



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.