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Inspector General

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March 27, 2017

Darryl Irick  
Acting President  
MTA New York City Transit  
2 Broadway, 30th Floor  
New York, NY 10004

Re: Workers' Compensation Duplicate  
Payments  
MTA/OIG #2016-14

Dear Mr. Irick:

In June 2015, Pamela Davis, Executive Assistant General Counsel, Law Department, asked the Office of the MTA Inspector General (OIG) to assist her department in assessing aspects of New York City Transit's (NYC Transit or NYCT) self-funded system for issuing payments (Benefits) to employees for injuries or illnesses incurred as a direct result of their job. The Benefits are issued to these employees (Beneficiaries) by NYC Transit's Workers' Compensation Division (Workers' Comp) under Ms. Davis's supervision. Ms. Davis expressed concern that Workers' Comp may have inadvertently issued duplicate payments to Beneficiaries.

In response to her request, we examined all payments issued in the fourth quarter of 2014. While duplicated Benefits are naturally a cause for concern, on a positive note we found very few such duplications, numbering 31 and totaling \$32,893, which is less than one-half of one percent of both the total number of Benefit payments (8,543), and the total amount of Benefits paid (\$9,693,088) during the three-month period. These duplicate payments included Benefits issued by Workers' Comp that erroneously overlapped regular pay issued by the NYC Transit operating departments of Subways and Buses. In addition, we found 14 instances totaling \$32,564, in which these departments issued payments that were erroneous because the employees were properly receiving Benefits issued by Workers Comp.

Certainly, we recognize the positive impact of the recent efforts by Workers' Comp to prevent payment errors, and we also acknowledge the likely beneficial consequences of the planned improvements Ms. Davis described to us, most notably the implementation of a new computer system. To further improve and strengthen the payment processes of Workers Comp and the operating departments, we have set forth our findings and recommendations below.

## FINDINGS

### Duplicate Payments Issued by Workers' Comp

Initially, to determine whether and to what extent Workers' Comp had issued duplicate payments, we reviewed data for the 1,507 NYC Transit employees who received Benefits from October 1 through December 31, 2014 (the Subject Beneficiaries). We sought to identify any instances in which a Subject Beneficiary received duplicate checks, defined as two checks issued by Workers' Comp in the same amount for the same payroll period.

We found that eight Subject Beneficiaries received duplicate payments totaling \$5,764. Workers' Comp staff had discovered seven of the erroneous payments after the checks were issued; OIG identified the eighth. When we reviewed these findings with Workers' Comp officials, we learned that in three instances the staff member responsible for disbursing Benefits (the Examiner) mistakenly issued two checks payable to the Subject Beneficiary in identical amounts and for the same dates. In four instances the Examiner erroneously issued a check payable to the Subject Beneficiary before correctly issuing the check to the attorney involved in the case. And in the last instance the Examiner mistakenly issued a penalty payment to the Subject Beneficiary before correctly issuing it to the New York State Workers' Compensation Board (the Board), which regulates this system of compensation.<sup>1</sup>

Generally, such errors come to light only after the fact, when the Examiner discovers the issuance of a duplicate check while performing data entry. As a means to alert Examiners to a potential duplication, a red banner appears at the top of the computer screen when an employee's record includes two Benefit checks covering the same dates. However, officials told us that the banner functions poorly as a warning because it is not conspicuous. More to the point, the system does not contain a failsafe that actually *prevents* duplicate payments.

NYC Transit is authorized to recoup excess amounts paid to Beneficiaries, further reducing the financial impact of these infrequent errors. However, even with the development of strengthened preventive controls, if mistakes are not identified through regular monitoring and analysis, such recoupment will not be possible. In that regard, though, we learned that Workers' Comp lacks the analytical staff necessary to identify duplicate payments and investigate potentially troubling trends and patterns. Going forward, Ms. Davis informed us that her unit has received budgetary approval to hire a staff member to conduct such analyses, among other job responsibilities. We agree that this is a sensible investment.

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<sup>1</sup> The Board may fine an employer for wrongful acts and/or omissions, including a failure to file a claim within a prescribed timeframe.

### **Overlapping Workers' Comp Benefits and Regular Pay**

Within the MTA, paychecks for employees of the MTA constituent agencies, including NYC Transit, are issued by the MTA Business Service Center (BSC). An employee at work receiving regular pay is not eligible to also receive full Workers' Comp Benefits.<sup>2</sup> To determine whether any employees simultaneously received overlapping regular paychecks and Benefits from Workers' Comp, we reviewed payroll data from the BSC for the 1,507 Subject Beneficiaries. We found 23 overpayments of Benefits, totaling \$27,129, caused by various errors, which Workers' Comp officials had not previously identified. The three primary causes of these overpayments are as follows:

- **Return-to-Work Dates Missing or Erroneous**

It is the responsibility of the employee's operating department to notify Workers' Comp of the date the employee returns to active service. This Return-to-Work Date is the agency's official indicator that Benefits should cease and the Examiner is responsible for entering it into the Workers' Comp computer system immediately.

We found 12 instances in which employees received both Benefits and regular pay for the same time period, amounting to \$24,729 in excess Benefits, constituting 91 percent of the \$27,129 total. The largest such overpayment occurred when Workers' Comp continued to provide Benefits to an employee for over *four months* after she had already returned to work. While we understand that Workers' Comp had previously been unaware of these errors, Workers' Comp officials subsequently determined, through further research prompted by our inquiries, that the employees' Return-to-Work Dates had not been entered into the computer system correctly or, in some cases, entered at all. As to the cause of these errors, however, Workers' Comp could not determine whether: (1) the operating department failed to provide the Examiner with the Return-to-Work Date; or (2) the department provided that date to the Examiner, but the Examiner failed to enter it into the computer system.

Officials in the NYC Transit Subways and Buses departments told us that prior to our review they recognized that the untimely documentation of Return-to-Work Dates posed a challenge to Workers' Comp. To facilitate the process, these departments now periodically send Workers' Comp the names of employees who have recently returned to work. As Ms. Davis described this enhanced quality-control system, several Workers' Comp staff members review this information and enter any Return-to-Work Dates that had not been previously entered, to be sure that the computerized records are complete and accurate.

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<sup>2</sup> In contrast, an employee with a partial disability could return to work and receive both wages and partial Benefits. We did not identify any such Beneficiaries during our sample period.

#### ○ **Waiver and Election Period Errors**

One highly valuable aspect of receiving Benefits is that injured employees do not have to use accrued sick, vacation, or personal leave to continue their income stream. However, because the Benefits are not issued until the Board approves a claim; certain represented employees may *wave* their right to conserve their leave and *elect* to get a regular paycheck for a maximum of 20 days at eight hours a day. During this Waiver and Election period, the employee receives that paycheck from the BSC; once the Board approves the claim, the responsibility for making “payments” (now in the form of Benefits instead of a paycheck) shifts to Workers’ Comp. The employee’s Benefits should then begin on the first day after the Waiver and Election period ends.

We found eight instances in which an employee received an overlapping payment of Benefits from Workers’ Comp during the Waiver and Election period because the Examiners did not correctly identify the date that this period ended. These overpayments occurred even though the Waiver and Election Form submitted by the operating department contained the date the employee’s leave credits would be exhausted—an indication to the Examiner that Workers Comp’ should begin paying Benefits the following day. Workers’ Comp staff members ascribed the overpayments to human error.

#### ○ **Work-Shift Miscalculations**

Certain Department of Subways employees work overnight shifts. For timekeeping and payroll purposes, and in accordance with the Transport Workers Union contract, a work shift that starts at 8:01 p.m. or later in the evening is deemed to begin on the *following* calendar day. Because employees who do not choose the Waiver and Election process may be eligible to start receiving Benefits beginning the day after their injury occurs, it is critical to the correct determination of that day that the Examiner understands and properly applies the overnight-work-shift rule.

We found three instances in which an employee received an overpayment as the result of a work-shift miscalculation by the Examiner, although the information as to the employee’s schedule would routinely be included on the report filed when the employee was injured. Workers’ Comp officials confirmed that Examiners had incorrectly identified each employee’s work hours—and thus began paying Benefits one day too soon.

### **Computer and Payroll Systems Lack Integration**

In our discussions, Ms. Davis explained that a contributing cause of the overlapping payments described in this section is the near-total lack of integration among the Workers’ Comp computer system, the various NYC Transit payroll systems, and the BSC’s PeopleSoft payroll system. For example, when a Beneficiary returns to work, PeopleSoft cannot automatically signal the Workers’ Comp computer system that the employee should no longer receive Benefits.

We understand that NYC Transit is in the process of developing a replacement for the Workers' Comp computer system. Based on her direct involvement in designing the new system's technical specifications, Ms. Davis advised us that she expects the replacement system to allow Workers' Comp to collect, analyze, and report on data more effectively. Ms. Davis also expects it to have the necessary functions and controls to correct the weaknesses our research has uncovered, including the ability to integrate with PeopleSoft to detect and prevent overlapping and other duplicate payments. While the OIG did not review the new system's specifications, we are optimistic that better information technology will support improvements in the Benefit payment process.

To avoid overpayments of any type in the months, or years, before the new system becomes fully operational, Workers' Comp should provide additional training for Examiners to improve the accuracy of the payment process. Just as regular monitoring and analysis supports preventive internal controls and furthers the recoupment of any overpayments, increasing awareness of correct data entry procedures is crucial to ensure that this monitoring and analysis is effective and efficient.

### **Operating Departments Issued Other Erroneous Payments**

We found 14 overpayments caused by NYC Transit operating departments in the fourth quarter of 2014, totaling \$32,564. These overpayments, which involved different kinds of timekeeping errors, had not previously been discovered by these departments

#### ***Department of Buses***

Employees in Buses who retire from active service receive "terminal pay"—meaning additional vacation leave that is contractually provided to employees upon their retirement. However, employees who retire while receiving Benefits from Workers' Comp are not eligible to receive terminal pay.<sup>3</sup>

We found four cases in which a Beneficiary retired without returning to work, and in all four the department erroneously issued terminal pay in a combined amount of \$29,633, constituting 91 percent of the \$32,564 total overpayments paid in error by the departments in the fourth quarter of 2014. While Buses officials had been unaware of these errors, when we brought them to their attention they conducted further research and determined that the errors occurred because some staff members with timekeeping responsibilities were unfamiliar with the above rule governing eligibility for terminal pay.

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<sup>3</sup> TWU, Local 100 contract, effective December 15, 1999, p. 53; ATU, Local 726 contract, effective February 2, 2000, p. 46.

In a separate finding, we identified one instance in which a Beneficiary was overpaid because Buses erroneously paid for his twenty-first day of Waiver and Election, despite the 20-day limit on the length of the waiver period. Department officials told us this overpayment resulted from a miscalculation of days by Buses personnel.

### *Department of Subways*

There are four main operating divisions within Subways, each with separate timekeeping functions. Maintenance of Way (Maintenance) is the only division to use craftspeople (e.g. track workers), to serve as timekeepers; the other three divisions (Car Equipment, Rapid Transit Operations, and Stations) use administrative personnel.

Among the cases we reviewed, we found 9 instances in which Subways timekeepers erroneously made holiday or other work-related payments to employees who were not entitled to them because they were properly receiving Benefits. We found that 6 of these 9 Beneficiaries worked in Maintenance. Subways officials told us that this higher rate of errors was caused by the division's use of inadequately trained field craftspeople as timekeepers. They further explained that the department plans to replace these timekeepers with personnel specifically dedicated to this administrative task and assigned to a central location. We will continue to monitor as appropriate.

## RECOMMENDATIONS

To improve the functioning of its payment process, New York City Transit should:

- 1) Make more conspicuous the computerized alert to Examiners that Workers' Comp may be at risk of issuing a duplicate payment.
- 2) Ensure that the new computer system includes a failsafe mechanism to prevent Workers' Comp from issuing duplicate payments.
- 3) Reinstruct Workers' Comp Examiners on the proper entry of dates and other significant information.
- 4) Notify individual Examiners when their errors are identified so they can correct the payment record and improve their future performance.
- 5) Reinstruct appropriate timekeeping staff on the rules for issuing terminal pay.
- 6) Pursue recoupment from active and retired employees identified as having received any overpayments, including erroneous Benefits payments.

## Agency Response

*In his letter dated February 16, 2017, Darryl Irick, Acting President, NYC Transit, asserted that his agency "is committed to making all reasonable efforts to assure accurate payments and accounting" and has taken steps to address each of our recommendations. Specifically, he responded as follows regarding the implementation of the above Recommendations:*

- 1. "The existing system includes a warning message if it detects that a possible duplicate payment is about to be paid. This system has generally been successful in avoiding duplicate payments. NYCT is, however, reviewing the IT [Information Technology] costs associated with a modified alert system requiring the examiner to respond to a query prior to making the payments in order to require another proactive step to further prevent duplication of payment."*
- 2. "As you are aware, NYCT is in the process of procuring a replacement for the existing WCIS [computer] system, which will enhance the efficiency of Workers' Compensation operations. It is anticipated that this new system will incorporate additional functions and controls to prevent the issuance of duplicate payments."*
- 3. "The Workers' Compensation Division has developed a close working relationship with the operating departments to better ensure that significant information, such as the date a [Beneficiary] has returned to work, is timely provided to the Division. In turn, Workers' Compensation's management has emphasized to staff responsible for making such data entries the necessity of inserting the Return to Work information properly into the system. The Division is committed to continually reinforcing the importance of accurate data entry to mitigate the opportunity for error. Further, the Division is employing various checks and balances, including a periodic report from both Buses and Subways alerting us to the names of employees who have returned to work but whose status in the claims system does not reflect this."*
- 4. "All examiners who made double payments have been notified and were given corrective instructions to improve their future performance."*
- 5. "The Department of Buses is coordinating with MTA IT to program the Unified Timekeeping System (UTS) as follows: Institute 'pop-up' alerts to all users when processing 'Terminal Leave' for employees on Workers' Compensation; prevent 'Terminal Leave' if not entitled; [and] prevent over-payment of Waiver & Election. Additionally, while Buses waits for the implementation of IT improvements, it will provide training to all timekeeping staff on the proper procedures for processing Terminal Leave and Waiver and Election when employees are receiving workers' compensation benefits."*

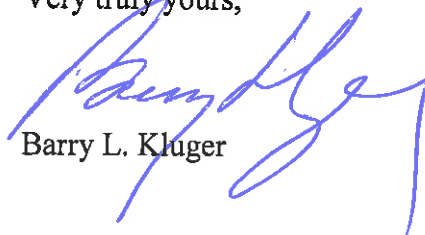
Mr. Darryl Irick  
Re: MTA/OIG #2016-14  
March 27, 2017  
Page 8

*"The Department of Subways (DOS) also is addressing the identified concern regarding overpayments in connection with processing of terminal pay (and overpayments arising in other contexts), in several ways:*

- *DOS Timekeepers will be reinstructed on proper payment of terminal pay for employees retiring or resigning from compensation;*
  - *DOS will continue to review and scrutinize the BSC [payroll] reports; and*
  - *DOS intends to develop a process to ensure the Workers' Compensation Division receives timely notification of employees' Return-to-Work Dates across the four (4) DOS Divisions and will clarify to the Workers' Compensation Division when an employee is considered working for the next day when Timekeeping is paying the employee during the Waiver and Election period."*
6. *"Workers' Compensation Division has been pursuing recoupment of overpayments and to date has recovered \$5,484.20. Where possible, [Subways] Timekeeping will also be pursuing recoupment of overpayments that were made in error to its employees. In circumstance where these recoupment efforts are unavailing, the Workers' Compensation Division will also be working with an attorney from the Law Department's Affirmative Unit."*

We appreciate your attention to the issues we raised, as well as the courtesy and cooperation afforded to us at all times by your staff. Should you have any questions regarding this final report, please contact me or Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours,



Barry L. Kluger

cc: Pamela Davis