



2017 Annual Report

It's a BIG SYSTEM.

HELP US KEEP an EYE ON IT.



Office of the Inspector General
Metropolitan Transportation Authority

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 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, other misconduct, 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. See, for example, our work this year with the United States Attorney’s Office for the Eastern District of New York regarding bribe solicitations by a NYC Transit construction administrator, and see our work with NYC-area prosecutors and the NYPD to address issues involving drunk and impaired driving. 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 straphangers, 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.

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 in 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 (OIG) to independently review the operations of the MTA and its constituent agencies: MTA New York City Transit (NYC Transit), MTA Long Island Rail Road (LIRR), MTA Metro-North Railroad (Metro-North), 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, plans, projections, contracts, memoranda, correspondence and any others materials" of the MTA (PAL §1279[3]).

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

~ ABOUT THE INSPECTOR GENERAL ~
AUDIT

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]).

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]).

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].

INTAKE, AUDIT, AND INVESTIGATIONS



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:

The OIG Hotline and Website provide customers with fast, simple, and direct ways to communicate complaints and request information on an individualized basis. We also welcome more traditional means of contact (e.g. postal mail, and walk-ins). In 2017, our Hotline received over 1,500 calls and our Website generated more than a thousand additional contacts.

Since the OIG launched its newly redesigned website last year, the site has provided an enhanced online complaint mechanism aimed, in part, at directing more substantive issues to the OIG. Additionally, just as 511 and 311 campaigns have been helpful in directing customer concerns where they need to be, the OIG's enhanced website provides specific instructions for reporting a variety of customer service matters directly to the agency involved as well.

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Complaints:

The Unit reviews complaints made by individuals both inside and out of the MTA. As part of each review, Unit staff obtain supplemental information and/or perform preliminary research and background checks as necessary to assess how best to resolve the matter. Complaints concerning fraud, waste, or other concerns within the OIG's jurisdiction are referred to our Audit or Investigations divisions to resolve independently or in partnership with law enforcement or other external agencies. Where appropriate, the Unit expedites resolution of complaints by directly contacting agency personnel. Other matters are retained for resolution by the Unit itself, generally involving a range of issues relating to E-ZPass, MetroCard, commuter railroad ticketing, and Access-A-Ride (AAR), which is operated by the Paratransit Division of NYC Transit.

The following are brief illustrations of some of the ways our Intake staff worked to assist individual MTA customers this year with problems that may be of relatively little monetary significance, but are of great concern to the customer:

- 17-0492-C: An MTA bus dispatcher complained to the OIG that wages garnished by court order to be deposited directly into the bank account of his ex-wife, had indeed been withheld from his paycheck but never deposited into her account. The employee also reported that there had been several issues with carrying out the court ordered garnishment. Thereupon, Unit staff contacted the agency's payroll department and confirmed that the wages were withheld, but not distributed. The OIG further learned, through the agency IT department, that while updating the agency's payroll system a minor network error occurred that impacted all employees with active garnishments. The agency advised Unit staff that the OIG's intervention in this matter led to early detection and resolution of the system error. We communicated the outcome of our inquiry to both the employee and his ex-wife.
- 17-0340-C: A customer/complainant reported an incident with a NYC Transit station agent where the complainant gave the agent two MetroCards belonging to the complainant valued at \$97.35, and asked that the agent combine them into one. However, the replacement card returned to the complainant instead had a zero balance. Unit staff contacted the agency and learned that the station agent did, in fact, notify the field supervisor of the incident and processed the \$97.35. This was further confirmed with NYC Transit personnel. Based on the foregoing, NYC Transit sent the complainant a replacement card with a value of \$97.35.
- 17-0481-C: After more than a month and several failed attempts to obtain a replacement for a damaged Reduced Fare MetroCard (RFMC) with a balance of \$16.00, the complainant emailed the OIG to request assistance. Upon review, Unit

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staff contacted the complainant to obtain additional information, and then contacted the agency, which replaced the RFMC with the appropriate balance.

- 17-0495-C: The complainant contacted the OIG after unsuccessful attempts to resolve \$285.00 in charges to a credit card linked to her E-ZPass account that she insisted she had not incurred. Unit staff reviewed supporting documentation provided by the complainant, including toll bills as well as information from her credit card issuer, and substantiated the complaint. The staff then notified the complainant and contacted the agency, which credited the complainant's account.
- 17-0564-C: Since 2011, in a successful effort to reduce costs, AAR has used "broker car services" to provide up to 20 percent of all rides for Paratransit customers. Complainant, an AAR customer, telephoned the OIG Hotline to report perpetual late pick-ups by his car broker. The complainant specified that within the last six months, the car service arrived anywhere from one-half hour to forty five minutes late for scheduled services. Because the complainant further reported that he was unsuccessful in his efforts to resolve the problem, Intake contacted the NYC Transit Department of Buses on his behalf.

Following its review of the complaint, the Department of Buses notified the complainant in writing of its findings, confirming the late pick-ups. Further, the agency informed the complainant that "The broker carrier apologizes and has taken corrective action to help ensure safe and efficient service in your future trip activity. [The broker's management] has made dispatch aware of your frequent late service and your trips will be more closely monitored. [The broker] has been diligently working to improve its timeliness."

Intelligence Support

Unit analysts perform 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 other reviews. In 2017, the Unit continued to provide proactive assistance to the OIG Audit and Investigations divisions by performing research and analyses to verify information provided to these divisions by complainants and informants.

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 with the participation of the MTA Inspector General, to monitor recovery efforts. The Unit continues to provide ongoing support to this committee by preparing enhanced integrity screening of vendors and contractors

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working on Sandy-related projects. The Unit screened 75 businesses in 2017, nearly 50 percent more than in the prior year.

Similarly, the Unit continues to assist the MTA General Counsel as needed 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 provided input helpful to the decision-making process by the General Counsel. In 2017, the Unit performed targeted research and maintained data files on 88 vendors for planned procurements requiring MTA Board approval. The Unit also continues to conduct certain background checks for a variety of law enforcement agencies, including the NYPD and the NYC Department of Investigation. In 2017, the Unit conducted 151 background checks.

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, accessible, and efficient, and make recommendations for improvement as appropriate. Audit works closely with the OIG Investigations Division providing valuable analytical assistance for a wide range of criminal and administrative investigations, and reviews of agency employees, and vendors. Audit regularly consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government.

In 2017 Audit conducted a number of significant reviews with recommendations to increase the accessibility of MTA services, deter contract fraud, safeguard assets, and improve operations and quality of performance. Additionally, Audit conducted follow-up reviews to monitor the implementation by the agencies of the OIG recommendations they previously accepted. A variety of these new and follow-up reviews are described below.

BSC Procurement Consultant Services Contracts (MTA/OIG #2017-06)

The MTA Business Service Center (BSC) was established in 2009 to consolidate the performance of administrative functions on behalf of MTA Headquarters and the six constituent agencies. Among those functions was the procurement of goods and services common to all agencies. In October 2013, the first MTA Chief Procurement Officer (CPO) was hired and charged with overseeing the consolidated procurement of materials and services. This initiative required the development of a larger procurement operation within the BSC. To assist with this transition and capacity-building effort, MTA officials determined that there was a need for management consultants to provide strategic advice on the approach to and ways to achieve the cost savings from the consolidated procurement function.

The OIG conducted an audit of two of these management consulting contracts entered into by the CPO with a single major management-consulting firm (the Consultant). Specifically, the audit focused on cost controls over the two contracts and the subsequent supplemental agreements to the original contracts bringing the total value of the contracts from \$3.16 million to \$11.86 million, of which \$10.6 million was expended. We found that these and other internal controls exercised by BSC Procurement over these contracts and supplemental agreements were inadequate, specifically in the following areas:

- *Inadequate Separation of Duties:* Generally, the user department, which is the requester of goods or services, is a separate entity from the procurement department, which in turn provides expertise in such acquisition. However, under

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these contracts, BSC Procurement was both the user of the management-consulting service and the procurer of that service. The cost of the second contract increased substantially—from \$1.05 million to \$9.21 million—without scrutiny by any MTA officials outside of BSC Procurement. This growth was authorized under the signature of the CPO but, given that his department also requested the supplemental funds, this represented an inadequate “separation of duties.” That separation is critical to prevent or at least reduce the opportunity for misconduct, fraud and error in approving additional contract spending and the disbursement of funds.

- Reports to the MTA Board Lacked Transparency on Consulting-Services Spending: BSC initially requested that the MTA Board authorize spending of up to \$5 million on as-needed consulting services. Subsequently, BSC requested and the Board approved two contract modifications increasing the funding authorization by \$5 million each time. In its justification for the additional funding, BSC Procurement reported how much had been spent on the project at that point, the anticipated benefits of the work, the nature of the planned additional projects, and how much more money was needed for them. However, the BSC in its request to the Board did not clearly identify the Consultant as the recipient of 97 percent of the funds authorized by the original contract and the two subsequent modifications.
- Contracts did not cap these expenses nor were the expenses audited: Both contracts were structured so that the Consultant would be reimbursed for out-of-pocket expenses at actual cost. For audit purposes, the contracts required that the Consultant maintain and make available upon request all timekeeping and expense records documenting the Consultants’ actual labor hours and reimbursable expenses. However, the contracts did not cap these expenses nor were the expenses actually audited or reviewed in detail by MTA personnel, even though the contracts provided for this cost-control step. At the time of our audit, the Consultant’s expenses accounted for approximately \$1.43 million of the amount invoiced.

To improve cost controls and the oversight of management contracts, the OIG recommended that for any similar contracts proposed by MTA, when BSC Procurement is both the contract manager and the end user of a contracted service, requests for supplemental work must be authorized by the MTA Chief Financial Officer in order to establish an adequate separation of duties. We further recommended that funds committed for “as-needed consulting services contracts” should be reviewed by the MTA Auditor General semi-annually to ensure that agency procurement departments have properly procured both the original and any supplemental awards, and have scopes and terms consistent with the authorization of the “as-needed” funds. Additionally, an annual report should be made to the MTA Board documenting how the money was spent, on

which projects, and to which consulting firms. And finally, management consultants must provide an estimate of out-of-pocket expenses as part of the original contract, as well as any subsequent supplemental agreements, and MTA should audit the expenses before authorizing reimbursement.

MTA management agreed with all of our findings and recommendations, including the need to establish adequate separation of duties in the approval of contracts when BSC Procurement is both the contract manager and the end user of the contracted services. Management also agreed to develop a reporting process to advise the MTA Board more specifically about the expenditure of funds, including recipient consulting firms and the projects involved. Lastly, management agreed to include a budget for out-of-pocket expenses in the contracts and supplemental agreements and to closely monitor the expenses. The OIG will continue to monitor the implementation of our recommendations as appropriate.

Small Business Mentoring Program (MTA/OIG #2017-11)

The MTA's Small Business Mentoring Program (SBMP) is one of the two programs established by MTA to help enlarge the pool of qualified construction contractors who can successfully compete as prime and subcontractors for MTA capital projects.⁴ SBMP offers firms training in the fundamentals of the construction business, as well as the opportunity to compete with other SBMP contractors for relatively small construction projects that are specifically designed for the program. In 2017, the OIG Audit Division undertook an evaluation of selected aspects of program eligibility.

MTA has established financial thresholds for firms that apply to SBMP to help ensure that SBMP training and contract opportunities target the small businesses that truly need the assistance. For example, to be eligible for the SBMP Tier 1, defined by MTA as its basic mentoring program, a firm's annual gross revenues cannot exceed \$3 million, averaged over the three calendar or fiscal years' that preceded its application.

However, we found that the owner(s) of some of the firms accepted into SBMP also owned or were affiliated with other construction firms, but were not required by MTA to disclose their relationship to these other businesses when applying to SBMP. Since other ownership and affiliations may bear heavily on an applicant's need for a mentoring program, the failure to require such disclosure was a flaw in the MTA's process for determining SBMP eligibility. For example, the owner of one SBMP-approved firm also owned another, much larger construction company that had demonstrated proficiency as a prime contractor on MTA projects before the smaller firm

⁴ The other program is named the Small Business Federal Program.

had applied to SBMP. Clearly, the owners of the smaller firm did not need the mentoring and other assistance provided by the program—they were already a successful prime.

We also found that the background evaluations performed by the MTA for SBMP eligibility were incomplete. Although the Authority evaluates the background of the applicant firm, it did not conduct background checks on the firm's owner(s) and other key personnel. For example, we found that the MTA accepted a firm into SBMP Tier 1 that would have been disqualified by a more thorough background evaluation because the firm's owner was not truthful in his SBMP application. When we alerted the Authority to the adverse information regarding the firm, it terminated the firm from the program. Although the MTA took swift action, this example highlights the importance of the Authority including thorough checks of an applicant's owners and key personnel in its background reviews.

We made five recommendations to strengthen the rules regarding disclosure, eligibility, and integrity. The MTA accepted all of our recommendations.

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

The MTA and its constituent agencies hire individuals for a wide range of positions. To ensure that new employees have the necessary training, qualifications, and experience to perform their assigned tasks, the MTA requires candidates to undergo a background check to verify their credentials. In 2013, the MTA contracted with the current vendor to conduct these checks for a period of three years. MTA Bridges & Tunnels (B&T) took the lead in procuring this vendor, while the Business Service Center, which is part of MTA Headquarters, coordinated the relationship between the vendor and the MTA. Each MTA agency assigned one representative to serve as a liaison among their agency, the vendor, and the BSC.

In 2015, the OIG completed an audit of MTA agencies' utilization of the background check contract. As documented in our report, we found that BSC and agency liaisons did not jointly inform the contractor of recurring performance problems. This inadequate oversight and coordination allowed weaknesses to persist, including incomplete background reports and costs higher than reasonably expected. To address these findings, we made three recommendations designed to improve the oversight of the contract.

We also found that there had been a delay in the implementation of contract amendments that would have allowed the vendor to provide services better designed to meet the MTA's needs and at a lower cost. Therefore we made two recommendations to improve future contracts for background services.

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And lastly, we found that personnel across the agencies did not have a clear understanding of, and agreement about, their individual and collective roles and responsibilities in the context of this joint procurement, which led to confusion as to who should have alerted the vendor to substantive contractual issues. To address this finding, we recommended that the agency formally define the responsibilities of staff members involved in any joint procurement.

BSC accepted all six of our recommendations. In 2017 the OIG conducted a follow-up review to evaluate the extent to which BSC had implemented them.

During this review we met with the agency liaisons and BSC personnel managing the contract, examined the vendor's detailed background reports for 80 recent hires across all MTA agencies, and studied a version of the planned Request for Proposals (RFP) for rebidding these services in 2018. We found that BSC had implemented the three recommendations relating to oversight of the contract as well as the two recommendations relating to future contracts for the background services. More specifically, we found that BSC holds quarterly conference calls for the agencies and the vendor, facilitating more timely resolution of performance concerns and billing questions; agency personnel reviewed each background report generated by the contractor to ensure completeness, and performed appropriate follow-up when needed; and BSC shared the draft RFP with appropriate representatives of each agency as well as MTA Legal staff, and incorporated many of their requests into the final document.

As to our sixth recommendation, regarding the need to formalize roles and practices in future joint procurements, we learned that the MTA's ongoing effort to centralize its "back-office" functions has deepened BSC's involvement in many, but not all, of the MTA's joint procurements. For those multi-agency procurements handled by BSC, there are now established standards for BSC procurement staff members involved in the selection of vendors for goods and services. BSC also provides contract-management training to all MTA staff members—both at BSC and in the operating agencies—who are responsible for overseeing vendor performance under a single-agency contract or as part of a joint procurement. The purpose of the training program is to facilitate the cost-effective delivery of goods and services that satisfy contractual requirements across the MTA.

We will continue to monitor the agencies' procurement and contract-management activities as appropriate.

Select Bus Service – Issues in the Fare-Evasion-Enforcement Process

To expedite bus travel, MTA Select Bus Service (SBS) customers pay at ticket machines before boarding. NYC Transit Eagle Team inspectors monitor fare evasion and issue \$100 Notices of Violation (Notices) to customers without tickets. In 2017, the OIG

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received complaints from two customers who had received Notices and disputed their violations. For example, one strongly objected to inspectors' refusal to credit her claim that the ticket machine had failed to dispense a usable ticket. The Transit Adjudication Bureau (TAB) is responsible for evaluating each disputed Notice and making a final determination of its validity. TAB eventually found both "Not in Violation" because evidence showed they had actually used their MetroCards at the time in question.

To determine if there were systemic procedural problems with the issuance of Notices, the OIG reviewed a sample of 73 Notices issued between April 2016 and June 2017 that customers had disputed successfully. In every case, the customer had been unable to immediately show an SBS ticket to the inspector, who therefore had a valid basis for issuing a Notice. Thus, we did not find evidence of unfair or unreasonable actions by inspectors. Nevertheless, the TAB hearing officers properly dismissed the Notices, showing that the enforcement system has some safeguards for those who lose their tickets or encounter out-of-order ticket machines. In most cases (77%), the dismissal was based on a check of the customer's MetroCard usage history which showed that the customer had paid the fare at an SBS ticket machine for the ride in question. In cases where customers claim the ticket machine malfunctioned, the hearing officer can also access Transit records of machine malfunctions to investigate the claim. While these safeguards can prevent the imposition of a penalty, they don't eliminate the burden on customers who encounter machine outages and then spend time disputing a Notice.

In addition to reviewing TAB determinations, we calculated the percentages of disputed and dismissed Notices for each inspector and found widely varying results. Some inspectors had much higher percentages than others, indicating that going forward additional management oversight was warranted to ensure consistent application of the rules and minimize errors such as wrong dates or times. Related to this, in 11 percent of our sampled dismissals, the hearing officer found that an inspector had completed the Notice erroneously, thus invalidating it.

Eagle Team officials, who had not previously seen this type of analysis, told us that ongoing receipt of such information would enhance their training efforts and supervision of inspectors. Further, we learned that TAB and the Eagle Team maintained separate databases of Notices, an apparent duplication of effort, and that the Eagle Team did not have access to information about disputed Notices or their dispositions. To address that deficiency, we facilitated the exchange of information between the two. Based on our suggestions, Eagle Team officials requested—and TAB began providing—daily disposition reports and hearing decisions to help Eagle Team officials monitor inspectors' performance.

While working with the data, the OIG identified many instances of erroneous information in TAB's database concerning the names and ID numbers of the inspectors who issued Notices. While such errors would not ordinarily impede the adjudication of

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disputed Notices, the inaccuracies complicated the analysis of inspector performance that the OIG conducted and the Eagle Team officials intend to perform going forward. On a related note, the contract with the consultant who provides administrative services at TAB requires a data-entry error rate below two percent (based on a 10 percent sample of each batch of Notices), but the contract is silent on the precise method for calculating that error rate. We noted that TAB's documentation of its quality control tests to check for errors was limited and unclear. We suggested that TAB clarify how the rate is to be calculated and then follow through in monitoring data quality. TAB adopted our suggestions, and the OIG will continue to monitor as appropriate.

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

As noted above, Select Bus Service customers obtain tickets at MetroCard Fare Collectors (MFCs) before boarding, and NYC Transit Eagle Team inspectors monitor fare evasion by checking for those tickets. In a 2015 audit the OIG learned that electrical interruptions periodically cause all the MFCs at a given stop to be out of service for prolonged periods, and we found that NYC Transit had persistent difficulty managing such long-term outages. Not only did the outages inconvenience customers, they also facilitated fare evasion and hampered enforcement.

NYC Transit's formal policy to address this problem required customers boarding at a stop with no working MFCs to disembark at the next stop to obtain a ticket. Bus operators would not necessarily wait for such passengers to re-board. In our view, this policy was unduly burdensome to customers and we recommended that it be changed. Among other findings, we concluded that NYC Transit had not provided the managerial oversight necessary to reduce the impact of out-of-service MFCs on the customer experience. Therefore we recommended that the agency address these issues and work more closely with the NYC Department of Transportation (DOT), Consolidated Edison (Con Ed), and/or other third parties to ensure the most rapid repair possible. Transit officials agreed with our recommendations and made its MFC policy more customer-friendly.

By way of follow-up, we obtained data and status reports from NYC Transit to determine the extent to which it has implemented these recommendations. First, we verified that the agency has continued the policy as revised in 2016 regarding SBS stops with no working MFCs: Its website still confirms that customers in this situation "should board the bus, ride to their destination, and get a ticket at a machine when you exit the bus." Further, in a written update to the OIG, officials confirmed that NYC Transit continues to place a sign on the machine(s) at bus stops experiencing an outage "when initial repair visits have not solved the problem." The officials agreed with our concern that the signs may fall off the MFCs over time, leading to confusion for passengers who may be unfamiliar with the more-lenient policy, and consequently fear boarding without

a ticket and waste time trying to obtain one beforehand. They stated: “Going forward, we will re-visit locations with power outages regularly to re-post [signs] if necessary.”

NYC Transit reported that it has made increased efforts to resolve MFC outages, resulting in a greatly reduced MFC outage rate—down from 2.3 percent in 2015 to 0.8 percent in 2017, a decrease of nearly two-thirds. The agency further stated: “...we have significantly shortened most outages by regularly checking with NYC DOT Street Lighting staff, and by engaging high level staff at Con Ed to request expedited repairs.” NYC Transit has also recently requested “that DOT put longer-term outages on the agenda for their monthly meetings with Con Ed on street-light power issues.” We will continue to monitor as appropriate.

Bus Wheelchair Systems: Improving Reliability and Service

The NYC Transit Department of Buses and the MTA Bus Company (collectively Buses) operate buses equipped with a “wheelchair system,” a term used by Buses for the equipment that includes either a ramp or a lift as its primary component to help passengers board the bus. In 2017, the OIG received complaints from customers who were unable to board a bus because the wheelchair system was out of order. We learned that the NYC Transit customer services department had also received such complaints. As a result, we looked at how Buses ensures the reliability of the wheelchair system, and we also reviewed Buses’ procedures for collecting and reporting data on Wheelchair System usage.

Through our analysis, we learned that two older, local bus models, equipped with lifts rather than ramps, have a disproportionately high wheelchair system failure rate. Buses was aware of the failures. To help address this problem, Buses requires that all local buses with lifts undergo preventive maintenance inspections of the wheelchair system twice as frequently as those with ramps.

To test compliance with this requirement, the OIG reviewed a sample of lift-equipped buses at two Brooklyn depots and found that in an eight-month period, 20 percent of these older buses had received a late inspection, increasing the risk of failure while in service. We alerted Buses officials, who then discovered many similar occurrences at other depots. Buses instructed the depots to take corrective action, and in August 2017 Buses issued a revised Maintenance Directive on wheelchair system inspections aimed at ensuring compliance with all required inspection intervals.

Our review also found shortcomings in Buses’ process for collecting and reporting data on the number of times passengers board using wheelchair systems. Collecting reliable data allows Buses and other interested parties to track trends in the demand for accessible bus service and to consider this factor in the planning and scheduling of bus routes. However, we found that procedures for gathering this information were poorly

defined and likely resulted in undercounts. The “Trip Sheet” that bus operators used at the time of our review to report use of the wheelchair systems referred only to “Wheelchair Passengers,” a term that could be interpreted to exclude for tracking purposes those who, for example, use the wheelchair systems to board with a walker or a cane. Buses officials agreed that the terminology was not consistent with their goal of counting all lift and ramp usage and decided to revise the Trip Sheet and develop new procedures for its use.

Depots were also using a variety of formats for summarizing and reporting passenger usage, and some depots’ monthly reports did not present the counts by route. Buses officials agreed with us that collection and reporting should be standardized across all depots, and in March 2018 they confirmed that the new forms and procedures—including a standard monthly report showing usage by route—had been implemented at each depot and for each route. Buses further stated that the new process would provide much better data for service planning purposes. We will continue to monitor these issues as appropriate.

Accessibility in Boarding and Disembarking at Metro-North Railroad

The Americans with Disabilities Act (ADA) requires that all commuter rail cars obtained after August 25, 1990 be accessible; in trains with older cars, at least one car in each train must be accessible. In the context of rail-passenger boarding, accessibility generally refers to keeping the car floor and the station platform relatively level, and the legal requirement will be satisfied where the train crew is available to provide assistance, e.g. by placing a portable “bridge plate” in the space between them to allow a passenger to safely negotiate an excessively wide or uneven gap.

In 2017, as part of our ongoing monitoring of accessibility at the MTA, the OIG conducted a review of boarding and disembarking practices at MNR and spoke with LIRR officials as well. We also followed up on inquiries from a number of riders who had experienced difficulties boarding and disembarking from trains while using a walker or wheelchair, noting that busy intermediate stations such as Harlem-125th Street posed a particular problem because trains stop there so briefly.

MNR officials told us that conductors on every train have access to at least one bridge plate and receive training in its use. They agreed that Harlem-125th Street can be a challenging place for people with special needs to board or disembark; along with brief stops, its crowded platforms, caused in part by the convergence of three rail lines, can make it difficult for conductors to identify customers in need of assistance. We learned that the crew is obligated to take the initiative in asking passengers if they need help when a possible need for assistance seems evident. However, MNR emphasized that conductors’ ability to provide effective assistance relies in part on customers’ making an

active effort to *request* help during or after boarding, whereas OIG learned that the complainant had generally thought she would have to disembark on her own.

MNR officials also told us that they had received very few complaints about accessible boarding. Nevertheless, after our initial discussions MNR promptly issued a formal Train Service Notice reminding train crews to pay close attention to special-needs customers, with extra care at busy stations. At LIRR, officials acknowledged that boarding and disembarking could be challenging for inexperienced travelers with special needs, and subsequently implemented changes consistent with both our recommendations and a contemporaneous agency initiative.

We reviewed MNR and LIRR materials on accessibility, including the Commuter Rail Lines section of *The MTA Guide to Accessible Transit* (the Guide) on the MTA website. The Guide describes the boarding process for customers with mobility limitations.⁵ While it provides useful information, the Guide did not tell customers that they can contact MTA Customer Service (511) for more assistance. The Guide also did not inform customers about one important service that MNR and LIRR have long offered: Each railroad allows customers with special needs to make advance requests for travel assistance. Essentially, after a customer makes a request through 511, each railroad’s Customer Service Department takes steps to alert the crew of the specific train that the customer plans to take. The conductors then watch for and assist the customer in boarding. The OIG confirmed that Customer Service representatives from both railroads are trained to address accessibility questions.

After the OIG raised the possibility of publicizing this service, we learned that MTA undertook a major revision of the Guide, which references both 511 and advance requests. Given the importance of these and related issues, the OIG will continue to monitor the effectiveness of and communication about accessibility practices at the MTA.

EEO Policies & Practices at MTA Agencies – Follow-Up

In 2016, OIG auditors reviewed the Equal Employment Opportunity (EEO) policies and procedures in place at each of the MTA agencies. Our goal was to better understand the agencies’ activities governed by the federal Civil Rights Act and other laws and regulations, which together require an employer to maintain a workplace environment free of discrimination and harassment.

The Federal Transit Administration (FTA) is mandated to regularly audit each agency’s EEO practices to evaluate compliance with Federal civil rights laws. FTA guidelines address a variety of “required elements” regarding how a regulated agency

⁵ See <http://web.mta.info/accessibility/rail.htm#trains>.

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should receive, document, investigate, and report complaints of potential discrimination, among other activities. In response to these guidelines, each MTA agency designed its own specific EEO policies and procedures.

Our research revealed three areas of concern. First, it appeared that some MTA agencies were not satisfying all the required elements in Federal EEO guidelines—for example, by fully documenting employees’ complaints of potential discrimination. Second, we found that several MTA agencies had highly developed EEO programs, while the others had programs that were both less formal and less effective. And third, the agencies’ EEO leaders did not have a forum to share their respective expertise with one another.

Based on these findings, the OIG recommended to the then-MTA Chairman and Chief Executive Officer that MTA assess the degree to which each agency’s EEO program is consistent with FTA’s required elements and MTA policies. We further recommended that MTA develop a plan to fulfill FTA’s new requirement for consolidated reporting, and that the agency EEO Officers establish a forum for regular communication, e.g. a quarterly meeting. The then-Chairman/CEO agreed with our recommendations and asked MTA’s Chief Diversity Officer to implement them.

In 2017 and early 2018 we learned that the agencies had taken significant steps to implement improvements individually and collectively. In accordance with our recommendations, a working group of staff members from EEO and the legal department of each agency has been meeting quarterly since April 2017 to identify areas in which the agencies’ procedures were not FTA-compliant or were inconsistent with other MTA agencies, and develop shared policies and procedures to correct deficiencies. Additionally, Human Resources staff members hold regular conference calls with EEO Officers and legal department representatives. This in-house assessment resulted in the creation of new all-agency policies and improved methods for effectively handling complaints of potential discrimination.

Not surprisingly, the agency-specific deficiencies that the OIG had identified also came to light during the agencies’ own in-depth collaborative assessment of the complaint-management process, and we since learned that the relevant agency leadership and MTA Headquarters staff members implemented any necessary corrective action. The group also developed a plan to comply with the FTA’s requirement for consolidated counting and reporting of diversity-related data. The MTA began implementing that plan this year. The OIG will continue to monitor the MTA’s EEO-related activities as appropriate.

Inventory Controls at the Long Island Railroad MoW Repair Shop – Follow Up (MTA/OIG #2016-10)

In 2016, the OIG reported on the deficient controls that existed for LIRR Engineering Department’s Maintenance of Way (MoW) Repair Shop parts and supplies inventory. This inventory is used to maintain and repair power tools and specialized track maintenance equipment and vehicles. We found that the actual counts of the sampled items did not match the inventory records and that Repair Shop employees did not always sign the log book when checking-out or returning items. We also found that the outdoor storage yard was disorganized, poorly maintained, and not protected from the elements. Lastly, we found that the value of the Repair Shop inventory was understated. The OIG made several recommendations to provide effective control and protection of the Repair Shop inventory, as well as to make reporting of the inventory more accurate. MoW agreed to implement our recommendations.

This year, the OIG’s Audit Division conducted a follow-up review to evaluate the extent to which MoW implemented our recommendations. Based on our review of documents obtained from MoW, we confirmed that MoW has taken steps to implement all of the recommendations in our report. More specifically, MoW is making ongoing efforts to better organize and secure inventory items stored in the outdoor yards around the Repair Shop, as well as to identify and dispose of obsolete items. Repair Shop management has also implemented a monthly count of a sample of inventory items to identify inventory discrepancies and to determine their causes. Finally, we found that new inventory items are now being valued in a manner that is in compliance with LIRR’s average cost inventory valuation method.

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

In 2015, the OIG conducted a review to determine whether the Long Island Railroad was adequately safeguarding the property turned in to its Lost and Found Office (LFO) and facilitating return to the rightful owner. We found that property in the LFO was at risk of avoidable misplacement or theft, in part because the storage space was inadequately controlled and monitored. We also found that 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. Additionally, we found that information maintained in the LFO database was frequently inaccurate, preventing staff from tracking 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.

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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.

In a recent follow-up review, we found that LFO management and staff had removed a significant number of items that were past their retention periods from the Lost and Found Office, greatly reducing the visible clutter. LIRR had also created an additional staff position to assist in the ongoing disposition of property. Additionally, senior management officials had updated the agency's corporate policies and procedures to clarify roles, responsibilities, and standards, and created a detailed operating manual for LFO staff. Further, management had overseen the development and implementation of a new database and, in mid-2017, provided database-training to LIRR personnel assigned to the Railroad's stations as to the proper handling and documenting of lost property.

We also learned that LIRR has begun the process of moving the Lost and Found Office to a more centralized location within Penn Station. Demolition was completed in the space in early 2018, and the redesigned LFO is projected to open in late 2018. LIRR plans to install cameras in the new space to allow for more effective security and access-control practices. We will continue to monitor as appropriate.

NYC Transit Supply Logistics Department Central Warehouse Inventory

In December 2016, the OIG received a complaint alleging a suspicious disappearance of high value inventory items at the Supply Logistics Department (SL). The complainant claimed the missing items had a value of more than \$34,400 and identified them as "a box of "Module Diagnostic" (Electronic item), to be used by Elevator and Escalator Department."

The OIG's Audit Division traced the intake, inventory, and disbursement procedures to determine the status of the alleged missing inventory items. To begin, Audit staff interviewed employees of the Maintenance of Way Elevator & Escalator Division maintenance shop/storeroom (the Shop)—the user of these parts—and Central Warehouse personnel. Staff also performed a physical examination of the inventory items in question at the Shop to confirm the existence of the items. The Shop stocks various parts and materials for elevator and escalator repair and maintenance including the missing inventory "modules" that were the subject of the complaint. This part is

essentially a computer that monitors the escalator performance and provides diagnostics information for repair/maintenance purposes.

By reviewing the inventory records, Audit determined that the Shop received a total of eight OKA401 Modules from Central Warehouse in 2017 and in turn, distributed four of the modules that were used to repair four escalators, according to documentation reviewed by the OIG. In addition, the Shop used part of a fifth module for repair of a fifth escalator. Staff then verified that three complete modules and the partially-used module remained in Shop inventory—thereby accounting for the entirety of the stock. Rather than wrongdoing, Audit found that the “missing” modules resulted from a clerical error made by Central Warehouse personnel in the receiving and storing of the items. Finally, Audit confirmed that management, upon detecting the discrepancy and verifying that no materials were lost, properly instructed appropriate staff to correct the inventory records.

Attendance-Related Disciplinary Practices at Metro-North Railroad – Follow-Up (MTA/OIG #2016-26)

Excessive unscheduled employee absences can adversely affect productivity and efficiency, unnecessarily increase overtime costs, reduce the overall quality of service, and put additional burdens on employees who do report to work. To ensure sufficient coverage for operations, Metro-North Railroad has an Attendance Policy (the Policy) for represented employees, which outlines disciplinary measures that may be taken against those employees who demonstrate unsatisfactory attendance. Additionally, the agency uses an Attendance Tracking System, in accordance with the system’s reference manual (the Manual), to record absences and flag those days to be considered when assessing an employee’s attendance record.

In 2016 the OIG reviewed Metro-North’s attendance-related disciplinary practices. We found that while the Policy creates hard and fast rules that do not afford any discretion to staff or management to excuse absences—that is, to remove them from potential disciplinary action—the departments have used language introduced by the Manual to effectively assume that authority by allowing absences to be excused on a case-by-case basis. Our analysis further revealed that without any guidance or definitions as to what is considered a “late” arrival or “early” departure, departments used their own differing definitions for initiating disciplinary action for such absences. We also found instances where a supervisor responsible for reviewing employee attendance records neither classified the absence as a violation of the Policy nor removed it from consideration for discipline, but management did not detect this inaction in time to pursue appropriate disciplinary measures consistent with the applicable collective bargaining agreement. Lastly, we found that for a number of Metro-North employees suspended for repeated absences, the employees did not serve the entire suspension period as required by the Policy. Consequently, we made a number of recommendations designed to help

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make implementation of the Attendance Policy more effective and fair, and its enforcement appropriately consistent,

Metro-North agreed with all of our recommendations and also agreed to initiate improvements with some modification that we considered appropriate. Our follow-up review revealed that Metro-North has established agency-wide standards for (1) the process of exercising discretion by which attendance violations may be excused, (2) routine audits of excused violations, and (3) documentation and enforcement of suspensions served. Metro-North has authorized its operating departments to develop their own criteria for discipline relating to late arrivals and early departures, and further permits each department to develop and provide the policy-related training it deems necessary. Regarding the technical improvements we recommended, Metro-North determined that it was not feasible to create a computerized alert to management when violations are unaddressed within a specific timeframe; instead, the agency implemented a workable, manual system to confirm that actions are taken on a timely basis. Lastly, Metro-North management has developed a means to electronically monitor whether employees have served their entire suspension on the required dates.

We also learned that in lieu of revising the agency's Attendance Policy, the Metro-North Human Resources Department distributed a memorandum to operating department officials describing our recommendations and the resultant procedural changes occurring in the agency.

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The Investigations Division receives and investigates complaints from within and outside the MTA and upon its own initiative, concerning alleged fraud and other criminality, waste, and abuse. 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 on the federal, state, and local levels for further investigation, in which the division routinely participates, and/or for criminal or civil prosecution. 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 significant 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, accountants, engineers, and 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 2017, CFU's investigations, often in conjunction with other investigative and law enforcement agencies, have resulted in monetary recoveries and court ordered forfeitures from contractors of over \$89 million. Also within the division is the Intake and Intelligence Unit (discussed previously), 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 conducts criminal and other investigations in areas including suspect construction practices; procurement-related fraud; ethics and labor law violations; disadvantaged minority and/or women's business enterprise fraud; employee theft of time and property; as well as vendor and contractor overbilling. The division has a number of active criminal investigations pending with both federal and state prosecutors.

Below is a sampling of our completed investigations and other work performed by the division in 2017, as well as an update regarding certain matters from our previous annual reports.

Bribe Solicitation by NYC Transit Construction Administrator

Following our findings of impropriety by a NYC Transit program manager in the hiring of temporary employees called “job shoppers” (see MTA/OIG #2016-25), the OIG initiated a spin-off investigation of a NYC Transit construction administrator who appeared to have an undisclosed ownership interest in a consulting business. While the construction administrator originally claimed to OIG investigators that his wife owned the business, he later admitted that he had taken payments from contractors and deposited them into the consulting business’s bank account. Shortly after we commenced this investigation, the construction administrator retired.

The OIG referred the matter for prosecution to the United States Attorney’s Office for the Eastern District of New York, and we conducted further investigation jointly with the United States Department of Transportation Office of the Inspector General. Our joint investigation concluded that the construction administrator had sought and received more than \$150,000 in payments from two NYC Transit contractors whose work he had overseen and whose projects he had threatened to delay if they did not make the demanded payments.

The former construction administrator was charged in federal court and pleaded guilty to one count of violating Title 18, United States Code, Section 666(a)(1)(B) (bribery concerning programs receiving federal funds). On February 23, 2018, the defendant was sentenced to imprisonment for 48 months, supervised release for three years, and a fine. The court also required the defendant to pay monetary forfeiture.

Prohibited Gifts from Vendor to Procurement Executive (MTA/OIG #2017-07)

The OIG conducted an investigation into the relationship between a procurement executive (PE) at the MTA Business Service Center and a Principal of a management consulting firm that was providing advisory services under two contracts to the BSC. At that time, the firm was one of those authorized by the MTA Board to bid on certain as-needed contracts. This increased the firm’s potential to receive, as it later did, certain MTA contracts through a competitive mini-bid process. The PE was part of the selection committee for both contracts and was responsible post-award for overseeing the firm’s performance. The Principal led the team that developed the firm’s proposals and was responsible post-award for the overall execution of the deliverables of both contracts.

Our investigation revealed that the PE solicited favors for his family members from the Principal. Specifically, in 2015 the PE emailed his sister’s resume to the Principal, saying he would be “eternally grateful if something could work out for her.” The Principal not only forwarded the resume but also intervened to help prompt job interviews at the firm for the sister. The PE later requested that the Principal forward his

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son's resume in an attempt to help the son obtain an internship with a sports management firm. The Principal also forwarded the son's resume within his firm. These emails were sent while the firm was not only providing services under contract to the MTA, but at a time when there was potential for receiving additional MTA contracts. By soliciting these favors, the PE violated MTA All-Agency Code of Ethics §2.01, a zero-tolerance provision regarding gifts from a "prohibited source" (such as the Principal). And by his effort to accommodate the PE's solicitations, the Principal violated MTA Vendor Code of Ethics §4.01, also a zero-tolerance provision, that bars gift-giving by vendors doing business or seeking to do business with the MTA.

We also found that on several occasions the Principal and the PE communicated with each other regarding Requests for Proposal during the pre-award "restricted" period of those solicitations, in violation of New York State Finance Law §139-j and §139-k. Respectively, these provisions prevent "offerors" (such as the firm and its agents) from contacting anyone within "governmental entities" (such as the MTA) other than the "designated" point of contact—which the PE was not—about open procurements with the intent to influence the procurement.

Additionally, we found that on six occasions spanning October 2013 through December 2016, the Principal gave the PE gifts consisting of wine and gift baskets. By giving and accepting these gifts, the Principal and the PE further violated their respective codes of ethics.

We provided our findings to MTA management, which terminated the PE during our investigation, and we recommended that the MTA conduct inquiries into the activities of the Principal and his firm with respect to the MTA Vendor Code of Ethics and New York State Finance Law.

During the MTA's inquiries, the firm terminated the Principal as well as a subordinate and took additional disciplinary and corrective actions. The MTA concluded that the former Principal acted in disregard of the MTA Vendor Code of Ethics as well the firm's code of ethics, and engaged in an impermissible contact as defined by the Finance Law.

**Assistant Chief Officer Falsifying Records
(MTA/OIG #2017-10)**

The OIG substantiated anonymous allegations that a NYC Transit Assistant Chief Officer (ACO) abused time by working as a volunteer firefighter during his work shift and submitted false NYC Transit time records. During this investigation, OIG investigators learned that the ACO, whose NYC Transit work location was in Brooklyn, also worked as a volunteer firefighter at a fire department (FD) in Nassau County. OIG staff compared the ACO's NYC Transit time and attendance records with his fingerprint-

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validated responses to FD emergencies for the period January 1, 2015 through May 27, 2016. We found eight occasions where he had responded to FD alarms yet his NYC Transit records reflected his report that he was performing his work for NYC Transit.

During our review of NYC Transit's policies and procedures on outside activities, we found that they lacked clarity regarding activities, such as volunteer firefighting, that do not provide traditional salaries and compensation and instead provide benefits such as tax abatements, stipends, and vehicles. We suggested that the agency clarify those policies and procedures and such a review is now pending.

As to the ACO, the OIG recommended that the agency impose discipline up to and including termination. NYC Transit demoted and suspended the ACO without pay pending disciplinary proceedings and sought his dismissal. The union appealed the proposed dismissal and the matter was submitted to an arbitration board. In explaining its decision to sustain the demotion but not terminate the ACO, the Board made clear that neither this employee nor any other should misunderstand its leniency:

After emphasizing at the outset that the Board was "unanimous" that "the charges here are extremely serious, and for another employee would be of sufficient gravity to support a decision to uphold dismissal, especially of a high-level Agency Manager whose position of trust was breached through multiple, recurring failures to accurately and properly report his work hours on his Time and Attendance Reports . . ." The Board then explained:

Notwithstanding the foregoing, a majority of the Board has decided it is appropriate, on a non-precedential basis, to give [the ACO] credit for his more than three (3) decades of service, all of which was very good and even excellent until the instant time-reporting violations . . . In deciding against dismissal, the Board majority observes that [the ACO's] demotion to his prior, non-managerial Civil Service title . . . was itself a substantial penalty. His loss of stature and income will be felt for the remainder of his career. . .

In short, neither [the ACO] nor any other Transit Authority employee, should draw from this decision even a hint that this type of conduct will not result in termination in a future case. Likewise, [the ACO] is squarely on notice that he shall not expect in a future case involving serious misconduct to again be the beneficiary of leniency.

**Abuse of Union Release Time
(MTA/OIG # 2017-01)**

The OIG investigated an anonymous complaint that a NYC Transit Department of Buses union official abused union release time. Under the terms of a collective bargaining agreement, while on full union release time, the official was allowed to select a bus run and receive full pay without actually driving the run. However, the union official was required to perform union duties at a depot for the equivalent of the paid work hours of the run, and to keep a log of those union activities.

OIG investigators substantiated the complaint, having determined that on numerous occasions the union official violated NYC Transit directives and policies by not being present at one of the depots as required; leaving work before the end of his required time; misrepresenting on union release sheets the amount of time he worked; and failing to maintain a daily log detailing his activities.

The OIG recommended that the union official be disciplined, and that NYC Transit Department of Buses continue to review internal controls and promulgate additional policies and procedures to ensure the integrity and accuracy of union release time and the sheets documenting it. In response to our recommendations, the agency has taken steps to ensure the accuracy of the union release sheets and the submission of logs detailing work activities. The union official agreed to a 30 day suspension and restitution for 66 hours and 36 minutes of time he did not work.

**NYC Transit Manager's Improper Manipulation of Hiring Process
(MTA/OIG #2017-08)**

The OIG received an anonymous complaint alleging that the director of track engineering in the NYC Transit Department of Subways had modified a job posting specifically to hire the son of a former colleague at NYC Transit. We substantiated the complaint, finding that by manipulating the hiring process, the director violated both the New York State and MTA codes of ethics. Additionally, we found that a performance manager in the same department, who functioned as its liaison to the agency's Human Resources department, also violated these codes of ethics by assisting the director's misconduct and, as further revealed by the investigation, by manipulating the hiring process for the son of a second former NYC Transit employee.

Specifically, OIG investigators found that the director had posted a position for which he selected the son, but the son was rejected for the position by NYC Transit Human Resources because he did not meet the minimum requirements for the position. The investigators also found that the director told the liaison that he wanted to find a way to hire the former colleague's son; the liaison assisted by suggesting he change the posted title requirements to create a second position so that the candidate could meet the

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minimum qualifications for that second position. During an interview with OIG investigators, the director conceded that the only reason he interviewed the applicant was because he recognized his name. Additionally, the director reached out to the former colleague to inform him when the positions would be posted.

As for the liaison, OIG investigators found that in addition to assisting the director in manipulating the hiring process, the liaison improperly told the director that he had to interview a second applicant; that applicant also did not meet the minimum requirements for the second position. The liaison admitted that she added this second applicant to the list of interviewees for the second position because she recognized his name as that of the son of another retired NYC Transit employee.

By engaging in the foregoing conduct, the director and the liaison violated the New York State Public Officers Law Code of Ethics (§ 74[3][f][h]) and the MTA All Agency Code of Ethics (§ 4.02[a][b][c]), in that they engaged in conduct: (1) that raised suspicion among the public that they were likely to be engaged in acts in violation of the public trust; (2) that provided a reasonable basis for the impression that another person could unduly enjoy their favor in the performance of their official duties; and (3) that involved using their official position to secure unwarranted privileges for others.

The OIG recommended that NYC Transit take disciplinary action against both the director and the liaison. The director retired before the agency could take action. The liaison was suspended for three weeks and her appeal of the suspension is pending.

**NYC Transit Superintendent's Unauthorized Outside Employment
(MTAIG #2017-04)**

The OIG investigated and substantiated anonymous allegations that a NYC Transit superintendent in the Maintenance of Way, Elevators and Escalators division was engaged in unauthorized outside employment.

The superintendent was responsible for the supervision of 50 employees who maintained elevators and escalators within the NYC Transit system. Because of his position and status as a “policy-maker,” the New York State Public Officers Law (POL)(§§ 73, 74), Executive Law § 94(16) and the implementing regulations of the Joint Commission on Public Ethics (JCOPE)(19 NYCRR Part 932), together with the MTA All-Agency Code of Ethics and NYC Transit Policy and Instructions required the superintendent to obtain prior written approval from his supervisors, the NYC Transit Ethics Officer, and from JCOPE, before engaging in any outside employment that the employee expected to generate more than \$5,000 in annual compensation. Further, under the provisions of POL § 73-a, the superintendent was required to file an annual statement of financial disclose and report, among other items of information, any outside employment from which he earned in excess of \$1,000 in a given year.

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The OIG established that at the time of the investigation, the superintendent had been working for more than one year for a private elevator company without NYC Transit or JCOPE approval and had earned compensation in excess of \$5,000. In fact, the superintendent had submitted a belated request for approval that had been denied on three separate occasions, most recently during the pendency of the OIG's investigation. The superintendent had also falsely denied during an OIG interview that he was working outside his NYC Transit job.

The OIG found that the superintendent had violated the MTA All-Agency Code of Ethics, as well as the NYC Transit Policy and Instructions, and also apparently violated the Public Officers Law, by failing to obtain all of the necessary prior approvals for his outside employment, and to disclose his income from it on his annual financial statement. We also found that he failed to cooperate fully and honestly with the OIG's investigation.

Based on the foregoing, we recommended that the agency discipline the superintendent, up to and including termination. We also referred the matter to JCOPE for its review. The superintendent resigned before termination proceedings were completed. Further, the superintendent settled the JCOPE proceedings by accepting a \$4,000 penalty.

**Ethics Violations by LIRR Assistant Chief Program Officer
(MTA/OIG #2017-02)**

The OIG investigated an anonymous allegation that an Assistant Chief Program Officer (ACPO) in LIRR's Department of Program Management (DPM) had a "very unusual," possibly "corrupt" relationship with a Senior Manager of a consulting firm that provided services on construction-related projects to DPM. The ACPO was responsible, in part, for overseeing consultants retained by the LIRR and for supervision of LIRR staff directly responsible for project management and oversight. OIG investigators substantiated the complaint, having found that the ACPO, as a result of the relationship with the Senior Manager, engaged in a number of unethical and prohibited acts that violated the MTA All-Agency Code of Ethics.

Specifically, the investigation revealed extensive and troubling communications between the ACPO and a Senior Manager at the consulting firm. The Senior Manager was a 25-year former LIRR Engineering employee, whose employment at the LIRR overlapped with that of the ACPO for some two years, and with whom the ACPO continued their pre-existing personal relationship. Several of their communications involved the consulting firm's LIRR work. The ACPO disclosed to the consultant Senior Manager a number of inquiries made by MTA officials about the consultant's performance. In some instances, the ACPO not only forwarded internal email queries to the Senior Manager, but also sought the Senior Manager's input in formulating responses, and/or subsequently shared the ACPO's own responses to the MTA queries with the consultant Senior Manager. Similarly, the ACPO directed a subordinate to contact the

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Senior Manager to obtain an explanation about a matter under LIRR review and, almost immediately thereafter, alerted the Senior Manager that he had done so. Significantly, these communications occurred without the knowledge of the LIRR managers directly responsible for overseeing the consulting firm's contracts.

The ACPO engaged in additional misconduct, including repeatedly forwarding to the consultant Senior Manager entire LIRR internal email message chains; on two occasions the email messages contained confidential LIRR information. In another instance of misconduct, the ACPO attended a negotiation meeting with the consulting firm and, on the same day, sent his resume to the consultant Senior Manager for comment and revision prior to submission by the ACPO for his own promotional opportunity at LIRR. The ACPO also admitted to OIG staff that he had attended several business meetings at the consulting firm's office without including his subordinate project managers, and did not keep any record of those meetings. Further, the ACPO attended a professional sporting event with the consultant Senior Manager, who provided the tickets—a gift made by the Senior Manager in violation of the MTA Vendor Code of Ethics and accepted by the ACPO in violation of the MTA All-Agency Code of Ethics.

On a separate matter, we learned that the ACPO also violated MTA's anti-nepotism policy by contacting MTA and LIRR officials in an attempt to assist his own daughter's search for employment by the LIRR or MTA Headquarters.

The OIG recommended to LIRR that the ACPO be disciplined, up to and including termination for his violations of the MTA All-Agency Code of Ethics that included conflict of interest, breach of confidential information, accepting a gift from a prohibited source, and nepotism. We further recommended that the agency take appropriate corrective action with respect to the consultant Senior Manager's violation of the MTA Vendor Code of Ethics.

The LIRR agreed with our recommendations, accepted the ACPO's resignation in lieu of termination, and convened special vendor responsibility hearings with the consulting firm and its Senior Manager. The outcome of the hearing process is pending.

Employee Misconduct in MetroCard EasyPay Program
MTAIG #2017-03

The OIG investigated an anonymous complaint that a NYC Transit staff analyst in the Corporate Communications, Mail & Ride Program, took EasyPay MetroCards without authorization and kept them at her home. The EasyPay Program allows customers to automatically refill MetroCards using a previously authorized debit or credit card rather than refilling the cards at subway stations.

The employee's job was to process customer identification information received by mail to load money onto newly purchased or renewal MetroCards and mail them to

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the customers. The employee was also responsible for attempting to obtain valid mailing addresses for MetroCards that had been returned to her department as undeliverable by the US Postal Service.

OIG investigators determined that the employee did have returned MetroCards in her home without authorization. Although the investigators recovered a number of these cards from the employee's possession, they subsequently determined that all of them were unusable because they were expired or had no money loaded.

Based on our findings, the OIG substantiated the complaint and recommended that the agency discipline the employee as it deemed appropriate. Additionally, based on our finding that the department lacked sufficient controls to ensure the security of MetroCards, we also recommended that the agency review and enhance its policies and procedures going forward to ensure the security of its property.

NYC Transit accepted our recommendations. Regarding the employee, the agency determined that the employee failed to know and comply with agency rules and protect agency property. The agency further determined that the employee violated the ethical requirement that "No officer or employee of the Authority....[s]hall pursue a course of conduct which will raise suspicion among the public that he/she is likely to be engaged in acts that are in violation of his/her trust." Accordingly, the agency dismissed the employee. Regarding the security of its property, the agency has undertaken a review of its applicable policies and procedures. We will continue to monitor the implementation of this recommendation as appropriate.

**Unauthorized Outside Employment/Misuse of LIRR Resources
(MTA/OIG #2016-16)**

As reported in 2016, OIG investigators established that a director and a senior project manager in the LIRR Department of Program Management violated requirements of the MTA Code of Ethics and LIRR's dual employment policy. OIG reported its findings to LIRR and recommended that the agency impose appropriate discipline commensurate with their respective levels of misconduct. LIRR agreed with our recommendation, demoted both employees and reduced their pay accordingly. We also referred our findings to JCOPE, which issued guidance letters to the employees.

During the investigation, OIG investigators further established that a consulting firm's employee working as a resident engineer on an LIRR project misused his access to LIRR's email system to conduct his own side business. We recommended that LIRR take remedial action to prevent further misuse of its resources by consultant staff.

Accordingly, LIRR took steps to require that all contractor employees with access to the LIRR's resources receive written notice of and acknowledge their obligation to

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comply with the MTA's policy directive governing the use of such resources. Further, LIRR actively pursued a credit from the consulting firm. In 2017, the firm credited the LIRR to account for the improper use of the email system.

THE OIG CONSTRUCTION FRAUD UNIT

The 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. CFU has also continued its oversight of the \$4.2 billion Hurricane Sandy Recovery Grants (discussed below) .

In 2017 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, the NYC Department of Investigations, 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.

Additionally, 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, such as "Significant Adverse Information," to attending and participating in responsibility hearings.

We also worked with Vendor Relations, as well as the MTA Chief Compliance Officer, regarding outside monitorships. Specifically, 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.

Monitoring Hurricane Sandy Recovery Efforts

In response to a Federal Transit Administration requirement to provide monitors for the projects funded by the \$4.2 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, Disadvantaged Business Enterprise [DBE] rules and goals), monitor contractors' compliance efforts, and provide guidance when these efforts need

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strengthening. By using this approach, we work to deter and detect improper conduct by contractors. The basic components of this approach 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 purpose of conducting interviews of trade workers to gauge compliance with prevailing wage rules.
- Reviewing certifications, such as those issued by OSHA and the MTA, to ensure that workers have the credentials and training to enter and work on our job-sites.
- 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 strategy—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 2017, OIG staff performed the following monitoring/training activities:

- Conducted four training sessions on fraud awareness for 119 attendees, including both MTA agency employees and consultants.
- Conducted 37 background checks of vendors and contractors.
- Attended three kick-off meetings with each project management team and explained our role and the heightened oversight of Sandy projects.

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- Attended 23 progress meetings to review the status of projects and to further demonstrate our ongoing oversight.
- Conducted 17 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.
- Conducted 10 office visits of DBE firms on Sandy-related projects to ensure that the entity is real and commercially viable.
- Reviewed documentation for 43 change orders valued between \$100K and \$1M.
- Continued to analyze bids for the purpose of identifying irregularities and potential bid rigging.

OTHER INVESTIGATIVE ACTIVITIES

Addressing Certain Criminal Court Plea-Bargaining Practices

In late 2016, the then-Acting President, MTA Bus Company/Acting Senior Vice President, NYC Transit Department of Buses (the Bus Executive), approached the OIG for assistance. A number of Bus employees charged with off-duty driving while intoxicated or impaired (DWI/DWAI) were reporting to the court that their MTA employment would be negatively affected if they were convicted by guilty plea or verdict. Consequently, a number of prosecutors and judges in counties within the New York City area were persuaded to offer well-intentioned but questionable plea bargains to offenses not involving DWI/DWAI.

In truth, however, in 2003 the MTA and various bus operator unions had negotiated agreements (the Stipulations) so that NYC Transit Department of Buses employees arrested and convicted of DWI/DWAI when off-duty—whose driver licenses would be suspended or revoked under state law upon conviction regardless of their employment—could actually *keep* their jobs by getting assistance for their alcohol-related problem. Indeed, the purpose of these Stipulations was to motivate employees to be evaluated, accept treatment, and be monitored to ensure that they were fit to return to their safety sensitive duties once their license privileges were restored—a win-win situation. According to the Stipulation, conviction of the DWI/DWAI charges is considered a “1st-time positive” under the MTA Drug and Alcohol Policy and the

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Other Investigative Activities, Continued

employee is entered into a mandatory recheck program. A second positive results in dismissal but with a right to restoration in a *non-safety-sensitive* position. Ironically, among other problems, the well-intentioned plea bargains had the effect of undermining the employees' motivation to seek help.

The OIG and Buses convened a meeting of top NYC-area prosecutors in the offices responsible for adjudicating these cases along with representatives of the NYPD. At that meeting, the Bus Executive appeared as the key speaker and effectively explained how the MTA handles off-duty DWI/DWAI convictions, including a detailed review of the DWI Stipulation. For their part, the prosecutors (and police representatives) were highly responsive to the informative presentation and the clarity it provided regarding the stipulation and its connection to plea bargaining. And for his part, the Bus Executive reported that the situation had since improved. The OIG continues to monitor this situation as appropriate.

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 2017, OIG investigators conducted 85 such inspections throughout the MTA system. The 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, in recognition of the value of the program, upper management has at times suggested sites for OIG inspection.

OUTREACH



TRAINING/EDUCATION

The 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 2017

The OIG staff presented four fraud awareness training sessions – addressing such topics as preventing, detecting and reporting fraud – to 67 MTA employees specializing in procurement or contract management. These sessions were conducted in addition to the four training sessions noted previously in our section on Monitoring Hurricane Sandy Recovery Efforts, bringing the total number of persons trained to 186. Of the 67 employees, nine were assigned to, or might become involved in, Sandy-funded projects.

The OIG also participated in two orientation programs for groups of newly-hired MTA Police Officers. The OIG Chief Investigator made presentations to a total of 90 police recruits, focused on the creation of the Office of the Inspector General, an overview of its statutory powers and duties, and the ways in which it exercises oversight of the MTA.

INTERGOVERNMENTAL COOPERATION

During 2017, the OIG maintained relationships with federal, state, and local agencies and task forces, including:

Federal

United States Attorney's Office, Eastern District of New York
United States Attorney's Office, Southern District of New York
United States Attorney's Office, District of New Jersey
United States Department of Labor, Office of the Inspector General
United States Department of Transportation, Office of the Inspector General
United States Department of Justice, Antitrust Division
Amtrak Office of Inspector General
Federal Bureau of Investigation

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
Office of the Attorney General
Department of Labor
Department of Transportation
Joint Commission on Public Ethics

Local

Office of the New York City Comptroller
Kings County District Attorney
Nassau County District Attorney
New York County District Attorney
Richmond County District Attorney
New York City Department of Investigation
New York City Police Department
New York City School Construction Authority, Office of Inspector General