



Metropolitan Transportation Authority

State of New York

March 31, 2014

Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Honorable Thomas P. DiNapoli
Office of the State Comptroller
633 Third Avenue, 31st Floor
New York, NY 10017

RE: Response to Report #2011-S-46 – Forensic Audit of Dual Employment Approvals and Conflicts

Gentlemen:

On December 18, 2013, the Office of the State Comptroller issued the above referenced audit report. As required by Section 170 of the Executive Law, I am providing you with the attached response which addresses the recommendations contained in the report.

A copy of the final audit report is attached for your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. F. Prendergast", with a long horizontal line extending to the left.

Thomas F. Prendergast
Chairman and Chief Executive Officer

Attachments

**METROPOLITAN TRANSPORTATION AUTHORITY
STATUS OF ACTIONS IN RESPONSE TO OFFICE OF THE STATE
COMPTROLLER'S AUDIT REPORT:
FORENSIC AUDIT OF DUAL EMPLOYMENT APPROVALS AND CONFLICTS
(Report 2011-S-46)**

As required by Section 170 of the Executive Law, this memorandum describes the actions taken by the Metropolitan Transportation Authority ("MTA") in response to the above referenced audit report. The following specific responses describe the steps taken by the MTA to implement the recommendations of the subject audit report:

Dual Employment

Recommendation 1:

Require each MTA agency to develop a comprehensive policy on outside employment. The Policy should be distributed to all MTA personnel. Staff needs to be informed of the potential ramifications for non-compliance. The Policies should be consistent between agencies as appropriate.

Implemented. As noted in our response to the State's draft report, each MTA agency, with the exception of Bridges and Tunnels, had a formal policy and procedure on dual employment that must be followed by employees who wish to engage in outside employment. Effective March 4, 2014, Bridges & Tunnels issued its policy on dual employment and outside activity. As a result, all MTA agencies have their own policy, which supplements the MTA All-Agency Code of Ethics. It should be noted that the MTA's All-Agency Code of Ethics, was revised effective February 26, 2014 to codify certain current practices and to establish additional "best practice" controls over how the MTA manages outside activity approvals.

Recommendation 2:

Take appropriate corrective action with those employees (and their supervisors) identified in this report as not complying with the MTA Code or their respective agency's Policy. Corrective action should address employees who have failed to notify their employer of outside employment, employees who have continued their outside employment even though their applications for such were denied by their Agency, and employees in safety-sensitive positions who do not have sufficient rest between their shifts.

In Progress. In response to the audit findings, each agency took action, where appropriate, to obtain the dual employment/outside activities notification forms for employees identified in the report who are currently dually employed. Additionally, the agencies initiated investigations on the employees cited in the audit. With respect to NYC Transit, its Labor Relations Department is reviewing the investigation results to determine the appropriate action for each employee. In addition, LIRR is working with NYC Transit to review employment records to determine whether there was a conflict of interest, such as overlapping hours, for one employee who had been dually employed at both agencies.

Recommendation 3:

Follow-up on the fraudulent transactions we have identified in this report (i.e., persons reporting to work in two places at the same time, persons being paid for travel time when they should be at work, etc.) and take appropriate disciplinary action.

In Progress. In response to the audit findings, each agency initiated investigations on the employees cited in the audit. With respect to Metro-North, one employee, in accordance with the applicable collective bargaining agreement, was given significant discipline and has served a 30-day suspension without pay. An additional 31 days of deferred time effectively keeps this employee on probation such that any additional violation will be cause for termination. The discipline will stay on the employee's record, and this prevents the employee from ever being promoted.

Recommendation 4:

Recoup the overpayments made to the MTA employees identified in this report.

In Progress. In response to the audit findings, each agency, where appropriate, initiated investigations on the employees cited in the audit. With respect to NYC Transit, its Labor Relations Department is reviewing the investigation results to determine the appropriate action for each employee. In regards to Metro-North, based on the records provided, any overpayments would have to be recouped by the agency from which the employee resigned back in June of 2011.

Military Leave

Recommendation 5:

Develop and codify a comprehensive and consistent Policy for MTA employees on active military duty. The Policy should clarify how reduced salary payments are to be calculated, documentation to be maintained to support those calculations, and include the ramifications to employees who fail to submit the necessary paper work to support their services. MTA officials should enforce those requirements.

In Progress. The agencies are working with MTA Headquarters to develop and codify a comprehensive All-Agency policy for military leave and military pay for all MTA employees. The All-Agency policy will incorporate the clarification noted in the State's recommendation. In the interim NYC Transit is evaluating its policy concerning military leave and military pay to determine what changes should be made to incorporate the clarification noted until the MTA issues an All-Agency Policy.

Recommendation 6:

Recover the overpayments made to the employees on active duty identified in this report and take steps to minimize future overpayments.

In Progress. In response to the audit findings, each agency took action, where appropriate, to investigate and verify the overpayments. With respect to LIRR, one employee was found to have been over compensated by \$5,127 and has begun to repay the overpayment, and a second employee was determined to owe \$13,617, and deductions are being made from the wages to recoup the overpayment. As noted earlier, the agencies are working with MTA Headquarters to develop and codify a comprehensive All-Agency policy for military leave and military pay in order to minimize future overpayments.



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Forensic Audit of Dual Employment Approvals and Conflicts

Metropolitan Transportation Authority



Report 2011-S-46

December 2013

Executive Summary

Purpose

To determine whether Metropolitan Transportation Authority (MTA) employees who also worked for a New York State or City agency had approval to do so; were working their required hours at each employer; and were not violating any safety regulations. Our audit covered employees with the described dual employment during the period July 1, 2009 through June 30, 2010 for payroll analysis purposes, and through December 31, 2011 for field observations.

Background

The MTA provides transportation services in and around the New York City metropolitan area. MTA's Code of Ethics (Code) allows employees to engage in external employment with certain provisions. For example, the outside employment must not interfere with the employee's ability to fulfill his/her duties at the MTA; and the employee must not use any MTA resources in connection with his/her outside employment. Each MTA agency may develop its own outside employment policy (Policy) to supplement the Code. As of June 30, 2010, we found that the MTA and its agencies had 78 employees who were dually employed and earning more than \$10,000 from both the MTA and either a State, City or another MTA agency during the exact same time periods.

Key Findings

- We found that 58 of the 78 dually employed MTA employees did not notify MTA officials regarding, or have MTA approval to work, their outside job.
- We identified 11 MTA employees who were fraudulently reporting to be at two places at the same time. These instances equate to an overpayment of \$41,914 during the audit period.
- There were 16 Transit employees who, because of their dual employment, were violating time limits for consecutive hours worked within a 24-hour period. Accordingly, they were potentially putting public transportation users at risk.
- In addition, MTA employees on military leave were overpaid an aggregate of \$65,722.

We have referred our findings to the MTA Inspector General and will assist in any further investigation.

Key Recommendations

- Prepare comprehensive policies for employees who are seeking, or have, outside employment, or are on military leave, stipulating the required approvals and appropriate conduct in such circumstances, as well as the ramifications for those who do not comply with the policies.
- Distribute these policies to staff with appropriate guidance, monitor compliance and take follow-up action as appropriate.
- Recoup the \$108,000 in overpayments identified in this report, and take appropriate disciplinary action where fraud was perpetrated by employees and abetted by their supervisors.

Other Related Audits/Reports of Interest

[Metropolitan Transportation Authority/Metro-North Railroad: Forensic Audit of Select Payroll and Overtime Practices and Related Transactions \(2010-S-60\)](#)

[Metropolitan Transportation Authority: Management and Control of Employee Overtime Costs \(2009-S-88\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

December 18, 2013

Mr. Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Mr. Prendergast:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Metropolitan Transportation Authority entitled *Forensic Audit of Dual Employment Approvals and Conflicts*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law. This engagement was undertaken as part of a series of comprehensive forensic audits of overtime and other payroll-related practices at the Metropolitan Transportation Authority.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA comprises seven agencies including New York City Transit (Transit), which operates the New York City bus and subway systems; Long Island Rail Road (LIRR), which operates a commuter railroad between New York City and Long Island; Metro-North Railroad (Metro-North), which operates a commuter railroad between New York City and parts of upstate New York and Connecticut; and MTA Bridges and Tunnels (B&T), which operates seven bridges and two traffic tunnels in New York City.

MTA's Code of Ethics (Code) addresses when it is acceptable for staff to engage in outside employment (dual employment). Also, each MTA agency may develop its own outside employment policy (Policy) to supplement the Code.

The Code allows MTA employees to engage in outside employment provided the employment:

- Does not interfere with the employee's ability to perform his or her MTA duties;
- Does not violate agency policy; and
- Does not involve the use of any MTA resources (e.g., time, equipment, telephone).

For staff who are policy makers, the Code requires that outside employment must have approval from MTA agency management, as well as the Joint Commission on Public Ethics if such outside income exceeds \$1,000 and \$4,000 respectively. The Code is silent on approvals for outside employment for staff who are not policy makers. However, the Code does provide that employees must notify their respective MTA agency management of outside employment unless the agency has its own Policy pertaining to such notification.

Transit and Metro-North have policies that prohibit certain employees with "safety-sensitive" positions, such as bus drivers and track workers, from engaging in external employment when the employee will not have a continuous 8-hour block of non-working time before reporting to their MTA job. As a rail road, Metro-North's employees who perform safety-sensitive activities are subject to Federal Hours of Service requirements which require a 10-hour break between shifts if their preceding shift was 12 hours long.

As of June 30, 2010, the MTA and its agencies had 78 employees who were dually employed and earning more than \$10,000 annually from the MTA and either a State, City or another MTA agency.

Audit Findings and Recommendations

We found that during our audit field work two of MTA's major subsidiaries (LIRR and B&T) had not developed Policies and procedures for their employees to follow when seeking and/or securing outside employment. Thus, the employees of each MTA agency are not subject to the same dual employment approval requirements. Although Metro-North and Transit officials have developed such Policies, their employees do not always comply with them. We found that 58 of the 78 dually employed MTA employees did not notify or have MTA approval to work their outside jobs. More importantly, we identified 11 MTA employees who were being paid by both the MTA and their State or City agency employer, or more than one MTA agency, fraudulently reporting to be in two places at the same time - an impossible task. For two of these employees, whose schedules overlapped only when they worked overtime, their respective ending times at one employer abut their starting times at their second employer. Logically, one of their employers is routinely paying for the travel time between the two jobs instead of paying for time actually worked on site. We estimate the payments to these 11 employees for time not worked to total \$41,914 for our review period based on their MTA salaries plus fringe benefits.

In addition, we identified 16 Transit employees in safety-sensitive positions (e.g., bus operators, track workers) whose dual employment does not provide for the required mandated rest period for their specific positions - placing themselves, their co-workers and the riding public at potential risk.

Lastly, we identified another 12 MTA staff who were receiving pay from both the MTA and the military who, as a result of incomplete documentation and inaccurate calculations, were overpaid \$65,722 by the MTA.

We have referred our findings to the MTA Inspector General and will assist in any further investigation.

Compliance With Dual Employment Policies

The first procedure we performed was to determine whether each of the 78 employees we identified with outside employment during our review period had applied for approval from, or otherwise notified, their respective MTA agencies of their intention to seek outside employment.

We found that only 34 of the 78 employees had done so. Thus, 44 of these employees were dually employed without the knowledge of their MTA agencies. These 44 employees included bus operators and signal maintainers.

Of the 34 employees who did apply for approval from, or otherwise notify, their respective agency, 20 were approved and 14 were denied their dual employment. However, such denial did not stop them from maintaining their outside employment. As a result, MTA officials are not aware of the potential hazards that may be posed by their employees in safety-sensitive positions who hold outside employment.

Conflicting Work Schedules

For those MTA employees who held outside employment during our review period, we contacted their State or City employer to obtain their daily time and attendance records and/or work schedules so we could compare their reported days and hours worked at those agencies to their time records maintained by the MTA. For the period July 1, 2009 through June 30, 2010, we identified 11 employees fraudulently reporting a pattern of being in two different work locations at the same time. Their overlapping work hours during this period totaled 1,126 hours which, based on their MTA salaries and fringe benefits, approximates \$39,292 paid for time not worked. (The actual amount overpaid during this period may differ depending on which employer was shortchanged on any given day.) Considering future pension benefits to these employees, and the fact that several of these employees have been dually employed for multiple years, the actual overpayments to date are likely significantly higher and will continue to grow if not corrected.

For employees with the most scheduled overlaps, we performed on-site observations with audit staff posted at both job locations to confirm these overlaps. The following examples detail some of our findings and observations in this area:

- A Transit Track Equipment Maintainer hired on July 28, 1997, who worked at the Broadway Junction Train Station and claimed to not have any outside employment, also worked for the New York City Department of Environmental Protection (DEP) at 30-03 Review Avenue in Long Island City since April 7, 2003 - a location approximately 20 to 47 minutes away depending on his mode of transportation. During our review period, his respective work schedules for his two employers overlapped by one hour for each of his four workdays per week:

Employer	Monday	Tuesday	Wednesday	Thursday
Transit	8:00 a.m. - 4:00 p.m.	8:00 a.m. - 4:00 p.m.	8:00 a.m. - 4:00 p.m.	8:00 a.m. - 4:00 p.m.
DEP	3:00 p.m. - 11:30 p.m.	3:00 p.m. - 11:30 p.m.	3:00 p.m. - 11:30 p.m.	3 p.m. - 11:30 p.m.

On August 11, 2011, we visited both of his job locations simultaneously to confirm that either one or both of his time records were not reporting his actual work hours. One of our teams arrived at his Transit location at 2:00 p.m. to find that he had already left for the day even though he was scheduled to work for another two hours. Our team at DEP found that this employee arrived at that site at 2:53 p.m. - on time for that job.

When we questioned this employee about his overlapping work schedules, he told us that for the past seven years he was informally authorized by his supervisor to work his Transit job from 6 a.m. to 2 p.m. even though his Transit time and attendance records did not report such. On September 8, 2011, we performed an unannounced visit to his Transit work location to determine whether he truly started his day at 6 a.m. as claimed. However, we found that he arrived just before 8 a.m., his regularly scheduled start time.

For the one-year period ended June 30, 2010, we identified 146 overlapping instances for this employee for which he was paid \$8,232, including fringe benefits, for time not worked.

As noted above, he has been leaving early from his Transit job for several years. As such, we estimate his cumulative overpayments for time not worked may be significantly higher.

- In another example, we have a Transit Bus Operator assigned to the East New York Transit Bus Depot, who was also employed by the NYS Office for People with Developmental Disabilities, at the Brooklyn Developmental Disabilities Services Office (DDSO), as a housekeeping supervisor even though his request for outside employment had been denied. His regularly scheduled work hours at Transit were 4:00 p.m. to 12 midnight Thursday through Monday. His scheduled hours at the DDSO were from 3:30 p.m. to 12:00 midnight Sunday through Thursday. During our review period we identified a total of 749 hours in overlapping work schedules for this employee, including 56 days where his overlaps were at least seven hours (for all intents and purposes an entire shift). The total overlaps amounted to \$22,462 in overpayments.

Subsequent to our review period, this employee changed his schedules at both jobs but his time records continued to show patterned overlaps approximately 1.5 hours a day, three days per week. We visited each of his job locations simultaneously on June 11, 2011, to confirm the reported conflicting schedules. We found that this employee left his DDSO job at 12:40 p.m., nearly two hours early, and arrived at the bus depot at 1:09 p.m., nine minutes late. As with our prior example, this employee claims that his reported work schedule at the DDSO during the time of our floor check was not accurate. He claims that he had unofficially changed his DDSO work schedule to accommodate his Transit job but could not support this assertion.

We supplied MTA, as well as the appropriate State and City agency, officials with the names of each of the employees with overlapping hours, and their respective supervisors (as available per their time and attendance reports), so they can follow up on these fraudulent transactions and take corrective action as appropriate. We have also referred our findings to the MTA Inspector General and will assist in any further investigation.

Adjoining Work Schedules

We also found two MTA employees with outside employment whose respective work schedules for their two employers ended/started at the exact same time. Thus, there is no accounting for needed travel time between their two jobs. As such, as with those employees whose work schedules overlapped, one or both of their employers were paying them for time not worked. For example:

- A Transit Structure Maintainer assigned to the West 4th Street Station, whose regularly scheduled hours were 8 a.m. to 4 p.m. Monday through Friday, also worked for Metro-North, at Grand Central Station, as a Sheet Metal Worker from 4 p.m. to 12 a.m. Tuesday through Saturday. During our review period, his time and attendance records show that he worked adjoining shifts on 112 days. For 110 of these days he clocked in at Metro-North approximately 30 minutes before his Transit shift ended.

On Wednesday, June 1, 2011, we performed concurrent observations at both job locations and found that he signed out from Transit at 3:55 p.m., his normal time, yet had already clocked in at Metro-North. We observed him at Metro-North at 4:20 p.m. Considering the minimum travel time it takes to get from one job location to the other, we estimate he has been paid a total of \$2,383, including fringe benefits, for 56 hours not worked. When we confronted this employee with our observations he did not provide an explanation.

This employee resigned from his Transit position on June 2, 2011, one day after we performed our observations.

- Another Transit Track worker, assigned to the Utica Avenue Station on the "A" Line, was also employed as a Plant Utility Assistant at SUNY Downstate Medical Center (DMC). Minimum travel time by car between the two locations approximates 10 minutes. Considering walking time to and from his car, the total travel time between locations is more likely at least 15 minutes. During the three-month period April 1, 2010 through June 30, 2010, his work schedule at Transit was from 11 p.m. to 7 a.m. Sunday through Thursday, and his work hours at DMC were 3 p.m. to 11 p.m. Monday through Friday resulting in an average of four days per week of adjoining work schedules. During this three-month period, we identified 29 days when he submitted time records that he was actually at both jobs on the same date and claiming to leave DMC on time as well as arriving at Transit on time - an impossible task. We conservatively estimate the amount of time during our audit period that he was paid for working when actually on travel time to total 7.25 hours resulting in a \$240 overpayment.

Public Safety Issues

We identified 16 Transit employees with outside employment who held safety-sensitive positions and appear to have been violating Transit's rest period requirements and risking the safety of themselves, their co-workers and the riding public. According to Transit's Policy, employees with certain safety-sensitive positions (e.g., track workers, bus operators, etc.) must have a mandatory rest period of eight consecutive hours between their Transit shifts. This period affords employees the opportunity to obtain sufficient rest to ensure they are fit for work.

- One full-time Transit Track worker was also employed full-time by Bronx Community College (BCC). His Transit work schedule was 10 p.m. to 6 a.m. Sunday through Thursday, and his BCC work schedule was 9 a.m. to 5 p.m. Monday through Friday. Thus, on the four days each week where he was working both jobs, it was impossible for him to obtain the required eight-consecutive-hour rest period. In fact, Transit records indicate that this employee worked 33 hours of overtime during our review period, further diminishing his required rest time. We question when and where this employee may have been getting his necessary sleep considering the minimal downtime between jobs. This employee did not report his outside employment to Transit Human Resources.
- A full-time Transit Car Inspector was also employed by Metro-North as a full-time safety-sensitive electrician. His Transit work schedule was 7 a.m. to 3 p.m. Monday through

Friday, and his Metro-North work schedule was 4 p.m. to 12 a.m. Wednesday through Sunday. Thus, on three days each week it was impossible for him to obtain the required consecutive eight hours of rest. This employee also failed to notify Transit of his outside employment.

In June 2013, we followed up with our MTA and MTA agency liaisons to determine whether any follow-up action had been taken in response to our preliminary findings. Metro-North officials informed us that they had increased their communications with employees regarding their need to seek approval for dual employment. They were awaiting receipt of our draft report before any specific follow-up actions would be taken with the employees cited in our report. Transit officials also referenced us back to the explanations that were given to us during our audit field work which have already been considered in our report.

Recommendations

1. Require each MTA agency to develop a comprehensive Policy on outside employment. The Policy should be distributed to all MTA personnel. Staff needs to be informed of the potential ramifications for non-compliance. The Policies should be consistent between agencies as appropriate.
2. Take appropriate corrective action with those employees (and their supervisors) identified in this report as not complying with the MTA Code or their respective agency's Policy. Corrective action should address employees who have failed to notify their employer of outside employment, employees who have continued their outside employment even though their applications for such were denied by their agency, and employees in safety-sensitive positions who do not have sufficient rest periods between their shifts.
3. Follow up on the fraudulent transactions we have identified in this report (e.g., persons reporting to work in two places at the same time, persons being paid for travel time when they should be at work) and take appropriate disciplinary action.
4. Recoup the overpayments made to the MTA employees identified in this report.

Military Leave

Three MTA employees not included in our sample of 78 employees with outside employment were receiving semi-monthly payments from the NYS Division of Military and Naval Affairs (DMNA). Upon further inquiry, we determined that these employees were actually on active military duty during our audit scope period and not employees of DMNA.

Since each of these employees was also receiving a biweekly salary payment from an MTA agency, we asked for MTA's Policy (Policy), if any, regarding payments to such employees.

On October 22, 2001, as a result of the recent terrorist attacks, the MTA authorized military leave

benefits for their employees who were members of the Reserves and National Guard (Reservists) and called to active duty (activated).

MTA's military benefits (benefits) include:

- Leave at full pay for the first 22 working days activated (or 30 calendar days - whichever the Reservist prefers);
- Reduced pay (the difference between the Reservists' regular MTA pay and their military pay) beyond the 22/30-day period for those reservists who choose not to charge their accrued leave or have insufficient leave balances to receive full pay; and
- Paid medical health benefits (medical, dental and vision).

To be eligible for these benefits, the employees must submit, at the very least, their activation notice, a periodic attendance certification, and proof of their military benefits.

We found that MTA officials have not established systems and controls to ensure compliance with their military leave payment policy. For each of the three employees in our sample we found that, although their activation notices were available in their MTA agency personnel files, there were no attendance certifications or proof of military pay. As such, we contacted DMNA to confirm the active duty status of these three individuals and were able to do so.

We then attempted to assess the propriety of reduced MTA payments to each of these employees by accessing the New York State Payroll Database (PayServ) website to obtain the DMNA military pay each received based on their individual service grades. We found that these employees were overpaid an aggregate of \$37,809 during our scope period as follows:

Employee 1 works for Metro-North. When we asked for an explanation of why they paid this employee \$35,323 instead of \$23,934, Metro-North representatives told us that they use the U.S. Department of Defense's monthly basic military pay schedule as a source instead of the actual payments available on PayServ.

Employee	MTA Salary	Military Pay	Reduced MTA Pay Per Policy	Actual MTA Reduced Pay	Overpayment
1	\$46,690	\$22,756	\$23,934	\$35,323	\$11,389
2	\$46,818	\$28,879	\$17,939	\$23,314	\$ 5,375
3	\$41,071	\$24,532	\$16,539	\$37,593	\$21,054
Total Overpayment					\$37,818

Representatives from B&T, where employee number 3 is employed, gave us a similar explanation.

Employee 2, who works for Transit, was paid approximately 50 percent of his base salary according to Transit representatives. This is their usual practice and at the termination of the employee's active duty they would perform a reconciliation between what the employee was actually paid and what he/she should have been paid to determine whether any recoveries are warranted.

However, we were not shown any evidence of these reconciliations nor is this practice in writing.

Due to the inconsistencies in payroll coding between MTA agencies, we were unable to obtain an accurate count of all MTA employees on military leave during our review period. From available information, we selected an additional nine employees (two from B&T, two from Transit, two from Metro-North and three from LIRR) to determine whether the lack of required documentation and practice of overpaying employees on active duty was consistent.

Activation notices were available for only six of the nine employees. The other three were not on active duty. Two of them were in voluntary military training, and the third employee without documentation was not serving in any military capacity during the designated dates. All three should not have received any MTA pay during this period unless they charged accrued leave - which they did not, but two of them were in fact paid. In addition, there were no attendance certifications or independent evidence of military pay in the files for the six employees who were in fact on active duty.

The nine employees in our expanded sample were overpaid an aggregate of \$27,904 resulting in a total overpayment for our sample of 12 employees reported as being on military leave of \$65,722.

In June 2013, we were informed by MTA's Audit Division that they are initiating an MTA-wide review of military pay and related operations. In addition, B&T management noted that they will be seeking recovery of the overpayments in this area as they pertain to B&T.

Recommendations

5. Develop and codify a comprehensive and consistent Policy for MTA employees on active military duty. The Policy should clarify how reduced salary payments are to be calculated, documentation to be maintained to support those calculations, and include the ramifications to employees who fail to submit the necessary paperwork to support their service. MTA officials should enforce those requirements.
6. Recover the overpayments made to the employees on active duty identified in this report and take steps to minimize future overpayments.

Audit Scope and Methodology

The objective of our forensic audit was to determine whether MTA employees who also worked for a New York State or New York City agency had approval to do so; worked all required hours for each of their employers; and did not violate any safety regulations. Our audit covered employees with the described dual employment during the period July 1, 2009 through June 30, 2010 for payroll analysis purposes, and through December 31, 2011 for field observations.

Using the MTA, New York State and New York City payroll databases, we identified 111 employees who were on a New York State or New York City agency payroll, as well as that of an MTA agency, for at least \$10,000 in earnings from each. We then requested time and attendance records for these individuals to determine whether the dates and times for work claimed by the individuals for one agency conflicted with those at the MTA agency and identified 78 employees in this category. In addition to summarizing the hours and associated dollars for conflicting work schedules, we performed physical observations of selected employees to confirm their reported conflicting schedules. For employees with conflicting or adjoining schedules, we also calculated the travel time between jobs when calculating unproductive time. We also interviewed relevant LIRR, NYCT, B&T and Metro-North railroad officials; examined agency policies and procedures; and reviewed relevant regulations. For those on military leave we accessed the DMNA payroll database and reviewed their personnel files for supporting documentation.

We conducted our forensic audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits.

Authority

We performed this audit 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.

Reporting Requirements

We have provided a draft copy of this report to MTA officials for their review and comment. Their comments have been considered in preparing this final report and are attached in their entirety at the end of the report.

MTA officials assert that they are committed to resolving the issues identified in the report. They have also provided us with some additional data and documentation that are reflected in this final report (see State Comptroller's Comment).

Within 90 days of the final release of this report, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

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Vision

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Agency Comments

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Thomas F. Prendergast
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

September 6, 2013

Frank Patone, CPA
Audit Director
The Office of the State Comptroller
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Dear Mr. Patone:

This letter responds to draft audit report 2011-S-046, "Forensic Audit of Dual Employment Approvals and Conflicts." The MTA appreciates the opportunity to review the draft report and to submit this response.

The MTA is committed to resolving the dual employment and military leave issues identified in the report. The audit used a comparison of State and City payroll records, but the MTA agencies do not have the ability or authority to perform such an analysis to identify employees who are dually employed. Nevertheless, the MTA is committed to taking steps to ensure to the best of its ability that employees are reporting dual employment. We will use these findings and recommendations to strengthen our internal processes in order to minimize the operational and financial impacts of employees who are dually employed or performing military service. Below are our comments with respect to the specific recommendations contained in the report:

Dual Employment

Recommendation 1:

Require each MTA agency to develop a comprehensive Policy on outside employment. The Policy should be distributed to all MTA personnel. Staff needs to be informed of the potential ramifications for non-compliance. The Policies should be consistent between agencies as appropriate.

Response: We agree. The MTA has an All-Agency Code of Ethics that applies to every employee of the MTA. This Code expressly prohibits employees from engaging in outside employment that interferes with the proper and effective discharge of their official duties and responsibilities. This Code directs each employee to consult with their agency's Human Resource Department to determine what dual employment policy exists at the employing agency. At this time, each MTA agency, with the exception of Bridges and Tunnels, has developed a formal policy and procedure on dual employment that must be followed by employees who wish to engage in outside employment. The agencies continue to remind all employees, via internal and corporate communications, that they

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

must comply with dual employment policies. Collectively, the All-Agency Code of Ethics and the individual agency policies provide the MTA with a comprehensive policy regarding outside employment. To ensure that employees are in compliance with the Code of Ethics, Bridges and Tunnels will establish a formal written agency policy on dual employment. Finally, the MTA Chief Compliance Officer will periodically restate to employees the importance of complying with the Dual Employment Policy. Since a policy alone cannot ensure employee compliance, we have also requested MTA Audit Services to periodically audit this area for compliance and notify appropriate departments on their conclusions and findings. The review will be conducted similarly to the way the State Comptroller's audit was conducted by comparing MTA's payroll to the State and City payrolls and using other forensic audit steps.

Recommendation 2:

Take appropriate corrective action with those employees (and their supervisors) identified in this report as not complying with the MTA Code or their respective agency's Policy. Corrective action should address employees who have failed to notify their employer of outside employment, employees who have continued their outside employment even though their applications for such were denied by their Agency, and employees in safety-sensitive positions who do not have sufficient rest periods between their shifts.

Response: We agree. Each agency is in the process of following up on the information provided by the State to investigate the employees cited in the audit. If a violation is confirmed to have occurred, appropriate corrective and disciplinary action will be taken. With respect to NYC Transit, it should be noted that the initial results of their investigation determined that four of the individuals who were reported to have failed to file dual employment forms where in fact not subject to the dual employment policy (since they were independent contractors and not employees), the missing dual employment forms for five other employees identified in the report have since been located, two employees who were thought to have been fraudulently reporting time due to conflicting or adjoining schedules have been found to not have any overlap of actual time worked.

*
Comment
1

Recommendation 3:

Follow-up on the fraudulent transactions we have identified in this report (i.e., persons reporting to work in two places at the same time, persons being paid for travel time when they should be at work, etc.) and take appropriate disciplinary action.

Response: We agree. Each agency will take appropriate disciplinary action based on the results of its investigation into each alleged violation reported by the State. Any disciplinary action taken will be consistent with the appropriate collective bargaining agreements.

Recommendation 4:

Recoup the overpayments made to the MTA employees identified in this report.

Response: We agree. Each agency will initiate action to recover any overpayments made for time not worked from the employees reported by the State based on the agency's established disciplinary process.

Military Leave**Recommendation 5:**

Develop and codify a comprehensive and consistent Policy for MTA employees on active military duty. The Policy should clarify how reduced salary payments are to be calculated, documentation to be maintained to support those calculations, and include the ramifications to employees who fail to submit the necessary paper work to support their service. MTA officials should enforce those requirements.

Response: We agree. While the agencies have processes in place relative to military leave, some policies do not address the reconciliation of earnings or the documents that are required to be submitted by employees (such as activation notices, attendance certificates, etc.). Further, the MTA agencies do not have access to the New York State Payroll Database ("PayServ") to determine the actual payments made by the military to the employees who went out on military leave. The agencies will work with MTA Headquarters to develop and codify a comprehensive All-Agency policy for military leave and military pay for all MTA employees. The All-Agency Policy will incorporate the clarification noted in the recommendation above. As noted in the draft report, to assist in formulating an all-agency policy, the MTA audit group is also performing an all-agency review of military pay to identify existing and best practices.

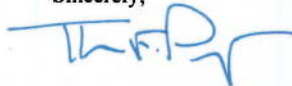
Recommendation 6:

Recover the overpayments made to the employees on active duty identified in this report and take steps to minimize future overpayments.

Response: We agree. Where a specific policy was in place at LIRR identifying how recalculations would be performed, and notifying the employees of the policy in advance, the agency will recover any verified overstatements made to employees on military leave. As noted above, the MTA is in the process of developing an all-agency policy that will provide for a detailed consistent methodology to perform these reconciliations in the future and will establish a process to recover any overpayments made going forward. The agencies are committed to establishing new procedures to help minimize future overpayments.

Thank you again for the opportunity to respond to the draft audit report.

Sincerely,



Thomas F. Prendergast
Chairman and Chief Executive Officer

State Comptroller's Comment

1. We have adjusted our final report figures to account for the four individuals who were ultimately found to not be subject to the MTA's Dual Employment Policy, as well as for the five employees whose dual employment applications, notifications and/or approvals were subsequently located. We have also adjusted our report figures for one of the two employees who, upon MTA follow-up, was found to not have been fraudulently reporting her time. We did not see sufficient competent evidence to adjust our findings for the remaining employee.