



Barry L. Kluger
Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
212-878-0000

January 16, 2019

Mr. Daniel DeCrescenzo
Acting President
MTA Bridges and Tunnels
2 Broadway
New York, NY 10004

**Re: Controls over Non-Revenue
E-ZPass Usage
MTA/OIG #2018-51**

Dear Mr. DeCrescenzo:

As you know, MTA Bridges and Tunnels (B&T) provides free passage over its nine crossings through its non-revenue E-ZPass (Pass) program to active and retired B&T employees (Passholders). Several years prior to your administration, to address the vulnerabilities of this program, the Office of the MTA Inspector General (OIG) reviewed records and evaluated the policies and procedures B&T had established to prevent abuse of this free passage. We found significant deficiencies, including inadequate oversight and monitoring of Pass usage, as well as policies silent as to the consequences of fraud and abuse or other misuse, all of which allowed prohibited usage to occur undetected and undeterred. The findings and recommendations contained in our 2014, report provided B&T with an opportunity to enhance its controls over the Pass program. Thereafter, B&T took appropriate corrective action in 15 cases of abuse identified by the OIG.

The OIG recently conducted a follow-up review primarily to determine whether: (1) all Passes in active use were properly authorized by B&T and (2) whether any employees or retirees had used their Passes in violation of B&T policies. In performing our follow-up, we interviewed B&T management and staff, examined policies and other key documents, and analyzed Pass usage by retired and active employees. This review was helped considerably by the assistance and cooperation of B&T's Internal Security and Revenue Management departments.

Our 2018 analysis identified a total of 18 Passes—fifteen retiree Passes, two terminated employees' Passes, and one active employee's Pass—that showed evidence of having been misused. While these numbers, fortunately, are relatively small, our follow-up revealed that there is room for improvement. In our view, as more fully explained below, the most effective action B&T could take, and has begun taking, is to identify and timely deactivate the Passes of those retirees who are deceased. We also believe that instead of auditing a random group of active employee Passes each quarter and retiree Passes on a three-year cycle, the method of oversight that B&T had been utilizing, the agency should focus on Passholders who show high usage or questionable patterns of travel. B&T should also perform regular reviews that match a

reliable roster of Passholders to records of Pass usage.

We provided a draft report of our findings and recommendations to the agency on November 9, 2018, and former B&T President Cedrick Fulton responded on December 28, 2018. The agency agreed with most of our recommendations, although Mr. Fulton expressed some concern about the agency's legal authority to implement one of them. He also described the actions that B&T has taken or will take to implement improvements.

BACKGROUND

B&T's Human Resources Department (HR) determines individuals' eligibility for Passes in accordance with two governing policies (Policies).¹ The Policies outline standards for Pass usage; for example, they require a Passholder to be present in the vehicle and also prohibit the Passholder from using his or her Pass during the course of outside employment, other than commuting.

Before receiving a Pass, an employee or retiree must complete an application, which includes an affirmation that the Passholder will comply with the Policies. HR reviews the application, certifies that the employee or retiree is eligible for the Pass, and submits the eligible application to the Revenue Management Department (Revenue) for final review and approval. Revenue then submits the approved application, with a request to activate an account, to a third-party-operated Customer Service Center (CSC).² After CSC completes its data entry and activates the E-ZPass device, either CSC mails the Pass to the Passholder or the Passholder picks up the Pass directly from a designated B&T location.

FINDINGS

Closer Monitoring of Passholder Status and Pass Reissuance Should Reduce Misuse

Officials in Revenue and the Internal Security Department (Security) have complementary obligations to help ensure that Passholders comply with non-revenue program requirements. Revenue is responsible for authorizing the issuance of all Passes and deactivating Passes when necessary, while Security is responsible for monitoring Pass usage and investigating instances of suspected misuse.

To evaluate the effectiveness of the agency's oversight, OIG analyzed selected Pass transactions for the 12-month period ending October 31, 2017. Prompted by our review, Revenue analyzed that dataset and confirmed OIG's findings of the following 14 cases of misuse:

¹ *MTA B&T Employee E-ZPass Tag Policy & Procedure* (December 1999) and *MTA B&T Retired Employee E-ZPass Tag Policy & Procedure* (Draft - April 2015).

² The Customer Service Center is an organization established by MTA Bridges & Tunnels, the Port Authority of New York & New Jersey, and the New York State Thruway Authority to manage E-ZPass accounts and transactions.

- Twelve Passes belonging to retirees showed activity after the recorded dates of the Passholders' death. Unfortunately, the passes had been misused for between 13 months and six years after the retiree was deceased without detection by the agency. Revenue subsequently deactivated these accounts. To improve timely notification of a Passholder's death, in March 2018, prompted by our audit, B&T started using the services of a contractor to identify deceased retirees by surveying government records on a weekly basis.
- Two terminated employees—who were thus ineligible to retain their Passes—showed Pass usage long after their termination dates. According to Policy, employees are obligated to surrender their Passes upon separation from the agency, and Revenue officials told us that such accounts should be deactivated immediately. When we reviewed these two cases with B&T officials, we learned that one Pass remained active for nine years and the second Pass for seven months after the employees' termination. As a result of our findings, B&T enhanced its procedures for deactivating Passes by requiring that Human Resources notify Revenue and Security of employee terminations and that Revenue deactivate all terminated employees' Passes on a timely basis.

Routine Verification of Pass Authorization Should Reduce Misuse

Besides approving Passes at the issuance stage, Revenue is responsible for identifying and deactivating unauthorized Passes. At the start of our follow-up review, Revenue officials performed this important control (which they termed "reconciliation") by comparing a list of actively used Passes each quarter against Revenue's "Control List." However, Revenue originally created this List from one of the quarterly transaction reports, but without verifying that all Passes on the original list were authorized by Revenue or HR.

Specifically, Revenue officials first ran a quarterly report listing all of the toll transactions and the Pass numbers linked to those crossings, and then compared those Passes to the Pass numbers recorded on the List. If a Pass did not appear on the Control List, these officials, rather than verifying that the Pass was authorized, simply added the Pass number to this List—an assumption, though unsubstantiated, that the Pass was in fact authorized to be in use. Consequently, the Control List is not a reliable basis for reconciliation and does not ensure the ability of B&T officials to identify unauthorized Pass usage.

A more reliable reference point would be a roster of authorized non-revenue Passholders, created by Human Resources and/or Revenue after verifying the accuracy of CSC's original data entry. Going forward, this roster should then be updated with information from HR or Revenue as Passes are authorized or deactivated. When quarterly reports are received from CSC and compared to the roster of authorized Passholders, any Passes that are active but not on the list should be investigated.

Risk-Based Sampling Assists in Identifying Misuse

To identify impermissible usage under the Policies, we selected Passes to analyze based on risk factors that increased the likelihood of noncompliance (e.g. high usage or questionable patterns of travel). Through this analysis we identified the four remaining cases of the 18 evidencing misuse.

Two Passes belonging to retirees over 85 years of age showed patterns of daily commutation, raising the specter that someone else was using the tag. A third Pass, belonging to a retiree with a permanent address outside the tristate area, reflected similar patterns. As noted above, B&T Policy requires that retirees be present in the vehicle at the time of Pass usage. When the OIG informed Security officials of these results, they opened investigations into the cases. One was found to be improperly used and was deactivated. Retirees' use of the other two Passes could not be proven to be valid or invalid so the retirees have been reinstructed and their use is being monitored.

The fourth Passholder was an employee with extremely high usage (1,200 crossings) who we found had used his Pass 33 times while performing for-hire vehicle trips for Lyft and Uber during the 11-month period from June 2017 through April 2018. As noted earlier, agency Policies clearly prohibit the use of Passes in service of outside employment. Significantly, drivers for Uber and Lyft must be licensed by the Taxi and Limousine Commission (TLC) and anyone can research an individual's status as a TLC license-holder by checking the agency website. Checking drivers with high usage to see if they have TLC licenses should be part of B&T's monitoring program. TLC officials have stated their willingness to share additional information on licensees to assist government agencies seeking information to enforce regulations. This Passholder is now under investigation by the OIG.

Current Monitoring Activities

Security currently performs regular audits of employees' Pass usage on a random basis. Specifically, each quarter, Security compares the Pass activity and work schedule of 20-25 randomly-selected employees to identify transactions that conflict with the employees' work schedule and location.

For retirees, Security reviews every Passholder's usage on a three-year rotational cycle by last name as part of the recertification cycle. Each year, Security analyzes a third of the Passholders and audits those with high frequency of Pass usage in the prior three years. If unusual transaction levels or patterns are revealed, Security initiates an investigation.

We believe that the time and effort spent conducting audits in connection with the recertification process could be better used to screen for misuse on a targeted basis. The current audit process, in which Security annually reviews Pass usage by means of the alphabetically-driven review of one-third of retirees eligible for recertification, may actually increase the likelihood of undetected Pass misuse because the process is essentially randomized and spread out over three

years. Focusing instead on those specific Passholders within the entire population who have high usage and/or other identified risk factors would be a more effective and efficient method of detecting significant violators.

Retiree Recertification Process Needs to be Strengthened

Upon completion of the Passholder usage audits, Security mails a recertification letter (Letter) to those retirees whose Pass usage did not raise suspicion.³ The Letter requires a signed written response within 30 days, including an “affirmation by the retiree that continued [Pass] use is requested.” If Security receives no response, it sends a second Letter, again with a 30-day deadline, and if necessary, a third Letter—this one by certified mail—with a final notice. If the retiree does not respond to that third letter, Revenue deactivates the Pass. This multi-stage process is both time-consuming for B&T and unnecessarily delays detection of the misuse of Passes issued to retirees—which Passes our analysis revealed were misused more often than those issued to any other category of Passholder.

Further, although the Letter represents an opportunity for B&T to remind Passholders of their responsibilities, it does not highlight the requirements for permissible Pass usage, e.g. that the retiree must be present in the car.

B&T Policy Does Not Address Pass Privileges for Suspended Employees

During our analysis, we found that two employees used their Passes while suspended under B&T’s disciplinary program. The agency’s written Policy does not address the question of whether employees retain Pass privileges while suspended, and the governing labor agreements are silent on the matter. We reviewed the relevant policies of other MTA agencies and learned that:

- New York City Transit confiscates passes from any employee suspended for 30 days or more but allows him or her to reapply for a pass upon return to work; and
- Long Island Rail Road and Metro-North Railroad provide managerial discretion to suspend and confiscate employee’s pass privileges immediately if the employee is removed from service through disciplinary action or will be absent from work for an extended period of time.

These policies were developed by each agency’s executives and operational managers in consultation with Labor Relations officials and union representatives. We believe that B&T would benefit from having a similar policy. In any event, should the employee retain the Pass during periods of imposed discipline, the agency should, in our view, very closely monitor the employee’s Pass activity for further misuse during the pendency of proceedings, which may

³ Security informed us that it conducts a more thorough investigation of Passholders with suspicious activity, on a case-by-case basis, before inviting them to recertify.

provide an appropriate basis for additional disciplinary charges or the imposition of greater discipline.

RECOMMENDATIONS

1. Revenue Management should implement a better verification and reconciliation process to ensure its ability to identify Passes that are not authorized.

Agency Response: Accepted. In his response on behalf of the agency, Mr. Fulton stated that Revenue Management will create a roster of authorized employees and retirees with Passes and will update the roster using information from Human Resources as Passes are authorized and issued or deactivated. Further, on a quarterly basis, Revenue Management will cross-reference the roster to all Pass activity and the agency will investigate any discrepancies. Additionally, Internal Security "is subscribed to a death audit service that provides a weekly notification of retiree deaths."

2. Internal Security should:

- a. Enhance its monitoring by identifying and targeting Passes whose use indicates the presence of known risk factors, and by appropriately utilizing Taxi and Limousine Commission resources.

Agency Response: Accepted. The Internal Security Department (ISD) will modify its monthly review of employee Passes to "a risk-based approach and will include all hours [working and non-working] and any suspicious activity." Additionally, ISD has revised its recertification process to include "risk-based audits" of the entire retiree population.

- b. Increase the efficiency of the current retiree recertification process by reducing the administrative burdens and delays associated with multiple mailings and times to respond.

Agency Response: Accepted. The Internal Security Department has "modified [the recertification mailing process] from three mailings to mailing an initial letter and a final notice 45 days later. [...] If there is no response received within 45 days of the second [meaning final] mailing, the retiree's non-revenue E-ZPass account will be marked for suspension."

- c. Revise the retiree recertification letter to highlight the requirements for Pass usage and clearly state the consequences of misuse.

Agency Response: Accepted. The recertification letter will be revised to include language that distinctly states the requirements for non-revenue E-ZPass tag usage and the consequences if these requirements are not met.

3. B&T management should:

- a. Draft a policy to address Pass privileges, by deactivation or otherwise, during periods of imposed discipline

Agency Response: B&T does not believe it has the right unilaterally suspend a represented employee's pass during all periods of disciplinary suspension. "[W]here the disciplinary offense involves the misuse of the nonrevenue E-ZPass tag, Labor Relations vigorously pursues disciplinary charges against the employee. Penalties have included lengthy suspensions up to termination of employment. In addition, where the disciplinary charges include abuse of the non-revenue E-ZPass tag policy, B&T may be able, as part of a settlement of the matter with the employee and his union, to include a provision that the employee relinquishes the nonrevenue E-ZPass tag for a period."

OIG reply: B&T should consult with Transit, LIRR and MNR which already have such policies, before finally determining whether it is feasible to have a deactivation policy in place during suspensions.

- b. Re instruct employees as to: (i) the consequences of fraud and abuse or other misuse of a Pass, including rescinding it; (ii) the requirements and conditions for holding non-revenue Passes, including the prohibition on usage in for-hire vehicle work or any other outside employment; and (iii) that Pass usage will be monitored for unauthorized activity.

Daniel DeCrescenzo
Re: MTA/OIG #2018-51
January 16, 2019
Page 8

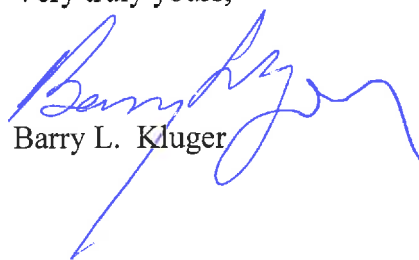
Agency Response:

Accepted. "B&T management agrees. All B&T employees and retirees will be so notified by letters sent to their home addresses. The letter will also be posted in prominent locations at all B & T facilities. The letter will be a reminder of (i) the consequences of non-revenue E-ZPass tag fraud and abuse; (ii) the requirements and conditions for holding non-revenue E-ZPass tags; and (iii) that all non-revenue E-ZPass tags will be monitored for unauthorized activity.

The letter will also explain that, while the non-revenue E-ZPass tag is allowed for commuting to a second job when employed by B&T or for commuting to a post-retirement job, non-revenue E-ZPass tag use during the course of outside employment, other than commuting, is prohibited. In addition, the use of the non-revenue E-ZPass tag is prohibited for for-hire vehicle work or for any outside employment where the non-revenue E-ZPass tag is used to avoid a toll normally charged as part of a commercial trip. For example, a B&T employee or retiree cannot use their non-revenue E-ZPass tag as an owner or employee operating a commercial vehicle (i.e., plumber's, carpenter's or electrician's van; tow truck, for-hire vehicle, etc.)."

As always, we appreciate the courtesy and cooperation afforded to us at all times by you and your staff. If you have any questions please do not hesitate to call me or Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours,


Barry L. Kluger

Cc: Donald Look