

STATE OF NEW YORK
Office of the MTA Inspector General
Metropolitan Transportation Authority

2015 ANNUAL REPORT
Barry L. Kluger
Inspector General



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¹ Readers of the electronic version of this Annual Report can press Ctrl + Click on <http://mtaig.state.ny.us/> to go directly to the Home page of our website, or on any of the numbers in parentheses to go directly to that page of this Report.

ABOUT THE INSPECTOR GENERAL



MESSAGE

The Metropolitan Transportation Authority—North America’s largest transportation network—is a vast, complex, and costly operation. MTA subways, buses, bridges, and railroads transport billions of riders annually over thousands of miles to countless locations along the way.

To make this system run, the MTA employs tens of thousands of individuals and budgets billions of dollars for operating expenses and projects in its Capital Program.

And to help make this costly and complex system run even better, our independent Office of the MTA Inspector General (OIG) provides oversight in two very basic ways: First, we conduct audits to help make MTA systems and operations work at optimal effectiveness and efficiency. Second, we conduct investigations to root out fraud and other wrongdoing and abuse by those who work for or do business with the MTA.

To be sure, we do not work alone. Over the years, we have forged effective partnerships with numerous investigative and prosecutorial agencies on the federal, state, and local level. We have also forged positive relationships with countless dedicated and conscientious managers and staff of the MTA— individuals who want the MTA and those who do business with it to operate on a level playing field, strive for excellence, and best serve the public. And of course we work with strap-hangers, commuters, and other members of the public whom this enormous system is designed to serve and who help us keep a watchful eye on it.

Certainly, the scope and depth of our work is significant. A sampling of the areas of our work in 2015 includes: Fraud and other criminality; safety and emergency response; nepotism and other ethical misconduct; worker productivity/overtime; operational efficiency; procurement issues; service improvements for riders with disabilities; and Hurricane Sandy recovery.

With your continued input, my staff and I look forward to doing even more to help the MTA and its customers in the years to come.

BRIEF BIO

On February 14, 2007, **Barry L. Kluger** was appointed by the Governor to serve as Inspector General of the Metropolitan Transportation Authority. This appointment was confirmed by the New York State Senate on May 30, 2007. Mr. Kluger served in the Office of the Bronx County District Attorney from 1975 until his appointment as MTA Inspector General. In 1989, the Bronx County District Attorney appointed Mr. Kluger to be his Chief Assistant District Attorney. Previously, Mr. Kluger served as Executive Assistant District Attorney, Chief of the Investigations Division and Chief of the Arson and Economic Crime Bureau. Mr. Kluger received his B.A. from City College of the City University of New York and his Juris Doctorate from Brooklyn Law School. Mr. Kluger is a lifelong resident of New York City.

In 2009, Mr. Kluger was elected to the Board of the Association of Inspectors General, a national organization comprised of federal, state, and local members from across the country. He presently serves as 2nd Vice President.

THE ROLE OF THE MTA INSPECTOR GENERAL

Creation of the Office

In 1983, at the request of the Governor, a virtually unanimous state legislature created the Office of the Inspector General specifically within the MTA, but reporting only to the Governor and Legislature, and independent of MTA management and its Board. The Governor's Special MTA Study Panel concluded that among the changes that would help the MTA and the state to improve services and control costs, "Most important of these is the restructuring and strengthening of the MTA's Inspector General function." Indeed, the Study Panel's report declared:

The Panel views the lack of a strong Inspector General function within the MTA as a serious deficiency. A strong Inspector General is needed to hear and act upon complaints about service deficiencies, to audit performance, to assure that appropriate follow-up action is taken on outside audit findings, and to investigate charges of fraud and abuse. . . The Inspector General . . . should be appointed to a fixed term, to assure a measure of independence. However, to be truly effective the Inspector General must also have a close day-to-day working relationship with MTA's top management and with its Board.

Statutory Authority

Public Authorities Law (PAL) §1279 authorizes and directs the MTA Inspector General to independently review the operations of the MTA and its constituent agencies: MTA New York City Transit (NYC Transit or Transit), MTA Long Island Rail Road (LIRR), MTA Metro-North Railroad (Metro-North), MTA Long Island Bus (LI Bus), MTA Bridges and Tunnels (Bridges and Tunnels), MTA Bus Company (MTA Bus), and MTA Capital Construction Company (Capital Construction).²

In terms of the scope of its statutory authority to perform this review, the Inspector General has "full and unrestricted access" to all "records, information, data, reports,

² As used in this report, unless the context indicates otherwise, the term "MTA" includes the constituent agencies.

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plans, projections, contracts, memoranda, correspondence and any others materials” of the MTA (PAL §1279[3]).

The Inspector General also has the following statutory functions, powers, and duties (PAL §1279[4]):

- Receive and investigate complaints from any source or upon his own initiative concerning alleged abuses, frauds, and service deficiencies, relating to the MTA.
- Initiate such reviews as he deems appropriate of the operations of the MTA to identify areas in which performance might be improved and available funds used more effectively.
- Recommend remedial action to be taken by the MTA to overcome or correct operating or maintenance deficiencies or inefficiencies that he determines to exist.
- Make available to appropriate law enforcement officials information and evidence relating to criminal acts that he obtains in the course of his duties.
- Subpoena witnesses, administer oaths and affirmations, take testimony and compel production of books, papers, records, and documents as he deems relevant to any inquiry or investigation pursuant to PAL §1279.
- Monitor implementation by the MTA of recommendations made by the Inspector General or other audit agencies.
- Do “all things necessary” to carry out the above functions, powers, and duties.

The Inspector General, who is an ex officio member of the New York State Public Transportation Safety Board (PTSB) with authority to vote on matters involving the operations of the MTA (as per Transportation Law §216[1]), is further authorized and directed to cooperate, consult, and coordinate with PTSB regarding any activity concerning the operation of the MTA.³ With respect to any accident on the facilities of the MTA, the primary responsibility for investigation belongs to PTSB, which is required to share its findings with the Inspector General (PAL §1279[5]).

The OIG is required to make annual public reports to the governor and members of the legislature (PAL §1279[6]).

³ PTSB has a reciprocal obligation, imposed by statute to cooperate, consult, and coordinate with the MTA Inspector General. New York State Transportation Law §219[2].

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The Inspector General may request from any office or agency of the State of New York or any of its political subdivisions, such cooperation, assistance, services, and data as will enable him to carry out his functions, powers, and duties, and they are authorized and directed to comply (PAL §1279[7]).

INTAKE, AUDIT, AND INVESTIGATIONS



AUDIT

The Audit Division (Audit) of the OIG conducts in-depth audits and reviews of a wide variety of policy initiatives, program operations, and service-related activities of MTA agencies. The auditors assess whether MTA operations are safe, effective, and efficient, and make recommendations for improvement as appropriate. The division is staffed by experienced auditors, most of whom have a graduate degree in a related field.

Audit provides significant support to the OIG Investigations Division, regularly assists and consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government, and has provided valuable analytical assistance for a wide range of audits, investigations, and reviews of agency employees, and vendors.

In 2015, Audit completed a number of significant reports with recommendations to enhance safety, improve operations and quality of performance, save money, and increase the productivity of its workers. These reports and other work are described below.

REPORTS

Fare Machine Outages at NYC Transit Select Bus Service Stops (MTA/OIG #2015-26)

In 2008, NYC Transit and the NYC Department of Transportation (DOT) established the first Select Bus Service (SBS) route, which was located in the Bronx, to expedite travel using innovative techniques such as off-board ticket machines. SBS customers pay before boarding and inspectors monitor fare evasion. As of December 31, 2015, eight routes using off-board ticketing were in service throughout New York City, with further expansion planned. While SBS has many advantages, the OIG had received complaints from customers who received \$100 summonses after boarding a Select Bus at a stop where the MetroCard Fare Collectors (MFCs) were out of service.

Electrical interruptions periodically cause all the MFCs at a given stop to be out of service for prolonged periods. We found that NYC Transit had a persistent problem with such long-term outages. Indeed, our latest data showed that in a recent 12-month period, 16 percent of SBS stops suffered an electrical outage lasting at least four days. On average, five stops were in the midst of such a long-term outage on any given day. Many of these outages lasted several months or longer.

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Most electrical outages require work by DOT, Consolidated Edison (Con Ed), or other third parties and are often not resolved promptly. Given that about 97 percent of customers use MFCs to obtain tickets and Transit had no workable provision for alternate payment, these outages were a serious challenge to a system built around the requirement of payment at the bus stop before boarding. Not only did the outages inconvenience customers, they also facilitated fare evasion and hampered enforcement.

Although Transit had faced this problem since 2008, only in September 2015 did the agency settle on a formal policy to address it, which required customers boarding at a stop with no working MFCs to disembark at the next stop to obtain their tickets. Notably, to maintain the service schedule bus operators would not necessarily wait for such passengers to re-board. We believed that this policy was unduly burdensome to customers and recommended that it be changed. Also recognizing the burden of mandated disembarking, Transit's SBS ticket inspectors told us they do not strictly enforce the policy and often accept the passengers' assurance that they boarded at a stop known to be out of service. All the same, it is not a sound practice to have an unreasonable policy tempered only by discretionary enforcement.

Further, we found serious weaknesses in Transit's process for informing both customers and its own personnel about these outages and how to deal with them. For example, multiple stops with long-term MFC outages had no outage signs or instructions. Additionally, Transit had not gathered adequate data about long-term outages or provided the managerial oversight necessary to reduce the impact of out-of-service fare machines on the customer experience. We concluded that Transit should promptly address these issues as it expands the program to new routes.

Transit officials agreed with our recommendation to develop an alternative approach for passengers to obtain tickets when the MFCs are out of service. In April 2016, agency officials assured us that going forward the agency would instead allow such passengers to obtain tickets when they disembark at their *final* stop. These officials also assured us that the agency plans to improve its oversight and management of long-term outages. They further assured us that the agency will implement methods for tracking and evaluating the impact of outages on MFC availability, and will work more closely with DOT and Con Ed to monitor each power outage to ensure the most rapid repair possible.

Security of Property at Long Island Rail Road Lost and Found Office
(MTA/OIG #2015-10)

For almost 20 years, the LIRR has maintained a Lost and Found Office (LFO) in Penn Station. In 2013 alone, the LFO accepted over 15,500 items ranging from paperback books to diamond jewelry. The defining responsibility of a Lost and Found

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operation is to safeguard the property in its custody and facilitate its return to the rightful owner. For the LFO to accomplish these goals, its storage space must be properly organized and managed, its information retrieval system must be up-to-date, and its overall operation must be secure.

In response to complaints received about lost property, OIG began a review to determine whether LIRR was adequately securing items turned in to the LFO. While our review found that many items are returned to their owners, we also found that property in the LFO was at risk of avoidable misplacement or theft. We selected a sample of 20 items that should have been on the premises, according to the LFO database, but staff was unable to locate eight of them (40 percent).

Regarding physical security, we found that although the door to the LFO storage space was locked, access was not monitored by cameras, an electronic keycard system, or a formal sign-in process to document arrivals and departures. Additionally, the inside of the storage area was not monitored by a video surveillance system or otherwise secured. Many high-value items kept in this area, including jewelry, and high-risk identity documents, such as driver licenses and passports, were stored in unlocked bins.

On the other hand, many inexpensive items were retained for much longer than required by law before their eventual disposition, thereby increasing overcrowding and the risk of misplacement or loss of more recently-recovered property. Indeed, we found that of the auctioned or discarded items valued at less than \$100—the category for 87 percent of all items received by the LFO—the average retention for items in this group was 254 days, nearly triple the required 90-day period.



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Additionally, we found that information maintained in the LFO database was frequently inaccurate, outdated, and/or incomplete. Therefore, staff could not readily track the location of property or the length of its retention. And lastly, we learned that when one of the LFO's three permanent, full-time staff members was absent, problems with data-entry and property storage were exacerbated by the inexperience of their temporary replacements.

We recommended that LIRR better control individuals' access to the storage areas while also securing property particularly at risk of theft, including jewelry, computer tablets, smart phones, and identity documents. We also recommended that management bring the LFO into compliance with the legally-mandated retention periods; make the data retrieval system more accurate, up-to-date, and complete; and ensure that unclaimed property is disposed of in accordance with law. Finally, we recommended that management evaluate options for stabilizing the staff coverage of the LFO.

LIRR leadership agreed with our recommendations and promptly began their implementation—for example, by removing from the Lost and Found Office any items past their retention periods. Management also plans to relocate the LFO to a larger space within Penn Station in 2017, where security cameras will be installed.

Accuracy of Reporting on Disadvantaged Business Enterprise Participation in MTA Contracts

(MTA/OIG #2015-05)

The laws and regulations of New York and the United States have established programs designed to increase the participation of minority and women-owned firms in publicly-funded contracts with private businesses. The program for federally-funded contracts uses the term Disadvantaged Business Enterprise (DBE), meaning a small business owned by individuals defined to be “socially and economically disadvantaged” and who do not exceed a specified net-worth limit. MTA's Department of Diversity and Civil Rights (DDCR) administers the DBE programs. DDCR also runs a similar program for MTA's New York State-funded contracts.

As required by federal law, DDCR sets overall percentage goals for the MTA for the participation of certified DBEs. The Department also sets goals on specific contracts, gathers and analyzes the relevant data, and makes periodic official reports on MTA's performance. These reports cover total contract awards and payments, as well as the amounts/percentages going to certified DBE contractors. Because the reports are used to gauge MTA's progress and to guide policy-making, it is essential that the data be complete and accurate.

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This audit focused on the accuracy and completeness of DDCR's final report to the MTA Board on payments made on federally-funded contracts in fiscal year (FY) 2013. We also reviewed DDCR's reports to the Federal Transit Administration (FTA) on payments for the MTA's federally-funded contracts that were completed in that period.

We found a combination of design flaws, errors in data entry and analysis, and inadequate internal controls. Consequently, MTA underreported a total of \$1.4 billion in payments to prime contractors by 17.5 percent (\$245 million), and underreported a total of \$146.7 million in payments to DBE subcontractors by 5.9 percent (\$8.7 million). As a result of these reporting errors, DDCR inadvertently overstated the percentage of total payments that went to DBE subcontractors.

Major contributing factors to these errors included a poorly designed and confusing monthly-report form that led contractors to frequently report incomplete payment amounts. Additionally, DDCR entirely omitted one month of payment data (September 2013). DDCR also made data entry errors and counted payments to some subcontractors who were not certified DBEs. DDCR did not have basic procedures in place that could have facilitated detection of the numerous instances of mistakes and faulty data that led to such a large total error.

Besides inaccuracies, DDCR's reports suffered from incompleteness. Specifically, its reports to the FTA on contracts completed in FY 2013 did not cover most recently-completed contracts. Indeed, we reviewed a sample of 13 contracts completed in FY 2013 and found that DDCR had reported on only one of them. The 12 contracts that were not reported had an aggregate final value of \$445 million. DDCR explained that it had a large backlog in doing its final reviews of completed contracts.

DDCR acknowledged the errors and accepted OIG's nine specific recommendations to change and enhance its data collection and reporting procedures. For example, DDCR revised its monthly report form and stated that it had begun other corrective actions. These included providing new instructions to contractors and obtaining independent confirmation of reported payments. Additionally, DDCR is moving to a new computer management system that it is confident will address a number of the shortcomings that led to reporting errors. DDCR has also done extensive work with MTA Audit Services to reduce its backlog on completed contracts.

The deficiencies OIG found in DDCR's federal payment-reporting raised concerns that the Department's data collection, analysis, and reporting systems in other areas (such as payments on New York State contracts) had similar shortcomings. Therefore, we also recommended that DDCR "broadly revisit and test its data collection, analysis, and reporting systems to ensure that they produce timely and accurate results." DDCR accepted this recommendation as well.

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Department of Diversity and Civil Rights Certification Unit Operation
(MTA/OIG #2015-09)

In 2015, OIG completed a review of the DDCR's Certification Unit, which is responsible for determining a firm's eligibility to participate in the DBE program. As described above, this program was established by the federal government to ensure that qualified firms can compete fairly for designated federally-funded, transportation-related projects.

As the Metropolitan Transportation Authority is one of four agencies in the New York State Unified Certification Program (NYSUCP), DDCR must comply with federal regulations as set out in 49 CFR Part 26, which have been incorporated into standard operating procedures. In this audit, we examined MTA adherence to federal and state guidelines that govern program participation; how thoroughly the MTA processed applications for certification; and whether and to what extent the MTA conducted annual reviews to determine continued program qualification.

We found that DDCR performed most elements of the initial certification process in accordance with NYSUCP guidelines. However, we also found that its subsequent annual reviews were not always performed (only 22 percent of sampled files contained all the documents), and some financial determinations of eligibility were not sufficiently thorough. Notably, the unit's Assistant Director acknowledged that she did not track how often her unit completed the required annual reviews of the documents submitted by certified DBE firms, but estimated the incompleteness rate to be about 25 percent.

We also reviewed the financial analyses that DDCR performed on ten certified firms, both at the time of initial certification and subsequent annual review. We observed that, in some cases, DDCR conducted full and rigorous reviews of financial records. However, in other cases, a more extensive review was required than was carried out.

In light of our findings, we made seven recommendations—all of which DDCR accepted—designed to help DDCR more fully comply with federal mandates and to help ensure that its operations carry out program goals. Six have been implemented while the final recommendation should be realized in the second half of 2016.

Oversight of All-Agency Contract for Background Check Services
(MTA/OIG #2015-04)

MTA requires job applicants to undergo a background check if selected for a position. The background check helps provide assurance that new employees have the necessary qualifications to perform their assigned tasks. In 2013, MTA contracted with the current vendor to conduct these checks over a three-year period for every MTA

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agency. MTA Bridges and Tunnels (B&T) took the lead in procuring this vendor, while the MTA Headquarters Business Service Center (BSC) coordinated the relationship between MTA and the vendor on such matters as service quality and billing discrepancies. One representative in each agency served as the primary liaison with the vendor, BSC, and B&T.

After receiving various complaints, we began a review of MTA agencies' utilization of the contract through June 2014. We found that despite their partnership in this joint procurement, BSC and agency liaisons did not jointly inform the vendor of recurring performance problems. This inadequate oversight and coordination allowed weaknesses to persist. Specifically, the background checks were often incomplete, which caused delays in hiring, and more costly than reasonably expected, both because the vendor performed unnecessary work that inflated the costs and because the agencies were not adequately informed about what the costs should be and how to budget for them. Additionally, there was a delay in the implementation of contract amendments that would have allowed the vendor to provide services better designed to meet MTA's needs at a lower cost.

More generally, we found that BSC, B&T, and agency liaisons did not have a clear understanding of, and agreement about, their individual and collective roles and responsibilities in the context of this joint procurement. This uncertainty led to confusion about who should alert the vendor to time-sensitive matters in general and substantive contractual issues in particular.

We recommended that BSC improve communication channels for agency representatives and monitor the timeliness of the vendor's work. We also recommended that MTA amend the contract as needed to more effectively and efficiently meet agency needs. To improve the coordination of the next background services contract, we recommended that BSC oversee all procurement and non-procurement matters and incorporate the agencies' needs and preferences in the new contract specifications. Lastly, we recommended that the MTA chief procurement officer, who reports to the senior director of the BSC, develop and distribute to every operating agency guidelines defining the roles and responsibilities of staff members involved in a joint procurement.

BSC officials accepted our recommendations and told us that BSC has integrated many of them into the agency's process for managing the contract and other joint procurements. Additionally, BSC management informed us that in mid-2015, BSC became wholly responsible for managing the contract for background services, as part of the planned centralization in the BSC of selected procurement functions previously performed by the operating agencies. Most recently, we learned that in early 2016, BSC elected to extend the current contract for one year—into mid-2017—to allow adequate

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time for the agencies to develop clear specifications and for BSC to conduct an open and competitive procurement process.

MTA Bridges & Tunnels Reporting of Employee Accidents to the MTA Board
(MTA/OIG #2015-24)

The Safety and Health Department (Safety) of MTA Bridges and Tunnels reports certain statistical information concerning safety to the MTA Board. These statistics include job-related injuries and job-related illnesses (commonly referred to collectively as “Injuries”), some of which result in lost work time. According to the data reported to the Board by B&T in February 2015, the number of accident reports filed by B&T employees had increased 26 percent from 270 in calendar year 2013 to 341 in 2014.

To understand the causes of this significant increase, the OIG examined Safety data from January 2014 through March 2015 and found that B&T was incorrectly categorizing interactions with employees about Injuries as “recurrences,” a term normally used in the industry to describe an actual subsequent Injury to the same body part affected in a previous incident and since healed. Specifically, we determined that a significant number of the “recurrences” were simply notifications about surgeries or other absences related to the originating injury. This practice had the effect of unintentionally inflating the number of accidents in Board reports. We also discovered that many of Safety’s descriptions for “recurrences” were similar or identical to the descriptions of the original illness or injury, making it difficult for the agency to ascertain the causes of any actual recurrences and take action to correct hazardous conditions or practices.

To improve the accuracy of B&T’s reporting and the thoroughness of its monitoring efforts, we recommended that the agency develop a consistent definition of a “Recurrence”; clearly report to the Board new injuries and illnesses, highlighting any that are recurrent to ensure appropriate attention to ongoing hazards; and provide a unique description for each event entered into the Safety database. We discussed our findings and recommendations with B&T management, which accepted our recommendations and promptly initiated improvements.

Estimating Overhead and Profit on Material and Equipment Costs in Change Orders
(MTA/OIG #2015-20)

Following the award of a construction contract, it is not unusual for an agency to negotiate change orders to account for changes in project scope not provided for in the original contract. Once the scope of the additional work is identified, the agency must estimate the cost of labor, materials and equipment. Overhead and profit allowances, where factored into change order estimates, serve as a basis for negotiation. According to

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agency guidelines, the agreed-upon price should not exceed 10 percent of the internal estimate.

In 2015, the OIG looked at the manner in which MTA agencies review, estimate, and approve change orders to construction contracts. The significant fiscal impact of these change orders makes this an area of particular concern. In conducting these reviews, we found that the various agencies had established different cost-estimating protocols.

In order to determine what, if any impact to the MTA resulted from this lack of uniformity in protocols, OIG conducted a review of the respective contractual standard terms and conditions, protocols, and procedures utilized by NYC Transit, Metro-North, and the LIRR. We found that there are significant differences among the agencies in two basic areas: First, in the allocation for overhead and profit on labor and materials; and second, on how equipment rental costs are determined.

For change orders there was no single accepted standard of how to deal with overhead and profit on materials; the agencies each addressed that issue differently. Unlike either of the commuter railroads, which applied only a five or 10 percent overhead and profit mark-up for materials on change orders, NYC Transit applied a 21 percent markup. These variances yielded potentially significant differences in bottom-line costs.

The MTA agencies also follow different protocols when estimating the cost of required equipment, (i.e., backhoes, cranes, pile drivers, etc.). Neither Metro-North nor LIRR allowed any mark-up for overhead on equipment supplied by the contractor since each, as a default, assumed the contractor owned the equipment. For contractor-owned equipment, the cost charged to these agencies was pegged to the then-current rates as set-out in the Rental Rate Blue Book, an accepted industry standard. On the other hand, NYC Transit, MTA Capital Construction, Staten Island Railroad, and MTA Bus applied a full 21 percent markup, even as to equipment owned by the contractor.

Based on our findings, we recommended to MTA that agency chief estimators, chief contract officers, and general counsel develop and implement standard construction contract terms to be applied to construction change orders on an all-agency basis. The resulting standardization of approach should ensure that the allocation for overhead and profit, as well as the manner in which equipment rental costs are determined, are on terms most beneficial to the MTA. In its response, the MTA stated that it is conducting an “analysis to determine whether the factors involved in costing the delivery of services is significantly different between agencies to justify different estimating approaches. . .” or, if not, to determine “what would be the best unified approach with terms most beneficial to the MTA.” We will continue to monitor and report on this issue as appropriate.

INVESTIGATIVE AND GENERAL SUPPORT BY AUDIT

Proper Licensure/Registration of Contract Security Guards

The proper licensure/registration of contract security guards has important public safety implications to MTA customers and personnel, as well as to public and private property. In 2004, the New York State Department of State (DOS) determined that more than 150 private security firms were in violation of state law for operating without a state license employing unlicensed/unregistered security guards, and/or for using guards registered with another company. Some of these companies had contracts with NYC Transit at that time. MTA agencies have since awarded new security contracts to some of the same contractors as well as to new contractors.

Because the use of unlicensed/unregistered guards poses a significant risk to people and property, given that such guards may not have been subjected to required background checks or received mandated training, we conducted a review in 2015 to determine whether guards assigned to MTA facilities were properly licensed/registered. As of June 2015, there were four security companies, using 400 security guards, fulfilling seven contracts for security services to MTA agencies. Using the information provided by the DOS Division of Licensing Services, and the Special Licensing and Firearms Unit of the Connecticut State Police, we verified that all security guards assigned to MTA properties in New York and Connecticut were properly licensed in accordance with respective state laws. New York DOS also confirmed that there were no recent disciplinary actions against the four security companies.

Help Point Intercom System for Subway Customers

In the last few years, NYC Transit has installed instant communication devices capped with distinctive blue beacon lights in subway stations near turnstiles and along subway platforms. Help Points, as the units are called, provide customers direct lines to Transit personnel who can deliver either emergency assistance or service information. Begun as a pilot in 2010, the project is proceeding, with 100 units installed in 2014—the first full year of the installation project—and the agency plans to equip all 469 stations by the end of 2017.

In 2015, OIG conducted a review of both the pilot project and NYC Transit's evaluation of the underlying new technology. Our goal was to understand the process by which MTA formally evaluated this experiment and to determine if its evaluation process was sufficient.

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We learned that in 2010 and 2011—before and after the installation of initial prototypes in two stations—the agency was informed by substantive market research with customers. Passengers responded positively to the 19 intercoms, which included both hard-wired and wireless models and functioned for four months without any unit failures.

We also learned that between 2011 and 2013, NYC Transit addressed a wide range of technical, logistical, and financial issues before MTA and NYC Transit leadership publicly expressed their support for the installation of Help Points in every subway station. Perhaps the most significant issue was the extraordinary organizational complexity of the project, both because several Transit departments played a significant role in the project, and because the agency needed to coordinate the work of Consolidated Edison and multiple installation contractors, including Transit Wireless and participants in the MTA Small Business Mentoring Program. Other complexities involved procurement challenges, including efforts to expand suppliers and avoid reliance on a sole source; and preparedness, including NYC Transit’s readiness to answer an increasing number of non-emergency calls as the project expands. This issue of readiness also raised questions about the agency’s staffing levels and the quality of information available to customers, as well as the need to inform the riding public about the new intercoms and how to use them.

In 2015, we assessed the capability of NYC Transit to handle these complexities. While challenges remain, we found that NYC Transit was already aware of and working to manage the many aspects of the Help Point program and is providing capable oversight as the installation project continues. Most fundamentally, we observed that the intercoms were functioning as intended and hundreds of calls per day were already being received, including some emergency calls. The switch of all non-emergency calls to the Travel Information Center (TIC) has been accomplished.

Analysis of the LIRR Crew Dispatcher Office Staffing and Overtime

The LIRR Crew Management Services (CMS), a unit of the Transportation Department’s Operations Support and Analysis Group, has a history of high overtime cost for its crew dispatchers. Our review covered the Train and Engine Service crew dispatchers operating from the Crew Dispatcher Office (CDO) under the supervision of the CMS. The crew dispatchers’ primary function is to ensure that Train and Engine Service crews are available to fill all daily vacancies. They are also responsible for making extra assignments in accordance with applicable collective bargaining agreements, as well as conducting annual crew assignment and vacation selections. In 2014, Train and Engine Service crew dispatchers, including trainees, were paid a total of \$2,156,390 in wages, of which \$744,053 (34.5 percent) was for overtime. The purpose of

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OIG review was to understand what was driving the high amount of overtime, if it was necessary, and whether it could appropriately be reduced.

CDO operates seven days a week, 24 hours per day, using three eight-hour shifts. We obtained and evaluated LIRR's analysis of the CDO staffing level, which was provided to us as support for using 24 crew dispatchers to cover these shifts. Although the authorized staffing level of 24 positions appeared sufficient to fill the weekly 109 crew book assignments, it allowed for only 11 shifts per week to cover absences and/or extra assignments. Any additional coverage had to be provided by staff on overtime.

By late 2014, as a result of retirements and the absence of one dispatcher on extended medical leave, the CDO had only 21 active crew dispatchers. Consequently, many assignment vacancies were filled by employees working overtime. In that year, \$478,798 of the overtime cost (64.3 percent) resulted from leave coverage. Sometimes overtime is a less costly way to cover temporary vacancies, since hiring additional staff comes with the added costs of health and pension benefits. Indeed, that was the case in 2014; our analysis showed that LIRR actually saved money as a result of these vacancies. However, while fewer employees with more overtime may in the short term be a more economical approach, other problems arising from staffing shortages make that approach inappropriate as a long-term solution.

CMS management began making efforts to address the staffing shortage in mid-2014. Employees interested in becoming crew dispatchers had to successfully complete a challenging six-month training program, which very few trainees could accomplish. Under the current collective bargaining agreement, the job is open to all LIRR clerical workers, ticket clerks, and other employees in job titles represented by the Transportation Communications Union regardless of the employees' skills and/or aptitudes. Since there are no minimum qualifications required to apply for the crew dispatcher trainee positions, CMS management has limited ability to specifically select candidates with the skills and/or aptitudes that increase their likelihood of success in the training program. Indeed, during the period from June 2014 to May 2015, only 1 out of 6 trainees successfully completed the training. Management also does not have the ability to use the applicants' time and attendance records in the crew dispatcher trainee selection process.

As a part of our review, LIRR Labor Relations informed us that that it would be acceptable for CMS (i.e., consistent with the collective bargaining agreement) to test the crew dispatchers trainee applicants' ability to do the job before awarding the positions. In light of this interpretation, CMS management is considering enhancements to the screening process for crew dispatcher trainees. We will continue to monitor this in 2016.

Verifying the Accuracy of LIRR Equipment-Failure Statistics

In 2014, the OIG received an anonymous complaint alleging that LIRR's Maintenance of Equipment Department (Equipment) was manipulating its Mean Distance

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Between Failures (MDBF) statistics and thus overstating the equipment's performance. MDBF, a widely-reported measure of fleet reliability, represents the average number of miles a rail car travels before a mechanical failure causes a train delay of six minutes or longer. In 2014, LIRR reported a MDBF of 206,226 miles. The complaint specifically alleged that Equipment underreported delays caused by mechanical failures by misattributing them to other causes, e.g., weather or customer incidents, thereby diverting management attention from other potential performance weaknesses. The complaint also alleged that the underreporting of mechanical delays was being influenced by senior officials.

As part of our review, we interviewed Equipment personnel to learn how staff initially report train delays and then investigate their causes. We also met with the LIRR Train Delay Review Committee, an interdepartmental committee that meets regularly to analyze and discuss train delays. Additionally, we examined train delay data from various other sources including the Maximo system, which has been Equipment's primary asset management system since 2011. Our review did not find any evidence that Equipment had underreported mechanical delays or that there was inappropriate influence on the process by senior officials.

Overtime Complaint re MTA Bus Operations' Facilities Department

The Facilities Department is responsible for the maintenance and repairs of MTA Bus Operations' depots and their equipment/machinery. In 2015, the OIG received an anonymous complaint alleging overtime abuse in that: (1) certain MTA Bus Operations' Facilities Department line supervisors assigned to the Central maintenance division based at the Bathgate Shop in the Bronx were allowed to exceed the annual earnings cap; 2) overtime was not fairly distributed among eligible employees; and 3) the chairman of the Transit Supervisors Organization (TSO), an employee on full-time release for union business, repeatedly received overtime pay for time not worked. During the period from January to June 2015, the nine Central line supervisors were paid approximately \$164,300 for 2,500 overtime hours. Based on our review of records and interviews with management, overtime was mostly attributed to vacancies and absences coverage.

Under the existing labor agreement, line supervisors' earnings are capped at an agreed-upon amount. Based on the payroll data and earnings-cap calculation provided by the NYC Transit Controller's Office, we found that, the employees did not exceed the earnings cap.

We also analyzed the distribution and pay records for line supervisors for six months in 2015. Based on the records, we determined that available overtime was reasonably distributed among the seven line supervisors, who were in the group for that entire period. On average, the monthly overtime hours for the four highest overtime

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earners did not vary significantly. Of the remaining line supervisors, two had consistently refused the offered opportunity for overtime and one had reached the earnings cap for most of the review period and therefore was not eligible for additional overtime.

Regarding overtime payment to the TSO chairman on full-time release for union business, he claimed that past practice entitled him to three hours of overtime pay daily. The Facilities Department advised us that they had worked with Labor Relations to discontinue this overtime payment practice. In August 2015, management notified the union chairman that he would no longer be eligible for these daily overtime hours in connection with his union duty. We subsequently confirmed with payroll records that the union chairman was no longer paid for overtime under the now-discontinued practice.

Overtime Complaint Regarding Staff in NYC Transit HVAC Department

The OIG received an anonymous complaint regarding employees in the Heating Ventilation and Air Conditioning unit (HVAC) of the NYC Transit Maintenance of Way Department (MOW). Specifically, the complaint alleged that the stationary engineers assigned to mobile units were paid unnecessary overtime to monitor low pressure boilers that could operate in automatic mode, and that overtime was given to selected employees. We did not find evidence to support the complaint.

Stationary engineers are licensed by the City of New York as operating engineers and they are responsible for the operation and maintenance of NYC Transit's high-pressure steam boilers and other heating plants. These engineers are assigned either to one of the agency's six primary boiler plants (three are high-pressure) or to one of its two mobile units – Mobile North and Mobile South. The mobile units are responsible for maintaining smaller heating equipment at 13 NYC Transit's facilities other than the primary boiler plants. Although by law only high pressure boiler plants are required to be monitored on an around-the-clock basis, it has been the practice at NYC Transit to establish equipment monitoring rotations at all six major boiler plants to ensure the availability of heat and prevent major breakdowns of heating equipment, including heat distribution equipment such as pipes that could freeze and burst. In extreme cold weather, monitoring rotations are also established at some of these smaller plants. For the period encompassing January 2014 to February 2015, the 47 stationary engineers were paid \$952,460 in overtime.

In accordance with the applicable collective bargaining agreement (CBA), the primary factor in the distribution of overtime is the employees' seniority, but factors such as severe weather may from time to time affect the overtime assignment rotation. It is important to note that for tracking purposes, all overtime offered to an employee is counted toward the rotation whether or not the employee accepted the overtime

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assignment. Thus, to ensure that the distribution was fair and done in accordance with the CBA, we analyzed the amount of overtime offered, not simply how much individual employees ultimately worked.

As part of our review, we analyzed the overtime distribution records for the mobile units, which showed the daily overtime assignments and the accumulated overtime hours offered to each employee. We also factored in the employees' seniority and compensation rates. Utilizing all of this information, we found no evidence to suggest that overtime was steered to selected employees. We also found that employees from the same work location with similar seniority and base pay received comparable overtime payments. We did note, though, that the stationary engineers assigned to the Mobile North unit received more overtime than those assigned to the Mobile South unit or the six primary boiler plants. However, we determined that the higher overtime could readily be attributed to the shortage of staff in the Mobile North unit at the beginning of the heating season; severe cold weather in early 2015 requiring mobile unit employees to maintain watches at various locations; and a major failure at the 207th Street Yard steam plant caused by contaminated fuel, which required the Mobile North employees to provide extra manpower for the repair/recovery while continuing to maintain their regular assignments.

Deployment of LIRR Customer Service Ambassadors

As part of an OIG series of projects intended to improve MTA agency communications with customers, we reviewed the Customer Service Ambassador (CSA) program at Long Island Rail Road. LIRR created these positions in 2013 in response to the OIG's earlier observations noting customers' pressing need for timely and accurate information during major service disruptions. The agency currently employs seven full-time CSAs to disseminate information at Penn and Jamaica stations. These employees are available during regular morning and evening rush hours to assist customers with travel information, service status, and other related information. In the event of a major disruption, the CSAs serve as primary resources for customers seeking information about the length of the disruption and alternate travel options. CSAs are assigned uniforms which include red vests and blazers so customers can easily find them in crowded conditions and differentiate them from other uniformed personnel.

In July 2015, OIG staff made eight unannounced visits over four days to CSA posts to assess whether CSA employees were indeed available to customers during the rush hours. In our visits, we observed most Ambassadors on site or, in a few cases when we did not, LIRR officials accounted for their whereabouts during subsequent discussions. We also learned that a number of CSAs had incomplete uniforms, affecting our ability to identify them on site and potentially causing LIRR riders the same

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difficulty. LIRR officials have since reported to us that the CSA either have proper uniforms or the uniforms are on order.

Grand Central Terminal Holiday Fair Vendor Complaint

The MTA operates an annual Holiday Fair at Grand Central Terminal (the Fair). The event features approximately 75 vendors who sell their wares over a period of about 40 days. During the first half of 2015, OIG received several complaints from event vendors who had participated in the Fair at various times between 2008 and 2014. Complainants alleged that event officials showed preferential treatment to one or more vendors during the selection or operational phase of the Fair, and event organizers failed to rotate vendors over the years. Complainants further alleged that the day-to-day event manager could “blacklist” vendors from future participation.

In terms of general facility management for Grand Central Terminal, the MTA Real Estate Department contracts with Jones Lang LaSalle Incorporated (JLL) to provide that service. Through that contract, JLL appoints a designated staff person to run the day-to-day aspects of the Fair. Additionally, a selection committee composed of MTA and JLL staff evaluates each application package based on design, creativity, quality, price point, and product classification.

To help the OIG assess the complaints, Audit Division staff interviewed the 2015 selection committee members and reviewed the available 2015 committee records associated with the selection of vendors. We also reviewed archived website pages, and the contractual scope of work relating to the Fair.

Based on the foregoing, we found no evidence that event officials gave preferential treatment to or were biased against any vendors during the selection or operational phase of the Fair. Further, and contrary to the complainants’ assumptions, we found no requirement that event organizers cycle vendors or limit their participation to a certain number of years. Lastly, we found no evidence that any vendors were “blacklisted” because of animosity on the part of the day-to-day event manager or otherwise. Nevertheless, to better substantiate the decision-making process, we recommended that JLL management and MTA Real Estate maintain records of vendors that violate Fair rules as well as the nature of their violations. Further, to avoid even the appearance of unfairness in the process, we also recommended that JLL and the MTA maintain all applications and selection-committee records going forward as well as future complaints and their resolution. They agreed with our recommendations.

FOLLOW-UP ON PREVIOUS WORK

Improving the Safety Controls in the MTA NYC Transit Paratransit Broker Car Service Program

(MTA/OIG #2013-18) (Follow-up)

This year, we performed a follow-up review of the Paratransit Broker Car Service Program to determine the extent to which Paratransit has implemented the recommendations we made in our 2013 report. In our original audit we had found that Paratransit had not reported to the broker the safety violations and excessive cell phone use observed by the agency's undercover riders. We also found that the broker had not implemented elements of its safety programs and was not reporting accidents and injuries to Paratransit as required by its contract. In our report, we recommended that Paratransit clarify the role of its Safety and Performance Unit (SPU); establish procedures to ensure timely reporting of driver safety violations; enforce the car service broker contract requirement to promptly notify Paratransit of accidents; and ensure that car service brokers have a safety program.

In our follow-up audit, we found that Paratransit has implemented all of our recommendations. SPU has improved both its data gathering and reporting to broker companies of the safety violations its riders have observed. Additionally, according to Paratransit officials, contract managers for the broker now meet monthly with the brokers to discuss safety violations and other safety-related issues, and broker companies now provide accident information for analysis on a monthly basis.

Improving the Management of Crews in the MTA Long Island Rail Road's Structural Maintenance Division

(MTA/OIG #2012-05) (Follow-up)

Our audit in 2012 utilized information obtained through the LIRR's Automatic Vehicle Location Monitoring (AVLM) system to locate vehicles in real time and run historical reports on vehicle location. As a result, we noted that on any given day the five- or six-person crews that maintain the LIRR's vast network of stations, bridges, and facilities dispersed over 700 miles of track, may be scattered among several work locations. While effective management of this widely-dispersed workforce is certainly critical to ensuring productivity and a cost-efficient maintenance operation, our original examination of three construction projects performed by crews from LIRR's Structural Maintenance Division—staircase replacements at the Great Neck and Deer Park stations, and a fence installation along a roadway in Manhasset—revealed that these workers were often not productively engaged, and that their performance problems were systemic.

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Our original findings also indicated that low expectations on the part of the supervisors in charge of the projects with regard to the amount of time that the crew was expected to spend at the job site each day, reduced the productivity of the crews. Further, because division managers and project supervisors did not employ project schedules and budgets to plan and monitor the projects, they could not ensure that the projects would be completed in a timely and efficient manner. Consequently, we made a number of recommendations designed to address these issues, all of which the agency accepted.

In 2015, by way of follow-up, we reviewed a project involving the renovation of four stairways at Syosset station, and met with agency officials to assess compliance with the revised and newly-created procedures. Our review found that LIRR had enhanced management oversight as follows:

- Prior to the start of each project, the agency places a trailer containing all required materials at the work site, and directs crews assigned to the job to report directly to that site at the start of their shift. Crews can then remain on site eliminating travel time to permanent crew quarters at the beginning and end of shifts.
- Management developed work scopes, budgets, and schedules for all construction projects on which the crew is expected to be engaged for 30 straight calendar days, and prepared these projections one year in advance, with scheduling based on the projects' priority.
- Crew foremen are now required to file daily reports documenting their work activities.
- Supervisors now prepare written status reports for review by the principal engineer of the Structures Department at least once every 30 days.

LIRR management also assured us that supervisors have been trained on the AVLMM system and are expected to use it to monitor their crews. This expectation is consistent with our frequently-expressed view that using AVLMM as a management tool is essential to cost-effectively monitor the individuals and equipment employed by a widely-dispersed workforce. We will continue to monitor the use of AVLMM at the agencies and will also continue to provide information to managers on best practices.

MTA and NYC Transit Have Not Fully Managed Their Responsibilities Regarding Privately Owned Elevators, Escalators, and Stairways

(MTAOIG #2011-12) (Follow-up)

This year we followed up on our 2011 audit of the management of privately maintained elevators, escalators, and stairways (termed “out-of-system property”) that lead directly into the subway system. In our audit, we found that while several departments had roles regarding this out-of-system property, no one individual or

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department within the MTA or NYC Transit has overall responsibility for ensuring compliance with easement agreements. The OIG made a series of recommendations that includes designating a lead department to interact with owners of the out-of-system property to expedite any needed repairs and manage new agreements. During our follow up interviews we found that all recommendations have now been implemented.

Following the drafting by the MTA Real Estate Department of an inter-agency Memorandum of Understanding (MOU) in 2012, a more formal process was implemented to monitor out-of-system property. For example, Transit staff now inspects elevators and escalators daily and outages are reported on the MTA website. Staff also inspects stairways every 72 hours and reports any repair issues to MTA Real Estate. Consequently according to Transit staff, long term outages on this equipment have greatly decreased over the three-year period since the MOU.

Another of our recommendations now implemented was for the MTA to utilize the self-help clause in their easement agreements. This clause authorizes the agency to make repairs and charge the owner when the owner fails to meet its responsibilities under the agreement. Last year for the first time, Transit and the MTA Legal Department utilized this clause in connection with the repair of a stairway at the Dyckman Street Station in Inwood. After making the repair and incurring the cost, MTA Legal instituted and is actively pursuing litigation proceedings against the owner for reimbursement.

Assessing the Effectiveness of the MTA All-Agency Contractor Evaluation (ACE) Program

(MTA/OIG #2009-08 and #2009-15) (Follow-up)

In December 2009, the OIG issued two reports, respectively titled “Assessing the Effectiveness of the MTA All-Agency Contractor Evaluation (ACE) Program” (2009-08), and “Program Design Deficiencies in the MTA All-Agency Contractor Evaluation (ACE) Program” (2009-15). Within these reports, we made numerous findings and a total of 13 recommendations, all designed to help the MTA and its constituent agencies use ACE properly to achieve its two basic goals: as a management tool to correct poor performance, and as a procurement tool to screen high-risk vendors seeking MTA contract awards. The MTA generally agreed to implement our recommendations.

In 2015, OIG revisited the ACE program and found that agency personnel may still not be properly and effectively rating contractors. On the issue of “post-final” evaluations which are to be completed when a major problem occurs after the contract is finished; no such evaluations have been completed. We reported those findings to MTA officials and in response they reiterated their support for the program and reinforced the need to constructively evaluate contractors.

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Additionally, the MTA Chairman issued a memo to the agency presidents noting the benefits of the ACE program and the importance of providing accurate assessments of contractor performance. The memo calls for senior capital managers to improve the accuracy of ACE and directs the MTA Office of Construction Oversight to develop a method of monitoring its use by each agency. Further, the MTA asserted that there is a practical procedural barrier to properly using the ACE system's post-final evaluation option because of the need for proper coordination between operating and capital managers. In that regard, the MTA committed to having senior managers examine the post-final process and work towards developing agency procedures that will allow the MTA to obtain and record post-final evaluations. OIG will continue to monitor the performance of the ACE system as these efforts progress.

VTL 19-A Audit/Investigation

(MTA/OIG #2011-01) (Follow-up)

Article 19-A of the New York State Vehicle and Traffic Law (VTL) along with implementing regulations, establishes "special requirements" for all bus drivers. However, the rules for "school bus drivers," a classification applicable to Access-A-Ride operators, are even more stringent. Perhaps the most significant difference is that this class of driver is subject to criminal background checks utilizing the drivers' fingerprints as part of a mandated Department of Motor Vehicle (DMV) driver qualification review.

Access-A-Ride, operated by the NYC Transit Paratransit Division, contracts with various carriers to provide paratransit services to eligible individuals, and these AAR carriers are responsible for hiring and training vehicle operators. In accordance with review procedures required by New York State Regulation (15 NYCRR 6.3), the carrier must submit a proper Article 19-A Driver Application along with the requisite fingerprints to DMV within ten days of hiring the operator. Applicants with certain serious prior criminal convictions (e.g., homicides, assaults, sex-, drug- and weapons-offenses, and drunk driving) are disqualified by statute from driving a school bus either permanently or for a prescribed period of time (VTL §509-cc).

In our original report, we found that operators with serious disqualifying criminal records were driving AAR vehicles. We examined hiring records and corresponding DMV records and identified 18 drivers out of 1,027 who had prior convictions that should have led to disqualifications. This situation occurred because the carriers allowed operators to drive AAR vehicles during the pendency of the operators' background checks. Although these "conditional drivers" were permitted by law to operate AAR vehicles before completion of the qualification-review process, OIG recommended that Paratransit demand a higher standard on the part of its carriers. Specifically, we recommended to Paratransit officials that they go beyond existing legal requirements and require confirmation of no disqualifying convictions before allowing an individual to

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operate an AAR vehicle. Paratransit agreed with the recommendation and directed carriers to comply with the recommendation as of October 1, 2010.

In 2015, OIG revisited the operator background check process and found that sufficient controls are in place to ensure that no one is operating an AAR vehicle until their 19-A certification is confirmed. Currently, when hired, operators are initially entered into Paratransit's trip-scheduling system as inactive and cannot be assigned routes, and therefore cannot operate AAR vehicles, until their background check is completed and the absence of disqualifying convictions is confirmed. Upon such confirmation that the operator is 19-A qualified, Paratransit staff changes the operator's status to active. Once the status coded as active, routes may be assigned to the operator.

OIG observed this process at Paratransit, and verified by sampling recent hires from each carrier that the procedures are being followed. We found that all certified 19-A operators were correctly activated, and that none of the operators who failed 19-A certification were ever activated.

INTAKE AND INTELLIGENCE

The OIG encourages all interested persons, including MTA employees, outside contractors and members of the public, to report their concerns about the MTA and its agencies to Intake and Intelligence, a unit of our Investigations Division. Complaints and inquiries can be communicated as shown in the **How to Contact the Office of the MTA Inspector General** notice (pictured at right), including through a direct email link on our website. Our Complaint Hotline is available around-the-clock, staffed during business hours, and capable of taking messages at other times.

HOW TO CONTACT THE OFFICE OF THE MTA INSPECTOR GENERAL

Telephone: (212) 878-0000

24-Hour Complaint Hotline:
1-800-MTA-IG4U (1-800-682-4448)

Walk-In or Mail: Office of the MTA Inspector General
Two Penn Plaza, 5th Floor
New York, NY 10121

Website: www.mtaig.state.ny.us

Intake Resolution

Hotline and Website:

Consistent with the OIG's generally broad approach to fulfilling its responsibilities and best serving the public, the OIG Hotline and its Website, along with the more traditional means of contact (e.g., postal mail and walk-ins), provides customers with fast, simple, direct, and personal ways both to communicate complaints and request information on an individualized basis. In 2015, our Hotline received over 2,300 calls, and our Website generated hundreds of additional contacts.

Complaints:

In 2015, our Intake and Intelligence unit (the Unit) received 893 complaints requiring follow up, made by individuals both inside and out of the MTA. As to each, Unit staff reviewed the complaint, obtained supplemental information and/or performed preliminary background checks as necessary to assess how best to resolve the matter.

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Complaints concerning fraud, waste, abuse and the like were referred to the OIG Audit or Investigations divisions to resolve alone or in partnership with law enforcement or other agency. Where appropriate, the Unit refers matters to the agency or expedites resolution of complaints by directly contacting agency personnel. Other matters were retained for resolution by the Unit itself, generally involving a range of issues including E-ZPass, MetroCard, commuter railroad ticketing, and Access-A-Ride eligibility.

The following are brief illustrations of some of the ways Intake staff worked to assist MTA customers this year:

- 15-0023-C: A Paratransit customer contacted the OIG after unsuccessful attempts to obtain taxi reimbursement from Access-A-Ride (AAR) for an authorized trip. Intake staff contacted AAR, and learned that the complainant had provided to AAR only a copy of the original receipt, rather than the original itself. Apparently, there was a breakdown in communication with the complainant with respect to this requirement. The complainant was contacted and advised that once AAR received the original receipt, it would process the reimbursement check for \$37.50. One week later the Unit followed up with AAR regarding this matter and confirmed that the agency had indeed processed the check.
- 15-0750-C: The complainant's Zero Fare MetroCard expired and attempts to secure a new one from AAR were not successful. The complainant reported that the AAR representative had no knowledge of the Zero-Fare Metro-Card, which serves as both an identification card and a MetroCard for certain eligible AAR customers able to use public transportation. Intake staff contacted AAR's Eligibility Department and explained the issue. Upon verifying the complainant's eligibility, the Eligibility Department processed the renewal request.
- 15-0765-C: The complainant emailed photographs to the OIG of trees and branches that had fallen from adjacent MTA property onto the complainant's home and surrounding property. The complainant also advised us that there were compromised trees still on MTA property that continued to pose a threat. Intake staff moved quickly to resolve this hazard by contacting NYC Transit Maintenance of Way (MOW), which immediately dispatched a crew, who worked over the course of two days to remedy the situation. The complainant expressed appreciation to Intake for acting as liaison and facilitating the outcome and commended NYC Transit's MOW for the speedy and efficient removal.
- 15-0657-C: The complainant, a tourist visiting New York City for four days, purchased a 7-Day Unlimited MetroCard for \$32. On the first day, the complainant used the card without incident, but her attempts to use the card after that were unsuccessful. According to the complainant, she took the card to a NYC

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Transit station agent, who was unable to detect the reason for the malfunction and advised her to mail in the defective MetroCard to the MetroCard Claims Unit (MCU) for a replacement. The complainant purchased a new 7-Day Unlimited MetroCard to complete travels while in New York City. When she returned home, she contacted MCU for a refund for the value of the unused portion of the defective card.

According to the complainant, the MCU representative refused to issue a refund, telling her that MCU's refund policy had been "highly advertised" for years and required that she obtain an envelope from the station agent and return the defective MetroCard within the 24-hour period allotted. For her part, the complainant explained that she never received an envelope from the station agent, had never been advised that the MetroCard needed to be mailed within 24 hours and, because she was from out-of-state, had never seen any advertisement of MCU's refund policy. Intake staff promptly contacted representatives of MCU and requested a reassessment of the complainant's claim. On the same day, MCU contacted the OIG to advise that it had issued a full credit of \$32.00 for the defective MetroCard to the complainant's credit card.

- 15-0826-C: The OIG received a complaint from a Nassau Inter County Express (NICE) Bus rider regarding her inability to make the appropriate transfers between NICE buses equipped with New York City Transit fare boxes. On a number of occasions, the complainant was being charged an extra fare for transfers. We contacted NICE Bus officials and requested a review of the complaint to determine appropriate corrective action. These officials advised us, and we in turn advised the complainant, that the transfers in question had been omitted from the NICE Bus transfer table, but that a new transfer table had been prepared to include the missing transfer options. NICE Bus will coordinate with MTA Information Technology to upload the new transfer table into the fare collection system.

Intelligence Support

Unit staff performs a valuable intelligence-gathering function by compiling information from MTA agencies, public records, and other sources to assess complaint allegations, and make referrals both inside and out of the OIG. The Unit also uses this information to detect associations, find patterns and trends, develop profiles, and provide insights that are incorporated into specific audits, investigations, and reviews.

Additionally, in the aftermath of Hurricane Sandy's devastating effect on the MTA's transportation system, the MTA established a monitoring oversight committee, chaired by the MTA Auditor General, to monitor recovery efforts. The Unit continues to

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support this committee by preparing enhanced integrity screening reports regarding vendors seeking approval for work on Sandy-related projects.

Similarly, the Unit continues to assist the MTA General Counsel by providing certain information regarding those vendors under consideration for MTA contract awards that require the approval of the MTA Chairman/CEO. When an MTA agency considers awarding a contract to a vendor with “Significant Adverse Information” (e.g., information bearing on the vendor’s integrity), the OIG provides an in-depth integrity report that is an essential part of the decision-making process by the General Counsel. This year, Intake and Intelligence provided the General Counsel with 16 such in-depth integrity reports. The Unit also continues to conduct certain background checks for a variety of law enforcement agencies, including the New York City Police Department and the New York City Department of Investigation. In 2015 the unit conducted 183 background checks.

INVESTIGATIONS

The Investigations Division (Investigations) receives and investigates complaints, from within and outside the MTA or upon its own initiative, concerning alleged fraud and other criminality, waste, and abuse, as well as safety, service, and management deficiencies. The division's priorities are the detection and deterrence of fraud, the protection of MTA assets, and assuring the safety of MTA ridership. In accordance with our statutory powers and duties, we refer matters to appropriate law enforcement and other governmental officials for further investigation, in which the division routinely participates, and/or for criminal or civil enforcement. The division is composed of experienced investigators and forensic experts who work with staff attorneys; additional subject matter expertise and analytical support is provided by OIG Audit. Besides the expertise of the staff and the Inspector General's statutorily authorized "full and unrestricted access" to all information and materials of the MTA, Investigations has a host of additional tools available to it. These include the statutory authority to subpoena witnesses, administer oaths, take testimony, and compel the production of records and other documents relevant to any inquiry or investigation.

Within Investigations is a specialized Construction Fraud Unit (CFU), established by the Inspector General in 2008, consisting of attorneys, investigators, analysts, a forensic accountant and two construction auditors. CFU concentrates on detecting and deterring fraud and other wrongdoing by contractors engaged in the construction, rehabilitation, and maintenance of MTA facilities. From its inception in 2008 through 2015, CFU's investigations, often in conjunction with other investigative and law enforcement agencies, have resulted in monetary recoveries and court ordered forfeitures of over \$81 million from contractors. We highlight below CFU's substantial efforts in various ways to reduce construction fraud, including its investigative work, the fraud awareness training it provides to MTA employees and consultants, and its contractor oversight. Also within the division is the Intake and Intelligence Unit, which receives complaints from the public, as well as from MTA employees, contractors and vendors. These units work closely with each other and with staff in the Audit Division.

The division engages in criminal and other investigations in areas including suspect construction practices; procurement-related fraud; prevailing wage and other labor law violations; disadvantaged minority and/or women's business enterprise fraud; employee theft of time and property; overbilling; and pension fraud. Below is a sampling of our investigations and other work performed by the division in 2015, including our joint activities with various federal, state, and local law enforcement agencies, as well as an update regarding certain matters from our previous annual reports.

SELECTED INVESTIGATIONS REFERRED TO PROSECUTORS

Certification-Testing Misconduct at Metro-North Railroad

A joint investigation involving the OIG, the MTA Police Department, Metro-North Railroad (MNR), and the Office of the New York County District Attorney (DANY) that began in June 2015, culminated in the filing of criminal charges in New York State court against 13 current and former MNR conductors and engineers. These charges alleged that the defendants engaged in a scheme to obtain and distribute current tests and answers used for the certification of conductors and locomotive engineers. To date, all defendants have pled guilty: three to Attempting to Impair the Integrity of a Government Licensing Examination, a Class E Felony; nine to Official Misconduct, a Class A Misdemeanor; and one to Disorderly Conduct, a Violation. Two defendants are currently awaiting sentence. The other eleven were sentenced to a conditional discharge and varying periods of community service. Going forward, MNR revised its test procedures and has taken administrative actions to prevent similar misconduct.

Disadvantaged and Minority/Woman Business Enterprise Fraud⁴

- **Contractor Entered into a Non-Prosecution Agreement; Agreed to Pay \$8.25 Million**

A joint investigation by the OIG with the United States Department of Transportation Inspector General and the United States Department of Labor, Office of Labor Racketeering and Investigations, and the IRS Criminal Investigation Division, focused on the use by a contractor of a “pass-through” DBE subcontractor on a NYC Transit project.⁵ Following that investigation, the contractor entered into a non-prosecution agreement with the Office of the United States Attorney for the Eastern

⁴ In accordance with federal and state law, the MTA oversees two similar programs aimed at increasing the participation of historically disadvantaged individuals and businesses in MTA’s contracts with private companies. The program for federally funded contracts uses the term “Disadvantaged Business Enterprises” (DBEs); for state-funded contracts, those certified eligible are termed “Minority or Woman-Owned Business Enterprises” (M/WBEs). “MDBE,” “WDBE,” and “MWDBE” are compound terms we use to refer to both programs and the participating contractors. The applicable laws and implementing MTA programs serve an important governmental function of ensuring that certified firms have the opportunity to compete on a level playing field with those already established.

⁵ “Pass-through” refers to one alleged to have performed the subcontracted work but who does not actually do so.

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District of New York. By its terms, the contractor agreed to pay a \$7,250,000 civil forfeiture to the federal government, and agreed to pay to the OIG the sum of \$1,000,000, which the OIG in turn transferred to the MTA Small Business Development Program.

- **New York County District Attorney M/WBE Investigative Group**

Several years ago, the OIG referred to the Office of the New York County District Attorney a matter involving MWDBE fraud. The investigation expanded to include multiple targets and the investigative team grew to include the Port Authority Office of New York and New Jersey Inspector General (Port Authority) and the New York City Department of Investigation (DOI). This year, our ongoing joint efforts resulted in the following settlements and guilty pleas relating to fraud in the utilization and reporting of MWDBEs:

- **Owner of an MDBE Firm Pled Guilty; Agreed to Pay \$950,000**

The owner of an MDBE firm acted as a pass-through by allowing prime contractors to utilize the firm name as an MDBE subcontractor on MTA and other public agency contracts although the firm did not actually perform the subcontracted work. The owner pled guilty to Scheme to Defraud in the Second Degree, a Class A Misdemeanor, and agreed to forfeit \$950,000.

- **Owner of a WBE Firm Pled Guilty; Agreed to Pay \$750,000**

The owner of a WBE firm that acted as a pass-through on MTA and other public agency contracts pled guilty to Offering a False Instrument for Filing in the Second Degree, a Class A misdemeanor. The owner agreed to perform 200 hours of community service and forfeit \$750,000.

- **Owner of an Electrical Company Pled Guilty; Agreed to Pay \$300,000**

The owner of an electrical company pled guilty to Offering a False Instrument for Filing in the Second Degree, a Class A Misdemeanor, related to its utilization of MWDBE firms. The company agreed to forfeit \$300,000.

- **Contractor Entered into Non-prosecution Agreement; Agreed to Pay \$250,000**

A now-defunct contracting firm entered into a non-prosecution agreement with the DANY and agreed to forfeit \$250,000 in connection with an investigation into its false filings related to the utilization of MWDBE firms.

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Taxi Reimbursement Fraud

As a result of an OIG audit, Investigations looked into abuse of the NYC Transit Paratransit Taxi Reimbursement Program by several of its customers. Following our investigation, we referred the matter to the Office of the Kings County District Attorney for prosecution. In 2015, two defendants were charged with one count of Grand Larceny in the Second Degree, a Class C felony; one count of Offering a False Instrument for Filing in the First Degree, a Class E felony; one count of Falsifying a Business Record in the First Degree, a class E felony; and 18 counts of Criminal Possession of a Forged Instrument in the Second Degree, a Class D felony. A third defendant was charged with Grand Larceny in the Third Degree.

OTHER SELECTED INVESTIGATIONS

Contractor's Failure to Comply with Contract Terms (MTA/OIG #2015-25)

The OIG conducted a review of a NYC Transit long-term construction contract and found that the contractor failed to comply with three different provisions of its contract. Specifically, we found that the contractor did not provide a contractually-required exclusive Project Manager, a full-time Safety Engineer, and a contractor's field office. We also concluded that this non-compliance should have resulted in contract credits to NYC Transit in the amount of \$312,176. In response to our report, NYC Transit conducted a Responsibility Hearing and has demanded that the contractor reimburse NYC Transit for its overpayments. NYC Transit and the contractor negotiated a settlement in which the contractor agreed to pay NYC Transit \$215,000.

Misappropriation of Laptop Computers (MTA/OIG #2015-21)

OIG investigated an allegation that a Metro-North Computer Support Analyst had misappropriated five Metro-North laptop computers. We retrieved the laptop computers in question and determined that no MTA information was compromised because the hard drives had been removed from the laptops before the employee's misappropriation. The employee was terminated.

Misconduct by MNR Assistant Superintendent (MTA/OIG #2015-12)

OIG investigated an allegation that a MNR assistant superintendent regularly left work before the end of his tour without authorization and while continuing to receive full

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pay. We substantiated the allegation, determining that the employee routinely left work early and went home. The employee was terminated.

Ethics Violations by MTA Facilities Manager
(MTA/OIG #2015-15)

OIG received information from an employee of a vendor that a facilities manager in MTA's Real Estate Division, who was responsible for overseeing the performance of a particular vendor, had accepted golf outings and meals from that vendor's employees.

Our investigation established that the manager played golf as a guest of these employees on at least three occasions, and also played golf on another occasion as the guest of an employee of a second company that was seeking work as an MTA subcontractor, all of which was in violation of the MTA All-Agency Code of Ethics (MTA Code of Ethics) provision barring employees from accepting gifts from "prohibited sources." We also found that although the golf outings took place on workdays, the manager used authorized leave for only one outing out of the four and therefore was absent from duty without approval on the three other dates. Additionally, we found that the manager further violated MTA's gift policy by accepting meals from the vendor's employees and another potential subcontractor. Lastly, in an unrelated matter, we found that the manager violated the MTA anti-nepotism policy by making telephone calls to agency officials concerning his son's possible dismissal from conductor training in an attempt to influence the agency's handling of that matter.

The MTA terminated the manager's employment. Further, the agency convened a special hearing concerning the vendor's conduct. As an outgrowth of that hearing, the vendor implemented a remedial action plan, making changes to its compliance program, code of ethics, and standards of conduct, including emphasis on compliance with the MTA's gift policy, the distinction between private industry and public sector clients, and mandating prompt reporting of noncompliance to the MTA. The MTA will take these measures into account in establishing responsibility should the vendor come before the MTA for future contract awards. Additionally, MTA Audit Services was informed of the matter and is conducting a review of the vendor's work requests and invoices. We also referred our findings to JCOPE, which on February 24, 2016, announced a settlement agreement in which the manager admitted violating the gift and nepotism provisions of the Public Officers Law and agreed to pay a fine of \$2,500.

Conflict of Interest by NYC Transit Consulting Services Manager
(MTA/OIG #2015-13)

An OIG investigation established that a director (the Manager) in the NYC Transit Capital Program Management Department (CPM) was involved for four years in a

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personal relationship with a then-vice president of a consulting firm at a time when he had official dealings generally with that firm and specifically with that vice president. The Manager failed to disclose his personal relationship to the agency ethics officer or obtain a conflict of interest waiver as required by the MTA Code of Ethics. Additionally, the Manager not only administered certain of the firm's contracts and task orders and evaluated their performance, but also repeatedly participated in negotiations with and recommended awards to the firm while serving on vendor selection committees that considered competing firms.

Some two years after beginning this personal relationship, the Manager and vice president began living together. Nevertheless, the Manager continued dealing with the vice president and the firm in violation of MTA policy, which specifically prohibits its employees from participating in the selection, award, or administration of contracts involving companies employing their "family members," a term that by definition includes members living in the same household. Finally, near the end of the four-year period, the Manager knowingly participated in a contract selection process involving a proposal submitted by a company with which the vice president was then engaged in employment negotiations.

Furthermore, we found that CPM management failed to effectively address the conflict of interest when the Manager ultimately informed his supervisors of the relationship. Although the Manager's immediate supervisor instructed the Manager that either he or his partner would have to recuse themselves from the ongoing contract, no one contacted the ethics officer for guidance and both the Manager and the vice president failed to recuse themselves, instead continuing to be involved in that contract and subsequent business. Following an unrelated reassignment, the Manager reported directly to a CPM executive who, despite knowing the history of the personal relationship (though we cannot establish that he knew they were living together) and eventually learning that the two planned to marry, failed to consult with or refer the matter to the ethics officer.

In response to our findings and recommendations, NYC Transit brought disciplinary proceedings against the Manager that, after a hearing, resulted in an eight week suspension without pay, a final warning and a year's probation. The Manager was also reassigned to other duties. Further, the agency agreed to implement our recommendation that it provide supplementary ethics instruction and training to CPM management.

Additionally, we referred our findings to the New York State Joint Commission on Public Ethics (JCOPE) because the Manager's conduct also appeared to violate provisions of the Public Officers Law. In April 2016, JCOPE announced it had reached a settlement agreement in which the Manager admitted he violated the Public Officers Law

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by using or attempting to use his position to secure unwarranted privileges for himself or others, and agreed to pay a penalty of \$5,000.

Family and Medical Leave Act Abuse and Unauthorized Secondary Employment
(MTA/OIG #2015-18)

OIG investigated allegations of Family and Medical Leave Act (FMLA) abuse and unauthorized dual/outside (Secondary) employment by a NYC Transit track worker, a position classified as safety-sensitive. Although we found no FMLA abuse, we determined that the track worker engaged in unauthorized Secondary employment that conflicted with his safety-sensitive-position requirement of eight consecutive non-working hours within the sixteen hours before reporting to work for NYC Transit. Additionally the employee improperly engaged on several occasions in Secondary employment while on NYC Transit sick leave. The employee received a 30-day suspension and a Final Warning. He also agreed to repay money he improperly obtained for sick pay and to forfeit those sick days.

FMLA Abuse by NYC Transit Power Maintainer
(MTA/OIG #2015-19)

A NYC Transit power maintainer was approved for intermittent leave under the FMLA to provide care for his mother. We determined that the employee improperly used six of those days for vacation with his family. Unlike regular vacation leave requests, which are subject to the employer's discretion, proper FMLA leave requests cannot be denied or delayed. Although the six days of vacation reduced the employee's accrued vacation leave, it was improper to request such leave under the guise of FMLA leave and therefore constituted an abuse of FMLA benefits. Following referral of our findings, NYC Transit disciplined the employee by suspending him for 30 days and imposing a final warning.

FMLA Abuse by Bridges and Tunnels Officer
(MTA/OIG #2015-06)

A Bridges and Tunnels officer (BTO) was approved for FMLA leave in 2014, and in 2015 submitted a renewed FMLA application, for the stated purpose of providing care for her parent. Based on a referral from the agency, we investigated and determined that the BTO's parent was in a full-time nursing care facility and that the BTO was actually using the leave improperly as time off from her regular work tour rather than to provide any parental care. The BTO waived a hearing and accepted a penalty of a 45-day suspension without pay.

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Unauthorized Secondary Employment and FMLA Abuse
(MTA/OIG #2015-27)

A NYC Transit train operator was approved for continuous FMLA leave for his own health issues. He improperly used this leave and received sick pay from NYC Transit while training at unauthorized Secondary employment. Further, after his FMLA leave expired, he used an additional 18 days paid sick leave to engage in this employment. Although NYC Transit was unable to initiate disciplinary action because the employee left NYC Transit before his wrongdoing was discovered, the agency is seeking to recover from that employee the \$22,472.85 in wages that he improperly obtained.

Unauthorized Secondary Employment of Employee in Safety-Sensitive Position
(MTA/OIG #2015-22)

OIG investigated an allegation of unauthorized Secondary employment by a NYC Transit bus operator, a safety-sensitive position. Specifically, we found that the employee submitted materially false information in her NYC Transit employment application by denying that she had Secondary employment. Further, her Secondary employment work schedule prevented her from meeting the required eight consecutive non-working hours before reporting to NYC Transit. Additionally, we found the employee improperly used NYC Transit sick leave while engaged in her Secondary employment. The bus operator resigned from NYC Transit.

Unauthorized Secondary Employment While on Sick Leave
(MTA/OIG #2015-23)

The Office of the New York State Inspector General (NYS/IG) requested OIG's assistance to investigate a claim that an employee at a New York State agency improperly used his sick time accrual at that agency to engage in unauthorized employment at an MTA agency. Based on information from NYS/IG and the state agency, OIG began an investigation and substantiated the allegation, determining that the state employee was also employed by the LIRR as car appearance maintainer. The OIG further determined not only that the individual never filed a Secondary employment application with the LIRR, but that he used LIRR sick time accrual to work at the state agency. The employee resigned from the state agency and served a 60-day suspension imposed by the LIRR.

Unauthorized Secondary Employment
(MTA/OIG #2015-11)

OIG investigated an allegation of unauthorized Secondary employment by a NYC Transit electrical helper. We found that in 2013, when the individual first applied for

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employment with NYC Transit, he knowingly falsified the Secondary employment form he submitted along with his application by omitting his then-current Secondary employment. Although the employee subsequently submitted a second form that accurately disclosed his continued Secondary employment, he had never actually received authorization for such employment. The employee was suspended by NYC Transit for 20 days and resigned from his Secondary employment.

Ethical Violation by MTA Bus Supervisor
(MTA/OIG #2015-03)

OIG investigated an allegation that a MTA Bus supervisor ordered two subordinate employees to assist her move from one apartment to another in exchange for favorable treatment at work. Although we substantiated that two subordinate employees did in fact assist the supervisor with her move, we did not substantiate that the supervisor either ordered her subordinates to assist her or gave them any favorable treatment in exchange for the assistance. We found that the move was conducted during non-working hours and did not involve the use of any MTA property. Moreover, all parties involved described themselves as social friends and the assistance to be merely a friendly gesture.

Nevertheless, we found that by accepting the assistance of subordinates, the supervisor violated the MTA Code of Ethics provision related to public trust, which forbids engaging in conduct that gives a reasonable basis for the impression that there was an improper exchange of favors in the workplace based on relationship. The agency agreed with OIG's findings and imposed a suspension, which was overturned by an arbitrator on appeal and replaced by a reprimand.

MONITORING HURRICANE SANDY RECOVERY EFFORTS

In response to a Federal Transit Administration (FTA) request to provide monitors for the projects funded by the \$4 billion Hurricane Sandy Recovery Grants, the MTA established a monitoring oversight committee chaired by the MTA Auditor General. The committee is composed of staff from MTA OIG, MTA Audit Services, MTA Corporate Compliance and the MTA Office of Construction Oversight. The committee communicates regularly with its members to help coordinate their roles and responsibilities. Additionally, the OIG works with its investigative partners, including the United States Department of Transportation, Office of the Inspector General, and others charged with overseeing the expenditure of Sandy Recovery funds.

Our monitoring approach is to identify requirements set forth by the FTA (e.g. Buy America, DBE rules and goals), monitor contractors' compliance efforts, and

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provide guidance when these efforts need strengthening. By using this approach, we work to deter and detect improper conduct by contractors. Our efforts include:

- Providing ethics training to contractors' project management and field supervisory personnel.
- Attending kick-off and progress meetings to place agency and contractor personnel on notice of the importance of the accuracy of certified payroll and DBE utilization forms.
- Visiting job sites for the purposes of conducting interviews of trade workers to gauge compliance with prevailing wage rules.
- Reviewing worker certification documents such as OSHA certification cards and applicable MTA agency certification such as track-training cards.
- Observing and documenting markings on trucks and equipment to determine DBE firm independence.
- Observing the activities of the DBE labor force to determine if they are performing a "Commercially Useful Function" in accordance with regulations.
- Documenting, photographing, and otherwise monitoring materials purchased and delivered onsite, to determine compliance with contract provisions and federal Buy America regulations.

This approach—targeting project and item-specific risks through proactive initiatives while emphasizing our presence on the site—helps us deepen our knowledge of project actions and activities. More specifically, it helps distinguish integrity issues from operational ones, leading to a more customized approach to managing risk and corrective action.

In 2015, OIG staff performed the following monitoring/training activities:

- Conducted eight fraud awareness training sessions for 122 attendees, including both MTA agency employees and consultants. These sessions have yielded leads regarding misconduct.
- Conducted 34 background checks of vendors and contractors.

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- Attended six kick-off meetings where we met the project management team in each project and explained our role and the heightened oversight of Sandy projects.
- Attended 16 progress meetings to review the status of projects and to demonstrate our ongoing oversight.
- Conducted 23 site visits. During these visits we interviewed workers to determine if they possessed the appropriate certifications and were being paid the prevailing wage; spot checked for compliance with safety protocols; checked for DBE and Buy America compliance; and performed product substitution reviews. Information from the site visits produced leads for investigations of contractor misconduct.
- Conducted six office visits of DBE firms on Sandy-related projects to ensure that the entity is real and commercially viable.
- Conducted 22 payment verifications to ensure that DBE firms had received appropriate payment.
- Conducted prevailing wage reviews of 8 contractors to ensure compliance with federal wage law.
- Reviewed documentation for 66 change orders valued between \$100K and \$1M. These reviews led to OIG findings and recommendations, including the identification of a variance in how change orders are estimated between agencies.

THE OIG CONSTRUCTION FRAUD UNIT

CFU has continued to employ its partnership approach to detect and deter fraud and other wrongdoing by contractors engaged in the construction, rehabilitation, and maintenance of MTA facilities.

New York County District Attorney Construction Fraud Task Force

In 2015, the OIG continued its work with the New York County District Attorney's Construction Fraud Task Force. Other investigative entities participating include: the Port Authority Inspector General, DOI, the Dormitory Authority of the State of New York, and The City University of New York. Work is ongoing in areas of safety and construction fraud.

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Assistance to NYC Transit Vendor Relations

The CFU is often called upon to assist NYC Transit Vendor Relations staff in determining whether a low bidding contractor, who may have a questionable background, is a responsible bidder. Our assistance ranges from sharing intelligence regarding “Significant Adverse Information” and otherwise, to attending and participating in responsibility hearings.

Kick-off and Progress Meetings

OIG staff regularly attend kick-off and progress meetings on construction projects, where the members address the contractors and project managers regarding the OIG’s oversight role. Specifically, the contractors are informed that it is a felony to file a false document with an MTA agency with intent to deceive the MTA, and that any fraud in connection with these projects may constitute a state or federal crime, or both, depending on the funding source. Contractors are also made aware of their obligations relating to certified payrolls, DBE submissions, and change orders.

Site Visit Program

The CFU continued its site inspection program involving unannounced visits to construction sites to ensure contractor compliance with legal and contractual obligations. These obligations include use of appropriate construction materials, safe construction practices, prevailing wage compliance, and limiting site-access to approved contractors, subcontractors, and other authorized personnel. OIG investigators interviewed workers on-site to determine: the identity of their employers; if workers were being paid the prevailing wage; and if they had proper identification and proof that they completed required safety training.

Outside Monitors

The CFU staff attended kick-off meetings on MTA monitorship projects, reviewed monitors’ reports, provided monitoring assistance to MTA agencies, and provided assistance to the outside monitors themselves.

UPDATES FROM PRIOR INVESTIGATIONS

Website Offering Discounted E-ZPass Tags Defrauded E-ZPass Agencies

As reported in 2014, a joint investigation involving the OIG, the United States Secret Service, the Port Authority Inspector General, and the Office of the United States Attorney for the Southern District of New York, culminated in the federal prosecution

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and conviction after trial of two individuals who engaged in a \$6 million internet-based credit card fraud scheme to fund fraudulent E-ZPass accounts. Both defendants were convicted of Conspiracy to Commit Access Device Fraud; Conspiracy to Commit Mail Fraud and Bank Fraud; Mail Fraud; Bank Fraud; Aggravated Identify Theft; and Conspiracy to Steal Government funds. On August 7, 2015, the defendants were sentenced in federal court; one defendant was sentenced to 56 months in prison and the other was sentenced to 36 months. The defendants were ordered to forfeit a total of \$950,000 and to pay restitution in the total amount of \$263,421.

Theft by NYC Transit Station Agent
(MTA/OIG #2014-20)

As reported in 2014, the OIG and the Office of the Special Commissioner of Investigation for the New York City School District, jointly investigated the sale by a NYC Transit station agent of stolen MetroCards obtained from a NYC Department of Education employee. Following this investigation we referred the matter to the Office of the New York County District Attorney for prosecution. In September 2015, a Grand Jury issued an indictment charging the station agent and the DOE employee with 46 counts of Grand Larceny in the Fourth Degree, a Class E felony. Both defendants pleaded guilty to the felony, and upon their convictions were sentenced by the court to 200 hours of community service.

OTHER INVESTIGATIVE ACTIVITIES

Security and Integrity Compliance

The Security and Integrity Compliance Program involves unannounced inspections by OIG teams of up to ten investigators to test the security at facilities, determine whether staff are present and performing their assigned duties, and ensure that staff is following safety protocols. In 2015, OIG investigators conducted 43 such inspections throughout the MTA system. OIG notifies the respective agencies of any improprieties revealed, and makes recommendations for disciplinary action as appropriate.

The deterrent effect of this long-standing proactive initiative is that employees throughout the MTA are on notice that they are subject to unannounced inspections at any time by an independent office providing oversight of the MTA. Over the years, OIG has received positive feedback on this program from upper management, which has referred suggested sites for OIG inspection.

OUTREACH



TRAINING/EDUCATION

OIG both conducts fraud awareness and ethics training and participates in training classes presented by law enforcement, regulatory, investigative, prosecutorial, and other oversight entities. Notably, we also provide educational outreach to contractors and labor representatives.

Training Activities 2015

In 2015, OIG staff presented fraud awareness training seminars to MTA agency employees as well as to MTA consultants managing construction projects. These sessions were specifically tailored to those specializing in procurement and contract management.

Specifically, OIG staff gave presentations on nine occasions to a total of 131 MTA employees and consultants, and to an additional 17 individuals at a contract management class. As noted previously in our section on Monitoring Hurricane Sandy Recovery Efforts, OIG staff made eight presentations for 122 MTA employees and consultants on fraud awareness.

Additionally, an OIG representative gave a presentation on the topic of investigative interviewing to approximately 90 attendees of the Spring Conference of the New York/New Jersey Intergovernmental Audit Forum.

INTERGOVERNMENTAL COOPERATION

During 2015, OIG maintained relationships with federal, state, and local agencies and task forces, including:

Federal

United States Attorney for the Eastern District of New York
United States Attorney for the Southern District of New York
United States Attorney for the District of New Jersey
Internal Revenue Service, Criminal Investigation Division
United States Department of Labor, Office of the Inspector General
United States Department of Transportation, Office of the Inspector General
Eastern District of New York Federal Construction Fraud Task Force

Interstate Agency

Port Authority of New York and New Jersey, Office of the Inspector General

New York State

Office of the State Comptroller
Office of the New York State Inspector General
Department of Labor
Department of Transportation
Joint Commission on Public Ethics
Empire State Development Corporation

Local

Office of the New York City Comptroller
Kings County District Attorney
Nassau County District Attorney
New York County District Attorney
Suffolk County District Attorney
New York City Department of Investigation
New York City School Construction Authority, Office of Inspector General
New York City Business Integrity Commission
Office of the Special Commissioner of Investigation for the New York City School District