OVERTIME REFORMS AT THE MTA
MONITORING REPORT, THIRD QUARTER 2020

Carolyn Pokorny
MTA Inspector General
State of New York

I.   EXECUTIVE SUMMARY

During the third quarter of 2020, the Office of the MTA Inspector General (OIG)'s monitoring of MTA's overtime reform focused on: (1) the status of 4 OIG and 15 Morrison & Foerster LLP (M&F) overtime reform recommendations (collectively, the 19 recommendations); and (2) whether management had mitigated the internal control gaps that had provided opportunities for overtime abuse identified in OIG's audit report highlighting MTA's deficient overtime verification procedures (OIG 2019 audit report).[1] This report discusses the status of the 19 recommendations, as well as areas of OIG concern. We also summarize the results of our investigations, together with law enforcement partners, into suspected vandalism of Kronos timekeeping clocks in MTA facilities and report on two notable outcomes.

Regarding overtime reform: on a positive note, in the first 8 months of 2020, the MTA reduced its aggregate overtime spending by 12% compared to the same period in 2019, through deferred maintenance, reduced service requirements, less traffic congestion due to the Coronavirus pandemic, and fewer than expected weather events. Also, the MTA Overtime Task Force (the Task Force) made significant progress toward the recommended overtime reforms— during a pandemic, no less—with 10 completed recommendations and 2 additional recommendations expected to be complete by the end of 2020 and early 2021.

However, difficult management tasks remain, and are areas of concern to the OIG:

- In our OIG 2019 audit report, we found that MTA management lacked the fundamental ability to properly verify overtime claims made by 75 high overtime-earning employees, which could create opportunities for employees to claim overtime that was not worked – or even assigned to them – without being detected. **We were troubled to find that the control gaps we identified in our OIG 2019 audit report remain largely unchanged**.

---

[1] OIG monitors overtime reforms at the MTA, as the M&F Report on overtime policies and procedures recommended to ensure MTA agencies meaningfully rein in overtime spending and safeguard against waste, fraud, and abuse.

Despite the biometric feature of the Kronos clocks being shunned due to the pandemic, the clocks are still in wide use by employees who swipe ID cards or input their employee numbers to track their start and end times. However, in some departments, **management is not requiring all employees to use the new timekeeping clocks at all.**

- The herculean but critical work of **integrating the disparate MTA timekeeping systems with the Kronos system remains unfinished**; furthermore, **the deadline has passed by which the MTA was to develop a plan and timeline for the integration effort**. MTA has contracted an external consultant to aid in developing such a plan, but the "road map" is only in draft form.

Given how little has changed in the agencies' overtime authorization and other timekeeping processes since the OIG 2019 audit report, the OIG remains concerned that the lack of management systems and controls continue to present opportunities for overtime abuse. It is vital for the MTA to finish implementing the overtime reform efforts that the pandemic delayed.

Regarding suspected vandalism of Kronos timekeeping clocks in MTA facilities, OIG uncovered evidence that **a NYC Transit employee intentionally damaged a Kronos clock at NYC Transit Headquarters, resulting in the employee, who retired, agreeing to pay $2,500 in restitution**.

II.   STATUS OF OVERTIME RECOMMENDATIONS

In July 2020, we reported that 10 of the 19 overtime recommendations were complete. The Task Force is now close to completing the implementation of 2 additional recommendations and has made progress toward satisfying the remaining 7 recommendations.

A.   Two Recommendations Near Completion

- **M&F Recommendation 6: Overtime Reports** (due August 2020)
Implement written periodic reports regarding applicable managers' progress managing overtime within budget, including a written explanation of any failure to do so.

In response to this recommendation, the Task Force implemented an Overtime Analysis dashboard in August 2020. Managers using this dashboard are able to assess their overtime spending against other managers' totals by day, title, month, number of hours, and dollar amounts. While this tool is useful for managers to view their progress toward managing overtime within budget, agencies have not finished rolling out the dashboard to operational managers. The Task Force will continue to monitor usage by agency employees.

- **M&F Recommendation 7: Management Accountability** (revised due date February 2021)
   Evaluate managers with overtime approval authority specifically on the implementation of overtime policies and managing overtime within budget.

   The Task Force developed evaluations for Bridges & Tunnels (B&T), Long Island Rail Road (LIRR), Metro-North Railroad (MNR), MTA Bus, MTA Headquarters (MTAHQ), including MTA Construction & Development (C&D), and New York City Transit (NYC Transit) and originally expected to complete the implementation by August 2020. Recently, the Task Force has further revised the completion date to February 2021 to better align with the year-end performance evaluation cycle.

B.   Seven Recommendations Remain

   Three of the remaining recommendations relate to implementing and integrating timekeeping data with a single payroll system:

- **M&F Recommendation 1: Standardization of Timekeeping** (timeframe under revision)
   Standardize timekeeping procedures across the MTA, including implementing Kronos biometric clocks as the standard timekeeping tool.

- **M&F Recommendation 2: Kronos Integration** (timeframe under revision)
   Integrate Kronos with MTA-wide payroll systems, all of which should be standardized.

- **OIG Recommendation 4: Kronos Integration & Tools** (timeframe under revision)
   The MTA is under a mandate to install and use Kronos biometric time clocks to capture employees' work hours across the entire agency. MTA should integrate the new clocks into the timekeeping/payroll system so that it not only captures employees' start/end times and overtime authorization, but also electronically generates payroll data and minimizes manual adjustments to the payable time. Special consideration must be made to fully account for field employees working at remote locations. The system should also be capable of electronically providing the necessary tools and information to time approvers (Approvers) and other personnel responsible for monitoring employees' time and attendance.

As OIG reported in the July 2020 overtime monitoring report, the coronavirus pandemic significantly impacted the standardization of timekeeping using Kronos and the integration of the timekeeping and payroll functions into one system. The biometric capabilities of these clocks remain disabled, as they have been since mid-March.

M&F recommended that MTA develop a plan for the Kronos integration no later than 3 months from the date of the M&F report. Although the Task Force did prepare a plan within this recommended timeframe, it abandoned that plan because of the pandemic and is working on a new timeframe to implement the 3 recommendations. As OIG reported in July 2020, the MTA's Chief Operating Officer is establishing a team of individuals with knowledge of the relevant business processes to work with MTA Information Technology (MTA-IT) on the integration effort. Their first step was to develop a new "roadmap" identifying the necessary steps and timeframe, which was supposed to be finished in July 2020; however, it has not yet been completed. MTA-IT continues to work with a consulting firm on this key task; a kick-off meeting occurred on October 1, and the finalization of the roadmap is expected shortly.

- **M&F Recommendation 14: Annual Report on Overtime** (expected in 2021)
  Issue an annual public report on overtime by the Chairperson of the MTA, including reporting on whether the MTA managed overtime to budget, and if it did not, an assessment of why overtime accruals exceeded budget.

The Task Force has developed a format for the annual report and plans to produce the 2020 report in early 2021.

- **OIG Recommendation 1: Recordkeeping** (expected Q2 2021)
  Require all agencies to retain, in an electronic retrievable form, the name of the person authorized to work an overtime shift, the name of the shift supervisor, the work location, and the start/end times for the overtime.

The Task Force is considering specific solutions to address this recommendation. Task Force members are working with MTA-IT to develop an implementation strategy and to monitor the progress of 2 separate pilot programs to design and test electronic overtime approval forms. The Task Force expects to receive the results of the pilots by the end of this month. The Task Force will then evaluate the pilots' results to determine whether they meet OIG Recommendation 1.

- **OIG Recommendation 2: Information for Approvers** (expected Q2 2021)
  Provide Approvers with the necessary information to verify employees' overtime claims and hold them accountable for confirming the information.

The all-agency overtime policy, which was implemented under M&F Recommendation 3 discussed below, requires overtime approvers to be provided with the information necessary to verify that employees' claimed overtime was actually worked and requires these approvers to be held accountable for verifying this information. The information necessary to verify employee overtime will be included in the overtime dashboard, which is not yet available to all users. Kronos swipe data is also available for this purpose, but approvers are not automatically enrolled to receive swipe data reports. Instead, they must opt into receiving the reports by specifically requesting access to the data. Additionally, the approvers OIG interviewed who have access to the Kronos data do not always use it to verify employees' payroll claims.

While Kronos swipe data is useful in confirming employees' work start and end times, OIG's follow-up with individual time approvers revealed that not all employees swipe the clock or input their employee number to capture their attendance. In particular, we learned that:

- Since the suspension of the clocks' biometric feature in March 2020, employees in the LIRR Engineering Department have not been required to use the Kronos clocks to verify their attendance. Engineering management cited employees' concern over the spreading of the coronavirus through finger scans or queuing up to the clock. In addition, management explained that to ensure adequate social distancing, they allow employees to report to temporary reporting locations (such as a train station), where they may not have access to a Kronos clock.

- Similarly, due to concern about the virus and the small crew quarters where the clocks are located, NYC Transit Stations employees are authorized to report directly to their work sites. If the reporting location is near a subway station, employees are required to swipe at a turnstile.

- NYC Transit Track employees do not swipe because the MTA is still investigating a solution that can effectively cover its mobile work force.

Because some employees do not swipe and some approvers lack access to the swipe data, half of the approvers OIG interviewed in the third quarter continued to rely on paper records such as sign in/out sheets or labor distribution sheets, which can be easily manipulated as the basis for approving employees' payroll.

- **OIG Recommendation 3: Reports on High Earners** (due Q1 2020)

Create monthly reports of "high earners" or "high rollers" that show employees with excessive daily work hours over many consecutive days, and distribute the reports not just to budget officers and upper management but also to lower levels of management (e.g. Approvers), so that all can be involved in assessing and curtailing unreasonable hours. All management levels from Approvers up must also be held accountable for keeping overtime expenditures within their budget.

In response to M&F and OIG recommendations, the Task Force created the monthly high earner report and an assessment protocol in which each agency examines the overtime documentation (both electronic and manual) for the employees earning the highest amounts of overtime pay. The monthly high earner assessment was temporarily paused due to the pandemic but resumed in July 2020.

While M&F Recommendation 10, the High Earners Protocol, has been implemented, the OIG recommended more specific requirements for the High Earners Protocol which have not yet been met. For example, the OIG recommended that agencies make the monthly high earner assessment a shared responsibility of all levels of management, including individual time approvers. In addition to high-earning employees, the OIG recommended reporting excessive daily work hours claimed over consecutive days. Data on consecutive days with excessive hours does not yet appear in these reports, although the overtime dashboard does contain this information. The Task Force plans to incorporate the dashboard data into future high earner reports to satisfy this recommendation.

According to the Task Force, the high earner reports are being distributed to the overtime approvers of any employees listed in the report, which meets the distribution requirements of the OIG's recommendation. However, when we followed up with 12 LIRR and MNR time approvers directly, we found that only 3 had ever received the report. Another 6 had heard of the report but had never received it, and 3 were totally unaware it existed. All 11 NYC Transit and MTA Bus time approvers OIG interviewed had heard of the report, but had never received a high earner report.

C.   OIG Concerned about Follow-Through on a Completed Recommendation

- **M&F Recommendation 3: Minimum Requirements for Overtime Policies** (due February 2020)
  Establish minimum requirements for MTA-wide overtime policies and procedures.

The MTA issued an all-agency policy, effective June 29, 2020, which sets the minimum requirements for overtime policies and procedures. Each agency is responsible for issuing updated policies and procedures that incorporate the new language for its employees. The importance of agency-level or department-level policies lies in each entity's ability to customize its rules to address its unique circumstances, titles, and collective bargaining agreements. Agency-level and department-level overtime policies are expected to be specific about which roles are accountable for each part of the process and should include consequences for deviation from these policies.

For example, if a department's overtime expenses exceed its monthly budget, the all-agency policy requires that department to provide a written justification to their Agency President by the 15th day of the following month. We would expect the agency-level policy or department-level procedure to establish which managerial position is responsible for making this report and what consequences exist if the process is not carried out as directed. In another example, the all-agency policy requires that overtime must be pre-approved and exceptions for pre-approval must be clearly documented. We would expect the agency-level policy or department-level procedure to specify the overtime pre-approval exceptions.

The OIG reported in July that the agency-level policies were expected to be completed that month. Since then, LIRR and MNR have issued updated overtime policies, but NYC Transit (including MTA Bus) has not. B&T and MTAHQ (including C&D, MTA-IT, and MTA Police Department) have each decided against issuing an agency-level policy and will instead rely upon the all-agency policy and their own department-level procedures. It should be noted that MTAHQ overtime expenditures are incurred mainly by MTA Police and MTA-IT employees. Therefore, we believe it is essential that these departments must establish their departmental overtime procedures.

The OIG is concerned that until an agency has established its own policies and procedures its employees may lack clarity regarding who is responsible for performing key tasks and how and when those tasks should be performed.

III.   OIG FOLLOW-UP ON INTERNAL CONTROL GAPS IDENTIFIED IN OIG 2019 AUDIT REPORT

In the OIG 2019 audit report, we reported that MTA management lacked the fundamental ability to properly verify overtime claims made by 75 high overtime-earning employees, which could create opportunities for employees to claim overtime that was not worked – or even assigned to them – without being detected. The OIG interviewed 33 approvers and found that when approving timesheets, many approvers could not be certain of their employees' attendance when employees did not work overtime under their direct supervision or when the approvers did not assign the overtime. Some approvers even viewed employees' attendance reporting as an "honor system."

The agencies are working with the Task Force to determine how best to implement OIG's 4 recommendations addressing the internal control gaps we had identified. As part of our ongoing monitoring effort, OIG staff followed up directly with 24 of the 33 individual approvers we had interviewed during the OIG 2019 audit report. The purpose of the follow-up was to learn whether the agencies had made any changes that would mitigate the control weaknesses.

A. Overtime Authorization and Other Timekeeping Processes Unchanged

Based on these interviews, the OIG found that the agencies' process of authorizing, scheduling, and documenting overtime – as well as other timekeeping functions – largely remain unchanged since mid-2019. Specifically:

- Requests for overtime authorization and canvassing of employees to work overtime are still made with handwritten paper documents, phone calls, text messages, or emails.

- Paper forms such as sign in/out sheets, deviation sheets, and labor distribution sheets are still being used to report, approve, and process employees' time for payroll purposes.

- The vice president of one operating department told us that he instructed the department managers to take a cautious approach by continuing to follow the existing overtime authorization and approval process until an agency-wide overtime procedures document is implemented.

In a more positive development, we learned that certain individual operating departments have attempted to create forms to document overtime authorizations in a format that can be transmitted electronically (e.g. via email) among the involved parties. However, these efforts have met with varying levels of success. For example:

- The LIRR Engineering Department created an Overtime Approval Request Form (Request Form), a fillable PDF document with various drop-down menus to minimize the need for handwritten notes. This form contains virtually all of the information recommended by the OIG – *except* the actual names of the employees who have been selected to fill the overtime positions requested. The selected employees are identified in a separate document referred to as the overtime assignment sheet or canvass sheet.

  Both the Request Form and canvass sheet are sent electronically to a designated email address, which, according to the custodian of that address, could receive hundreds of emails per day. The custodian is responsible for comparing the Request Forms and canvass sheets to the overtime hours claimed by the employees to verify the accuracy of the employees' claimed overtime. However, she told us she could only complete from 5 to 7 overtime claim reviews per week, because she has other work responsibilities in addition to this task. She also stated that she believes she is the only person in Engineering assigned to perform this kind of review.

  The LIRR time approvers told us they continue to approve employees' overtime claims based on the labor distribution sheets, as they have always done.

- In January 2020, MTA Bus and NYC Transit's Department of Buses implemented the Facility Overtime Scheduling Form to schedule and approve employees to work overtime. This form was developed and electronically retained within the existing Spear bus maintenance management system to replace the handwritten overtime assignment paper form previous used. The completed form, which includes the names of the employee assigned to work the scheduled overtime, is distributed to supervisors and foremen at the start of each shift so they know the listed employees have been authorized to work overtime. This appears to be an effective interim process, using a reliable electronic system to document overtime authorization.

Given how little has changed in the agencies' overtime authorization and other timekeeping processes, the OIG remains concerned about the control gaps that presented opportunities for overtime abuse and might continue to do so. To ensure that overtime is effectively managed to reduce unnecessary spending and minimize the opportunities for overtime abuse, the MTA must finish implementing the overtime reform efforts that have been delayed by the ongoing pandemic.

IV.   SUMMARY OF BIOMETRIC KRONOS CLOCK INVESTIGATIONS

From June 2019 through March 2020, the OIG responded to 20 reports of damaged biometric Kronos clocks at 19 MTA locations: 13 reports at NYC Transit locations, 5 at LIRR locations, and 2 at MNR locations. OIG worked with our law enforcement partners and inspected all 19 locations, reviewed MTA records, interviewed possible witnesses, and viewed security videos when available.

The OIG found that 13 of the 20 reported biometric Kronos clocks had been damaged by suspected vandalism. In most of these cases, the OIG was not able to identify the individual(s) responsible for the damage due to the lack of eyewitnesses and security videos. Of the remaining 7 incidents, 4 were found to be accidental, while the causes of the remaining 3 incidents could not be determined. The OIG investigations resulted in 2 notable outcomes:

- The OIG uncovered evidence against a NYC Transit employee for intentionally damaging a Kronos clock on the 9th floor of the NYC Transit building at 130 Livingston Street, Brooklyn. The employee, who has since retired, paid $2,500 in restitution for the damaged clock.

- On 2 separate dates in 2019, the OIG was notified of damage to Kronos clocks located in a passageway at the NYC Transit Concourse Train Yard in the Bronx. Although the individual(s) responsible for the damages were not identified due to the lack of eyewitnesses and surveillance videos, at OIG's recommendation NYC Transit installed a security camera at the location to deter further vandalism of the clocks. There have been no further incidents.

OIG will continue to respond to and fully investigate any allegation of vandalism to Kronos clocks.

*****

        In preparation for the next quarter's report, OIG will continue monitoring the implementation of M&F and OIG recommendations, particularly the progress made on the "roadmap" for the integration of timekeeping and payroll systems. The table on the following pages lists the 19 recommendations and the status of each item, as reported by OIG in July 2020 and as evaluated during our present review.

No.	Recommendation	OIG Opinion July 2020	OIG Opinion October 2020
MF1	Standardize timekeeping procedures across the MTA, including implementing Kronos biometric clocks as the standard timekeeping tool.	In-progress (execution disrupted)	In-progress, past due date (execution disrupted)
MF2	Integrate Kronos with MTA-wide payroll systems, all of which should be standardized.	In-progress (execution disrupted)	In-progress, past due date (execution disrupted)
MF3	Establish minimum requirements for MTA-wide overtime policies and procedures.	Completed with concerns	Outstanding concerns remain
MF4	Create a centralized repository for all timekeeping and overtime policies and procedures.	Completed	Completed
MF5	Develop and require mandatory training for (i) all employees with respect to timekeeping procedures, including detailed training on Kronos, and (ii) all managers with respect to overtime approval authority, overtime policies and procedures, budgeting for overtime, and monitoring and tracking overtime.	Completed with concerns	Outstanding concerns remain
MF6	Implement written periodic reports regarding applicable managers' progress managing overtime within budget, including a written explanation of any failure to do so.	In-progress	In-progress, past due date
MF7	Evaluate managers with overtime approval authority specifically on the implementation of overtime policies and managing overtime within budget.	In-progress	In-progress
MF8	Develop metrics to determine when it is more cost-efficient to use overtime, as opposed to new hires or other methods, to satisfy workload demands.	Completed	Completed

No.	Recommendation	OIG Opinion July 2020	OIG Opinion October 2020
MF9	Conduct an internal review of whether and how the current hiring freeze is impacting overtime costs, with conclusions reported to the Board.	Completed	Completed
MF10	Develop a standard protocol for receiving and responding to monthly reports of high earners.	Completed (monthly review disrupted)	Completed (monthly review resumed)
MF11	Provide labor relations departments with a guide on how the Collective Bargaining Agreements (CBAs) affect work rules that includes, at a minimum, the following: (i) a list of work rules that are relevant to timekeeping or overtime issues and how they are relevant; and (ii) any current interpretations of each listed work rule.	Completed	Completed
MF12	Expand and standardize productive initiatives aimed at addressing employee availability issues.	Completed	Completed
MF13	Appoint a specific office (or job title) at MTA HQ to implement the recommendations in the Report and report to the Board with the MTA IG monitoring that oversight.	Completed	Completed
MF14	Issue an annual public report on overtime by the Chairperson of the MTA, including reporting on whether the MTA managed overtime to budget, and if it did not, an assessment of why overtime accruals exceeded budget.	In-progress	In-progress
MF15	Set firm deadlines for implementing each of the above recommendations.	Completed	Completed

No.	Recommendation	OIG Opinion July 2020	OIG Opinion October 2020
OIG1	Require all agencies to retain, in an electronic retrievable form, the name of the person authorized to work an overtime shift, the name of the shift supervisor, the work location, and the start/end times for the overtime.	In-progress (implementation disrupted)	In-progress (implementation disrupted)
OIG2	Provide Approvers with the necessary information to verify employees' overtime claims and hold them accountable for confirming the information.	In-progress (implementation disrupted)	In-progress (implementation disrupted)
OIG3	Create monthly reports of "high earners" or "high rollers" that show employees with excessive daily work hours over many consecutive days, and distribute the reports not just to budget officers and upper management but also to lower levels of management (e.g. Approvers), so that all can be involved in assessing and curtailing unreasonable hours. All management levels from Approvers up must also be held accountable for keeping overtime expenditures within their budget.	In-progress (implementation disrupted)	In-progress (implementation disrupted)
OIG4	The MTA is under a mandate to install and use Kronos biometric time clocks to capture employees' work hours across the entire agency. MTA should integrate the new clocks into the timekeeping/payroll system so that it not only captures employees' start/end times and overtime authorization, but also electronically generates payroll data and minimizes manual adjustments to the payable time. Special consideration must be made to fully account for field employees working at remote locations. The system should also be capable of electronically providing the necessary tools and information to time approvers (Approvers) and other personnel responsible for monitoring employees' time and attendance.	In-progress (implementation disrupted)	In-progress (implementation disrupted)