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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 18, 2016

Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Re: Forensic Audit of Select Payroll and
Overtime Practices and Related
Transactions
Report 2015-F-14

Dear Mr. Prendergast:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by Metro-North Railroad officials to implement the recommendations contained in our audit report, *Forensic Audit of Select Payroll and Overtime Practices and Related Transactions* (Report 2010-S-60).

Background, Scope, and Objective

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA is governed by a Board of Directors, whose 23 members are nominated by the Governor and confirmed by the State Senate. The MTA encompasses six constituent agencies, including the Metro-North Railroad (Metro-North), which operates a commuter railroad between New York City and parts of upstate New York and Connecticut.

The federal Hours of Service statute (Statute) was established in 1907 to improve railroad safety by limiting the number of hours certain railroad employees, such as signal construction employees, may work within a designated time period, as well as requiring a mandatory rest period. The Statute states that covered employees can work up to 12 hours, plus an additional four hours within a 24-hour period in emergency situations, and then they must take 10 hours off. These employees cannot perform routine work (routine repairs, maintenance, or inspections) under the emergency provision. When a mandatory rest period coincides with an employee's regularly scheduled work hours, Metro-North timekeepers prepare attendance records using a code for "Hours of Service" and the employee will be paid as if they are working and not resting.

In July 2009, Metro-North employees started to use a new timekeeping system (KRONOS). This system requires employees to use a time clock to punch in and out upon their arrival to and departure from work. If an employee does not punch in or out, an “exception” report must be signed by an authorized person for the employee to be paid for all claimed hours. The exception report authorizes the budget department to manually override KRONOS and enter an employee’s start and/or end times.

Our prior audit found that certain Metro-North employees received costly payments due to long-term practices related to Hours of Service that may have been avoidable. In fact, for calendar year 2010, we determined that these practices cost Metro-North \$991,208 in overtime and \$216,128 in regular pay, and enriched certain staff and supervisors. In addition, these payments will inflate future pension payments for these employees by about \$5.5 million. We also found missed time punches by Signal Construction unit employees were frequently not supported by exception reports. In addition, supervisors approved their own attendance records.

We issued our initial audit report on November 9, 2011. The objective of our follow-up review was to assess the extent of implementation, as of February 26, 2016, of the six recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

Metro-North officials made some progress in correcting the problems identified in our initial report. Of the six prior audit recommendations, two were implemented, two were partially implemented, and two were not implemented.

Follow-Up Observations

Recommendation 1

Study the cost benefit and feasibility of rearranging signal workers’ schedules (e.g., a night shift) so that unnecessary overtime pay is stopped.

Status - Implemented

Agency Action - Metro-North prepared a document entitled “Signal Construction Business Process Review” that studied the cost benefit and feasibility of rearranging signal workers’ schedules so that unnecessary overtime pay is stopped. The document contains several proposed methods for reducing overtime and Hours of Service payments by adding work shifts. However, none of these changes had been implemented at the time of our follow-up review, as they are subject to processes for collective bargaining agreements.

Recommendation 2

Discontinue Hours of Service payments and related premium pay for employees who are not entitled to it.

Status - Partially Implemented

Agency Action - An official from Metro-North's Communication and Signals Department stated that any employee working on approved tasks whose rest period coincides with his or her regularly scheduled hours will be eligible for Hours of Service payments.

We requested overtime approval forms for 12 pay periods during calendar years 2013, 2014, and 2015. However, Metro-North officials could only provide overtime approval forms for the four pay periods in 2015. This conflicts with Metro-North's record retention policy, which requires such files to be retained for seven years. At the closing conference, Metro-North officials stated they were following the federal record retention requirement of two years.

Based on the forms provided, we reviewed six Hours of Service charges from 2015 and determined that there was no evidence to show that the tasks performed by the employees qualified under the Statute. However, subsequent to the start of our follow-up review, Metro-North modified its overtime pre-approval form to include a line for pre-approval of Hours of Service work, which will help ensure that only employees who are entitled to Hours of Service payments receive it. MTA officials provided us with a copy of the new form at the review's closing conference.

Recommendation 3

Investigate the inappropriate payments noted in our report and take appropriate corrective action, including disciplinary action, recovery of payments, and adjusting pension benefits.

Status - Not Implemented

Agency Action - Metro-North officials did not investigate inappropriate payments noted in our initial report. As a result, no disciplinary actions, recoveries of payments, or adjustments to pension benefits were considered by Metro-North.

Recommendation 4

Clarify and communicate, as appropriate, which employees are entitled to compensation for Hours of Service and which are not.

Status - Not Implemented

Agency Action - MTA's 90-day response to our initial audit stated that the overtime approval

form is an ongoing record of who is entitled to Hours of Service payments. However, the overtime approval form does not indicate which specific employees are entitled to compensation for Hours of Service. When we requested additional documentation that clarified which employees were entitled to compensation for Hours of Service, we were directed to the Statute, which does not identify the specific employees eligible for such compensation.

Recommendation 5

Adhere to payroll controls that are designed to provide checks and balances such as reconciling all exceptions between KRONOS and manual attendance records.

Status - Partially Implemented

Agency Action - Metro North's Maintenance of Way Timekeeping Procedures state that exception reports must include the time of a missed time clock punch, an acceptable reason for the lack of a punch, and an authorized signature on the resulting exception report. We reviewed timekeeping records for 54 employees and found that the required reconciliation was generally performed. However, in four instances, the exception reports did not have authorized signatures, and in one of these four instances, the reason for the lack of a time clock punch was missing.

Also, officials provided us with a copy of a report issued by MTA Audit Services on an audit of the KRONOS timekeeping system's access controls, which was conducted after full system implementation. Further, Audit Services officials provided us with documentation indicating that all three of their report's recommendations were implemented.

Recommendation 6

Immediately discontinue the practice of supervisors signing attendance records for themselves and determine whether other corrective action or disciplinary action is warranted.

Status - Implemented

Agency Action - Metro-North's current Maintenance of Way Timekeeping Procedures state that supervisors' timesheets must be signed by managers. We met with seven timekeepers, and all of them possessed a copy of these procedures. In addition, we reviewed a judgmental sample of 42 supervisors' timesheets from the 2013, 2014, and 2015 calendar years and found that all of the timesheets were signed by managers.

Contributors to this report were Robert C. Mehrhoff, Joseph F. Smith, Daniel Bortas, and Emil Cherian.

We would appreciate your response to this report within 30 days, indicating any actions

planned to address the unresolved issues discussed in this report. We thank the management and staff of Metro-North for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: M. Fucilli, MTA,AG
D. Jurgens, MTA Audit Services
Division of the Budget