



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 Metro-North Railroad



Executive Summary

Purpose

To determine if the Metro-North Railroad (Metro-North) used American Recovery and Reinvestment Act (Recovery 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

Metro-North, a subsidiary of the Metropolitan Transportation Authority (MTA), has four projects funded by the Recovery Act, namely, Poughkeepsie Station Building-Doors/Window (\$4.6 million), Grand Central Terminal Elevators (\$7.7 million), Grand Central Terminal Facilities Rehabilitation (\$22.7 million), and Tarrytown Station Improvement (\$37.3 million).

Key Finding

- Our review of Metro-North's monitoring of employees paid with Recovery Act funds found that Metro-North officials could better monitor their employees to ensure that Recovery Act funds are used for authorized purposes and instances of fraud, waste and abuse are mitigated. Metro-North officials should improve the timekeeping method used for conductors to better ensure they are actually working the hours they are paid for, require that all overtime is pre-approved and justified prior to being worked, and consider whether it is the most efficient practice and whether government funds are being wasted by paying conductors 2 hours and 40 minutes of overtime every day for indirect tasks such as changing their clothes, washing up, and traveling to and from the project site. Also, an unannounced visit to the Tarrytown Station found one conductor was not at his assigned post when a train made a stop.

Key Recommendations

- Monitor employees' time and attendance to ensure that they are only paid for actual hours worked.
- Establish agency-wide policies and procedures that govern the use, pre-approval and justification of overtime.
- Ensure the most efficient practices are in place and government funds are not wasted by paying overtime for indirect tasks such as employees changing their clothes, washing up and traveling to and from the project site.
- Monitor conductors to make sure that they are on site and working at their assigned posts to better ensure the safety of passengers, contract workers and other Metro-North employees when trains stop at a station during ongoing track work.

Other Related Audit/Report of Interest

[Metropolitan Transportation Authority/Long Island Rail Road: Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds \(2010-S-2\)](#)

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

Division of State Government Accountability

January 24, 2014

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 of the Metropolitan Transportation Authority entitled *Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds* at the Metro-North Railroad. 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
Monitoring Employees Paid With Recovery Act Funds	5
Recommendations	7
Audit Scope and Methodology	7
Authority	8
Reporting Requirements	8
Contributors to This Report	9
Agency Comments	10

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 Metro-North Railroad, which operates a commuter railroad between New York City and parts of upstate New York and Connecticut.

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. The Recovery Act guidelines require that funds are used for authorized purposes and instances of fraud, waste and abuse are mitigated in compliance with federal, state, and local laws and regulations.

Metro-North Railroad (Metro-North) has four projects funded by the Recovery Act totaling about \$72.3 million as follows: Poughkeepsie Station Building-Doors/Window (\$4.6 million), Grand Central Terminal Elevators (\$7.7 million), Grand Central Terminal Facilities Rehabilitation (\$22.7 million), and Tarrytown Station Improvement (\$37.3 million). The work conducted on these projects was done by contractors as well as Metro-North employees. The Metro-North employees sometimes charged overtime rates to the projects.

Audit Findings and Recommendations

Monitoring Employees Paid With Recovery Act Funds

Our review of Metro-North's monitoring of employees paid with Recovery Act funds found that Metro-North officials could better monitor their employees to ensure that Recovery Act funds are used for authorized purposes and instances of fraud, waste and abuse are mitigated. Metro-North officials should improve the timekeeping method used for conductors to better ensure they are actually working the hours they are paid for, require that all overtime is pre-approved and justified prior to being worked, and consider whether it is the most efficient practice and whether government funds are being wasted by paying conductors 2 hours and 40 minutes of overtime every day for indirect tasks such as changing their clothes, washing up, and traveling to and from the project site. Also, an unannounced visit to the Tarrytown Station found one conductor was not at his assigned post when a train made a stop.

Timekeeping Systems

Metro-North has two different timekeeping systems, KRONOS and the Crew Management System (CMS), to record and track time and attendance for the employees in its various job titles. KRONOS is an electronic real-time system used to record the actual time an employee signs in or out and its data is used to prepare payroll. KRONOS timekeeping clocks are installed at some, but not all, reporting locations. CMS is used exclusively by conductors and other employees with related on-board train titles (e.g., train engineers). Conductors are required to manually sign an attendance log book at the beginning of their shift. In addition, conductors are also required to sign in on the CMS at least once anytime during their scheduled shift. Because there is no requirement for conductors to sign out manually in the attendance log book or on CMS, there is no complete record of the employee's start time and end time. In addition, Metro-North management doesn't have a record of when conductors actually leave Metro-North facilities (i.e., buildings and train stations) at the end of their shift. Consequently, Metro-North management has less assurance that conductors are only paid for actual hours worked and that instances of fraud, waste and abuse are mitigated. Metro-North officials responded to our preliminary audit findings that, as a result of our audit, they have taken some measures to improve controls over the reporting of conductors' arrival and off-site times.

Pre-Approval and Justification of Overtime

We selected the 10 highest overtime earners who worked on Recovery Act-funded projects for the third quarter ended on September 30, 2010, to determine whether the overtime was pre-approved (except in emergencies) and justified. The 10 sampled employees included six conductors, a welder, a machinist, a mechanic foreman, and a bridge and building (B&B) foreman. The conductors recorded their attendance in manual attendance log books and CMS while the four other selected employees (welder, machinist, mechanic foreman and B&B foreman) recorded their time in KRONOS. These 10 employees worked a total of 183 hours of overtime in 54 instances during the period reviewed.

We reviewed the overtime requests and time sheets for the 10 selected employees. We found that there were no overtime requests or other documentation to support the pre-approval and justification of 45 overtime instances (136 hours) that were claimed by the six conductors. Overtime was justified but not pre-approved for the nine instances (47 hours) incurred by the welder, machinist, mechanic foreman, and B&B foreman. This was allowed to occur because Metro-North does not have agency-wide documented policies and procedures that govern the use, pre-approval and justification of overtime. Instead, Metro-North officials allow each management center to make that determination.

Unannounced Floor Check

We made an unannounced visit to the Tarrytown Station Improvement project on July 14, 2011 to determine if Metro-North employees were actually at the site and working. When we arrived at the station we spoke to a Metro-North construction engineer who told us that there were four conductors on duty that day at the station. Conductors, among other things, are responsible for ensuring the safety of passengers as well as contractors and other Metro-North employees when work is being done on the tracks. We asked the construction engineer to help us identify the four conductors. The following summarizes what occurred:

- One conductor was standing at the end of the second platform.
- The construction engineer told us that another conductor's designated post was the location where we were standing but we found that he was not present. While we were standing at the conductor's post a passenger train came and made a stop. A few minutes later, the conductor returned to his post and identified himself to us. When we asked why he was not at his designated post when the last passenger train arrived, the conductor claimed that the train we observed was a through train. We told him that was not an accurate statement because we observed the train stopping at the station. The conductor then said, "I don't know what happened." The safety of passengers as well as contract workers and other Metro-North employees may be compromised if conductors do not remain at their assigned posts when trains are passing through the station during ongoing track work.
- We were unable to see the other two conductors from our location because one was supposed to be working underneath the far end of the southbound platform and the other on the roof of the passageway. A supervisor later showed up at the site and took us to where the two conductors were located so that we could verify the identity of the two conductors and that they were present and working.

We learned during the visit that every conductor assigned to the Tarrytown Station is paid 2 hours and 40 minutes of overtime every day for changing their clothes, washing up, and traveling to and from the project site. We met with Metro-North's Assistant Director of Capital Operations for the Tarrytown project who confirmed that each conductor assigned to the project is paid 2 hours 40 minutes overtime each working day for these indirect tasks. According to the Assistant Director, the conductors' collective bargaining agreement requires them to allow conductors time to change their clothes, wash up and travel to and from the project site. We question whether paying overtime for these indirect tasks is the most efficient practice and whether stimulus funds

are being wasted as a result.

Recommendations

1. Require conductors to electronically sign in and out so there is a record of when their workday began and ended.
2. Monitor employees' time and attendance to ensure that they are only paid for actual hours worked.
3. Establish agency-wide policies and procedures that govern the use, pre-approval and justification of overtime.
4. Monitor conductors to make sure that they are on site and working at their assigned posts to better ensure the safety of passengers, contract workers and other Metro-North employees when a train stops at a station during ongoing track work.
5. Ensure the most efficient practices are in place and government funds are not wasted by paying overtime for indirect tasks such as employees changing their clothes, washing up and traveling to and from the project site.

Audit Scope and Methodology

Our audit objectives were to determine if the Metro-North used Recovery Act funds efficiently and for authorized purposes, and whether the funds were properly monitored to prevent fraud, waste and abuse. Our audit scope was April 30, 2009 through June 30, 2012.

To accomplish our objectives, we met with Metro-North officials to gain an understanding of their policies and procedures for the administration and management of their four 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 selected a sample of the 10 highest overtime earners assigned to the Metro-North 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 Metro-North officials for their review and comment. MTA Metro-North's response was considered in preparing this final report and is attached in its entirety to this report. MTA Metro-North officials generally agreed with our audit recommendations and indicate steps they have taken or will take to implement them.

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
Saviya Crick, Staff Examiner
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

November 8, 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 #2012-S-104 (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 Mr. Howard Permut, President, Metro-North Railroad, which address this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.F. Prendergast".

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

347 Madison Avenue
New York, NY 10017-3739
www.mta.info

Howard Permut
President



November 1, 2013

Mr. Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue, 7th Floor
New York, NY 10017

RE: MTA Metro-North Railroad: Use of Federal Stimulus Funds Audit

Dear Chairman Prendergast:

We have reviewed the Office of the State Comptroller's Draft Audit Report on the Use of Federal Stimulus Funds. As of the receipt of the Draft Report, Metro-North Railroad (MNR) has completed all work on our four American Recovery and Reinvestment Act (ARRA) funded projects, totaling \$73 million of capital improvements.

The audit's findings focus on the Tarrytown Station Improvement Project, which was a \$33.2 million construction project carried out while providing daily rail service at this station. Of this project budget, \$2.8 million (less than 10%) was spent on Conductor Flagging operations, which were required to ensure the safety of customers, contractors and employees throughout the duration of the 4 year project. Conductor Flagging personnel are posted at various job site locations to provide for the safe movement of trains while work is being performed on or near the tracks. Approximately \$800,000 of the flagging costs is attributable to overtime.

MNR supports the job creation goals of the ARRA funded projects, and the Tarrytown project did create and retain jobs—22 in total based on the federal formulas. For flagging operations, the utilization of our existing workforce on overtime was significantly more cost effective than hiring, training and deploying additional employees to the job site in order to cover all of this work on straight time.

To improve our processes and in response to a related MTA Audit on the topic of Conductor Flagging in 2012, MNR has made changes to strengthen the controls over our flagging operations. With respect to the specific recommendations contained in the Draft Report, MNR has detailed below the actions that have been taken, or will soon be taken. We have also noted where collective bargaining agreements restrict our ability to implement certain recommendations.

Recommendation 1:

Require conductors to electronically sign in and out so there is a record of when their work day began and ended.

MTA Metro-North Railroad is an agency of the Metropolitan Transportation Authority, State of New York
Thomas F. Prendergast, MTA Chairman and Chief Executive Officer

MNR Response to Recommendation 1:

Since mid-2012, MNR has instituted a process whereby Capital Program personnel are recording the off-site times of third party contractors where Conductor Flags are used. The off-site time is the time when contractors have stopped working on or near the tracks for the day and Conductor Flags are no longer needed. Conductor Flag overtime claims are then cross-checked with these off-site times by Operations Services management to ensure that only legitimate overtime claims are being paid.

Based on the Conductor's current collective bargaining agreement, Conductors are only required to sign into the Crew Management System (CMS) once per day; any change to this procedure would only come through the collective bargaining process.

Recommendation 2:

Monitor employees' time and attendance to ensure they are only paid for actual hours worked.

MNR Response to Recommendation 2:

We agree with this recommendation. In order to strengthen controls over flagging operations, MNR's Operations Services, Capital Programs and IT Departments are in the process of developing a software tool which will track and record all aspects of Conductor Flag jobs from inception through completion. This system, known as the Job Ordering Tracking System (JOTS) will provide an auditable electronic record of the job "design" (which will clearly state the overtime requirements) as well as employee job assignments and actual hours worked. While JOTS is being developed we have put a temporary process in place for documenting the job design which serves as pre-approval for the use of overtime.

The Conductor's collective bargaining agreement guarantees a minimum 8-hour shift. As follow-up to the MTA Audit Services on this topic, we recorded and analyzed the actual third-party contractor off-site times over a 6 month period for the Hudson, Harlem and GCT divisions. This study revealed that contractors stopped work early on less than 1% of their shifts, so Conductors are working their full shifts. This off-site time recording has continued for these divisions and is currently being used to verify overtime claims by Conductor Flags.

Recommendation 3:

Establish agency-wide policies and procedures that govern the use, pre-approval and justification of overtime.

MNR Response to Recommendation 3:

All overtime, both scheduled and unscheduled, is ultimately approved through either our KRONOS timekeeping system or for Train and Engine employees, through CMS and the claims process. Scheduled overtime is pre-approved in a number of ways depending on the department. Unscheduled overtime is handled in real-time, and must be responsive to the urgent needs of service, emergency situations or for work which must be completed immediately. The distribution of overtime is also governed by various collective bargaining agreements, making a single approach difficult.

Recommendation 4:

Monitor conductors to make sure that they are on site and working at their assigned posts to better ensure the safety of passengers, contract workers and other Metro-North employees when a train stops at a station during ongoing track work.

MNR Response to Recommendation 4:

We agree that Conductor Flag personnel should be performing their work on site. Without the proper Conductor Flag personnel in place, 3rd party construction work cannot commence for the day. Moreover, if flagging personnel are not where they need to be, 3rd party contractors are very quick to notify MNR management as it compromises their own safety; they will not work under these conditions.

On a day-to-day basis, supervisors in the Operations Services Department conduct random site visits to monitor flagging activities and performance. The presence of construction management personnel at the job sites provides additional checks on flagging activity and safety. At times, Conductor Flags need to react to the changing conditions of the job site based on the work being performed, and therefore, it is not unusual for a Conductor Flag to move to different locations throughout the duration of his/her shift in coordination with 3rd party contractors and other MNR personnel.

Recommendation 5:

Ensure the most efficient practices are in place and government funds are not wasted by paying overtime for indirect tasks such as employees changing their clothes, washing up and traveling to and from the project site.

MNR Response to Recommendation 5:

We agree that the most efficient practices should be in place so that government funds are not wasted. All Conductors are required by agreement to work from a crew base reporting location, where they are scheduled to go on and off duty and review the most up-to-date safety and operating information. All Conductors are also guaranteed an 8 hour minimum shift. In the case of Conductor Flag assignments, it is necessary for Conductors to report to a crew base and then travel to and arrive at the job-site in advance of the start of the 3rd-party contractor's 8-hour shift. Given this, a Conductor Flag assignment will typically be longer than 8 hours, and therefore will require some level of overtime, which is built into the assignment.

While the Draft Report questions the allowance for travel time to and from the job-site along with time to wash-up at the end of the Conductor Flag shift, travel time and off-duty time are required per the collective bargaining agreement. It would be uneconomical to call out additional Conductor Flag personnel to cover a single 3rd-party contractor 8-hour shift with the intent of eliminating overtime by keeping all shifts to 8 hours or less. If MNR were to do this, we would be paying two full 8-hour shifts (based on the 8 hour guarantee requirement) to do the work that one Conductor Flag can do on one 8 hour shift with some additional increment of overtime hours.

If you have any questions or need additional information, please contact me. Thank you.

Sincerely,



Howard Permut

cc: M. Fucilli R. Burney S. Cummins J. Kesich
T. McCarthy A. Paul D. Evans N. Gilbertson