

State of New York



Office of the Inspector General
Metropolitan Transportation Authority

2018 Annual Report

Carolyn Pokorny
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 where our reports from prior years can be found, or on any of the numbers in parentheses to go directly to that page of this Report.



ABOUT THE INSPECTOR GENERAL

MESSAGE

I am pleased to present the MTA Inspector General's Annual Report, which summarizes the work of our Office during calendar year 2018. This is my first report as the MTA's new Inspector General, having recently been appointed by the Governor and confirmed by the New York State Senate to serve in this role. I want to thank my predecessor, Barry Kluger, whose distinguished career in public service has spanned more than 40 years, the last 12 as the MTA Inspector General. The excellent work of my Office reflected in this Report was accomplished under his leadership.

I am thrilled to be leading this Office, which performs three primary oversight functions at the MTA. First, we investigate fraud, waste, abuse, and service deficiencies at the MTA, including deficiencies in the maintenance and operation of facilities. Second, we recommend remedial actions and monitor their implementation, meaning that we can actually effect positive change. Third, when we uncover evidence of fraud or other criminality, we work closely with our law enforcement partners to see that it is investigated (often jointly) and prosecuted where appropriate.

Indeed, I spent most of my career as one of those law enforcement partners, having been a career federal prosecutor who worked at the U.S. Justice Department, where I served as Deputy Chief of Staff and Counselor to U.S. Attorney General Loretta Lynch, and at the U.S. Attorney's Office in Brooklyn, where I spent more than 14 years prosecuting corrupt elected officials, dismantling international drug cartels, and rooting out all manner of fraud.

I can think of no better use for my abilities and experience than serving as the MTA's Inspector General. The tens of thousands of hard-working and honest MTA employees, and the millions of riders and taxpayers who support the agency, want and deserve an advocate with a serious compliance attitude, and the integrity and independence to look out for them.

During my first few weeks on the job, I have visited transit facilities, operations and stations in all five boroughs as well as LIRR and Metro-North facilities in the suburbs, inspecting operations at these facilities, and hearing directly from workers, riders, contractors, and taxpayers. And I also spent time getting to know MTA leadership—all of whom have graciously offered their time and support—and familiarizing myself with the MTA. From managers to maintenance workers and straphangers alike, I believe all of them look forward to positive change.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

For the convenience of the reader, we have grouped this report into topical categories. For starters, see the following samples: “Overtime Abuse by LIRR Foreman” (page 11); “Unauthorized Outside Employment by Bus and Train Operators with TLC Licenses” (page 21); “Management of Confidential Capital Cost Estimates” (page 30); “Investigation into Misconduct by a New York City Transit Superintendent” (page 35); “Access-A-Ride Performance Metrics” (page 39); “Vehicle Idling at Metro-North Railroad” (page 47); and “Ethics Violations by LIRR Project Manager” (page 50). Additionally, under “Integrity Monitoring,” we have described some of our programmatic oversight, including that regarding construction and Hurricane Sandy Recovery Efforts.

I know well that this is a critical time for the MTA, and I look forward to the challenge. I also want to thank all of you readers for your interest in and concern for the MTA. Like me, you want the MTA to be the safest and most effective, efficient, and transparent transportation agency in the world. And like me, you can help. Continue to share with us your thoughts, complaints, tips, and ideas, whether by email (complaints@mtaig.org), phone (800-682-4448), or our new presence on social media (@mtaig). Together, we *will* make a difference!

BRIEF BIO

Carolyn Pokorny is a life-long New Yorker and user of public transportation.

Ms. Pokorny began her career as a federal prosecutor in the Brooklyn U.S. Attorney's Office, where she headed the Office's narcotics and money laundering program. There, she devised a national strategy for charging the leaders of Mexico's most powerful cocaine cartels, including drug lord Joaquin "El Chapo" Guzman, and led the international investigation that resulted in the conviction of over 30 leaders of Colombia's "Norte Valle" cartel on charges of murder, operating a continuing criminal enterprise, money laundering and drug trafficking. Because of her work on that case, she received the Attorney General's Award for Distinguished Service, and the Federal Drug Agents Foundation "True American Hero" award. Ms. Pokorny eventually became the Office's Senior Litigation Counsel for Public Integrity.

In 2011, Ms. Pokorny joined U.S. Attorney Loretta Lynch's Executive team as Deputy Chief of the Criminal Division overseeing over 100 criminal AUSAs in all areas, including fraud and corruption. In 2015 when President Obama tapped Loretta Lynch to be his Attorney General of the U.S. Department of Justice, Ms. Pokorny served as her Deputy Chief of Staff and Counselor.

Ms. Pokorny most recently served as Special Counsel for Public Integrity in the Executive Chamber and Chief Special Counsel for Ethics, Risk and Compliance for New York State.

Ms. Pokorny is a graduate of New York University and Brooklyn Law School. She served as a law clerk for Hon. Arthur D. Spatt of the U.S. District Court for the Eastern District of New York, and an Assistant District Attorney in the Bronx.

THE ROLE OF THE MTA INSPECTOR GENERAL

Creation of the Office

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

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

Statutory Authority

Public Authorities Law (PAL) §1279 authorizes and directs the MTA Inspector General (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 or MNR), MTA Bridges and Tunnels (Bridges and Tunnels or B&T), MTA Bus Company (MTA Bus), and MTA Capital Construction Company (Capital Construction).²

In terms of the scope of OIG 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 ~
THE ROLE OF THE MTA INSPECTOR GENERAL

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

- Receive and investigate complaints from any source or upon her own initiative concerning alleged abuses, frauds, and service deficiencies, relating to the MTA.
- Initiate such reviews as she 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 she determines to exist.
- Make available to appropriate law enforcement officials information and evidence relating to criminal acts that she obtains in the course of her duties.
- Subpoena witnesses, administer oaths and affirmations, take testimony and compel production of books, papers, records, and documents as she 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 Inspector General 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 the Inspector General to carry out her 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 direct email: complaints@mtaig.org. 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**

Email: complaints@mtaig.org or
Website: www.mtaig.state.ny.us (also includes email link)

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
One Penn Plaza, 11th Floor
New York, NY 10119

Website: www.mtaig.state.ny.us (includes email link)

Intake Resolution

Hotline and Website:

The OIG Hotline and Website facilitate our approach to fulfilling our responsibilities and best serving the public by providing customers with fast, simple, and direct ways to communicate complaints and request information on an individualized basis. We also continue to provide more traditional means of contact (e.g. postal mail, and walk-ins). In 2018, our Hotline and Website generated just under 2,600 contacts.

The OIG's enhanced website continues to provide specific instructions for reporting a variety of customer service matters directly to the agency involved. As a result, more of the complaints that the OIG receives directly are consistent with our mission to weed out fraud and corruption and eliminate waste and abuse in the MTA.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE

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

- 18-0004-C – An MTA NYC Transit employee, who retired on disability, contacted the OIG after losing his medical coverage. For reasons of cost, the employee declined Medicare Part B, after being informed by the United States Social Security Administration that he was eligible. As a result, the retiree unwittingly lost his employer coverage, which required that he have Part B. The retiree was unaware of his coverage status until bills for hospitalization and out-patient care were declined. Following unsuccessful attempts to resolve this matter, the retiree complained to the Office of the New York State Attorney General, which advised him to contact the OIG.

Our Intake staff ascertained from MTA Business Service Center (BSC) personnel the details relating to the retiree's loss of coverage and partnered with BSC to facilitate a resolution on behalf of the retiree. Meanwhile, the retiree obtained Part B. Over the course of a week, and several communications between Intake staff and BSC, which in turn communicated with the insurance provider chosen by the retiree under the MTA Plan, Intake staff received confirmation that coverage for the retiree had been restored. Thereupon, they contacted the retiree to inform him of the restoration of his medical coverage, alert him that new insurance cards would be mailed to him, and confirm with the retiree directly that full medical coverage was actually in place.

- 18-0047-C – A disabled complainant mailed in a Reduced-Fare MetroCard to the MetroCard Customer Service Center because the card was damaged. When the complainant did not receive a replacement card after a few weeks, she reached out to the OIG. The complainant reported that she subsisted on Social Security Disability and because she could not afford full fare she had to forgo necessary doctor's appointments. Intake staff contacted NYC Transit Customer Service on behalf of the complainant and ascertained that she could expect a replacement card by week-end. We then contacted the complainant, told her to expect the replacement, informed her that it was not necessary for her to forego appointments and explained to her the procedure for obtaining reduced-fare by using any of various forms of available identification until she received the new card. We then gave her the card's serial number along with instructions to call us if the card did not arrive within the week.

Intelligence Support

Our Intake analysts perform an important intelligence-gathering function by compiling information from MTA agencies, public records, proprietary data sources, social and news media, and other sources, to assess complaint allegations and make referrals both inside and out of the OIG. Intake 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 2018, Intake continued to provide proactive assistance to OIG Audit and Investigations divisions by performing research and analysis to verify information provided to these divisions by complainants and informants. In addition to these proactive reviews, Intake received more than 125 additional requests for research from OIG staff.

Also, Intake continues to provide ongoing support to MTA's Hurricane Sandy monitoring oversight committee by preparing enhanced integrity screening of vendors and contractors working on Sandy-related projects. Intake screened 56 businesses in 2018.

In 2018 Intake received notifications from MTA General Counsel's Office of more than 320 vendors to be presented to the MTA Board for contract approval. Intake performed computerized searches on these vendors using proprietary software and industry tools to sort through various data sources to identify and detect any significant or adverse information, as defined by the MTA All-Agency Responsibility Guidelines.⁴ Intake maintains a data warehouse of vendors that are presented to the MTA Board for consideration of an MTA contract award and continually monitors these vendors to ensure ongoing compliance.

Our Intake staff also continued to respond to a variety of inquiries from law enforcement and other governmental agencies, including the New York City Police Department, the New York City Department of Investigation, the New York State Department of Labor, and the Office of the New York County District Attorney. In 2018 our staff responded to 166 requests for information from our law enforcement and government partners.

⁴ The long list of these sources includes the NYC Transit debarred list; VITAL reports (Vendor Information and Transit Advisory List); VENDEX (Vendor Information Exchange System); PASSPort (Procurement and Sourcing Solutions Portal); the MTA All-Agency Contractor Evaluation (ACE) system; the federal debarred list known as SAM (System for Award Management); Public Access to Court Electronic Records (PACER), for federal court records; eCourts for New York State court documents; the Federal Contractor Misconduct Database; and Lexis Negative News Search.

OIG AUDITS AND INVESTIGATIONS

Audits and investigations by the Office of the MTA Inspector General are conducted by the Audit Division (Audit) and the Legal and Investigations Division (Investigations), which are briefly described below. For the convenience of the reader, we organized the extensive work the divisions performed this year into topical categories below consisting of Fraud and Abuse, Unauthorized Outside Employment, Strengthening Controls, Safety and Security, Accessibility Issues and Fair-Hiring Practices, Operational Efficiency, and Ethical Violations and Vulnerabilities.

About Audit

The Audit Division 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 they make recommendations for improvement as appropriate. Audit works closely with OIG Investigations, providing valuable analytical assistance for a wide range of criminal and administrative investigations, as well as 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.

About Investigations

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 a host of additional tools available to it. These include the statutory authority to subpoena witnesses, administer oaths, take testimony, and compel the production of records and other documents relevant to any inquiry or investigation.

In 2008, the OIG established within Investigations a Construction Fraud Unit (CFU), which works in conjunction with other investigative and law enforcement

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OIG AUDITS AND INVESTIGATIONS

agencies to deter fraud and other wrongdoing by contractors engaged in construction projects throughout New York City, including the construction of MTA projects and the rehabilitation and maintenance of MTA facilities. Since its inception, the CFU has participated in these joint investigations that have resulted in monetary recoveries and court-ordered forfeitures from contractors of over \$93 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.

FRAUD AND ABUSE

Theft and False Filing by MTA Chief Procurement Officer

In 2016 the OIG conducted an investigation into the relationship between the Chief Procurement Officer (CPO) at the MTA Business Service Center and a Principal of a management consulting firm. Our investigation revealed ethical violations by the CPO, who was terminated by MTA management. (See MTA/OIG Report #2017-07.)

Soon thereafter, the OIG learned that the former CPO had directed his staff to order numerous iPhones, collectively valued in excess of \$58,000, and had taken possession of them before he was terminated. The OIG also learned that the former CPO had provided false information on his own MTA job application by inflating his prior job salary in order to obtain a higher salary from the MTA.

The OIG referred the matter to the Office of the New York County District Attorney and worked jointly with that office, in light of the new information, to further investigate the former CPO's conduct. As a result, in July 2018, the grand jury filed an indictment charging the former CPO with grand larceny in the second degree, a class C felony, and attempted grand larceny in the second degree, a class D felony, based on allegations that he carried out a fraudulent scheme involving the purchase and resale of iPhones.

The former CPO was also charged in a second indictment with criminal possession of a forged instrument in the second degree, a class D felony, and offering a false instrument for filing in the first degree, a class E felony. The charges were supported by two earnings statements that the CPO submitted to the MTA, which contained altered paycheck figures consistent with the false salary he listed on his MTA job application.

On January 17, 2019, the former CPO entered a guilty plea to one count of grand larceny in the second degree (regarding the stolen phones), and one count of criminal possession of a forged instrument in the second degree (regarding the false earnings) in

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

New York Supreme Court, Criminal Term, New York County. On March 25, 2019, the former CPO was sentenced on the grand larceny conviction to a conditional discharge with court-ordered restitution in the amount of \$58,153, and to six months imprisonment on the criminal possession of a forged instrument conviction, along with \$375 in court costs and fees.

**Overtime Abuse by LIRR Foreman
(MTA/OIG #2018-48)**

The OIG Investigations and Audit divisions initiated and completed a review of possible overtime abuse by an LIRR foreman based on information obtained during an analysis of LIRR high-overtime earners. In addition to a review of the foreman's time and attendance and payroll records, investigators conducted surveillance of the foreman on 12 occasions at his regular daily work sites located in Nassau County, New York, and his home located in East Northport, New York. On 10 of those 12 dates, investigators found that the employee was not working at any of these sites, but rather was at or near his home during a significant number of hours that he claimed and was paid for as working.

During his interview with OIG staff, the foreman claimed that he was entitled to be paid for the time he spent transitioning between his various regular daily and overtime work sites, including his travel to and from his home, pursuant to the provisions of his union's collective bargaining agreement with the MTA relating to overtime pay. However, after reviewing the contract terms and consulting LIRR Labor Relations and management, the OIG determined that the foreman's claims were without merit. By his conduct, the employee violated LIRR Corporate Policy and Procedure # LEAVE-001, relating to time and attendance.

Based on our findings, we issued a report recommending that LIRR discipline the employee up to and including termination. We also recommended that LIRR take steps to account for the employee's actual work hours and recoup all payments made to the employee for hours that he did not work. In its written response the agency agreed with our recommendations. The employee was brought up on disciplinary charges but retired before the process was completed. The agency noted that "LIRR shall take all steps necessary," including legal means, to recoup any payments made to the employee for hours he did not work."

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OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

**NYC Transit Train Operator's Abuse of Time and False Records; Supervisor's Failure to Verify Records
(MTA/OIG #2017-12)**

The OIG investigated an anonymous complaint that an NYC Transit Train Operator falsely claimed and was paid for overtime work that he did not perform, and that the employee paid a kickback to his supervisor to approve the false time records.

OIG investigators conducted surveillance of the employee three times and substantiated that he left his work site at the Concourse Train Storage Yard in the Bronx early on those occasions. OIG staff also reviewed the employee's time records and determined that he had indeed claimed and was paid for overtime work on those three occasions. During an interview with OIG staff, the employee admitted that he left work early and improperly claimed overtime for work he did not perform. Although the investigation did not substantiate the payment of any kickback to the employee's supervisor, the OIG did find that the supervisor failed to verify the accuracy of the employee's time submissions.

Based on our findings, we recommended that the agency discipline the employee, up to and including termination. In accordance with our recommendation, the agency filed disciplinary charges and suspended the employee. The employee agreed to repay the money he received for unworked overtime described above and to retire. The supervisor retired before discipline was initiated.

**Abuse of Time and Property by MNR Vehicle Operator; Failure to Supervise
(MTA/OIG #2018-07)**

OIG Investigations followed up on an anonymous complaint that a Metro-North Railroad Vehicle Operator (VO) was stealing fuel and supplies. While these allegations were not substantiated, our investigators found that the VO had misappropriated MNR property, abused time, and was on duty for extended consecutive hours without oversight, raising safety concerns related to driver fatigue. We also found that an Assistant Supervisor failed to adequately supervise the VO's work activities and time. Additionally, we found that for the VO's position MNR lacked hours of service restrictions and policies to address potential safety issues created by driving for extended hours.

The VO drove an MNR truck used to transport heavy equipment to and from different work sites. He worked alone and frequently reported working for extended periods of as much as 32 consecutive hours at a time but did not seek permission from his supervisor either to work such long hours or to claim overtime. The VO's supervisor

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OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

worked a straight daytime tour and did not question the hours that the VO reported working. OIG investigators conducted extensive surveillance of the VO's activities and reviewed GPS and the VO's time records. The investigators established that the VO's vehicle was idling for hours at a time on a given day during periods when the VO remained inside, apparently sleeping. The investigators also saw the VO performing personal errands during hours that he claimed to have worked, and observed him taking various pieces of MNR property from alongside tracks during work hours.

During his interview with OIG investigators, the VO admitted that he often slept in his vehicle with the engine idling when he was tired after working long periods of time well over his regular 8-hour shift. He also admitted that he sometimes performed personal errands during work hours without authorization. He further admitted that he took discarded MNR property including a legless bench and pieces of wood without first obtaining permission, as he knew was required. The VO also admitted that he did not seek overtime approval for the extended hours that he worked and the hours that he spent sleeping in his vehicle. For his part, the supervisor admitted that he did not question the VO's overtime usage and did not review the VO's time submissions for accuracy.

Based on the foregoing, the OIG issued a report recommending discipline for the VO, up to and including termination, for violations of MTA policy #11-037 (use of official vehicles) as well as MNR policy numbers 10-015 (non-revenue vehicle management and monitoring) and 36-015 (disposal of company property). We also recommended discipline for the VO's supervisor as appropriate. Regarding the deficiencies observed by OIG investigators, we recommended that MNR review applicable industry standards, including the Federal Motor Carrier Act, and develop policies to impose hours of service limitations and implement internal controls for overtime approval and motor vehicle usage. (See Audit's report 2018-15 [at page 47] regarding excessive idling.)

In its written response MNR agreed with the OIG's recommendations. The VO was suspended for 61 days with a Last Chance Leniency warning and agreed to pay restitution of \$300. The Track Department counseled the supervisor about expectations for his performance and issued an official Letter of Warning. MNR commenced a review of industry standards and the Motor Carrier Act to "inform the development of policies, rules and guidelines" for its drivers. The Track Department "reinstucted line supervisors and timekeeping administrators to better monitor and evaluate time." Additionally, final approval for vehicle operator overtime has been reassigned to higher-level management.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

**FMLA Abuse by NYC Transit Signal Maintainer
(MTA/OIG #2018-38)**

The OIG received and investigated an anonymous complaint that an NYC Transit Signal Maintainer was improperly using leave under the provisions of the Family and Medical Leave Act of 1993 (FMLA) to play on a minor league baseball team. The employee had received approval for 60 days of FMLA leave for the purpose of providing health-related care to a family member. The approved time period for the employee's FMLA leave was March 2016 through March 2017.

OIG investigators conducted interviews and reviewed NYC Transit time and attendance records, the employee's credit card records, and records of the baseball organization with which the employee was affiliated. We determined that the employee improperly used FMLA leave to take personal trips, including his honeymoon and to serve as a volunteer coach for a not-for-profit baseball club. The employee also used approximately 140 days of FMLA leave, which was 80 days more than the time allotted, and took an additional 31 days of FMLA leave after the approval period expired.

Based on our findings, we recommended that the agency discipline the employee, up to and including termination. In accordance with our recommendation, the agency filed disciplinary charges and dismissed the employee. (See related Audit report # 2018-25 next below.)

**Family Medical Leave Act Usage in NYC Transit Subways
(MTA/OIG #2018-25)**

The OIG received a complaint in 2017 alleging the flagrant misuse of the FMLA by two signal maintainers employed by the NYC Transit Department of Subways (Subways). OIG investigators substantiated abuse of FMLA leave by one of the two signal maintainers named in the complaint (Investigations report 2018-38 above).

While this investigation was proceeding, the OIG Audit Division reviewed the administration and monitoring of employees' FMLA leave usage by Subways. The FMLA allows eligible employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave, for up to a total of 12 work weeks in any 12-month period, as long it is for a qualified reason. FMLA leave does not have to be continuous; in certain cases leave may be taken on an intermittent basis or the employee may work a part-time schedule. The administration of FMLA for Subways is the responsibility of the Subways Operations Support – Administration group (OSA), which created the FMLA Unit to receive and process FMLA leave applications for the department. Additionally, the NYC Transit Labor Relations Department guidelines on

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OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

FMLA implementation place the responsibility on that unit for monitoring and tracking FMLA usage by Subways employees.

In addition to OIG investigators' substantiation of the complaint that one employee was taking more FMLA leave than was approved and doing so well beyond the approved time frame, our audit revealed that the underlying problems were more systemic. Our analysis of 4,000 Subway employees' FMLA requests between 2016 and 2017, identified 90 Subways employees who did not use their leave in the manner provided for by the FMLA, including usage in excess of the maximum allowable period and/or use of FMLA without approval.

According to OSA, the FMLA Unit is staffed by only four individuals who must handle all sick-leave substantiation and FMLA administration for the entire department of approximately 30,000 people. Given these limited staffing resources, management places a higher priority on processing employees' FMLA requests in a timely fashion than on monitoring usage to identify abuse. Additionally, Subways' ability to monitor FMLA usage in real time is further limited by Subways' primary timekeeping systems that do not have the ability to provide individualized information as to an employee's FMLA approval status, cumulative FMLA leave usage, and/or remaining FMLA leave balance on a real-time basis.

OIG staff discussed with OSA management our concerns that because of a lack of oversight, the FMLA and its protections are being abused and improper FMLA usage has gone—and is going—undetected and undeterred. Accordingly, we recommended that Subways take the appropriate actions to better monitor employees' use of the FMLA, including the periodic analysis (e.g. quarterly) of FMLA usage data stored in Subways' timekeeping systems as compared to FMLA approvals. Any questionable usage identified should be referred to Labor Relations for further review. FMLA leave taken without approval or beyond the approved parameters should be retroactively accounted for in the timekeeping system and subjected to appropriate discipline, inclusive of those identified during this review.

In its written response, NYC Transit indicated that Subways is taking action to address our findings and recommendations, including a review of the excess use of FMLA identified in this report. Additionally, Subways will now review usage on an ongoing basis and adjust payroll entries as needed; implement improvements to the timekeeping system in order to readily identify employees with excess usage; review and adjust FMLA usage associated with application denials; and refer questionable usage to Labor Relations for further review and discipline as appropriate. The OIG will continue to monitor the agency's progress toward full implementation.

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OIG AUDITS AND INVESTIGATIONS
Fraud and Abuse, Continued

**Investigation of Irregularities Committed by MTA Police Department Assistant Chief
(MTA/OIG #2018-09)**

In November 2017, the Office of the MTA Inspector General received a request from the MTA Police Department (the Department) to assist it in investigating whether an Assistant Chief (the Chief) was in compliance with various MTA All-Agency/Department policies, rules, and procedures. During the prior year, the OIG had recommended to the then-Director of Safety and Security at MTA Headquarters, who had supervisory and oversight authority over the Department, that the Department install GPS systems in agency vehicles. The Director agreed.

Thereafter, the Department decided that it would install GPS in all Radio Motor Patrol vehicles (RMPs) assigned to primary operators on a 24/7 basis beginning in January 2017, requiring these operators, including the Chief, to appear at a scheduled time for GPS installation. According to the Department, the Chief was the only member of the Department Command Staff who did not comply, failing to appear for four separate appointments for installation in his assigned RMP, and failing to provide the Department with any satisfactory explanation.

The Department informed the OIG that as a result of the Chief's apparently dilatory tactics, he seriously compromised the Department's ability to ensure his compliance with MTA/Department rules relating both to his attendance and to the use of his vehicle. Consequently, the Department requested that the OIG place a GPS device on the Chief's assigned RMP. The OIG complied with this request and, for eight straight weeks from December 1, 2017 through January 25, 2018 (the Tracking Period), continuously compiled the GPS data and regularly reported it to the Department. The Tracking Period included 29 work days, 27 on his regular tour from 7:00 a.m. – 3:00 p.m., and two, at the Chief's request, from 11:00 a.m. – 7:00 p.m. It also included 16 weekend regular days off (RDOs) and 11 weekdays off.

During the Tracking Period, the OIG tracked the Chief's actual arrival and departure times at various locations. In short, as to his regular tour, rather than arriving at his work location by 7:00 a.m. to start his tour as required by the Department, the Chief arrived by that time on only four of 26 days for which we have data regarding his arrival time. Indeed, we determined that on virtually every one of these other 22 days, the Chief did not even leave his home until approximately 7:00 a.m. or later – sometimes as much as one hour later – meaning that he was still at home when his tour began. On six days he arrived between 7:30 a.m. and 8:00 a.m.; on 12 days he arrived after 8:00 a.m.; and on four days he arrived after 8:30 a.m. at least one and a half hours after his scheduled start time. And as to the two tours for which the Chief requested the later start time of 11:00

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a.m., he did not actually arrive by 11:00 a.m. on either date. Rather, he arrived approximately one and one-half hours after the start time on the first of the two days, and approximately 50 minutes late on the second day.

Compounding the Chief's consistent pattern of arriving for work significantly later than the beginning of his tour, he also left early on numerous occasions. For example, again on his two requested 11:00 a.m. – 7:00 p.m. tours, and after arriving late on both days, he left work (1) two hours and forty minutes early and (2) 55 minutes before his respectively-requested tour ended. On another day, he arrived for his regular 7:00 a.m. – 3:00 p.m. tour 52 minutes late, but left at 11:47 a.m., more than three hours early.

In tracking the Chief's time, we found a second significant area of concern. The "MTA All-Agency Policy Directive – Assignment and Use of Official Vehicles," (the Policy Directive) requires compliance by any MTA Employee in any agency or department who is assigned an MTA vehicle on a 24/7 basis. Section C, Paragraph 1 of the Directive states: "The use of all MTA Vehicles is restricted to the performance of Official Business and use for any personal purposes or business is strictly forbidden, except under very limited circumstances"

Based on our GPS tracking of the Chief's vehicle, we found that he engaged in a disturbing and continuing pattern of personal usage having no apparent connection to Official Agency Business, and not falling within the very limited exceptions to the Policy Directive. Examples of such unauthorized usage include a Saturday trip to the out-of-state parking lot of a liquor store in New Jersey; a Wednesday stay in a parking lot between a bank and a diner/lounge in Staten Island, remaining from 6:43 p.m. to 9:30 p.m.; and a Monday trip to a private residence in Plainview, Long Island, remaining there from 3:34 p.m. to 8:34 p.m.

While tracking the Chief's use of his assigned vehicle, we detected another recurring pattern that indicated not only that he was using his vehicle for personal activities, but also raised the troubling question as to whether he was using the vehicle for outside employment, possibly involving the funeral industry. More specifically, on Saturdays and on weekday days-off during the Tracking Period, the Chief used his vehicle to make 14 trips that stopped within close proximity to three different funeral homes located on Staten Island. Of these 14 trips, eight were followed by trips that stopped within close proximity to six different churches, also on Staten Island. In addition, on two days OIG investigators followed the Chief's vehicle and made personal observations, apparently corroborating that he was working in the funeral industry.

Along with documenting the Chief's apparently unauthorized personal use of his RMP, the OIG confirmed with the Department that the Chief had not submitted any

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outside employment/activity request to the Department, nor received any additional approvals, for the activities described above, as he was required to do by MTA All-Agency Code of Ethics section 4.07 (Other Employment and Outside Activities) and MTA Police Department Manual Section 4-01 (Secondary Employment) if these activities indeed constituted outside employment.

Finally, yet another troubling pattern emerged. On a number of work days during the Tracking Period, the Chief would leave his work location before the end of his tour, take odd, circuitous routes around city streets, stopping at various times, and then cross the Verrazano Narrows Bridge to his home in Staten Island, in what seemed to be an effort (perhaps given his E-ZPass usage, which is trackable into but not out of Staten Island) to make it appear as if he had at least worked close to his full tour.

The Department informed us in February 2018, following our request to interview the Chief, that he reported sick and was currently unavailable for OIG interview. Accordingly, based on our findings, we recommended the revocation of the Chief's vehicle assignment and the imposition of appropriate discipline up to and including termination. Thereafter, following forfeiture of all monies then due him—just over \$130,000—the Chief retired.

**Unauthorized Disposal of Passenger Property by Cleaner Helper
(MTA/OIG #2018-23)**

The OIG investigated a complaint referred by the NYC Department of Investigations that an NYC Transit bus passenger left her purse containing her wallet on the BX1 Limited bus. According to the complainant, after disembarking and realizing she had left her purse on the bus she immediately went to the Kingsbridge bus depot in the Bronx to retrieve her property. However, none of the employees there provided her with instructions on how to get her property back other than to call the depot later. Upon calling the depot as instructed, the complainant was still not told how to retrieve her property or how to contact the Lost Property Unit. The following day the complainant received a telephone call from an employee who told the complainant his first name and said that he had her driver's license at the depot. The employee suggested that the complainant come to the depot to pick it up during his night shift work hours but ended the call without providing further information.

OIG investigators interviewed the complainant and identified the employee who had called her. The employee, a cleaner helper with the NYC Transit Department of Buses, claimed that he had on occasion found various licenses and other identification documents on dashboards of buses that he cleaned and described his efforts to return the property to the rightful owners, including the complainant. Investigators obtained a

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written statement from the employee in which he admitted that he found the complainant's purse but threw it and the wallet in the trash after removing her driver's license and business card. He also admitted that he called the complainant at her work number. Further, he admitted that he had found other passengers' property on buses he cleaned and contacted those owners directly as well. Lastly, he admitted that he had received training on the proper procedure to follow regarding lost property, which required that he take the property to the Lost Property Unit and not make contact with any passenger. NYC Transit Rule 34(a)(b)(f).

The OIG issued a report containing findings and recommendations. As to the employee, we found that he violated several provisions of Rule 34 and recommended that NYC Transit discipline him up to and including termination. The agency initiated disciplinary proceedings and the employee resigned in lieu of termination. As to NYC Transit, we recommended that the Department of Buses take action to ensure that employees at all of its depots are fully aware of the rules and procedures for handling lost property and addressing inquiries from customers. The agency accepted our recommendation. We will continue to monitor as appropriate.

UNAUTHORIZED OUTSIDE EMPLOYMENT

In and of itself, unauthorized outside employment is a violation of the MTA All-agency Codes of Ethics. As will be clear from our 2018 work described below, however, our proactive and complaint-initiated investigations regarding such employment reveal other serious issues from fraud to public safety.⁵

Unauthorized Outside Employment and Failure to Cooperate by NYC Transit Capital Program Management Employee (MTA/OIG #2018-35)

The OIG Investigations Division, following up on a referral by the OIG Audit Division, conducted an investigation into the activities of an NYC Transit Capital Program Management employee (the Employee). During that investigation, we found that the Employee was connected to a home renovation and improvement company. Further investigation established that the company was registered at the Employee's home address and the Employee's daughter was listed as the Chief Executive Officer.

⁵ The terms "dual employment," "secondary employment," and "outside employment" are used interchangeably in this report.

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OIG investigators surveilled the Employee leaving his NYC Transit job and going to a job site of the home renovation company to inspect the progress of renovation work. The investigators also observed him at his residence in the morning (prior to his NYC Transit job) directing individuals dressed in construction work clothes into two pickup trucks. According to records of the New York State Department of Motor Vehicles, these trucks were registered to the Employee personally and no vehicles were registered to the home renovation company.

Additionally, the company's social media postings showed numerous photographs of the Employee, some at NYC Transit project sites, for one of which the Employee was the project director, and some at the home renovation company's job sites. In one photograph the Employee was pictured wearing a hardhat bearing the MTA logo. In a posted video, labeled "2016 Christmas Party" the Employee was shown handing out gifts and envelopes to individuals who appeared to be home renovation employees.

OIG staff interviewed the Employee about his outside employment. While the Employee denied that he worked for the home improvement company and claimed it was his daughter's, he did admit that the company operated from his home, that he used his personal credit card to buy company supplies, and that the company's vehicles were registered to him personally at his home address. The Employee also admitted handling the company's social media page and uploading a video of the company's holiday party. The Employee further admitted that he "helped," "guided," and "advised" the company, and used the pronoun "we" whenever he referred to the company. Notably, though, he denied signing any of the company checks.

To the contrary, however, the company's bank records, examined by OIG investigators, revealed: that the Employee had been an authorized signatory on the company bank account since the company opened in 2008; that the signature card listed him as the Vice President of the company; and that the address used on the company checks was the Employee's home address. Significantly, the bank records for 2017 established that he endorsed all of the checks deposited into the company's bank account and signed nearly all checks drawn on it. By way of contrast, his daughter signed only 11 of the 220 checks issued in 2017, ten of which were drafted after the Employee was notified to appear for his OIG interview.

Lastly, the CPM employee admitted that he never requested NYC Transit's approval to engage in outside employment. Despite that requirement, he stated that he decided on his own that he did not need permission.

Based on the foregoing, the OIG found that the Employee: failed to obtain prior approval to engage in outside employment, in violation of MTA All-Agency Code of

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Ethics Section 4.07 and NYC Transit Rule 4(g); used his official NYC Transit position in an attempt to attract business for his company, in violation of MTA All-Agency Code of Ethics Section 4.02(b); improperly used MTA property for business purposes, in violation of MTA All-Agency Code of Ethics Section 8.04; and made false statements to the OIG, in violation of MTA All-Agency Code of Ethics Section 1.07, which required that he cooperate fully and honestly with OIG's investigation.

The OIG issued a report containing these findings and recommended that NYC Transit impose discipline on the Employee up to and including termination. Prior to the filing of disciplinary charges, the Employee retired from NYC Transit.

Unauthorized Outside Employment by Bus and Train Operators with TLC Licenses (MTA/OIG #2018-08, 10-11, 18-22, 26-29, 30a-f, 30h-o, 30r, 32-34, 39-42, 44-45)⁶

With the explosion of Uber, Lyft, and other for-hire vehicle and e-hail companies serving New York City, the OIG Audit and Investigations divisions jointly embarked upon a proactive inquiry to determine whether any NYC Transit bus or train operators also possess a license to drive for-hire vehicles. In New York City these licenses are issued by the New York City Taxi and Limousine Commission (TLC).

Second jobs held by MTA employees may create a safety issue by impacting their fitness for duty. Accordingly, the MTA All-Agency Code of Ethics and NYC Transit policies regulate and restrict dual employment and other outside activities by these employees, including those driving for-hire vehicles. For example, rules require that MTA employees in safety-sensitive titles have no less than eight continuous non-working hours of rest in the 16-hour period immediately before reporting to work. NYC Transit Policy Instruction Rule 4.23.2, Section IV, Subdivision (B)(1) (the Hours of Service Rule). NYC Transit management has advised the OIG that because of the safety-sensitive restrictions and public-safety impact of their employment, bus and train operators would not be approved to work a second job that involves operating any motor vehicle. Employees who engage in unauthorized dual employment or other outside activities are subject to discipline up to and including termination.

Working with TLC, the NYC Transit departments of Buses (DOB) and Subways (DOS), as well as the MTA Bus Company, the OIG was able to identify 215 bus and 27 train operators who possess TLC licenses to drive for-hire vehicles. TLC maintains a database of all fare-paying trips provided by for-hire vehicles operating in New York City. This database includes, among other information, the license number of the driver,

⁶ This investigation resulted in the issuance of 36 reports and a related audit (see below).

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the date/time of each trip, and the GPS coordinates where it began and ended. The OIG analyzed the TLC trip data and NYC Transit time and attendance records for each employee who possessed a TLC license during the eight-month period comprising June 1, 2017 through January 31, 2018. Through this analysis, the OIG identified 36 bus- and five train-operators who were driving a for-hire vehicle without dual employment authorization. The OIG further identified a number of these operators who had also driven for-hire vehicles in violation of the Hours of Service Rule, as well as those who may have violated other time and attendance rules (e.g. FMLA, Workers Compensation, and agency sick leave).

For the benefit and convenience of the reader, given the large number of disciplinary reports we issued on this subject, the results of our review are discussed below with each section organized by job title (bus and train operators) and violation(s) committed (hours of service and/or unauthorized dual employment), and consisting (with one exception noted below) of a summary followed by one or more illustrative cases.

Bus Operators
Unauthorized Dual Employment
(MTA/OIG #2018-30a-f, 30h-o, 30r)

Based upon our investigation, including our analysis of the TLC trip data and NYC Transit time and attendance records, the OIG found that 15 NYC Transit bus operators possessed a license to drive a for-hire vehicle, and drove a for-hire vehicle for compensation without dual employment authorization in violation of MTA All-Agency Code of Ethics § 4.07 and NYC Transit Policy Instruction Rule 4.23.2 Section IV, Subdivision (A)(3)(collectively the Dual Employment Rules). Accordingly, we recommended that NYC Transit impose discipline up to and including termination. The agency filed disciplinary charges and suspended the employees pending resolution. As a result, one bus operator resigned and NYC Transit secured the termination of two bus operators; six bus operators received a 30-day suspension without pay and a final warning; one bus operator received a 20-day suspension without pay and a final warning; four bus operators received time-served suspensions and a final warning.

Unauthorized Dual Employment of Bus Operator
(MTA/OIG #2018-30i)

The OIG found that an NYC Transit DOB operator, hired on July 10, 2017, possessed a license to drive a for-hire vehicle, and drove a for-hire vehicle for compensation without authorization for secondary employment in violation of the Dual Employment Rules. Using TLC and DOB records, the OIG found further that from his hiring through January 31, 2018—while he was on probation—this

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bus operator drove his for-hire vehicle 18 times for compensation. Accordingly, we recommended that NYC Transit impose discipline up to and including termination. Consequently, the bus operator resigned in lieu of termination.

***Unauthorized Dual Employment of Bus Operator
(MTA/OIG #2018-30a)***

The OIG found that an NYC Transit DOB operator, hired on January 26, 2015, possessed a license to drive a for-hire vehicle, and drove a for-hire vehicle for compensation without authorization for secondary employment in violation of the Dual Employment Rules. Using TLC and DOB records, the OIG found further that during the period June 1, 2017, through January 31, 2018, this bus operator drove his for-hire vehicle 326 times for compensation. Accordingly, we recommended that NYC Transit impose discipline up to and including termination. As a result, the bus operator agreed to immediately cease his unauthorized dual employment. He also accepted a 30-day suspension and a final warning that any future violations similar in nature would result in his dismissal.

**Train Operator⁷
Unauthorized Dual Employment
(MTA/OIG #2018-44)**

Based upon our investigation, including our analysis of the TLC trip data and NYC Transit time and attendance records, the OIG found that an NYC Transit DOS train operator possessed a license to drive a for-hire vehicle, and that he drove 337 trips in such a vehicle for compensation during an eight-month period without dual employment authorization in violation of MTA and NYC Transit Dual Employment Rules. Accordingly, we recommended that NYC Transit impose discipline up to and including termination. The agency filed disciplinary charges and suspended the employee pending resolution. As a result, NYC Transit secured a 30-day suspension without pay and a final warning.

⁷ Because only one individual falls within this category, the write-up immediately below constitutes both the “summary” and “illustrative case.”

Bus Operators
Unauthorized Dual Employment / Violation of Hours of Service Rules
(MTA/OIG #2018-08, 10, 11, 18-22, 26-29, 32-34, 45)

Based upon our investigation, including our analysis of the TLC trip data and NYC Transit time and attendance records, the OIG found that 16 NYC Transit DOB operators possessed a license to drive a for-hire vehicle, and drove a for-hire vehicle for compensation without authorization for secondary employment in violation of the Dual Employment Rules. Using TLC and DOB records, the OIG found that these bus operators also drove their for-hire vehicles in violation of the Hours of Service Rule. Accordingly, we recommended that NYC Transit impose discipline on the 16 bus operators up to and including termination. As a result, NYC Transit secured the termination of three bus operators; one bus operator retired; two bus operators resigned; one bus operator received a 45-day suspension without pay and a final warning; two bus operators received a 30-day suspension without pay and a final warning; and seven bus operators received a time-served suspension and a final warning.

Unauthorized Dual Employment of Bus Operator/Violation of Hours of Service Rules
(MTA/OIG #2018-10)

The OIG found that an NYC Transit DOB bus operator possessed a license to drive a for-hire vehicle and that he drove a for-hire vehicle for compensation without authorization for dual employment in violation of the Dual Employment Rules. Using TLC and DOB records, the OIG reviewed the bus operator's trips in his for-hire vehicle against his DOB runs and found 32 dates on which the bus operator violated the Hours of Service Rule. For example, in one stretch of five shifts spanning September 9 – 13, 2017, the bus operator never received the required 8 hours of rest and, in fact, had no more than 5 hours and 45 minutes and as little as 4 hours of rest before his shifts. Accordingly, we recommended that NYC Transit DOB impose discipline up to and including termination. The agency filed disciplinary charges and suspended the employee pending resolution, after which the bus operator agreed to a time-served suspension without pay and a final warning.

***Unauthorized Dual Employment of Bus Operator/
Violation of Hours of Service Rules***
(MTA/OIG #2018-08)

The OIG found that an NYC Transit DOB bus operator possessed a license to drive a for-hire vehicle and that he drove a for-hire vehicle for compensation

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without authorization for secondary employment in violation of the Dual Employment Rules. Using TLC and DOB records, the OIG reviewed the bus operator's trips in his for-hire vehicle against his DOB runs and found 10 dates on which the bus operator also violated the Hours of Service Rule. For example, in one stretch of three shifts spanning January 17 – 19, 2018, the bus operator never received the required 8 hours of rest and, in fact, had no more than 5 ½ hours and as little as 2 ½ hours of rest before his shifts. Accordingly, we recommended that NYC Transit DOB impose discipline up to and including termination. The agency filed disciplinary charges and suspended the employee pending resolution, after which the bus operator agreed to a time-served suspension without pay and a final warning.

Train Operators
Unauthorized Dual Employment / Violation of Hours of Service Rules
(MTA/OIG #2018-39, 2018-40, 2018-41, 2018-42)

Based upon our investigation, including our analysis of the TLC trip data and NYC Transit time and attendance records, the OIG found that four NYC Transit DOS train operators possessed a license to drive a for-hire vehicle, and drove a for-hire vehicle for compensation without authorization for dual employment in violation of the Dual Employment Rules. Using TLC and DOS records, the OIG found that these train operators also drove their for-hire vehicles in violation of the Hours of Service Rule. Accordingly, we recommended that NYC Transit impose discipline on the four train operators up to and including termination. As a result, NYC Transit secured a 30-day suspension without pay and a final warning against three train operators, and one train operator received a time-served suspension and a final warning.

***Unauthorized Dual Employment of Train Operator/
Violation of Hours of Service Rules***
(MTA/OIG #2018-39)

The OIG found that a DOS train operator possessed a license to drive a for-hire vehicle and that he drove a for-hire vehicle for compensation without authorization for dual employment in violation of the Dual Employment Rules. Using TLC and DOS records, the OIG reviewed the train operator's trips in his for-hire vehicle against his DOS runs and found 9 dates on which the train operator also violated Hours of Service Rule. For example, in one stretch of three shifts spanning August 21- 23, 2017, the train operator never received the required 8 hours of rest and, in fact, had no more than approximately 7 ½ hours and as little as 5 hours of rest before his shifts. Accordingly, we recommended that NYC Transit impose discipline up to and including termination. The agency filed

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disciplinary charges and suspended the employee pending resolution, after which the train operator agreed to a time-served suspension without pay and a final warning.

**Bus Operators Driving for Outside Employment
(MTA/OIG #2018-31)**

In late 2017, OIG Audit began a proactive inquiry to determine whether any bus operators for the NYC Transit Department of Buses and the MTA Bus Company (collectively “Buses”) engaged in unauthorized outside employment as drivers of “for-hire” vehicles. As described in the Investigations summary immediately above, because outside employment may adversely affect bus operators’ fitness for duty, agency policy requires prior authorization for any dual employment and further requires that employees in safety-sensitive titles have eight consecutive non-working hours in the 16-hour period before reporting to work. OIG was advised by Buses management that owing to the safety-sensitive status of their employment, bus operators would not be approved to work a second job that involves operating any motor vehicle.

As also described in the preceding summary, OIG staff identified 215 bus operators who possessed TLC licenses to drive for-hire vehicles. Of these, 31 had active TLC-driving histories in the second half of 2017, despite lacking secondary-employment authorization from Buses. Our analysis also revealed that in addition to engaging in this unauthorized employment, a number of the 31 bus operators also violated other restrictions, including those applicable to hours of service—rules designed to assure adequate time for rest between work shifts. While these 31 operators were actually subjects of an OIG investigation and found to warrant discipline (see reports discussed above beginning at page 26), the remaining 184 bus operators with TLC licenses presented a risk of engaging in similar behavior and committing similar violations.

Given the safety-sensitive nature of the bus operators’ employment and the concomitant risk to public safety by violations such as those already committed, the OIG recommended that Buses immediately notify, in writing, all bus operators with TLC licenses, as well as their supervisors, that any use of their licenses would be monitored and that unauthorized use while employed as a bus operator would result in discipline, up to and including termination. The OIG also recommended that Buses reinforce the dual employment policy through its initial training program and refresher training sessions, as well as through periodic announcements and other appropriate reminders.

In discussions with the OIG, Buses management expressly recognized the safety issues presented by bus operators who also drive for-hire vehicles. In its written response to our findings Buses accepted all of our recommendations, and subsequently confirmed

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that it is in the process of implementing them. We will continue to monitor as appropriate.

**False Statements and Unauthorized Outside Employment by Metro-North Railroad Machinist
(MTA/OIG #2018-16)**

The OIG investigated an anonymous complaint that an MNR machinist (a safety-sensitive position) was improperly collecting insurance and disability payments from an injury while simultaneously working at an automobile body shop that he owned. OIG investigators reviewed records and determined that although the employee had in fact suffered an injury in the workplace, he had been placed on an occupational leave of absence and was not collecting disability payments.

However, further investigation, including surveillance of the employee and review of the records of both MNR and the body shop, substantiated that he both owned and worked at the body shop but had not obtained approval for his outside business, which violated MTA All-Agency Code of Ethics Section 4.07 and MNR Operating Procedure 21-029. During the course of the OIG's investigation, the employee belatedly applied for approval to work at the body shop, as part of which application he falsely denied that his MNR position was safety-sensitive, and claimed that the commute time from his outside employment in Holbrook, New York (located in Suffolk County) to his MNR job in Stamford, Connecticut was only 45 minutes, a significant distortion given that OIG investigators determined that the actual commuting distance was 70 – 76 miles, depending on the route.

The investigation also uncovered that in his original MNR job application the employee had misrepresented his role in the business; he claimed that he worked under a supervisor and omitted that he was the owner. These misrepresentations violated MNR's rules and regulations, resulting in charges including "Conduct Unbecoming an MNR Employee," "Falsifying Employment Application," "Making False Statements" and "Dishonesty."

The OIG issued a report recommending disciplinary action, up to and including termination. In accordance with our recommendation, the agency initiated disciplinary action, as a result of which it terminated the machinist.

Unauthorized Outside Employment of Employee in Safety-Sensitive Position (MTA/OIG #2018-12)

The OIG investigated an anonymous complaint that an NYC Transit Track Worker was possibly engaged in secondary employment that involved picking up money and tickets for an unidentified Broadway theater in Times Square. The Track Worker title is considered safety-sensitive; as such, the employee is subject to hours of service restrictions that require he get eight consecutive non-working hours of rest within the 16-hour period immediately prior to reporting for work at NYC Transit.

OIG investigators substantiated the allegation using NYC Transit time and attendance and other records, outside business records, and interviews. The employee had a second job as a truck driver but did not have authorization for this secondary employment. In addition, the work schedule for the secondary employment prevented the employee from meeting the hours of rest requirements for his safety-sensitive position. Moreover, the OIG found that the employee had previously been disciplined for improper use of sick leave to engage in unauthorized secondary employment. By this conduct, the employee violated MTA All-Agency Code of Ethics Section 4.07 and NYC Transit Policy Instruction 4.23.2 relating to dual employment; the employee also violated NYC Transit Section IV, Guidelines (B) (1) relating to hours of rest restrictions for safety-sensitive positions.

The OIG recommended that the agency discipline the employee up to and including termination. In accordance with our recommendation, the agency held the employee out of service, initiated disciplinary charges, and served notice on the employee that he should resign his second job and provide proof of this resignation to the agency. Instead, the employee resigned from NYC Transit.

Unauthorized Outside Employment (MTA/OIG #2018-17)

The OIG received and investigated an anonymous complaint that an NYC Transit Maintenance Supervisor I in the Department of Subways, Division of Elevators and Escalators was working as a real estate broker without authorization for the secondary employment. OIG investigators substantiated the allegation after conducting interviews and reviewing NYC Transit records, and found that: (1) the employee had been a licensed Associate Real Estate Broker and had worked as a broker for many years; and (2) the employee did not have authorization for his secondary employment during his tenure with NYC Transit. Based on our findings, we recommended that the agency discipline the employee as it deemed appropriate. NYC Transit suspended the employee for five days without pay.

Unauthorized Outside Employment and Sick Leave Abuse (MTA/OIG #2018-50)

The OIG investigated an anonymous complaint that an NYC Transit Elevator Maintainer was working a second job as an elevator inspector with the New York City Department of Buildings. OIG investigators substantiated the allegation and found, based on their review of NYC Transit records, outside organization records, and interviews, that the employee did not have authorization for this secondary employment and that he improperly used paid and unpaid sick leave from NYC Transit to work at the second job. By this conduct, the employee violated MTA All-Agency Code of Ethics Section 4.07 (Other Employment and Outside Activities); MTA All-Agency Policy Directive Sick Leave 11-014; and NYC Transit Policy Instruction for Dual Employment 4.23.2.

Based on these findings, the OIG recommended discipline up to and including termination. The agency accepted our findings, filed disciplinary charges, and suspended the employee for 30 days. The agency also issued a final warning to the employee along with formal notice to resign from the outside employment within 20 days of the notice.

NYC Transit Maintenance Supervisor's Unauthorized Outside Employment (MTAIG #2018-60)

The OIG investigated and substantiated an anonymous allegation that an NYC Transit Elevator Maintenance Supervisor was engaged in unauthorized outside employment.

The employee was hired by NYC Transit in 1995 as a Mechanic, which is a safety-sensitive title with a 16-hour rest requirement. He continued in this safety-sensitive title when promoted in 2012 to Maintenance Supervisor responsible for a crew of approximately ten Maintainers, before transferring in 2017 to a Trainer title, which is not considered safety-sensitive.

The OIG learned that the employee maintained outside employment with multiple private companies during the entirety of his 23 years with NYC Transit, but only first applied for secondary employment approval in 2009. That request was granted. While the employee thereafter sporadically applied and was approved for specific outside employment (in 2012, 2015, and 2018), he repeatedly failed to apply or re-apply, as required by NYC Transit, when engaging new secondary employers or hours or changing NYC Transit work or work hours. In 2017 the employee actually continued outside employment despite NYC Transit specifically denying him approval to do so.

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The OIG found that the Maintenance Supervisor's repeated failure occurred despite his demonstrated familiarity with the outside employment application process and although he was working in a safety-sensitive position subject to hours of service restrictions and acting as a supervisor. We also found that by failing to obtain all of the necessary prior approvals the Maintenance Supervisor violated MTA All-Agency Code of Ethics section 4.07, as well as the NYC Transit Rule 4(g) and Policy Instructions 4.23.2.

Based on the foregoing, we recommended that the agency discipline the Maintenance Supervisor, up to and including termination. After NYC Transit instituted disciplinary proceedings, the Maintenance Supervisor stipulated to a five-day suspension without pay as a penalty and waived his rights to a hearing and to appeal.

STRENGTHENING CONTROLS

Management of Confidential Capital Cost Estimates **(MTA/OIG #2018-47)** **(MTA/OIG #2018-02)** **(MTA/OIG #2018-36)**

In 2018 the OIG completed a review of the policies and practices of the New York City Transit Estimating Unit (Estimating) regarding the confidentiality of cost estimates. Estimating is a subdivision of the NYC Transit Department of Capital Program Management (CPM), and is responsible for establishing baseline construction cost estimates for each phase of an NYC Transit capital construction project, from conceptual design to substantial competition. Cost estimates and the documentation used by an estimator in the preparation of an estimate, such as design drawings, are confidential documents.

Our review was prompted by an OIG investigation completed in August 2017, which found mishandling of confidential NYC Transit cost estimates by an estimating consultant, who was employed by CPM under a professional services staffing contract and assigned to Estimating (OIG Report #2017-13).

Our review of Estimating's practices regarding confidentiality found that 8 of the 42 estimators whose work we analyzed, which included both NYC Transit employees and consultants assigned to Estimating, routinely mishandled the cost estimates entrusted to them, most frequently by transmitting confidential estimates to their personal email accounts for the asserted purpose of working on them after-hours. Although we found no indication that these estimators were transmitting confidential documents to construction

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contractors, the estimators' actions increased the risk of disclosure to unauthorized parties and undermined confidence in the integrity of the cost estimating process.

More troubling, we found that two estimators, one a CPM employee and one working for CPM as a consultant, knowingly transmitted estimates to unauthorized parties, specifically a friend and a colleague, respectively. The OIG separately reported its findings and recommendations regarding these improper disclosures to NYC Transit. Following our report, the agency dismissed the consultant (OIG Report #2018-36) and disciplined the employee by imposing an unpaid 30-day suspension (OIG Report #2018-02).

During our 2018 review, we also found that Estimating's written guidance and procedures pertaining to the preparation of bid and final cost estimates included no instructions regarding confidentiality.

Therefore, to help minimize the risk of disclosure of estimates to unauthorized parties, the OIG in this report recommended that NYC Transit revise its procedures to include a requirement that all parties involved in the estimating process sign a confidentiality agreement specifying that violations of the terms of the agreement could result in discipline up to and including termination. The OIG also recommended that NYC Transit provide cost-estimating staff with laptops that are appropriately configured to restrict the flow of information to approved sources only.

NYC Transit accepted our findings and agreed to implement the recommendations. Indeed, shortly after we met with Estimating's senior management in March 2018, to verbally convey our findings, they immediately took steps to minimize the careless handling of confidential documents, such as by restricting the business email accounts of all non-managerial staff to help ensure that estimates could not be sent to outside parties. As of October 2018, laptops have been issued to all Estimators and are configured to access only approved locations. NYC Transit also developed a confidentiality agreement and included it in the agency's revised Project Management Procedures and Project Management Guidelines. We will continue to monitor agency implementation as appropriate.

New York City Transit Signals Division Inspection and Recordkeeping Controls (MTA/OIG #2018-01)

The Division of Signals (Signals) within the Department of Subways Maintenance of Way, is responsible for the testing and maintenance of approximately 45,000 signal devices. Ensuring the integrity and accuracy of its signals inspection and maintenance records is critical for safety and essential for sound management.

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In 2010, the OIG found evidence indicating that maintainers were falsifying signal records. We notified the Office of the New York County District Attorney (DANY) and worked together to identify those responsible for the falsification (directly and indirectly), and to determine the nature and extent of any criminal conduct. At that time, in the interests of public safety, and consistent with the integrity of the investigation, we also worked with NYC Transit to help ensure the integrity of Signals inspection documentation. As a result of our joint investigation with the DANY, eight signal maintainers and two signal supervisors pled guilty to the crimes of Official Misconduct or Tampering with Public Records.

Meanwhile, based on our input and in an effort to improve record-keeping controls, Subways implemented two types of audits of Signals inspection records. One of the audits (“Logbook”) ascertains whether computerized and hardcopy inspection and maintenance activities have been properly recorded. The other audit (“Maintenance-delivery”) is designed to detect potentially fraudulent maintenance and inspection reporting by checking for employees who logged unreasonable amounts of work. The Asset Management and Operations Support Division of Subways (Asset Management) performs the audits and transmits the results to Signals management, which should ensure that Signals corrects any recordkeeping deficiencies.

In 2017, we reviewed these controls and found that Asset Management did not transmit its audit results to Signals promptly after completion so that Signals’ managers could quickly act on the findings. Moreover, Asset Management did not establish audit response deadlines, leaving time-frames open-ended. In one case we found that the Signals manager took eight months to respond to audit findings. More troubling, Signals was not required to describe the actions that it had taken to correct deficiencies found by the audits, meaning that Asset Management had no assurance that Signals had taken appropriate corrective actions in response to audit findings.

We also found that the audit designed to detect suspicious inspection activity was not as comprehensive in its analysis of records as it should be, because it focused only on certain (but not all) maintenance activities while wholly ignoring inspections.

The OIG recommended that Subways require that Asset Management provide more timely transmission of audit results to Signals and establish response deadlines in its Maintenance-delivery and Logbook audits. We also recommended that Subways require that Signals management explain the actions that it took to correct deficiencies identified in the Signals audits. Lastly, we recommended that Subways require that Asset Management perform more comprehensive maintenance-delivery audits. NYC Transit accepted all of our recommendations. We will continue to monitor as appropriate.

Controls over Non-Revenue E-ZPass Usage – Follow Up (MTA/OIG #2018-51)

MTA Bridges and Tunnels (B&T) provides free passage over its nine crossings through its non-revenue E-ZPass (Pass) program to active and retired B&T employees (Passholders). In June 2014, the OIG reported significant program deficiencies, including inadequate oversight and monitoring of Pass usage, as well as policies silent as to the consequences of fraud and abuse, all of which allowed prohibited usage to occur undetected and undeterred. In a September 2014 letter to the OIG, B&T accepted our recommendations without qualification, specifically citing a plan to improve oversight of Pass usage by retirees. The agency also took appropriate corrective action in 15 cases of abuse identified by the OIG.

In late 2017, the OIG followed-up to determine whether all Passes in active use were properly authorized by B&T and whether any employees or retirees had used their Passes in violation of B&T policies. To evaluate the effectiveness of the agency's oversight, we analyzed selected Pass transactions for the 12-month period ending October 31, 2017.

During this review, the OIG identified a total of 18 Passes—fifteen retiree Passes, two terminated employees' Passes, and one active employee's Pass—that showed evidence of having been misused. Twelve of the Passes had belonged to retirees listed in B&T records as deceased, but the Passes showed activity after the recorded dates of death. Further, two Passes belonging to retirees over 85 years of age showed patterns of daily commutation, raising the specter that someone else was using the tag. A third Pass, belonging to a retiree with a permanent address outside the tristate area, reflected similar patterns. While these numbers, fortunately, were relatively small, our review revealed that there was room for improvement.

To prevent such misuse in the future, we recommended that B&T establish procedures to identify and timely deactivate the Passes of deceased retirees. We also recommended that instead of auditing a randomly selected group of active employee Passes each quarter and retiree Passes on a three-year cycle—the method of oversight that B&T had been utilizing—the agency should focus on Passholders who show high usage or questionable patterns of travel. Lastly, we recommended that B&T compare a reliable roster of authorized Passholders to records of Pass usage on a regular basis to identify unauthorized active Passes.

In its response, the agency accepted all of our recommendations except one, which involved a deactivation policy that the agency did not believe it had the authority to implement. As to that recommendation, we further recommended that B&T consult with

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Transit, LIRR, and MNR, which already have such policies, before finally determining whether it is feasible to have a deactivation policy in place during suspensions. We will continue to monitor as appropriate.

**Unauthorized Use of Non-Employee Access Passes
(MTA/OIG #2018-52)**

NYC Transit conducts business with numerous contractors, consultants, concessionaires, and others (collectively vendors), who need access to transit-system property during the course of their business dealings with the agency. To provide such access, NYC Transit issues six types of non-employee access passes to these vendors for business-use only. OIG reviewed two types of passes that are susceptible to unauthorized use: System Access (SA) and MetroCard Temporary Transportation (MTT) passes. While both can provide subway and bus access to pass holders by swiping at the turnstiles and fareboxes respectively, the NYC Transit's Non-Employee Access Passes Policy (Policy) does not authorize the use of the SA pass to gain entry to buses. Further, the Policy restricts these passes to MTA-related-business use and expressly prohibits them from being used for commutation to and from the pass holder's residence and work location. The NYC Transit Department of Security (Security) is responsible for issuing passes, as well as for monitoring and maintaining accurate records regarding pass usage.

In 2018, the OIG reviewed the vendors' use of non-employee access passes to determine if such usage was in accordance with the stated business purposes and effectively monitored by the agency to prevent unauthorized use. Our review identified several pass holders who clearly misused their pass privileges by using them for commutation purpose in violation of the Policy, the most blatant violation being the use of SA passes on NYC Transit buses. As a result of our review, NYC Transit deactivated their passes and obtained reimbursement from the offending vendors.

The Policy dictates that each NYC Transit user department that approved the issuance of non-employee access passes is responsible for reviewing the pass usage to ensure that applicants are complying with applicable conditions and requirements. However, we found that the department project managers rarely conducted periodic audits of pass use even with periodic reminders from Security to do so. Additionally, while the Policy requires Security to determine the appropriate level of background check required for each individual requesting access, we found that it is silent as to who would be responsible for conducting such a background check if one is deemed necessary. Furthermore, there are no guidelines on what actions should be taken if a contractor's employee is found to have adverse information in his or her background. As a result, Security has not made any such determinations or actually conducted any background checks.

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The OIG recommended that NYC Transit block the use of SA and, when appropriate, MTT passes on buses. Further, NYC Transit should convert all SA and MTT pass-usage data to a format that supports computerized screening and analysis to enhance the effectiveness and efficiency of the monitoring process. Since responsibility for pass usage ultimately resides with the outside employers who request access to Subway facilities for their employees, the OIG also recommended that NYC Transit provide employers with pass-usage data on a regular basis to help them comply with the obligations they assumed when obtaining employee access passes. The OIG recommended further that NYC Transit consider the imposition of financial penalties on employers, in addition to requiring reimbursement, where despite receiving the relevant data the employers' compliance with their obligations is lax. Lastly, we recommended that NYC Transit expedite the development of guidelines to implement the required background check of an applicant for a non-employee access pass.

NYC Transit accepted all of our recommendations.

SAFETY AND SECURITY

Investigation into Misconduct by a New York City Transit Superintendent (MTA/OIG #2018-06)

The OIG investigated a complaint from an identified individual that an NYC Transit Superintendent (Superintendent) threatened a subordinate employee with the denial of his vacation request unless the employee retracted a statement he had made regarding a safety condition. OIG investigators substantiated the allegation. The investigators found that the Superintendent: threatened the employee and other subordinates with dismissal in an attempt to compel them to retract their written statements regarding a safety condition; submitted false disciplinary referrals to Labor Relations; and made false statements to the investigators themselves. The investigators also found that a Maintenance Supervisor I (MSI), at the direction of the Superintendent, refused to provide a required safety form to employees upon request and, in an effort to conceal the superintendent's improper directions, filed a false report with the Superintendent that stated the employees never requested the safety form. The OIG issued a report recommending discipline for the Superintendent and the MSI, as well as a review by the agency of OIG-questioned management practices and of the handling by identified management personnel of the complaint and investigation of misconduct.

The safety issue arose when several NYC Transit employees were assigned to install heating coils using a scissor lift at the 207th Street Shop. Some of the employees felt it was unsafe to use the lift for that work and requested a Safety Dispute Resolution Form (the Safety Form), which is used to assert that an employee has been directed by a

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supervisor to violate the law or an NYC Transit safety rule. Instead of providing the form, the MSI, at the direction of the Superintendent, ignored the requests and informed the employees that they were being reassigned to another job.

The following day, the Superintendent directed that the employees submit “G2” forms (generic memorandum forms for various statements) to explain why the previous day’s assignment was unsafe. After the G2 forms had been submitted, the Superintendent called a meeting with the employees and told the two employees who were on probation that if they did not retract their “letters” (referring to the G2 forms), they would be fired. Notably, one of the probationary employees had requested leave to visit his sick father who lived outside the United States, and the Superintendent threatened that he would not approve the employee’s leave request unless he retracted his G2 form.

The OIG staff also reviewed a recording of the Superintendent’s threats which included the following statements:

“What I want from him [the employee] is to retract his letter, that’s all I want him to do, retract the letter, sign and date it. That’s what I want and his thing will be approved.” “It’s a negotiation. I’m a business person, understand, we’re negotiating this business. All the time is gotta be give me, give me, give me, give me and when it comes to my side, I don’t get nothing in return. You understand. That’s not the way it works here.”

When a union member asked the Superintendent why he had not approved the leave request, the Superintendent responded, “You do for me and I do for you.”

The retraction request was also made by the General Superintendent who stated to the probationary employees, “Let’s work together, take the letter and change it to tell the truth.” The General Superintendent advised the employees that, as probationers, submitting a false G2 would not look good on their record.

When confronted by the OIG, the MSI admitted that the employees had asked for Safety Forms and that the Superintendent had instructed him not to give these forms to the employees.

The Superintendent falsely claimed to the OIG that the crew had not requested a Safety Form and that he never linked the retraction request to his approval of the probationary employee’s leave request. He later admitted to lying to the OIG.

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While the Superintendent also falsely claimed that he had contacted Labor Relations to recommend disciplinary action against the crew because they lied in their G2s, he subsequently admitted that the crew's G2s were accurate but he tried to have the crew change their forms because he did not want the G2s to reflect poorly on him. He also admitted that he knew that it was wrong to request disciplinary action against the crew for reporting the truth and that it was improper for him to tell the MSI to disregard safety protocol by not issuing a Safety Form immediately upon request.

As for the General Superintendent, he determined that the Superintendent should be disciplined with only a written reinstruction and training, despite the General Superintendent's own failure to conduct a full investigation into the matter. More specifically, the OIG found that the discipline imposed by the General Superintendent fell short because he did not consider the full extent of the Superintendent's misconduct. Most significantly, the General Superintendent failed to listen to the entire recording of the Superintendent's threat to deny the probationary employee leave unless he withdrew his G2 form. The General Superintendent was also unaware of the Superintendent's other misconduct, including providing false information to Labor Relations, lying to management about the events surrounding the safety incident, and directing the MSI to prevent employees from reporting a safety issue.

The OIG issued a report finding: that the Superintendent improperly directed the MSI to withhold Safety Rule Dispute Resolution forms from employees as required by Subways Bulletin 15-35, in violation of NYC Transit Rule 4(d); that the Superintendent intentionally provided false information to the Office of Labor Relations in his request for disciplinary action against several employees, in violation of MTA All-Agency Code of Ethics, Section 1.06 and NYC Transit Rules 8(a) and 10(a); that the Superintendent threatened two employees with discharge, in violation of MTA All-Agency Code of Ethics, Section 1.06 and NYC Transit Rule 10(a); that the Superintendent threatened an employee with the denial of leave in an attempt to compel him to retract his written G2 statement regarding a safety condition, in violation of NYC Transit Rule 10(a); that the Superintendent made multiple false statements to OIG staff, in violation of MTA All-Agency Code of Ethics, Section 1.07; that the MSI failed to provide Safety Rule Dispute Resolution Forms, as required by Subways Bulletin 15-35, in violation of NYC Transit Rule 4(d); that the MSI submitted a false G2 statement dated February 9, 2016, in violation of NYC Transit Rules 8(a) and 10(a); that the MSI failed to report the Superintendent's misconduct, in violation of MTA Code of Ethics Section 1.05; and that the General Superintendent and Labor Relations failed to conduct a thorough inquiry into the events surrounding the Superintendent's misconduct.

We recommended that NYC Transit impose discipline on the Superintendent up to and including termination and on the MSI as it deemed appropriate. We also

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recommended that NYC Transit conduct a full internal review of (1) the manner in which Labor Relations and the General Superintendent managed the complaint and investigation of misconduct, and (2) the management practice uncovered by our investigation of reassigning work crews that report potential safety issues.

NYC Transit agreed with our recommendations and prepared to bring disciplinary action against the MSI, the Superintendent, and the General Superintendent. While the MSI retired before disciplinary charges could be served, NYC Transit served him with charges post-retirement (consisting of Improper Performance of Duty, Failure to Supervise, Conduct Detrimental to the Operations of the Authority, False Report and Gross Misconduct) to preserve NYC Transit's rights in case the MSI tried to return to work.

NYC Transit issued disciplinary charges against the Superintendent for Improper Performance of Duty, Failure to Supervise, Conduct Detrimental to the Operations of the Authority, False Report, Retaliatory Conduct, Gross Misconduct and Conduct Unbecoming an Authority Employee. The Superintendent resolved the disciplinary matter by accepting the charge of improper performance of duty, a demotion to MS1, a time-served suspension, and agreeing to file promptly for retirement.

As to the General Superintendent, NYC Transit informed us that: "We are currently in the process of determining the appropriate course of action with regard to [that individual]." And as to the OIG's remaining recommendation, the agency wrote: "We will fully review and analyze the practice of reassigning work crews that report potential safety issues to the other jobs." The OIG will continue to monitor as appropriate.

**Strengthening the Metro-North Drug Use Notification Policy
(MTA/OIG #2018-46)**

The OIG investigated a complaint referred by the U.S. Department of Transportation Office of Inspector General, that a Metro-North Railroad (MNR) employee had failed a drug test and that MNR supervisors attempted to cover up the failure. We did not substantiate that complaint because our investigation revealed that although the employee's drug test showed the presence of a controlled substance, he had a legal prescription for the medication. However, we also found that the medication was of the type that could have affected his ability to safely perform his job. Notably, the employee failed to disclose to the Medical Review Officer (MRO) prior to performing work, as he was required to do under MNR Policy #21-012, that he was taking the medication. Given the employee's failure, the MNR managers were not made aware of

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the potential safety implications involved. The employee subsequently resigned in connection with an unrelated matter.

Regarding MNR, the OIG found that the agency lacked sufficient protocols to ensure that MROs notify MNR of violations of its policies and rules relating to the use of prescription medication. Accordingly, we made three recommendations to the agency: (1) Create a separate form for MROs to use to notify MNR of violations by employees of policies and operating rules; (2) Amend MNR Policy #21-012, Section II, to make clear when, how, and to whom MROs are to make these notifications; and (3) Further amend MNR Policy #21-012 Section II to set forth how such notifications are to be documented and records maintained.

In response to recommendation 1, MNR created and implemented a new Prescription Notification Form specifically addressing positive drug test results of employees in safety-sensitive positions. With regard to recommendations 2 and 3, MNR accepted the recommendations “in spirit” and offered the following “alternative remedy” in lieu of the policy update: “MNR Regulatory Compliance together with MNR Occupational Health Services will issue a formal instruction memo to all MRO's on staff. The MRO will use the new form to report violations of the reporting policy that come to his/her attention through positive test results of those who have not previously disclosed the medication as required. The form will then be sent to the Designated Employer Representative, who will keep all such forms received in a confidential file where the records will be maintained.” According to MNR, “This action, together with the reporting form, will effectively address the issues cited in this report.” The OIG accepted this alternative remedy and will continue to monitor as appropriate.

ACCESSIBILITY ISSUES AND FAIR-HIRING PRACTICES

Access-A-Ride Performance Metrics (MTA/OIG #2018-03)

MTA New York City Transit’s Paratransit division (Paratransit) has provided transportation to riders with disabilities through its Access-A-Ride program (AAR) for more than 20 years. Presently, over 140,000 customers rely on Paratransit’s AAR program to commute to their jobs, keep medical appointments, or generally travel throughout the city. Customers take about six million trips each year. Paratransit generally contracts with companies to provide these rides to its customers, with about 70 percent of all AAR trips being provided by its 13 dedicated transportation companies (carriers). These carriers use and maintain almost 2,000 NYC Transit-owned vans and sedans.

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In 2018, in response to customer complaints to the MTA Board, Paratransit began to publicly report more AAR performance standards and operating statistics, collectively known as the program’s performance-based measurements (performance metrics). In order to determine the validity and usefulness of the performance metrics, the OIG audited AAR’s calculations for the metrics and used program data to analyze AAR trips completed by contracted carriers during the ten-month period between March and December 2017. Overall, we found that Paratransit needed both to calculate certain key measures more accurately and provide more information publicly in order to present a clearer picture of program performance:

- *Paratransit needed to use more appropriate thresholds for determining when passenger drop-offs are on-time.*

Paratransit had an on-time goal of 90 percent for those scheduled trips that are arranged to accommodate the customer’s preferred time of drop-off at a particular destination. However, a drop-off that was considered “on-time” under Paratransit criteria was not necessarily on-time under guidance provided by the Federal Transit Administration (FTA). Applying Paratransit’s criteria for such trips, the OIG calculated that 88 percent of these drop-offs would be considered on-time, just two percent shy of Paratransit’s goal. But when applying criteria provided by the FTA, we calculated that 18 percent of the drop-offs were late and 30 percent were too early.

- *Paratransit did not report or adequately review trips that exceeded the maximum-allowed ride duration set by the agency.*

The OIG calculated that 106,814 rides during our audit period (3.1 percent of carrier trips) exceeded their ADA-based limits for the duration of individual rides. With very few exceptions, however, these lengthy trips—which are a source of discomfort and delay—were not being tracked, studied for causation, or reported to the public. Of particular concern was that Paratransit did not analyze those trips to identify oddly circuitous routes and other inefficiencies that could be addressed through better scheduling.

- *Paratransit did not measure and report frequent-rider experience.*

Paratransit’s metrics only evaluated discrete aspects of individual trips—pick-up, drop-off, and ride duration—without due attention to the cumulative experience of frequent riders (i.e. daily commuters or customers making round trips). Notably, though, the OIG found that 30 percent of all customers who took at least one trip in a week in the ten-month audit period experienced at least one late and/or overly-long trip in that week.

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- *Paratransit's revision of certain metrics inadvertently inflated statistics.*

As a result of an agency change in how it calculated on-time performance for pick-ups, Paratransit had inadvertently boosted the on-time performance statistics for pick-ups, without any actual improvement in the on-time performance itself. Previously, the driver indicated a pick-up was performed by pushing a button that captured the time. This data point is now determined by the GPS system identifying when the vehicle is within 150 feet of the pick-up location, an earlier point of reference. While this change has the salutary effect of insulating the GPS-recorded time from driver manipulation, it inadvertently boosted the on-time performance *statistics* for pick-ups. At the same time, Paratransit did not adjust its goal for on-time performance to account for this illusory improvement. As a consequence, because carrier penalties and bonuses are contractually tied to these performance statistics, Paratransit paid a total of nearly \$245,000 more over nine months to carriers for the same actual performance. When annualized, the OIG estimated these overpayments to be approximately \$327,000.

To address the issues revealed by our findings, OIG made recommendations to Paratransit. Among the more technical, Paratransit needed to develop better ways to measure the timeliness of pick-ups and drop-offs, and to routinely review excessively lengthy trips to ascertain and address their root causes. More fundamentally, though, Paratransit needed to find better ways to correlate objective data with the experience of its riders, and give the Board and the public more meaningful performance metrics to help them assess whether and to what extent Paratransit is meeting the needs of the very vulnerable population it serves.

New York City Transit and its Paratransit Division accepted all but one of our ten recommendations and agreed to implement them. Specifically, the agency agreed to use the FTA criteria for determining when drop-offs are on-time, to accurately calculate the percentage of pick-ups that are on-time, to raise the goals for the timeliness of pick-ups, and to report and review trips that exceeded the maximum-allowed ride duration set by the agency. Regarding metrics for the frequent-rider experience, NYC Transit planned on reporting how many trips had successfully met all of the criteria for the discrete aspects of the trips, including timeliness and ride duration. The only recommendation not fully accepted by Paratransit was that the agency regularly report the Weekly Customer Experience metric publicly to NYC Transit executives and the MTA Board. While Paratransit agreed to publish a new measure that captures how many trips were successful or unsuccessful based on the key elements of a customer's experience, it chose to do so based on a per trip basis rather than a weekly basis. As the agency explained, "We feel approaching it from the trip perspective is consistent with our other measures. We are

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heading towards reflecting the exposure on a bad trip basis rather [than] a customer week.”

The OIG will continue to monitor as appropriate.

**Fair Hiring Practices at Long Island Rail Road⁸
(MTA/OIG #2017-09)**

In September 2013, the MTA adopted All-Agency Policy Directive 11-051, entitled “Anti-Nepotism Employment Procedures”. Subsequently, each MTA operating agency updated its own policy to conform to that Directive. Long Island Rail Road approved its new Corporate Policy & Procedure EMPL-004 “Avoidance of Nepotism” in August 2014. The stated dual purpose of this policy and the MTA Directive is to ensure generally that decision-making on employment-related matters is merit-based and specifically that family members of MTA employees do not get any preference in the hiring process, including by means of referrals. Thereafter, the OIG commenced a review to determine whether LIRR’s hiring practices were merit-based and gave all candidates for public employment an equal opportunity to compete.

The LIRR Human Resources Department (HR) is staffed by HR representatives organized into four teams assigned to designated operating departments. When a job is posted, the appropriate HR representative reviews the résumés to determine which candidates meet the minimum job qualifications and will be selected for further consideration.

Based on our interviews of seven HR representatives responsible for hiring into nine union-represented titles, the OIG found that when considering which résumés to move to the next step in the hiring process, three HR representatives reviewed résumés for referred applicants before reviewing résumés for the general application pool. This consideration of referrals included four different high-volume titles across three major operating departments: Assistant Conductors, Station Appearance Maintainers, Track Workers, and Car Appearance Maintainers. The HR representatives told us that because they received between 2,500 and 7,000 résumés for each job posting, they were typically unable to review all of them. Thus, while the HR representatives may simply have sought a means to select applications for review, the effective result was preferential treatment for referrals. Further, we found that the HR representatives did not always

⁸ This report and the one regarding B&T Protocols that follows, are Audit reports that evidence how systemic deficiencies— in these cases the deficiencies involve fair hiring practices—may enable subsequent nepotism or other ethical misconduct.

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determine whether referrals were from family members and therefore impermissible under the anti-nepotism policies.

The four HR representatives responsible for the remaining five titles asserted that they either did not give preference to referrals or did not receive referrals at all. Notably, these five titles required more technical skills or training than the higher-volume titles and thus attracted significantly fewer applications; according to these four HR representatives, they received from 200 to 1,500 résumés for each job posting and were able to review all of them.

Based on our findings, we recommended that LIRR cease giving preference to referred candidates for high-volume titles by implementing instead a randomization methodology to identify candidates for formal testing and interviews. To further ensure that hiring with LIRR is merit-based only, we recommended that HR representatives receive proper instructions for the handling of known or anonymous referrals and continue to consider applications for lower-volume titles in strict accord with LIRR and MTA anti-nepotism policies. LIRR management accepted and has implemented our recommendations.

B&T Hiring Protocols
(MTA/OIG #2018-55)

Again based on MTA All-Agency Policy Directive 11-051, in 2017 the OIG commenced a review of MTA Bridges and Tunnels' procedures for filling vacancies including City Custodial Assistant (CCA), an entry-level position in the B&T Maintenance Department. Although CCA is a non-civil service title that does not require applicants to take an exam or have any specific experience or educational background, after successfully working in the position for two years a CCA may take the exam for Maintainer I, a title from which further promotion is possible.

We found that the hiring process for filling CCA vacancies lacked the necessary controls to ensure fairness and compliance with the Anti-Nepotism Policy. We learned that for the April 2017 CCA job posting, B&T planned to fill just two CCA vacancies but received 601 applications. While the sizeable number of applicants made the review process naturally daunting, it became more problematic because there were no controls in place to guide reviewers in selecting among the 601 for each of the eight interview slots, leaving the selection of finalists vulnerable to inappropriate influences.

Our previous work at other MTA agencies demonstrated that preferential treatment is more likely to be a factor in the hiring process for entry-level titles with minimal qualifications—particularly those that offer future promotional opportunities—

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than for titles requiring specialized knowledge or skills. Our 2013 review of the hiring process for one entry-level position at Metro-North Rail Road (MNR) found that MNR was approximately 160 times more likely to hire a referred applicant versus an applicant without a referral. In response to our findings, MNR developed a random, computerized process to manage its entry-level titles efficiently and fairly, while also assuring compliance with MTA's Anti-Nepotism Policy.

Based on our findings at B&T, we recommended that management implement a randomization methodology to prioritize CCA applicants for résumé review and initial interviews, with qualified candidates to progress on merit. In his response to our report, B&T's Acting President accepted our recommendation. We will continue to monitor B&T's hiring practices as appropriate.

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

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. New York State Public Officer's Law Code of Ethics (74[3][f][h]); MTA All-Agency Code of Ethics (402[a][b][c]).

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 she appealed her suspension. In December 2018, the OIG received notification that pursuant to her appeal, the liaison's discipline was reduced to a two-week suspension without pay.

OPERATIONAL EFFICIENCY

**Accuracy of Final Payments to MTAHQ Employees
(MTA/OIG #2018-53)**

The BSC Division of Time & Labor (Time & Labor) is responsible for managing certain aspects of the timekeeping process for MTA Headquarters (MTAHQ) employees,

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including the calculation of the final payments owed to employees leaving the agency through retirement, resignation, or termination. Specifically, when an employee leaves MTAHQ, he or she should receive one final regular paycheck, after which BSC makes one final payout to compensate the employee for any leave balances and correct any errors that might have occurred during his or her tenure.

In 2017 the OIG commenced a review of Time & Labor's administration of final payout hours to MTAHQ employees. We found that 32 out of 162 employees (20 percent) received wages for hours they had not actually worked in their final regular paychecks. We learned that Time & Labor's final payout process included a manual worksheet intended as a mechanism to identify employees who had been overpaid; however, this control failed to lead to the resolution of the overpayments in 8 out of 32 instances. Additionally, we learned that when BSC did discover that a former employee had been overpaid—and thus owed the agency money—BSC did not have a timely, reliable process for contacting the former employee to request reimbursement. Lastly, we identified an overpayment caused by a Time & Labor standard practice that violated the MTAHQ's Vacation/Personal Leave Policy's maximum on the payouts to employees leaving MTA employment.

BSC's final payout process was inherently labor-intensive and prone to error. For example, the many staff members involved relied heavily on email and phone calls, rather than on automated procedures, to share essential information. A permanent solution to this problem would include an extensive overhaul of the existing MTAHQ timekeeping and payroll system. In lieu of such a system—which financially and operationally is not feasible for MTAHQ at this time—we recommended that BSC management develop and implement a standardized process for accurately and efficiently calculating the final payouts owed to and from MTAHQ employees, as well as for requesting reimbursement from former employees who have been overpaid. We also recommended that BSC management reinstruct Time & Labor staff not to deduct employees' unearned hours from excess leave balances.

In his response to our report, the BSC Senior Director stated that in light of the issues identified by our audit, BSC has "evaluated our process and taken actions to ensure tighter controls and better communication" in the final payout process. He said that BSC plans to implement several measures to improve the accuracy of final payout calculations, including an independent review of the manual worksheet, a formalized process to transmit important payout information between parties, and a standardized approach for requesting reimbursements. And lastly, the Senior Director stated that "BSC Time and Labor has been re-instructed accordingly and employees' unearned hours will not be deducted from their final payout amount." We will continue to monitor the implementation of our recommendations in 2019.

Vehicle Idling at Long Island Rail Road (MTA/OIG #2018-05)

In 2012 the OIG examined how Long Island Rail Road (LIRR) was managing engine-idling among its highway vehicle fleet. On average, we found that these vehicles idled in violation of New York State regulations for two hours and eight minutes each day that these vehicles were used, wasting over 13,000 gallons of fuel per month, at a cost per month of over \$40,000.

The OIG initiated a follow-up review in 2017. During our review, LIRR and the OIG became aware of significant inherent technological limitations with the software product the railroad used to manage idling, which prevented OIG from accurately quantifying the amount of unnecessary idling at LIRR. While these limitations call into question whether the software vendor is meeting its contractual obligations as well as the suitability of its product, a joint agency effort between LIRR, Metro-North Railroad, and Bridges and Tunnels is underway to contract with a new vendor by the end of 2019. Accordingly, we made three recommendations to LIRR regarding the vendor's performance and the agencies' need to ensure that their eventual contract with a new vendor incorporates the lessons learned from their current experience.

More fundamentally, based on our interviews of key personnel and our evaluation of relevant policies, procedures, and reports, it became evident that LIRR's efforts to address the deleterious environmental and financial consequences of unnecessary idling were not fully implemented or sustained over time. Indeed, a recent in-house review conducted by LIRR effectively corroborated these findings. Commendably, LIRR's report made substantive recommendations that, when implemented, should address shortcomings found by both review teams.

While LIRR's effort to substantially reduce if not eliminate unnecessary idling has not yet achieved its intended result, the fundamental structure, process, and policy are in place to run an effective and lasting idling management program. Accordingly, we made an additional three recommendations, which are designed to build on those fundamental assets: (1) assign an operational executive to oversee and be accountable for the management of non-revenue vehicle idling; (2) bring the agency's vehicle idling policy into compliance with New York City's idling law; and (3) develop metrics to quantify unnecessary idling and establish idling reduction goals for LIRR's highway vehicle fleet.

In its response, management agreed with our findings and accepted our six recommendations. We will continue to monitor as appropriate.

Vehicle Idling at Metro-North Railroad (MTA/OIG #2018-15)

In 2012, OIG Audit examined how Metro-North Railroad was managing engine-idling among its highway vehicle fleet. We found that 15 vehicles in MNR's non-revenue Engineering fleet idled illegally for an average of 8,000 hours per month, thereby wasting over 7,000 gallons of fuel at a cost of over \$25,000. We further projected that idling across MNR's entire non-revenue fleet could cost the agency \$300,000 per year.

Audit initiated a follow-up review in 2017. During our review, MNR and the OIG became aware of significant inherent technological limitations with the software product the railroad used to manage idling, which prevented OIG from accurately quantifying the amount of unnecessary engine-idling at MNR. While these limitations call into question whether the software vendor is meeting its contractual obligations and the suitability of its product, a joint agency effort between MNR, Long Island Rail Road, and Bridges and Tunnels is underway to contract with a new vendor by the end of 2019. Accordingly, we made three recommendations to MNR regarding the vendor's performance and the agencies' need to ensure that their eventual contract with a new vendor incorporates the lessons learned from their current experience.

More fundamentally, we found that MNR established two programs to monitor safety-related behaviors, each of which included an idling component. However, MNR's associated audit processes, although designed in part to identify unnecessary idling, were inadequate to control the impermissible activity. (As an example of the value of monitoring excessive idling, see the Investigations Division's report 2018-07 [page 47]).

We also found that the oversight programs' deficiencies were compounded by the absence of an operational executive responsible for reducing unnecessary idling. Regarding that absence, MNR officials explained that management sharpened its focus on safety concerns after 2012 as a result of a number of safety-related events, and further explained that the agency simultaneously experienced unusually high executive turnover. The officials concluded that the combination of these factors resulted in less attention being paid to reducing engine-idling.

Based on our interviews of key personnel and our evaluation of relevant policies, procedures, and reports, it became evident that MNR's efforts to address the deleterious environmental and financial consequences of unnecessary idling were not fully implemented or sustained over time. Accordingly, we made six more recommendations to MNR designed to reduce unnecessary idling: (1) assign an operational executive to oversee and be accountable for the management of non-revenue vehicle idling; (2) amend the agency's idling policy to define in which safety situations and to what extent idling is

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permitted at MNR, accounting for New York state and city idling laws, and to identify the mechanisms through which it will be carried out and enforced; (3) develop and utilize training materials that effectively communicate to appropriate staff that unnecessary idling is harmful behavior and subject to discipline; (4) develop metrics to quantify unnecessary idling and establish idling reduction goals for MNR's non-revenue vehicle fleet; (5) design and circulate useful reports to operational managers to help them pursue those goals; and (6) establish a disciplinary process for employees engaging in unnecessary idling and enforce violations diligently and reasonably.

In its written response to the OIG, the agency agreed with our findings and accepted all of our recommendations. We will continue to monitor as appropriate.

Cashless Tolling (or Open-Road-Tolling) – Billing Issues

Transportation authorities including MTA Bridges and Tunnels have utilized cashless tolling to enhance safety while reducing congestion and air pollution. In September 2017, B&T completed the implementation of cashless tolling at all its bridges and tunnels. With this type of tolling, drivers do not have to stop to pay tolls. Instead, all cars simply drive under a gantry (overhead support) equipped with toll collection sensors (i.e. E-ZPass and license-plate readers), in any lane of their choosing. In an eight-month period in 2017-18, the OIG received a number of complaints regarding the operation of the cashless tolling system and initiated a review.

With cashless tolling, if a driver is in a vehicle with an E-ZPass tag and sufficient funds in the E-ZPass account, sensors will read the tag and deduct the appropriate, discounted toll from that account. If the account does not have sufficient funds but the driver elects to use it anyway, the E-ZPass system is set up to allow the account holder a ten-day grace period to replenish the account to pay for any tolls incurred without prompting by B&T. If the account remains insufficiently funded after the grace period, the account holder is considered a "violator" and assessed a toll-violation fee for the toll that resulted in a negative account balance and each subsequent toll transaction incurred, until the account is brought into good standing. Depending on the toll facility, each toll violation carries a \$50 or \$100 administrative fee. B&T sends toll violation notices by ordinary mail.

If the driver avoids using the E-ZPass tag when the E-ZPass account turns negative, and removes it from the vehicle or places it in the agency-supplied read-prevention bag, the driver will automatically become a "toll-by-mail" user with no new violation assessed for that crossing and will no longer be subject to additional toll violations. Importantly, drivers without E-ZPass accounts also become toll-by-mail users

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automatically. As such, cameras will photograph the vehicle license plate, and a bill for the non-discounted toll will be mailed to the registered owner of the vehicle.

The billing of toll-by-mail users works essentially as follows. The first bill is sent by ordinary mail to the registered owner upon identification through Department of Motor Vehicles records. The registered vehicle owner then has 30 days to pay the tolls and is offered the opportunity to opt-in for receiving future toll bills via email. If payment is not received in 30 days, a fee of \$5.00 is added; if that payment is not timely received (another 30 days), the registered owner will be assessed an additional fee of up to \$100 for each toll transaction incurred. If the tolls and fees remain unpaid after a third 30-day period, B&T refers the overdue account to collections.

During the period from October 2017 to May 2018, the OIG received 47 complaints made by individual drivers, E-ZPass account holders, and/or registered owners, including a number who asserted that they had improperly been charged fees, some involving hundreds of dollars or more. Our ensuing review of these complaints revealed that only three (6 percent) were caused by data-processing errors. The remaining 44 complaints evidenced that the complainants did not fully understand how the cashless tolling system works.

For example, many complainants apparently believed incorrectly that E-ZPass account holders do not need to maintain a positive account balance, assuming erroneously that they would receive a toll bill in the mail. These individuals apparently used their tags with negative balance rather than proceeding as toll-by-mail customers and were charged toll violation fees for not having enough money in their accounts to pay the tolls. Other complainants had set up their account to receive toll bills via emails but then failed to act on them. This resulted in multiple fees for missed payments.

In the course of our review, we found that B&T management is fully aware of these cashless tolling issues and already had implemented several public awareness programs to address them, including television/online advertisement, community outreach, E-ZPass statement/toll bill inserts, direct mailing, and lane handouts. These educational efforts should reduce frustration, help avoid unnecessary fees, and improve the customer's cashless tolling experience. We will continue to monitor the situation as appropriate.

ETHICAL VIOLATIONS AND SYSTEMIC VULNERABILITIES

Ethics Violations by LIRR Project Manager (MTA/OIG #2018-37)

The OIG initiated a proactive investigation of unethical conduct by a Project Manager (PM) in the LIRR's Department of Program Management (DPM) and a Senior Manager of a consulting firm that provided services to the LIRR.⁹ We found that the PM and the Senior Manager engaged in a series of improper private communications using the PM's personal email account concerning and during a pending Request for Proposal (RFP).

The LIRR issued an RFP for consultant firms to provide LIRR with a Resident Engineer (RE) and a Construction Inspector to support an expansion project. The responding consultants did not provide any suitable RE candidates and LIRR ultimately re-issued the RFP in an effort to identify additional candidates for both roles. In addition to managing the expansion project, the PM also served as a member of the Technical Evaluation Committee responsible for assessing the candidates proposed by consultants responding to each RFP. The Senior Manager's firm was not among those responding to either RFP.

The OIG's investigation established that while the evaluation and selection process was ongoing, the PM, in violation of MTA All-Agency Code of Ethics sections 4.02 (Public Trust) and 4.03 (Confidential Information) as well as LIRR corporate policy PL-015 regarding confidentiality, and despite having signed a confidentiality agreement, disclosed to the Senior Manager that LIRR was not getting qualified candidates in response to the RFPs. Moreover, although the PM was aware that vendor communications about ongoing procurements are to be directed only by and to the designated point of contact in LIRR's Department of Procurement and Logistics, the PM nonetheless communicated repeatedly with the Senior Manager via personal email for the purpose of obtaining potential candidates for the RFPs. The emails included résumés of potential candidates that the Senior Manager's firm might hire if the PM determined them to be suitable for the RFP, along with the PM's feedback on the suitability of each candidate.

⁹ This matter was undertaken based on the results of the OIG's previously reported investigation of the improper relationship between a LIRR DPM Assistant Chief Program Manager and this same Senior Manager.(see MTA/OIG #2017-02 on website).

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Aside from the PM's misconduct, the Senior Manager's communications violated the MTA Vendor Code of Ethics Section 2.01 (Designated Point[s] of Contact) and potentially the New York State Finance Law §§ 139-j and 139-k (known as the Procurement Lobbying Law), which prohibits contact with any individual within a governmental entity (including LIRR) other than the designated point of contact for the contract, with the intent to influence a governmental procurement during the pre-award phase (also known as the restricted period).

Our investigation also revealed that while the existence of the PM and Senior Manager's improper communications was unknown to LIRR management, the Senior Manager had continually disclosed to management officials within his firm that he was communicating privately with the PM, and also disclosed confidential LIRR information that he had obtained from the PM about the RFP status.

Based on the actions and intent of the PM, and though we found no evidence that the RFP final selection process was ultimately affected, we recommended to LIRR that the PM be disciplined, up to and including termination. We also recommended that LIRR conduct an inquiry into the activities of the Senior Manager and his firm with respect to the violation of the MTA Vendor Code Ethics including any improper disclosures of confidential LIRR information relative to future procurements, and continue to ensure that the Senior Manager does not participate in LIRR projects. We further recommended that the LIRR conduct an inquiry into the activities of the Senior Manager and his firm with respect to the possible violation of the New York State Finance Law. Lastly, we recommended that LIRR provide supplemental Ethics instruction for DPM project management staff regarding interactions with vendors and potential vendors, with particular emphasis on (1) confidentiality and communications during restricted periods or outside of official channels and (2) the designated-point-of-contact rule.

The LIRR accepted our recommendations. The PM, who had been a candidate for promotion, was instead demoted by LIRR to Assistant PM with a corresponding salary reduction. The LIRR is in the process of scheduling a special vendor responsibility hearing with respect to the consultant firm and its Senior Manager, and has provided the OIG with written confirmation that it has "completed the Ethics training for all currently active DPM management employees."

INTEGRITY MONITORING

The OIG Construction Fraud Unit (CFU) has continued to employ its partnership approach to detect and deter fraud and other wrongdoing by contractors engaged in the

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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 2018 the OIG continued its work with the New York County District Attorney's Construction Crimes Task Force. Other investigative entities participating include the Port Authority Inspector General, the NYC Department of Investigation, 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 regarding "Significant Adverse Information," to attending and participating in responsibility hearings and otherwise, before, during, and after contract award.

The CFU 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 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.

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- 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 2018, OIG staff performed the following monitoring/training activities:

- Conducted 10 training sessions on fraud awareness for 245 attendees (56 assigned to Sandy projects), including both MTA agency employees and consultants.
- Conducted 57 background checks of vendors and contractors.
- Attended six kick-off meetings with each project management team and explained our role and the heightened oversight of Sandy projects.
- Attended 47 progress meetings to review the status of projects and to further demonstrate our ongoing oversight.
- Conducted 17 site visits by either OIG staff or through a third-party contractor. During these visits workers were interviewed to determine if they possessed

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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 15 office visits of DBE firms on Sandy-related projects to ensure that the entity is real and commercially viable.
- Reviewed documentation for 46 change orders valued between \$100K and \$1M.

The Security and Integrity Compliance Program

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 2018 OIG investigators conducted 74 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.

Bid Rigging Database

The OIG in 2018 continued to analyze MTA-wide project bids for the purpose of identifying indicators of irregularities and potential bid rigging by prime contractors, subcontractors, as well as material and equipment suppliers.

Long Island Rail Road Third Track Procurement Monitoring

In early 2017, prior to accepting competitive requests for design-build proposals for its Main Line Expansion Project (commonly referred to as the Third Track project), the LIRR decided to engage an independent integrity monitor to oversee the procurement.

The primary objectives of this costly project were to improve service options and reliability for LIRR customers by adding a third track to the main line between Floral Park and Hicksville, and reduce automobile traffic congestion by adding more train

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options and eliminating street-level grade crossings, which should enhance safety and the quality of life for people in the project corridor.

The primary objective in using the design-build contract model, in turn, was to shorten the construction timeline and lower costs through efficiencies with one entity responsible for both design and construction. While this model offers significant benefits, including lessening the impact of the project on passengers and surrounding communities, there are also risks, including lowered competition. Besides minimizing these risks, the decision to engage a monitor was motivated by several factors: the scope and magnitude of the project; the need to ensure confidentiality of proposals and negotiations while balancing the need for transparency in decision-making associated with the large commitment of public funds; and the need to ensure compliance with New York State law along with MTA and LIRR procurement procedures. At the request of the MTA's then-Interim Executive Director and the then-president of the LIRR, the OIG agreed to serve as the independent monitor for the project.

The OIG monitored the procurement process from April 2017 through its conclusion in December 2017 when a design-builder was selected and ratified by the MTA Board of Directors. Broadly speaking, our findings were twofold: First, we found that the process was conducted with integrity in its design and implementation. The effort on the part of the procurement team to devise stringent protocols to protect the confidentiality and fairness of the process, while ensuring appropriate transparency, was continuous and consistent. In our view, the "best value determination" (a measurement of the value of the procurement through a comparison of costs and benefits) was made in compliance with the evaluation criteria set out in the Request for Proposals and the Source Selection Plan (SSP), without bias for or against any proposer. Basically, the SSP is a recognized approach that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected. Second, in terms of compliance, we found no material deviations from the SSP.

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 2018

The OIG staff gave 12 customized fraud awareness training presentations to a total of 315 MTA and consultant employees specializing in contract/project management or oversight. These presentations addressed such topics as preventing, detecting and reporting fraud and bribery.

INTERGOVERNMENTAL COOPERATION

During 2018, the OIG maintained relationships with federal, state, and local agencies and task forces, including:

Federal

United States Attorney for the Eastern District of New York
United States Attorney for the Southern District of New York
United States Attorney for the District of New Jersey
Internal Revenue Service, Criminal Investigation Division
United States Department of Justice, Antitrust Division
United States Department of Labor, Office of the Inspector General
United States Department of Transportation, Office of the Inspector General

Interstate Agency

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

New York State

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

Local

Office of the New York City Comptroller
Kings County District Attorney
Nassau County District Attorney
New York County District Attorney
New York City Department of Investigation
New York City School Construction Authority, Office of Inspector General
NYC Taxi and Limousine Commission