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December 15, 2016

Mr. Thomas Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway, 20th Floor
New York, NY 10004

**Re: NYC Transit Knowledge of Anti-
Nepotism Policy
MTA/OIG #2016-18**

Dear Mr. Prendergast,

In 2013 the Office of the Metropolitan Transportation Authority (MTA) Inspector General (OIG) conducted an investigation in which we found that by directly approving the hiring of a family member to work within her unit, a Metro-North Railroad (MNR) Assistant Vice President violated the agency's Operating Procedure governing employment of relatives, as well as the broader provisions of the MTA All-Agency Code of Ethics prohibiting nepotism, conflicts of interest, and violations of the public trust. Promptly after the release of these findings, the MTA Chairman/CEO approved the September 2013 All-Agency Policy Directive 11-051, entitled "Anti-Nepotism Employment Procedures" (Policy). The stated purpose of the Policy is "[T]o safeguard against the influence of nepotism in employment-related decision-making at the MTA to further ensure that decision-making on employment-related matters is based on merit and qualifications." The Policy includes such important information as the definition of "family member," outlines the responsibility of employees to recuse themselves from certain hiring matters, and describes situations that require absolute exclusion of an applicant from consideration.

OIG Survey re MTA Anti-Nepotism Policy

In 2014, as part of the MTA's evolving effort to strengthen the anti-nepotism practices at each operating agency, the MTA Chief Compliance Officer issued a directive requiring all MTA non-represented personnel to participate in two online training sessions. One was designed to test their knowledge of anti-nepotism procedures and the second required employees to certify by December 1, 2015 that they had read the Policy. To evaluate employees' knowledge of the Policy, in early 2016 OIG conducted a telephone survey of 21 NYC Transit staff members who directly participated in the hiring process for at least one new hire in 2015; for example, by serving as an interview panelist. Each respondent was asked 25 questions on such topics as the Policy's definition of "family member," restrictions on the actions Transit employees may take, and the process for reporting nepotism-related concerns.

The survey results were discouraging. While respondents were aware that the agency broadly prohibits nepotism, most were unfamiliar with specific aspects of the Policy directly related to their responsibilities. We also found that the immediate supervisors for the positions being filled, known as Hiring Managers, performed poorly relative to the other survey respondents. Considering those managers' important role in the hiring process, we are particularly concerned that they were unfamiliar with significant elements of the anti-nepotism policy.

In order to apply the Policy in a fair and consistent manner, NYC Transit must ensure that employees involved in the hiring process understand the Policy's definitions, requirements, and prohibitions. To that end, we make one recommendation to MTA executive leadership to clarify the Policy and three recommendations to NYC Transit management to provide resources and training to employees on the Policy.

Survey Results

Definition of Family Member

The MTA All-Agency Nepotism Policy defines "family member" using the exact language appearing in the MTA Code of Ethics:

(i) An MTA Employee's spouse, domestic partner, child or sibling; (ii) a person who is a direct descendent (or the spouse of a direct descendent) of a grandparent of the MTA employee or a grandparent of the MTA Employee's spouse or domestic partner; or (iii) any person living in the same household as an MTA Employee.¹

Nine out of 21 survey respondents were not aware that the Policy applies to unrelated individuals residing in the same residence, a crucial requirement of anti-nepotism guidelines.

Hiring Prohibitions and Restrictions

Several survey questions related to instances in which a hiring action is prohibited under the anti-nepotism policy. According to the Policy:

Employee participation in a hiring or promotional process involving a family member applicant is prohibited. An MTA Agency employee must not participate in ... an agency selection process for a position of employment or a promotion at an MTA Agency, when the employee has a family member who is an applicant for such position of employment or promotional opportunity at any MTA Agency... . This prohibition includes, without limitation, an employee submitting or

¹ The Policy, p. 2.

referring to an MTA agency or providing to an employee of the MTA agency involved in the hiring/promotional process, a family member's application, resume or other expression of interest with respect to a vacant position.²

As clearly stated, the Policy prohibits a Transit employee from participating in any aspect of the hiring process for a position to which a family member has applied. Less clear within the Policy – and not adequately covered in the required training – is the fact that this restriction applies *even if* the employee recuses him- or herself from activities specifically related to the relative—for example, by having a co-worker review the relative's résumé. However, seven of the 21 survey respondents erroneously thought that under the Policy, such recusal would allow an employee involved in the hiring process to continue participating in the process for other applicants to that position. Additionally, when asked whether a NYC Transit employee may submit a family member's name or résumé if the opening is in a different division, five of 21 respondents incorrectly thought it was permissible to do so.

Reporting Nepotism-Related Concerns

While survey respondents were generally successful in identifying nepotism-related situations that should be reported to an authoritative entity, they were less clear as to which person or office should receive notification. According to the Policy:

An Involved Employee may not participate in any aspect of the hiring or promotional process for a vacant position (the "hiring process") if a family member is an applicant for the vacant position. An employee whose participation in a hiring process is part of their regular job responsibilities must submit a signed recusal to the HR Dept. of his or her MTA Agency promptly upon learning of a family member's application for a vacant position.³

Additionally, "MTA agency employees witnessing perceived violations of [anti-nepotism procedures] are requested to report such perceived violations to their agency's Ethics Officer."⁴

While 20 of the 21 respondents knew they must recuse themselves if a relative has applied for a position in which they are involved in the hiring process, only two respondents knew the Policy requires them to submit a signed recusal form to Human Resources (HR). Furthermore, 19 of 21 survey respondents were not aware that they should report perceived violations of the Policy to their ethics officer.

² Policy, p. 3.

³ Policy, p. 4.

⁴ Policy, p. 14.

Hiring Managers were Generally Less Knowledgeable about Anti-Nepotism Policy

Hiring Managers play a critically important role in the hiring process. Within the Department of Subways (Subways) and the Technical and Administration groups (Tech and Admin), a manager generally participates in the process for each position that he or she will directly supervise; this participation includes reviewing résumé and conducting interviews.^{5,6} Significantly, we found that the Hiring Managers responding to our survey were often less knowledgeable about the Policy than other respondents, e.g. HR representatives involved in the process. Of the eight Hiring-Manager respondents, only two were aware that the Policy applies to unrelated individuals residing in a current employee's household. Further, six of the eight thought it was appropriate for an applicant to be hired for a position in which he or she would be indirectly supervised by a relative without the additional review required by the Policy. One Hiring Manager stated that the Policy should guide an employee in assisting a relative "who really wants to work for the MTA" to obtain employment so the employee with hiring responsibilities is not "criminalized" for his or her actions. Clearly such assistance would contravene the Policy, which must be emphasized in anti-nepotism training.

The Anti-Nepotism Policy Is Excessively Complex

A number of survey respondents expressed a need for supplementary materials to help them apply the Policy to their specific hiring-related duties, reflecting the complexity of both the material and the language used in the Policy. Several managers told us they believed the average NYC Transit employee found the current Policy neither easy to read nor easy to follow. Further, the NYC Transit officials who regularly work with the Policy found it less than straightforward—despite their professional expertise in the topic—and speculated that its complexity may be behind our poor survey results. We agree that this is a likely cause of our findings. We further believe that developing a revised policy that spells out management's expectations in clear text would be the most effective way to help NYC Transit staff implement anti-nepotism measures consistently.

We understand that any decision to revise the Policy requires the involvement of MTA leadership and deserves serious consideration, in what would likely be a lengthy process. Through our interviews we identified several steps NYC Transit could take—regardless of whether the Policy is ultimately clarified—to increase employees' understanding of the agency's anti-nepotism guidelines. We discuss those steps below.

⁵ Within NYC Transit Human Resources, the Client Services group administers non-civil service hiring and promotions; three Client Services teams support Subways, the Department of Buses (Buses) and the combined Tech and Admin groups respectively. Tech and Admin comprise 22 NYC Transit units, including Capital Planning and Budget, Legal, Materiel, and System Safety.

⁶ Within Buses, Hiring Managers do not review résumé and interview panels must consist of at least three individuals in addition to the Hiring Manager.

Survey Feedback on Improving Understanding of the Policy

Supplementary Materials

We asked survey respondents for suggestions regarding the Policy and the anti-nepotism training available to them. Four respondents said they would find it easier to apply the Policy in their day-to-day work if they had access to specific written scenarios illustrating typical situations and the steps hiring officials should take to comply with the Policy in each case. Four other respondents said it would be helpful if NYC Transit made copies of the Policy more readily available. We found these suggestions reasonable. Because the Policy itself is complex and not easily understood—especially by readers without legal or HR expertise, as mentioned earlier—NYC Transit should develop additional supplementary materials to ensure that employees involved in the hiring process have a thorough understanding of the Policy. We believe staff members would benefit from having another opportunity to review the material at the moment it is most relevant to their job responsibilities.

For example, based on the results of our survey, we believe that NYC Transit employees would benefit from the development of a reference page that presents—in plain language—key definitions and procedures, guidance on reporting nepotism-related questions and concerns, and detailed scenarios illustrating significant aspects of the Policy. The development of such a reference would be a helpful step toward educating all Transit personnel to carry out their responsibilities in a fair and unbiased manner that is consistent across the agency. We also recommend that Human Resources include a copy of or link to the Policy and the reference page with each package of résumé it sends to the hiring departments.⁷

Additional Training for Personnel Involved in the Hiring Process

In early 2016, NYC Transit Human Resources (HR) introduced two new forms to be used during the hiring process as part of the agency's ongoing efforts to achieve compliance with the Policy. The first form is to be signed by all interview panelists and HR representatives involved in a hiring process. The *Interview Relationship Form* asks those involved to disclose whether or not they have a familial relationship with any applicant for a given position. If such a relationship does exist, the Transit employee indicates such and signs the form recusing him or herself from any and all discussion and decisions relating to the hiring process for that position. The second form is to be used when a new employee is being hired and a familial relationship exists between the new employee and an existing family member in the same NYC Transit Division. In that case, the existing employee must complete the *Familial Relationship Recusal Form* recusing him or herself from all actions that could directly affect the new employee, including work assignments, evaluations, compensation, and promotions.

⁷ In Buses, interview panelists already receive a copy of the Policy with each batch of résumés.

Thomas Prendergast
Re: MTA/OIG #2016-18
December 15, 2016
Page 6

In November 2015 MTA's Chief Compliance Officer, NYC Transit's Ethics Officer, and several Transit HR representatives met with 26 departmental HR liaisons to provide anti-nepotism training and instruction on the new nepotism-related forms. A "HR liaison" serves as a point of contact between hiring personnel within the department and NYC Transit HR. The departmental HR liaisons are expected to have considerable knowledge on all hiring-related matters, including nepotism, and may occasionally serve as Hiring Managers themselves. At this meeting the officials delivered a presentation entitled "Anti-Nepotism Employee Procedures – All Agency Policy Directive 11-051" and also distributed a one-page "cheat sheet" outlining frequently asked questions about the anti-nepotism policy and procedures. Compliance officials later told us they created this one-page summary after recognizing that many employees found the full Policy unwieldy and difficult to understand.

In early April we contacted four of the departmental HR liaisons who attended the November 2015 training session and conducted the same survey we had conducted earlier with 21 respondents. We found the departmental liaisons somewhat more knowledgeable about the Policy after their training than the previous survey participants.

We reviewed the training materials and found them to be clear and thorough, addressing topics closely aligned to the areas of concern identified by our anti-nepotism survey. For example, the "cheat sheet" described actions the Policy specifically prohibits, including the submission by an MTA employee of a family member's résumé or application for a vacant position, a concept about which survey respondents were particularly uninformed. Additionally, the presentation covered topics such as MTA's zero-tolerance policy with respect to nepotism in employment-related decisions, the Policy's definition of a family member, reporting structures under the recusal process, and specific prohibitions and permissions. It also included four scenarios illustrating typical hiring situations, which were similar to OIG survey questions that respondents found considerably challenging.

While the training materials were not intended to be comprehensive, in light of our survey results we identified additional topics that could be beneficially addressed in the material. Specifically, on the presentation slides that explain the prohibition against the hiring of an applicant who will be directly or indirectly supervised by a relative, the slides could remind staff that the Policy requires employees to contact their department's ethics officer if they experience or witness any perceived violations of the Policy.

More significantly, we learned that because of time limitations, staff members in the MTA Compliance Office, as well as those in the NYC Transit Ethics Office and the Human Resources department are scheduled to provide in-person training not to the many personnel with hiring responsibilities but only to those who serve as departmental HR liaisons. As evidenced by our survey results, NYC Transit has an urgent need for detailed, role-specific instruction for all relevant personnel in this critically important area. We believe instruction to this larger group of employees would be a worthwhile investment of time and resources.

To build upon the work already completed by MTA and NYC Transit instructors, we recommend NYC Transit use its existing materials for a training program that expands to include its employees involved in the hiring process, with a greater emphasis on the application of the Policy to their day-to-day hiring responsibilities. This additional training could be provided by the departmental liaisons who have already received in-person instruction on these topics or if not practicable, their designees that have also been instructed. Using a “train the trainer” model, would allow for cost-effective expansion of the training program to reach all the individuals involved each year in hiring for NYC Transit and would reinforce the rules with those who most need to be familiar with the Policy.

RECOMMENDATIONS

To ensure a fair, consistent, and transparent hiring process across the entire MTA organization, MTA should:

- 1) Revise the MTA All-Agency Anti-Nepotism Policy to improve its clarity and facilitate its effective use by staff members with hiring responsibilities.

To ensure that NYC Transit employees are adequately familiar with the Policy, NYC Transit should:

- 2) Develop a reference page or expand the existing “cheat sheet” explaining critical aspects of the Policy not well understood according to our survey. These include the definition of “family member,” prohibited hiring-related actions by NYC Transit employees, agency protocol for reporting concerns about potential nepotism. Examples of pitfalls possible with typical hiring scenarios would be beneficial.
- 3) Require the Human Resources Department to include this reference page and a copy of or link to the Policy with each set of résumés it sends to a hiring department.
- 4) Provide in-person training to NYC Transit employees involved in the hiring process that will include updated training materials and focus on the areas shown to be problems from our survey.

Agency Response

Following our submission to you of our preliminary report containing the above Findings and Recommendations, you provided the agency response in a memorandum dated December 5, 2016. The memorandum indicated that MTA and NYC Transit “are in general agreement with the report’s findings and conclusions.” Specifically, you detailed the following actions that have been taken or will be taken soon to improve employees’ awareness of MTA’s anti-nepotism policy and practice.

Thomas Prendergast
Re: MTA/OIG #2016-18
December 15, 2016
Page 8

Regarding the revision of the All-Agency Policy, Recommendation 1, you wrote: "We believe that the actions being implemented to address the report's other recommendations will improve staff members' understanding of the Policy Directive. Nevertheless, we will make changes, as warranted, to the Policy Directive to clarify its requirements."

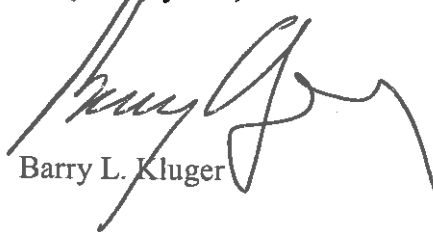
Regarding Recommendation 2 concerning the development and distribution of additional explanatory materials, you concurred and stated: "MTA will produce a Frequently Asked Questions (FAQ) document which will explain key definitions such as what is a family member and provide examples of prohibited and permissible employment actions as it relates to a family member. Additionally, MTA will post a resource guide to assist with the hiring process on the agencies' intranet sites."

In response to Recommendation 3, by which we sought to have the Policy regularly distributed, you wrote: "Concur. The FAQ and Resource Guide will be provided, along with a link to the Policy Directive, with each set of résumés being forwarded to the hiring department."

And finally, in response to Recommendation 4 encouraging more training, you wrote: "The NYC Transit Ethics Officer, in conjunction with MTA Corporate Compliance, will provide additional training to Transit employees involved in the hiring process with an emphasis on training departmental Human Resources liaisons to provide instructions to individuals involved in hiring by the end of the third quarter of 2017."

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, or need additional information, please contact me or Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours,



Barry L. Kluger

cc: V. Hakim
L. Kears