



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

Division of State Government Accountability

Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds

Metropolitan Transportation Authority Long Island Rail Road



Report 2010-S-2

January 2014

Executive Summary

Purpose

To determine if the Long Island Rail Road (LIRR) used the American Recovery and Reinvestment Act funds efficiently and for authorized purposes and whether the funds were properly monitored to prevent fraud, waste and abuse. Our audit covered the period April 30, 2009 to June 30, 2012.

Background

The LIRR, a constituent of the Metropolitan Transportation Authority (MTA), received funding through the American Recovery and Reinvestment Act (Recovery Act) for two of its projects: Atlantic Avenue Viaduct Phase II and Babylon Car Wash. These projects were estimated to cost approximately \$77.3 and \$25.5 million, respectively. A great portion of the work on these projects is performed by employees assigned to the LIRR Engineering Department (Department). The Recovery Act requires that instances of fraud, waste and abuse are mitigated and that there is a high level of transparency and accountability in the spending of its funds on these projects.

Key Findings

- In certain instances, the LIRR did not efficiently manage its Recovery Act funds to ensure that they were used for authorized purposes, and that they were properly monitored to prevent fraud, waste and abuse. Due to the poor controls over its time and attendance, employees might be paid for overtime that is unnecessary and/or not worked. For example, Department management did not always know the whereabouts of their field employees and one supervisor misinformed auditors by stating that an employee was working when, in fact, he was not at work.
- We identified three employees (an assistant track supervisor and two track foremen) who worked an excessive amount of overtime (from 18 to 24 hours in one day) on two separate occasions. Working an excessive amount of hours consecutively, without an adequate off-duty rest period, may degrade the efficiency and effectiveness of work performance and could compromise worker and passenger safety.

Key Recommendations

- Improve the control environment to promote accuracy in reporting staff attendance.
- Monitor employees to ensure they are only paid for overtime hours worked.
- Monitor the number of hours employees work consecutively without an off-duty rest period to ensure their work performance is efficient and effective and that worker and passenger safety is not compromised.

Other Related Audits/Reports of Interest

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

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

[Metropolitan Transportation Authority/Metro-North Railroad: Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds \(2012-S-104\)](#)

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

Division of State Government Accountability

January 24, 2014

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 so doing, 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 entitled *Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds* at the Metropolitan Transportation Authority Long Island Rail Road. 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 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*

Table of Contents

Background	4
Audit Findings and Recommendations	5
Overtime Worked on Stimulus Funded Projects	5
Site Visits	6
Recommendations	8
Audit Scope and Methodology	8
Authority	9
Reporting Requirements	10
Contributors to This Report	11
Agency Comments	12
State Comptroller's Comments	20

State Government Accountability Contact Information:

Audit Manager: Melissa Little

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

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 oversees six constituent agencies, including the Long Island Rail Road (LIRR), which operates a commuter railroad on 11 different branches between Montauk, on eastern Long Island, and Manhattan and Brooklyn.

In 2009, the federal government passed the American Recovery and Reinvestment Act (Recovery Act) to provide financial assistance to states, localities, and public authorities in a time of fiscal distress. The Recovery Act requires the expenditure of grant funds with an unprecedented level of transparency and accountability so that taxpayers know where and how their tax money is being invested.

LIRR has two Recovery Act funded projects referred to as Atlantic Avenue Viaduct Phase II and Babylon Car Wash. These projects were budgeted for approximately \$77.3 million and \$25.5 million, respectively.

Audit Findings and Recommendations

Overtime Worked on Stimulus Funded Projects

The Recovery Act guidelines require that funds are used for authorized purposes and that instances of fraud, waste and abuse are mitigated in compliance with federal, state, and local laws and regulations. In addition, projects funded through the Recovery Act should avoid unnecessary delays and cost overruns, such as those related to overtime charges.

Our audit found that in certain instances the LIRR has not been efficiently managing its Recovery Act funds to ensure they are used for authorized purposes, and to mitigate instances of fraud, waste and abuse. Due to the poor controls over its time and attendance, employees may be paid for overtime that is unnecessary and/or not worked, thereby wasting stimulus funds. Working an excessive amount of hours consecutively, without an adequate off-duty rest period, may degrade the efficiency and effectiveness of work performance and could compromise worker and passenger safety.

Department officials explained that certain types of maintenance work can only be done at night and on weekends to minimize service disruptions. Therefore, employees are scheduled to do overtime work at night and on weekends. Usually, a Department manager will schedule the overtime work, while a supervisor will canvass employees to determine who is interested in working the overtime assignment one or two days before the expected overtime date.

Adequate controls, such as the pre-approval and justification of overtime, are necessary to manage overtime costs. However, the overtime documents and time sheets that Department officials provided for review did not show evidence of overtime pre-approval or justification by the employees' foreman or the supervisor.

We reviewed the assignment schedules and time sheets for 11 selected employees, comprising electrical traction, signal and track workers, for September 2010. The time sheets for the 11 employees indicated that they worked 110 instances of overtime, totaling 998 hours in September 2010. We found that none of the 110 instances of overtime claimed were pre-approved or justified. We determined that Department officials do not maintain documentation explaining the reason for or the pre-approval of overtime.

We also reviewed the attendance records prepared and maintained by the employees' foremen and used to prepare the payroll for the Department's unionized employees. We found that the Department did not have a system in place to record the actual daily attendance of the field employees (e.g., timecards, electronic time-keeping systems, sign-in sheets). Consequently, there were no controls in place to verify the accuracy of the attendance records prepared by the foremen. Therefore, employees', including the foremen's, pay is based on the number of hours they are scheduled to work rather than on the actual hours worked.

The Department has two regular day shifts for track workers, which is 7:30 a.m. to 3:30 p.m. or 8 a.m. to 4 p.m. from Mondays to Fridays, while signal workers have a single regular day shift from 7:30 a.m. to 3:30 p.m. Department officials told us track workers' regular shifts cannot be changed without prior agreement by their union. As a result, three sampled track workers (i.e., an assistant track supervisor and two track foremen) were allowed to work excessive overtime hours on September 12 and September 26, 2010. For example, on September 12, 2010, one track foreman claimed 24 consecutive overtime hours, the assistant track supervisor claimed 20.5 consecutive overtime hours, while another track foreman claimed 18.5 consecutive hours on the same day. The excessive overtime by the three track workers was repeated two weeks later on September 26, 2010, when the track foreman, assistant track supervisor, and the other track foreman claimed 22.5, 18, and 19.5 overtime hours consecutively. Working an excessive amount of hours consecutively, without an adequate off-duty rest period, may degrade the efficiency and effectiveness of work performance and could compromise worker and passenger safety. LIRR officials should monitor the number of hours employees are allowed to work consecutively without an off-duty rest period to ensure their work performance is efficient and effective and that worker and passenger safety is not compromised.

In responding to the preliminary audit findings, LIRR officials explained that while specific time sheets and overtime documents were not pre-approved, an established process was followed in assigning overtime to employees. They also noted that pre-approval and justification for overtime was done through the project scope and the approved budget estimates. However, we believe the project scope approval by upper management cannot replace the overtime pre-approval and justification for individual overtime assignments. Further, prior approval of individual workers' overtime by line supervisors ensures that the work done was necessary, actually performed, and properly supervised. We note that 8 of the 110 overtime instances claimed by one track worker were approved one to seven days after they were worked.

In response to the issue regarding the three employees who worked an excessive number of consecutive overtime hours, LIRR officials noted that this was consistent with provisions of existing collective bargaining agreements and accomplished with careful consideration of the safety of all employees on site. While the collective bargaining agreement does not establish a limit on the number of overtime hours that can be worked, the Federal Railroad Administration Hours of Service Laws does. LIRR officials also responded that employees are paid based on actual hours worked and that both manual and electronic systems are used to record daily attendance. However, we found no evidence that any of the 11 employees' daily attendance was recorded either manually or electronically. As a result, employees may be paid for hours not worked.

Site Visits

The Grants Management Monitoring section of the Recovery Act Recommended Internal Control and Best Management Practices document requires that agency personnel (i.e., manager/monitor/auditor) visit grant recipients' project sites, as necessary, to ensure that Recovery Act funds are used for authorized purposes in compliance with federal laws, regulations, and terms of the agreement. However, we found that the Department did not always know the whereabouts of their employees. In addition, we found poor communication between field supervisors and

management in the Department concerning changes to workers' schedules.

We selected the nine highest overtime earners assigned to the two Recovery Act funded projects during the third quarter of 2010, and made visits to their scheduled assigned work locations to determine if they were working at their currently assigned project sites. We obtained those employees' work schedules for both overtime and regular hours from the Department.

We visited the sites where the nine employees were scheduled to be working based on a review of the Department's assignment schedules. The visits to the selected project sites were conducted on four separate occasions (two during regular work hours and two on weekend overtime shifts) since the nine employees were stationed at different locations throughout the LIRR system. Our series of visits began on Wednesday, May 11, 2011, and culminated with our final visit on Monday, September 26, 2011.

Over the course of the four visits, we located seven of the nine employees. One of the remaining two employees was on vacation while the other employee was no longer assigned to the scheduled work site. We determined that the Department was not aware that one employee was on vacation and the other had a changed work site. The Department's inability to promptly account for their employees' whereabouts or attendance could result in unproductive use of employees' paid time and/or employees being paid for hours they did not work.

The following describes the problems we encountered that required four site visits to account for the nine employees. On our first visit we were unable to locate eight of the nine employees at the Richmond Hill and Upper Holban facilities where a Department official had told us they could be found. This official's information was based on work schedules that field supervisors provided to the Department. After further inquiry, we concluded that the Department does not have a reliable record of workers' daily assignments indicating the locations of its workforce.

Field supervisors schedule regular shifts on a monthly basis, while overtime work for rank and file employees is scheduled a day or two in advance. Field supervisors may also reassign employees to various work sites where they are needed on a daily basis. We located an additional three employees on our second and third visits (May 21, 2011 and June 18, 2011) to the selected sites.

On Monday, September 26, 2011, we visited the Richmond Hill and the Upper Holban facilities to locate and identify the remaining five employees (according to the assignment schedules, four of the five employees should have been at Richmond Hill and one at Upper Holban) before they dispersed to their various work sites. We arrived at 7 a.m., before the start of the shift. At that time, we found two of the four employees who were scheduled to be at Richmond Hill. However, one of the two employees we located had arrived late. The supervisor provided an explanation that the employee was at another facility. However, when the employee subsequently arrived at the work site, he told us he was late and was just arriving to work. We concluded that the supervisor was covering up for the employee by misinforming us.

For the remaining two employees, we determined that one was actually on vacation and the other was reassigned to another location, contrary to the schedules we were provided. Apparently, the

field supervisor at Richmond Hill had not provided timely information to the Department for assignment schedules to be updated promptly. Furthermore, the field supervisor was unable to provide auditors with documentation showing that the employee was on an approved vacation. After our visit to Richmond Hill, we went to the Upper Holban facility and located the fifth employee. Given these lax controls, employees may be paid for hours not worked.

In responding to our preliminary findings, LIRR officials stated that corrective action was taken after we made them aware of the employee who arrived late to work. LIRR officials provided documentary evidence that the employee was marked late and his time was docked accordingly. We note, however, that at the time of our exit conference no action was taken against the supervisor who misinformed OSC auditors about the whereabouts of his employee. LIRR officials also indicated that the employee who did not follow proper procedures in submitting vacation request documents was issued a warning letter. LIRR officials also indicated that while they concur with our recommendations, they do not agree that our inability to locate the selected employees at their assigned locations was due to poor management. They believed it was due to the auditors' misunderstanding of their schedules and work shifts.

Recommendations

1. Establish a process for approving and justifying overtime for electric traction, signal and track workers in the Department prior to the overtime being worked.
2. Monitor employees to ensure they are only paid for hours worked.
3. Monitor the number of hours employees work consecutively without an off-duty rest period to ensure their work performance is efficient and effective and that worker and passenger safety is not compromised.
4. Implement a time-keeping system to accurately record the attendance of Department employees assigned to field locations.
5. Improve communication between field supervisors and the Department regarding employee schedules so that changes in assignments can be updated promptly and accurately.
6. Improve the control environment to promote accuracy in reporting staff attendance.

Audit Scope and Methodology

We audited the LIRR's use of federal stimulus funds for the period April 30, 2009 to June 30, 2012. Our audit objective was to determine if the LIRR used the American Recovery and Reinvestment Act funds efficiently and for authorized purposes and whether the funds were properly monitored to prevent fraud, waste and abuse.

To accomplish our objective, we met with LIRR officials to gain an understanding of their policies

and procedures for the administration and management of their two Recovery Act funded projects. We also reviewed the pertinent sections of the American Recovery and Reinvestment Act as well as MTA and federal guidelines pertaining to the American Recovery and Reinvestment Act. In addition, we examined overtime charges for the 11 highest overtime earners assigned to the LIRR Recovery Act funded projects for the third quarter of 2010.

We conducted our performance 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 obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As is our practice, we notified MTA officials at the outset of the audit that we would be requesting a representation letter in which MTA management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In this letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, MTA officials have not provided a representation letter in connection with this audit. As a result, we lack assurance from MTA officials that all relevant information was provided to us during the audit.

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 the 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 of program performance.

Authority

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.

Reporting Requirements

A draft copy of this report was provided to MTA LIRR officials for their review and comment. The MTA LIRR's response was considered in preparing this final report and is attached in its entirety at the end of the report. MTA LIRR officials generally agreed with our recommendations and stated actions they have taken or will take to implement them. Our rejoinders to certain MTA LIRR comments are included as State Comptroller's Comments.

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.

Contributors to This Report

Melissa Little, Audit Manager
Diane Gustard, Audit Supervisor
Robert Tabi, Examiner-in-Charge
Adrian Wiseman, Examiner-in-Charge
Joseph Fiore, Chief Investigator

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Acting Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments

347 Madison Avenue
New York, NY 10017-3739
212 878-7200 Tel
212 878-7030 Fax

Thomas F. Prendergast
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

October 24, 2013

Ms. Melissa Little
Audit Manager
The Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Re: Draft Report #2010-S-2 (Use of Federal Stimulus Funds)

Dear Ms. Little:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Ms. Helena E. Williams, President, Long Island Rail Road, which address this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'T.F.P.', with a horizontal line extending to the left and a flourish to the right.

Thomas F. Prendergast
Chairman and Chief Executive Officer

Attachment

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

Jamaica Station
 Jamaica, NY 11435-4380
 718 558-8252 Tel
 718 657-9047 Fax

Helena E. Williams
 President



October 18, 2013

Mr. Thomas F. Prendergast
 Chairman and Chief Executive Officer
 Metropolitan Transportation Authority
 347 Madison Avenue
 New York, NY 10018

**RE: New York State Comptroller's Request for Response
 Use of Federal Stimulus Funds –
 2010-S-2**

Dear Chairman Prendergast:

As required by Section 170 of the Executive Law, detailed below are the updated actions that have been taken to address the recommendations contained in the State Comptroller's Audit of Use of Stimulus Funds. LIRR received American Recovery and Reinvestment Act (ARRA) funding for two projects: the rehabilitation/replacement of the Atlantic Avenue Viaduct (Phase IIa) and the construction of the Babylon Train Car Wash.

The State Comptroller's report states, "In certain instances, the LIRR did not efficiently manage its Recovery Act funds to ensure that they were used for authorized purposes, and that they were properly monitored to prevent fraud, waste and abuse." The LIRR does not agree with this statement. The audit did not find any instances of fraud, and in fact, both projects were completed on time and under budget. The former project was completed ahead of schedule and earned several prestigious awards including, "Design Build Project of the Year" from the American Society of Civil Engineers, and "Diamond Award for Engineering Excellence" from the American Council of Engineering Companies. It also was recognized by the White House in September 2010 as one of the "100 Recovery Act Projects Changing America." These results were achieved through excellent management, including constant project review and oversight and high worker productivity.

The Atlantic Avenue Viaduct carries more than 25,000 passengers each week- day on the LIRR Atlantic 1 and 2 tracks. The 8,500-foot long viaduct comprises 199 individual steel spans, between 35' and 45' feet apart depending on location which, on average were over 100 years old . The entire rehabilitation involved demolishing and replacing 189 of those spans; including longitudinal girders and cap beams; bracing; painting; column repairs; and installing fiberglass interior and exterior walkways for workers.

*
 Comment
 1

MTA Long Island Rail Road is an agency of the Metropolitan Transportation Authority, State of New York
 Thomas F. Prendergast, Chairman and Chief Executive Officer

* See State Comptroller's Comments, Page 20.

Mr. Prendergast
October 18, 2013
Page 2

The Atlantic Viaduct project phase II was broken out into IIa and IIb. Phase IIa was budgeted at \$77.4 million and began in 2009. In this phase, 85 spans were replaced over 20 weekends as compared to the original 30 weekends planned based upon a strict review of the methods and means of undertaking the work. The \$26 million phase IIb replaced the remaining 17 spans within the Nostrand Avenue Station segment over six (6) weekends as compared to the originally planned 14 weekends. Overall, the ARRA funded portion of the Atlantic Avenue Viaduct Project – phase IIa was under budget by \$2.95 million.

The second project, the construction of the new Babylon Train Car Wash facility consisted of the construction of two buildings: the equipment building (21' x 180') which houses the control, wash room, pumps, reclaim/recycle wash water, waste water treatment system and storage tanks for the train wash; and a wash bay structure (26' x 282') consisting of pre-cast track slab sections, wash water collection system and the train wash equipment. The \$25.5 million dollar project was completed approximately \$1.5 million under budget and took place over a 34-month period. There were no overtime related issues identified during the audit for this project.

Both projects audited were developed, estimated and managed by the Department of Program Management (DPM), and as such, had a Project Manager assigned who was responsible to ensure work was completed on time and on budget. Per LIRR practice, the Project Manager regularly reviewed charges to the project against field records and validated timekeeping and financial records. Productivity issues were addressed during the projects and elevated to more senior management, if necessary.

While the LIRR is proud of the successful and productive completion of these two projects, totaling over \$128 million, it welcomes recommendations to further strengthen its management oversight. This memorandum summarizes the LIRR's response to the State Comptroller's audit and actions it intends to take in the near future to address the concerns raised.

Recommendation No. 1

- Establish a process for approving and justifying overtime for electric traction, signal and track workers in the Department prior to the overtime being worked.

LIRR Response:

The LIRR agrees with this recommendation.

As stated in the LIRR's July 6, 2012 response to the preliminary draft audit report, overtime for employees within all disciplines of the Engineering Department is authorized by management personnel (typically a division Engineer), either in writing or verbally in advance of any capital project work being performed. This approval is required to ensure overtime is necessary and to ensure manpower coordination with other ongoing initiatives.

Mr. Prendergast
October 18, 2013
Page 3

Verbal authorization is more typical with projects that are planned to be completed on overtime or projects that can only be completed outside of normal business hours (to minimize customer service impacts). In such cases, management will, at times, verbally advise supervision that overtime is required to support 3rd party projects such as the Atlantic Avenue Viaduct project. Supervision will then determine manpower required and canvass employees in accordance with the respective Collective Bargaining Agreement. Overtime is never worked without management authorization.

The Department's process for securing this approval is carefully managed by each individual discipline so as to ensure that overtime is utilized only when necessary and that it is consistent with the LIRR's policy direction. Once management approves (typically the division Engineer), a Supervisor canvasses employees to determine who will be deployed on overtime for each particular work assignment. Specific assignments are based on the provisions of existing collective bargaining agreements and management has no discretion on which employees will be deployed to the job.

One example of how the process works is in the Electric Traction/Power discipline. The Supervisor determines that there is a need for overtime based on emergency, planned work, job tickets, and determines the number of employees required to complete the work. The Electric Traction Trouble Desk prepares a manpower overtime list based on the collective bargaining agreement seniority list and fills out a form detailing the names of employees working and their assignment. Employees show up for this assignment and call the Engineering Systems Operations (ESO) desk on a recorded line who in turn enters the calls into a database. The Foreman calls the desk when the job is completed and the database is updated. Subsequently, the Supervisors review and verify labor sheets against the database.

In the case of Atlantic Viaduct project, LIRR President and executive management, which included the Chief Engineer, Chief Transportation Officer and Chief Program Officer, decided that the project span replacements would take place during off hours using weekend single track outages between approximately 9PM Friday until 5AM Monday to minimize impact to train service operations. As such, the use of overtime for the entire project was budgeted and pre-approved. The Base Contract included provisions for up to 28 weekend outages with two weekend outages for the Contract Option. However, the Contractor and LIRR only required 20 weekends overall to complete the Base and Option Scope of work.

The Babylon Train Wash project was provided up to 66 weekend track outages with an additional six weekends available to construct the Wash Bay on the wash lead track. In fact, the project required 59 weekend outages to perform this work. None of the 110 overtime instances noted in the report were related to the Babylon Train Wash project.

One factual clarification is required. The total number of specific overtime instances reviewed by the State Comptroller's Office was 110 and not 133. There are several reasons

* Comment 2

Mr. Prendergast
October 18, 2013
Page 4

for this confusion. For example, the State Comptroller's Office counted overtime worked by an employee on Friday night and the following Saturday morning (a single appearance) as two instances when in fact it should be counted as one single instance. Furthermore, although the 11 employees identified in the report did work on the ARRA related project, they also worked on other non-ARRA related projects. Of the 110 instances of overtime identified in the report, only 72 were directly related to ARRA funded work for the Atlantic Avenue Viaduct and none were related to the Babylon Train Wash project.

Nevertheless, despite the LIRR's position that overtime utilization was at an appropriate level for these projects, LIRR will develop procedures for prior written approval for all necessary overtime on future projects or post-approval where events occur that immediately necessitate overtime. LIRR's goal for these procedures will be to exercise tighter controls on a pre-authorization basis balanced by the use of post-authorization where on-site project management determines it must immediately progress a project to protect safety and/or minimize customer impacts. This process will supplement the use of biometric clocks, which is discussed below.

Implementation Status: *Complete and Ongoing*

Recommendation No. 2

- Monitor employees to ensure they are only paid for hours worked.

LIRR Response:

The LIRR agrees with this recommendation and has a process in place to ensure that employees are paid only for the hours they work.

Supervisors are responsible for monitoring, approving and signing-off on all hours worked by employees to ensure they are paid only for hours worked. The Engineering Department utilizes both manual and electronic systems to record the daily attendance of the unionized employees. The Foreman manually enters the actual information of the day's work on a Daily Labor Distribution Sheet (Labor Sheet). This Labor Sheet is signed by the Foreman and given to the Foreman's Supervisor for his/her review and signature. The Labor Sheet is then forwarded to a payroll clerk for data entry into the payroll system. After the information is entered into the payroll system, the entry is verified by a secondary group in the Engineering Administration Department. This information is further reviewed by another group in the Engineering Administration Department to ensure the accuracy and consistency of rule applications.

Notwithstanding the existence of this process, the Engineering Department is in the process of installing biometric clocks at all headquarter locations. Employees will be required to "scan in and out" at the beginning and end of their shifts. This will be a useful tool for the Department to maximize worker productivity and validate timekeeping and payroll. The

Mr. Prendergast
October 18, 2013
Page 5

Department expects all biometric clocks will be functional by the end of the first quarter of 2014.

Implementation Status: *Complete and Ongoing*

Recommendation No. 3

- Monitor the number of hours employees work consecutively without an off-duty rest period to ensure their work performance is efficient and effective and that worker and passenger safety is not compromised.

LIRR Response:

The LIRR agrees with this recommendation and takes numerous steps to ensure that employee safety, which it considers of highest priority, is maintained at work sites.

In the Signal Division, the LIRR is in compliance with the FRA's "hours of service" regulations, which require rest periods per prescribed hours worked. The remaining divisions are not subject to "hours of service" regulations but are subject to the provisions of their respective collective bargaining agreements. In any event, the LIRR does not assign employees to work if it would jeopardize their safety or the safety of their co-workers or customers. With regard to the specific instances cited by the State Comptroller's Office, in each case the deployment was conducted in accordance to the provisions of existing collective bargaining agreements and was accomplished with careful consideration of the safety of all employees on the site. Most importantly, there were no significant employee accidents on either of the two ARRA projects.

Implementation Status: *Complete*

Recommendation No. 4

- Implement a timekeeping system to accurately record the attendance of Department employees assigned to field locations.

LIRR Response:

The LIRR agrees with this recommendation. As noted in the LIRR's response to Recommendation #2, there is a process currently in place to monitor employee attendance. This process will be strengthened by the installation of biometric clocks by the end of the first quarter of 2014.

Implementation Status: *Complete and Ongoing*

Recommendation No. 5

Mr. Prendergast
October 18, 2013
Page 6

- Improve communication between field supervisors and the Department regarding employee schedules so that changes in assignments can be updated promptly and accurately.

LIRR Response:

While we agree that Field Supervisors should manage employee field activities and assignment changes, there seems to be some confusion concerning the role of the Field Supervisor and the "Department." It is the Field Supervisors' job to manage the day-to-day activities of his/her employees, including changes in their assignments. These changes are then documented on their Labor Sheets, which are approved and submitted by Field Supervisors to the Administration Section of the department. The Administration Section of the Department receives these Labor Sheets and inputs the information into the payroll system. The Administration Section is responsible solely for recording time and labor worked and not managing daily changes to assignments.

*
 Comment
 3

As noted in the LIRR's July 6, 2012 response to the preliminary draft, employees must start and end their tour of duty at their headquarters location, but their work assignments are conducted at different locations throughout the LIRR system. When the Engineering Administration officials provided the State Comptroller's office with a schedule identifying Richmond Hill and Upper Holban facilities as headquarters locations, they did not mean to imply that the employees in question could be found there throughout the day. In order to verify attendance, the auditors needed to arrive at these locations at the very start of the employee's shift. As the audit report details, the auditors recognized their mistake and revisited sites at the correct times.

*
 Comment
 4

During the course of the audit, a construction site visit to the Atlantic Avenue Viaduct project was conducted during one of the weekend outage periods to verify attendance of selected Signal Department employees engaged in providing signal protection and support to the project. The State Comptroller's Office representative was escorted to several signal locations adjacent to, but remote from, the actual span replacement work site, and verified Signal personnel attendance.

It should be noted that the Field Supervisors use their discretion and reassign workers as needed. The Administration Section does not require notification of changes of daily work assignments prior to the shift being worked.

Implementation Status: *Ongoing*

Recommendation No. 6

- Improve the control environment to promote accuracy in reporting staff attendance.

Mr. Prendergast
October 18, 2013
Page 7

LIRR Response:

The LIRR agrees with this recommendation. The installation of biometric clocks, scheduled to be completed by the end of the first quarter of 2014, will further enhance the controls already in place in this area. The system will have enhanced reporting capabilities to assist Management in maintaining more current and accurate employee leave and attendance records.

With regard to the Foreman who misinformed the auditor about the location of the employee under his supervision, Signal Supervision contacted the Foreman and issued a verbal warning that he is responsible for reporting absences and that he is required to provide clear and accurate responses to authorized state representatives such as auditors of the State Comptroller's Office. Also, as noted in the report, the employee who arrived late for work was not paid for the 30 minutes he was late. In addition, the Chief Engineer issued a memorandum to all Engineering employees reminding them of their responsibilities.

Also, as noted in the LIRR July 6, 2012 response to the preliminary draft, it was determined that the employee had requested a vacation change from his Foreman. The Foreman had tentatively approved the requested change and advised the employee to fill out a required vacation change request form. The employee who omitted to fill out the form was consequently issued a warning letter for not following the proper procedure. It should be noted that this employee's official Daily Labor Distribution document shows that this employee was marked and paid a vacation day.

Implementation Status: *Complete and Ongoing*

We would like to extend our gratitude to the Office of the State Comptroller for conducting this audit. We recognize that audits can provide important recommendations and insights for strengthening LIRR operations and maximizing productivity and efficiency. We believe the LIRR's action plan addresses the recommendations of the State Comptroller's Office. Please contact me should you require additional information.

Sincerely,



Helena E. Williams
President

State Comptroller's Comments

1. Our report does not state that the audit identified fraud. Rather, our audit concluded that the MTA LIRR did not efficiently manage Recovery Act funds to prevent fraud, waste and abuse. As detailed throughout the report, there were multiple weaknesses in the MTA LIRR's policies and procedures over employee time and attendance, and there was considerable risk that employees were paid for hours they did not work. Further, MTA LIRR generally agreed with our report's recommendations and indicated that they have or will take steps to implement them.
2. We corrected our report to note that 110 instances of overtime were not pre-approved or justified.
3. We sufficiently understood the respective roles of the Field Supervisors and the Engineering Department. Moreover, our point was that Field Supervisors needed to report employee assignment changes timely and accurately.
4. We were not confused. We advised MTA LIRR management that we intended to make unannounced site visits to selected projects to find a sample of employees, who received overtime pay for stimulus project work previously, to ensure these employees worked the hours for which the MTA LIRR would pay them. We followed MTA LIRR management's direction on where and how to find the employees. However, as detailed in our report, several of these employees were not where MTA LIRR management told us they would be.