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August 8, 2018

Mr. Phillip Eng
President
MTA Long Island Rail Road
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93-02 Sutphin Blvd., 3rd Floor
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**Re: Fair Hiring Practices at Long Island
Rail Road
MTA/OIG #2017-09**

Dear Mr. Eng:

In 2013, the Office of the MTA Inspector General (OIG) found that a Metro-North Railroad 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 (MTA Code) prohibiting nepotism. Promptly after the release of our report, the MTA Chairman/CEO approved the September 2013 All-Agency Policy Directive 11-051, entitled "Anti-Nepotism Employment Procedures" (the MTA Directive), and each MTA operating agency updated its own policy to conform to that Directive. As part of that process, Long Island Rail Road (LIRR) approved its new Corporate Policy & Procedure EMPL-004, "Avoidance of Nepotism" (the LIRR Policy) in August 2014.

The stated purpose of both policies is to ensure generally that decision-making on employment-related matters is merit-based, and specifically that family members of MTA employees do not get any preference in the hiring process including by means of referrals. In 2016, this Office commenced a review to determine whether LIRR's hiring practices complied with the Policies and gave all candidates for public employment an equal opportunity to compete.

Based on our LIRR review, including interviews with seven Human Resources representatives and an analysis of records concerning more than 5,000 candidates for nine union-represented titles, the OIG found that when considering which résumés to move to the next step in the hiring process, some HR representatives reviewed résumés for referred candidates before reviewing résumés for the general application pool. This occurred for titles that received a very large number of applications for a limited number of vacant positions. While the HR representatives may simply have sought a means to select applications for review, the effective result was preferential treatment for referrals.

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We also found that the HR representatives did not always determine whether referrals were from family members and therefore impermissible under the anti-nepotism policies. Lastly, we identified inaccurately recorded and missing information in HR files. These errors, while few in number, had significant consequences to individuals in two cases by disqualifying candidates who did, in fact, meet the requirements of the title for which they had applied.

Certainly, all qualified applicants should have the same opportunity to be considered for public employment. We recommended that when application pools are very large, applications should be selected randomly for review by HR Representatives, thereby avoiding even the appearance of preferential treatment. For titles receiving fewer applications, we recommended that HR continue assessing the merit of all applicants to ensure that candidates are considered fairly. Finally, we recommended that HR implement additional quality-assurance measures to reduce the likelihood that clerical errors might result in unfair consequences for job candidates.

In your letter dated July 27, 2018, on behalf of the agency, you agreed with all three recommendations and explained the actions that LIRR has taken or soon will take to implement them.

BACKGROUND

Nepotism Prohibited

As simply stated in the MTA Directive, “The MTA has a zero tolerance policy with respect to nepotism in hiring and promotion decisions.” This policy is reflective of the MTA Code and of the rules of the MTA constituent agencies, including the LIRR (collectively the Policies), as well as the state Public Officers Law (POL).¹

In essentially similar language, the Policies provide that employees are prohibited from participating in any hiring or employment decision relating to a “Family Member,” a term defined to include unrelated members of an employee’s household.² If a hiring or employment matter arises relating to a Family Member, the employee must advise his or her supervisor of the relationship and must be recused from any and all discussions or decisions relating to the matter. MTA employees are expected to recuse themselves immediately from all aspects of the formal hiring process upon learning that a Family Member is a candidate. The Policies state clearly that “There will be no preferential treatment for Family Members of current or former employees and/or union officials.”

¹ See MTA Directive §4; MTA Code §8.01 (Nepotism); LIRR Policy §V(A)(1); POL §73.14(a).

² MTA Code §1.01 (Definitions).

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Importantly, the prohibition specifically includes an employee submitting or 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, résumé or other expression of interest with respect to a vacant position.³

The overarching purpose of these Policies is to "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."⁴ Neither policy specifically addresses the referral of applications from *non*-familial candidates, e.g. personal acquaintances of LIRR employees.

The Role of HR Representatives

A Senior Director heads the LIRR Human Resources Department, which is staffed by HR representatives organized into teams assigned to designated operating departments. When a job is posted, HR representatives work with the hiring department to manage the recruitment and selection process, conduct interviews, perform evaluation and testing of the candidates interviewed, extend conditional offers, and confirm final job offers to candidates for vacant positions.

The process begins when a candidate selects a job posting on the MTA website, answers screening questions in the online PeopleSoft system, and uploads his or her résumé. The MTA Business Service Center then submits a list of candidates to the relevant team in LIRR's HR Department, and the responsible HR representative reviews the résumés to determine which candidates meet the minimum job qualifications and will be selected for further consideration.⁵ Depending on the job title, selected candidates progress through several evaluative stages, e.g. invitations for formal testing, panel interviews, and assessment on the technical knowledge required for that title. Candidates who satisfy these requirements then undergo a background check and other screening steps before the operating department makes a final hiring decision.

FINDINGS

Some Referred Candidates Received Preferential Treatment

The OIG conducted interviews with the seven HR representatives in LIRR's central HR office who were responsible for filling vacancies in nine titles within LIRR's three main operating departments:

³ MTA Directive §4(A)(1); LIRR Policy §V(A)(2). However, the prohibition does not prevent an MTA employee from providing to his or her family members publicly available information about job opportunities.

⁴ MTA All-Agency Policy Directive 11-051, *Anti-Nepotism Employment Procedures*, Sec. 1.

⁵ Typically, internal candidates (current MTA-agency employees) are listed first, followed by external candidates, with members of each respective group ranked according to their score on the PeopleSoft screening questions.

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- *Transportation*: Assistant Conductor, Station Appearance Maintainer
- *Maintenance of Equipment (Equipment)*: Car Appearance Maintainer, Car Repairman, Electrician Trainee
- *Engineering*: Electric Traction Helper, Summer Engineer, Signal Helper, Track Worker

Three of the seven HR representatives we interviewed explained that they received and considered referrals for four different high-volume titles across all three operating departments: Assistant Conductors, Station Appearance Maintainers (SAM), Track Workers, and Car Appearance Maintainers.⁶ Typically, these titles require minimal educational and experience qualifications, and the agency receives a very large number of applications per job posting. For example, the Transportation representative responsible for hiring Assistant Conductors and SAMs told us that for the Assistant Conductor title she receives approximately 7,000 résumés annually. For the 2016 Assistant Conductor job posting, approximately 1,100 candidates were invited to take the initial Assistant Conductor’s test, 510 actually took the test, and 234 were eventually hired.⁷ For the SAM title, the representative receives between 2,500 and 5,000 résumés annually. For the 2015 SAM posting, just 33 candidates were selected for the first step in the hiring process—a panel interview—and 16 were hired.⁸ This HR representative conceded that because these high volumes prevented her from evaluating all of the résumés, she used referrals from employees as an initial screening mechanism. She explained that she looked at those résumés first to see if they met the title’s requirements and then moved qualified referred candidates to the next step.

Similarly, an Engineering HR representative responsible for hiring Track Workers receives approximately 7,000 résumés for each job posting.⁹ For the 2014 Track Worker posting, 261 candidates were interviewed by a departmental manager—the first step in the hiring process for this title, which requires no testing—and 30 candidates were eventually hired. The Engineering representative told us that the high volume of applications prevented her from examining all of the résumés. She added that she often received résumés referred by LIRR employees and always reviewed them, but might not get to all the non-referred candidates.

An Equipment HR representative responsible for hiring Car Appearance Maintainers (CAM) said she occasionally receives referrals in support of particular candidates from the Senior Director of LIRR HR. She added that while she tried to review all of the approximately 5,000 résumés she receives annually for each CAM posting, she definitely considered the referred résumés. She estimated that 30 people are hired into vacant positions each year. The Senior

⁶ LIRR does not hire new employees in the “Conductor” title. This is a promotional title that is filled by Assistant Conductors who qualify.

⁷ To be hired as an LIRR Assistant Conductor, candidates must complete a series of hiring steps, starting with an initial test comprising cognitive, vocabulary, and mathematical components. The Transportation HR representative told us she typically invites twice as many candidates to take the test as there are seats available, because so many invitees fail to show up for the test.

⁸ LIRR requires no test for this entry-level title.

⁹ The Track Worker title is posted as necessary when vacancies exist; in some years (e.g. 2016) there is no posting.

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Director, for her part, asserted that she only occasionally received referrals and did not accept familial referrals; that is, if an LIRR employee brought a family member's application to her attention she would tell the employee that such referrals are prohibited.

The HR representatives responsible for the remaining five titles asserted that they either did not give preference to referrals or did not receive referrals at all. Notably, these five technical titles attracted significantly fewer applications than the four titles previously discussed; according to the HR representatives, they received from 200 to 1,500 résumés for each job posting and were able to review all of them. Two HR representatives in Equipment and Engineering told us that while they occasionally received referrals for the Electric Traction Helper and Electrician titles respectively, they were able to review each individual résumé without giving preference to referrals. Finally, the Equipment and Engineering representatives responsible for hiring Car Repairmen, Summer Engineers, and Signal Helpers told us they rarely, if ever, received referrals, and thus how best to handle them was not a consideration.

Some Referrals Could be in Violation of Anti-Nepotism Policy

HR representatives asserted that they did not maintain a list of the referrals they received, and thus we were unable to quantify the number of referred applicants that were hired. Further, despite the Policies' prohibitions against familial referrals, the representatives were not always aware of the relationship between the referrer and the candidate and thus could not always determine whether a given referral was permissible under the LIRR and MTA anti-nepotism policies.

The Transportation HR representative told us that while she received some referrals via email, others were dropped off at her desk by an unknown source. She explained that the latter referrals typically included only the name of the candidate and not the name of the LIRR employee making the referral. This representative gave us conflicting responses when asked whether she checked the referrals to determine whether a familial relationship existed between the candidate and any LIRR employee. She initially indicated that although she understood that the Policies prohibit employees from submitting or advancing Family Members' applications, she sometimes accepted referrals without determining whether a relationship existed between the candidate and an LIRR employee that would make the referral—and her preferential treatment of it—impermissible. However, she later claimed that she did ask the employee making a referral whether it was for a Family Member, although even this version did not account for the anonymous referrals.

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The Engineering HR representative similarly told us that she did review referrals when they were dropped off at her desk, and acknowledged that the résumés were often left by unknown sources. This representative also told us that she was aware that familial referrals violated the Policies and said that if she was aware the referral was from a Family Member, she would not review such referrals ahead of the general pool of candidates. Once again, however, the representative did not explain how she could be sure of the source of an anonymous referral.

Certainly, because an anonymous referral may originate from a Family Member of the candidate, such referrals potentially violate the Policies. However, all of the representatives we spoke to claimed that they had received no instruction on the course of action they should take when receiving a referral from either a known or unknown source. Thus it is predictable that we found inconsistent handling of referrals as well as inappropriate (even if unwitting) preferential treatment.

Random Selection of Applications to High-Volume Titles Avoids Preferential Treatment

In 2013, OIG reviewed Metro-North Railroad's (MNR) hiring process for Conductors to evaluate that agency's efforts to identify and prevent instances of nepotism.¹⁰ During that review we learned that in 2011 and 2012 only 0.1 percent of external candidates without a referral were hired as Conductors; external candidates *with* a referral were approximately 160 times more likely to have been hired during that period.

In response to these findings—and as confirmed by OIG in 2017—MNR developed a process to manage its high-volume titles (including Conductors and Track Workers) efficiently and fairly, while also assuring compliance with MTA's anti-nepotism policy.¹¹ Specifically, a computer program assigns each external candidate a random number, and candidates are invited to take the test based solely on this number.¹² Further, an MNR HR representative asserted that the agency now prohibits all referrals—not just those involving Family Members. In this regard, MNR has gone beyond nepotism to also exclude favoritism—thereby enhancing the equitable nature of the process—by preventing employees from giving preference to the résumés of friends or acquaintances. When we spoke to MNR Human Resources officials about this process, they expressed satisfaction with how it had improved fair hiring practices for the high-volume titles.

Although data was not available to calculate similar hiring percentages for LIRR, testimonial evidence shows that external candidates who had been referred are more likely to have their résumé selected for consideration than candidates without a referral. This is not appropriate for a public sector hiring process; instead, all applicants should have a similar chance to be considered

¹⁰ Unlike at LIRR, MNR Conductor is not a promotional title and thus job postings are open to the public.

¹¹ MNR does not use a randomization process for titles requiring significant technical skills, e.g. Carpenters and Electricians. The agency typically receives fewer applications for such titles than it does for titles with less-demanding qualifications.

¹² All internal candidates (current MNR employees) are invited to take the test.

if qualified.

To that end, LIRR should adopt a randomized approach for high-volume titles similar to the method MNR uses for its titles with a large applicant pool. Given the limited number of positions available and the extremely high number of candidates, especially for entry-level titles, such a mechanism would not only negate the benefits currently afforded to referrals, but would also reduce the significant workloads of the LIRR HR representatives responsible for filling high-volume titles. For lower-volume titles, the agency should reinstruct HR representatives as necessary that they must assess all candidates based on merit and without preference for referrals to ensure an equitable hiring process.

Quality-Assurance Controls Needed

The HR representatives use Microsoft Excel spreadsheets to track the status of candidates through the hiring process for each title. One member of each team is responsible for populating the spreadsheets with key information, including the results of candidates' tests, interviews, and background checks. When a vacancy becomes available in the operating department, the representative uses the corresponding spreadsheet to compile a list of qualified candidates.

As part of our review, OIG analyzed the spreadsheets created for the nine selected titles, including candidates who were hired from June 1, 2013 through May 31, 2016. Where possible, we also analyzed data for the candidates considered in the hiring process but who were not ultimately hired. Among these more than 5,000 records, OIG identified occurrences of clerical errors that, while rare, could—and did—effectively disqualify candidates.

- *Inaccurately Recorded Test Results*

In the Transportation department, we identified two candidates who passed the three-part Assistant Conductor test in December 2013 but were then erroneously recorded on a spreadsheet as having failed the math portion of the test. This action removed the candidates from further consideration in the hiring process. When made aware of this error, an HR representative said she would consider their applications for the next Assistant Conductor job posting.

- *Missing Documentation of Familial Relationships*

Some HR representatives, including those responsible for filling the CAM and Electrician Trainee titles, include a column titled "Relative" in their spreadsheet. The representatives make a notation in this column as to whether each candidate has reported a familial or domestic relationship with a current LIRR employee. (The candidate provides this information on the agency's Applicant Relative Disclosure Form [Disclosure Form], and an HR team member is responsible for entering the data into the spreadsheet.) However, OIG found that the "Relative" column was left blank on the spreadsheet for two candidates hired as a CAM and an Electrical Trainee who had, in fact, disclosed their familial relationships on the Disclosure Form. While

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we found no evidence that HR's omission of these familial connections from its summary spreadsheet was intentional or in any way affected the decision to hire the two candidates, the oversight increased the likelihood that these candidates could have been hired into vacant positions where a supervisory relationship with a family member would be in violation of LIRR's anti-nepotism policy.

We learned from the LIRR HR Senior Director that the only procedure in place for verifying data recorded in the spreadsheets—and just as an unwritten practice—was for the HR team member responsible for data entry merely to double-check his or her own work.

RECOMMENDATIONS

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

1. Cease giving preference to referred candidates for high-volume titles by implementing a randomization methodology to identify candidates for formal testing and interviews.

Agency Response: Agreed. By the end of the 3rd quarter 2018, "all résumés for high-volume titles will be subjected to a randomization tool." Those résumés that meet minimum and preferred requirements for the position will be advanced to the next step in the hiring process.

2. Direct that HR representatives, with proper instructions for the handling of known or anonymous referrals, continue to consider applications for lower-volume titles based on merit and in strict accord with LIRR and MTA anti-nepotism policies.

Agency Response: Agreed. On January 11, 2018, LIRR HR officials issued a memo instructing HR staff "to continue to consider applications for all titles based on merit and in accordance with the LIRR and MTA anti-nepotism policies."

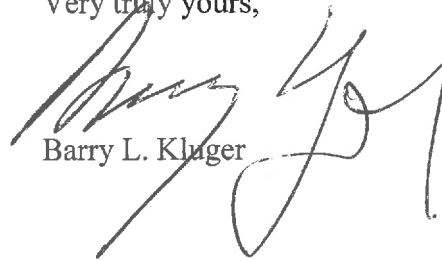
3. Implement quality-assurance controls to prevent and/or timely identify serious clerical errors to further ensure the integrity of the hiring process.

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Agency Response: Agreed. "By the end of the 3rd quarter 2018 the LIRR will implement quality control measures such as peer reviews and sign-offs to strengthen controls to prevent errors in documenting and tracking applications/recruitment" throughout the process.

We appreciate your attention to the issues we raised, which we will continue to monitor as appropriate, 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: M. Centauro