auditing program contained in the National Defense Authorization Act of 2002. IPERA 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 (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 in 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 2018.

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

¹⁷ Databases are 1) Systems for Awards Management-Exclusion Records – Private; 2) List of Excluded Individuals/Entities (LEIE); and 3) System for Award Management (SAM) Entity Registration Records, Private.

The following table shows cumulative overpayments (in millions of dollars) through FY 2018.

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

Fraud Reduction

OMB Circular A-123 and the GAO Green Book call for agencies to adhere to leading practices for managing fraud risk. Standards now require agencies to take a closer look at fraud risks (GAO principle 8 shown below) and to identify fraud risk factors and programs with increased susceptibility for fraud.

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

For FY 2018 the use of government purchase cards was identified as a program at a high risk for fraud. The following financial controls are in place to prevent potential fraud within the government purchase card program.

- The purchase card has a limit of \$3,500 per cardholder.
- All Purchase Card holders are required to take training prior to being issued a purchase card. STB also has developed a policy defining the roles and rules of the purchase card holder. The policy is reviewed and updated periodically with training planned for FY 2019.

The following administrative controls are in place to detect potential fraud within the government purchase card program.

- The STB reviews all purchase cardholders’ statements and supporting receipts monthly. The STB reviews the Cardholder History Report obtained from the servicing bank to review what purchase cardholders have procured during the annually. Any purchases that are deemed suspect are reviewed and handled accordingly.

Other areas reviewed include payroll, large contracts, and all government charge cards. Travel cards are not deemed a fraud risk as the travel card account is the cardholder’s financial responsibility and not the Board’s. Travel cards are reviewed quarterly for misuse.

Reduce the Footprint

The STB does not have any real property. The STB leases space through GSA, and therefore does not provide square footage data to the Federal Real Property Profile. In June 2017, GSA executed a new lease for the STB space for a total of 63,825 square feet in Patriots Plaza, representing a reduction of 10,464 square feet in office space. The new lease will take effect in the second half of FY 2019.

Reduce the Footprint Policy Baseline Comparison	FY 2015 (Baseline)	FY 2018	Change (FY 2015 Baseline – FY 2018)
Square Footage	74,289	74,289	0.00

Reporting of O & M Cost – Owned and Direct Lease Buildings	FY 2015 Reported Cost	FY 2018 Reported Cost	Change in Baseline 2015- 2018
Operation and Maintenance (O&M) Costs	N/A*	N/A*	N/A*

*The STB does not directly lease or own any space but has occupancy agreements with GSA.

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—2018 Adjustment*, Docket No. EP 716 (Sub-No. 3), issued a final rule to adjust its existing civil monetary penalties for inflation for 2018. 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/2018/01/09/2018-00166/civil-monetary-penalties-2018-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	2018	\$7,791.00
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	2018	\$779.00
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(b)	For each day violation continues.	1995	2018	\$40.00
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	2018	\$7,791.00
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	2018	\$155-\$779

Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 11901(d)	For each day violation continues.	1995	2018	\$78.00
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	2018	\$779.00
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	2018	\$155.00
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	2018	\$155.00
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	2018	\$1,066.00
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	2018	\$10,663.00
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	2018	\$26,659.00
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	2018	\$21,327-\$42,654
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	2018	\$1,558.00

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	2018	\$15,583.00
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	2018	\$38,954.00
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	2018	\$3,116.00
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	2018	\$7,791.00
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	2018	\$155,820.00
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	2018	\$311.00
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14904(a)	For all subsequent violations.	1995	2018	\$390.00
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	2018	\$779.00
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	2018	\$3,116.00

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	2018	\$779.00
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	2018	\$3,116.00
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	2018	\$15,583.00
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	2018	\$2,133.00
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	2018	\$5,332.00
Interstate Commerce Act, as amended by the ICC Termination Act of 1995	49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	1995	2018	\$7,791.00
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	2018	\$3,116.00
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	2018	\$779.00
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	2018	\$12,383.00

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	2018	\$7,791.00
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	2018	\$779.00
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	2018	\$155.00
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	2018	\$155.00
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	2018	\$1,558.00

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 cover program and administrative costs incurred as necessary. The STB is required to update its user fees at least annually. The STB published notice of its final rule on August 6, 2018, and the new user fee rates took effect on September 5, 2018.



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