

**Report of Findings and Recommendations
for the Metropolitan Transportation Authority**

Overtime Policies and Procedures

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I. INTRODUCTION

[T]he MTA has not effectively managed and controlled its overtime costs. Rather, there has been a culture of acceptance among MTA managers regarding overtime, and no real efforts were made to make significant changes in longstanding practices that resulted in routine, and often unnecessary, overtime. As a result, overtime has become the rule rather than the exception for many of the MTA's employees, and the MTA's already high overtime costs have continued to escalate.

Office of the New York State Comptroller's Report, 2009-S-88 Management and Control of Employee Overtime Costs - 8/5/2010 (time frame covered 1/1/2008–12/31/2009).

Unfortunately, this critical finding remains equally true almost 10 years later. Despite years of similar warnings, documented findings, and reports of excessive and escalating overtime, management and leadership of the Metropolitan Transportation Authority ("MTA") have failed to address excessive overtime and have not been held accountable for this failure and the resulting escalating overtime costs.

Most fundamentally, the MTA is not able to determine whether there is widespread possible overtime fraud or why overtime payments overall are increasing so rapidly, because it lacks many of the basic systems necessary to track overtime effectively. With a few exceptions, the MTA relies on antiquated manual systems that do not provide real-time insight into critical workforce benchmarks, including overtime utilization, employee assignments, and productivity. Further, there is no uniform MTA-wide system for tracking and monitoring timekeeping, attendance, or overtime. Lacking adequate information, the MTA has been unable to control costs or ensure that it is preventing potential fraud and abuse. Moreover, inadequate systems and controls historically have hindered management from creating a culture of accountability; even where management had rudimentary tools—for example, monthly "high earners" reports—there has been no expectation of any monitoring of overtime or efforts to prevent it. For years, MTA leadership at all levels has been on notice of management's failures to address overtime issues but has permitted these failures to persist unabated.

It is common sense that rules, procedures, and oversight are critically important in controlling costs and in preventing fraud, waste, and abuse. Absent these fundamental tools, fraud and abuse can occur, and overtime costs can mount, unnoticed, unregulated, and undeterred. By not addressing long recognized overtime issues, MTA leadership has failed in its duty to safeguard the public's funds and ensure that waste, fraud, and abuse are deterred and prevented. The MTA also has not given sufficient consideration to the adverse impact excessive overtime and the appearance of impropriety have on the public's trust in its transportation system and how taxpayer funds are expended. While it may turn out that a certain amount of overtime is cost-efficient, the inability of the MTA to assess overtime in real time makes it all too convenient to disregard excessive hours as the norm, or to cite institutional factors that drive overtime, rather than work toward devising solutions based on metrics and actual measurements.

Historically, the overtime failures arose at all levels of MTA leadership, including management and the MTA Board ("Board"). The current tone from the top and attention by the

Governor's Office, MTA leadership, the Board, and the MTA Inspector General's Office ("MTA IG"), however, finally may result in real systemic changes. In support of that shared goal, this report sets forth general findings with supporting information and recommendations to address those findings. These findings include the following:

- More than a decade of studies by public auditors and non-government watchdog groups indicate a pattern of systemic inefficiency and lack of accountability in tracking and managing overtime that persists to this day, suggesting, among other things, that those studies were not given sufficient consideration by MTA management and leadership.
- There are no uniform time and attendance and overtime policies across MTA agencies¹ or (with a few exceptions) within each of the agencies and there is no management function responsible for ensuring consistency in such policies.
- The vast majority of employee timekeeping relies on paper time cards, attendance sheets, or some other manual process, and the MTA spends millions each year on paper-driven processes and outdated technology to manage a complex workforce of more than 74,000 employees.
- Management has almost no real-time data regarding employee attendance, assignments, and overtime usage (with the exception of the Triborough Bridge and Tunnel Authority ("Bridges and Tunnels") and, to a lesser extent, MTA Bus Company) and thus rarely has metrics to measure, prevent, or deter waste, fraud, and abuse.
- Non-uniform overtime policies and procedures and the lack of real-time data on overtime makes it difficult to determine the extent to which there may be fraud and abuse of overtime by employees, especially those receiving large amounts of overtime pay.
- While every MTA agency has faced high workloads during the past two years, arcane collective bargaining agreement ("CBA") provisions and work rules, which often lack any modern justification, constrain management's ability to assign work in the most cost-efficient manner, and inflate overtime costs, including in the worst instances by authorizing workers to be paid for hours they did not actually work.
- Chronically high employee absences across the MTA, and vacancies within certain divisions, create a large number of shifts that are staffed on overtime.
- Of the five major agencies within the MTA, only the smallest, Bridges and Tunnels, appears to manage overtime to budget consistently.

¹ For ease of reference, this report refers to all MTA affiliates and subsidiaries as "MTA agencies."

II. PURPOSE AND SCOPE OF ENGAGEMENT

Recent media reports revealed that overtime expenses across the MTA have increased much faster than overall payroll costs, and that individual MTA employees have received massive and possibly fraudulent overtime pay. When some MTA employees reportedly earn more than four times their base salaries or appear to work more than 3,800 overtime hours per year—equating to 10 overtime hours every day, 365 days of the year—and when overtime payments approach 25% of an agency’s overall payroll, the public cannot help but question how its tax dollars are being spent. In response, Governor Cuomo, the Board, and current MTA leadership committed to determine how a publicly funded agency could seemingly lose control of its payroll and be susceptible to potentially egregious overtime abuse.

To that end, the MTA engaged Morrison & Foerster LLP (“Morrison & Foerster”) to examine the relevant MTA policies and procedures relating to time and attendance and the authorization and solicitation of overtime by management. As part of this engagement, Morrison & Foerster committed to providing the MTA a written report of findings and recommendations within 60 days and herewith provides such report (the “Report”).

As Morrison & Foerster’s engagement was limited to time, attendance, and overtime-related issues, Morrison & Foerster did not review other MTA policies, procedures, and practices that may have been identified by current leadership and the MTA IG as requiring attention. In addition, given that instances of potentially excessive overtime by certain MTA employees have been referred to law enforcement, Morrison & Foerster did not review overtime by any individual MTA employee except as was necessary to understand the relevant policies and procedures and draws no conclusions as to whether any individual overtime earnings were fraudulent. Nor did Morrison & Foerster analyze recent reports of vandalism or sabotage of new timekeeping equipment or consider whether installing security cameras or other surveillance is warranted, though the MTA should consider the utility of those measures.

Finally, Morrison & Foerster did not review time, attendance, and overtime issues at MTA Headquarters (“MTA HQ”) and the MTA Police Department (“MTA PD”). MTA HQ has very few overtime eligible employees—only 211 MTA HQ employees earned overtime in 2018, generally administrative staff and MTA PD officers—and they did not account for a significant amount of overtime relative to MTA’s operating agencies (about 2% of overtime MTA-wide). Moreover, a review of policies and procedures at MTA PD, a fully empowered police department, functionally was too different from a review of MTA’s operating agencies, especially given the compressed time frame for this Report.

The Report first sets out an overview of Morrison & Foerster’s methodology and the entities relevant to the instant review, including the agencies that the MTA comprises. The Report next reviews prior studies and audit reports that have examined timekeeping and overtime issues at the MTA, followed by a summary of MTA policies and procedures related to timekeeping and overtime. The Report outlines factors that drive overtime and identifies problems with existing safeguards against potential fraud and high overtime, including issues with management oversight and policies and procedures. The Report also examines overtime management techniques employed by major public transit authorities nationwide and extracts

best practices derived from that examination. Finally, the Report makes critical recommendations to address the findings.

III. METHODOLOGY

The Report has been prepared based on a review and analysis performed by Morrison & Foerster during the course of 60 days. Immediately upon its appointment, Morrison & Foerster met with management, the MTA IG, counsel for the MTA, and counsel for MTA agencies. Shortly thereafter, Morrison & Foerster interviewed key individuals across MTA agencies, with the goal of understanding each agency's timekeeping policies, procedures, and controls; the issues each agency faces with respect to timekeeping, overtime, and budget; and the main drivers of overtime.

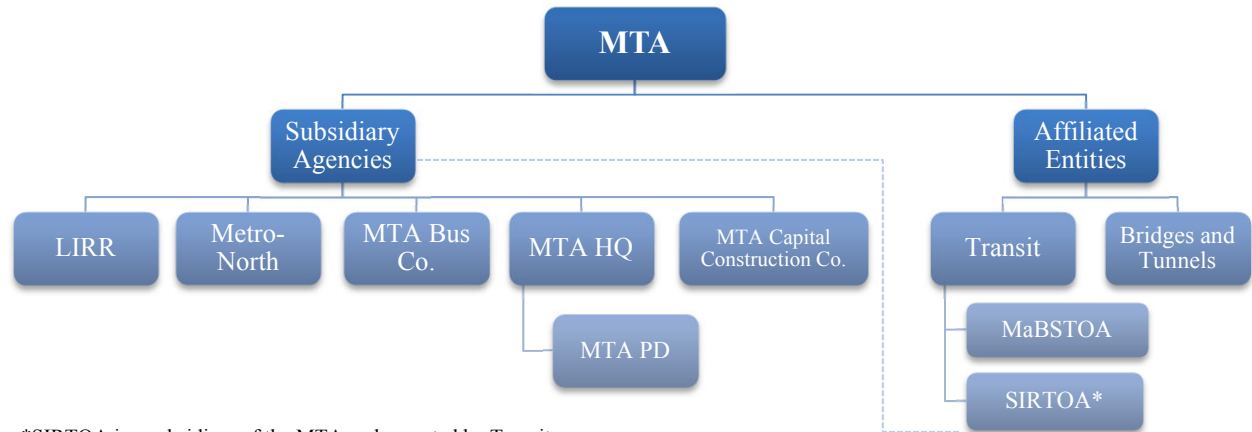
As part of its review, Morrison & Foerster:

- conducted interviews of more than 70 individuals across MTA agencies and relevant external organizations;
- reviewed thousands of pages of documents collected from the MTA;
- analyzed prior studies and audits by the MTA IG, the Office of the New York State Comptroller ("State Comptroller"), and the Board's Audit Committee ("MTA Audit Committee");
- researched and documented best practices for major urban transit authorities, as reported by outside entities and government oversight bodies;
- reviewed news articles, press releases, and other public materials relating to MTA's overtime issues and its ongoing projects; and
- contacted the leaders of several of the largest unions representing MTA employees and offered to meet with them, but none responded.

The information obtained from these activities, as well as Morrison & Foerster's analysis, conclusions, and recommendations, form the basis for the remainder of this Report.²

² Given the expansive scope of this review in a compressed timeframe, Morrison & Foerster was not able to meet with every witness with potentially relevant evidence or knowledge of overtime issues MTA-wide, nor was it able to collect and review all potentially relevant documents. The Report does not comprehensively catalog all information gleaned in interviews or from documents reviewed, but rather attempts to objectively present and analyze the most salient information gathered. Many numerical figures contained in the Report should be considered approximations drawn from the best sources available.

IV. RELEVANT ENTITIES



*SIRTOA is a subsidiary of the MTA and operated by Transit.

The MTA is a public benefit corporation responsible for overseeing public transit in the New York City area. The MTA is North America’s largest transportation network, serving a population of 15.3 million people in the 5,000-square-mile area fanning out from New York City through Long Island, southeastern New York State, and southern Connecticut. The MTA has a total 2019 operating budget of more than \$16 billion and employs more than 74,000 individuals across multiple agencies and their subsidiaries, including the New York City Transit Authority (“Transit”), the MTA Bus Company (“MTA Bus Co.”), the Long Island Rail Road Company (“LIRR”), Metro-North Commuter Railroad Company (“Metro-North”), Bridges and Tunnels, and the MTA Capital Construction Company (“MTA Capital Construction”).³

³ Bridges and Tunnels and Transit, and Transit’s subsidiary the Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”), are affiliates rather than subsidiaries of the MTA.

A. MTA Agencies Reviewed

MTA Snapshot	
Transit (Operates Dept. of Subways and Dept. of Buses)	<ul style="list-style-type: none"> • 50,000 employees • \$8.83B operating budget • 2018 overtime spending: \$899.2M (16% increase from 2017)
LIRR	<ul style="list-style-type: none"> • 7,500 employees • \$1.687B operating budget • 2018 overtime spending: \$218.8M (20% increase from 2017)
Metro-North	<ul style="list-style-type: none"> • 6,700 employees • \$1.32B operating budget • 2018 overtime spending: \$127.8M (10% increase from 2017)
MTA Bus Co.	<ul style="list-style-type: none"> • 3,900 employees • \$831M operating budget • 2018 overtime spending: \$74.6M (13% increase from 2017)
Bridges and Tunnels	<ul style="list-style-type: none"> • 1,400 employees • \$574M operating budget • 2018 overtime spending: \$24M (decrease from 2017)

1. New York City Transit Authority

Transit provides subway service within New York City, and it operates the Staten Island Railway through an MTA subsidiary, the Staten Island Rapid Transit Operating Authority (“Staten Island Railway”). Transit also operates bus service within New York City through its Department of Buses and its subsidiary MaBSTOA.⁴

Transit has more than 50,000 employees and a 2019 operating budget of \$8.83 billion, which is approximately 52% of MTA’s consolidated operating budget.⁵ It is, by far, the largest MTA agency. The Department of Subways (“Subways”) is Transit’s largest division. Subways is organized in five operating subdivisions: Maintenance of Way, Stations, Car Equipment,

⁴ MTA Bus Co., discussed further below, also operates certain bus routes in the Bronx, Brooklyn, and Queens, and express bus routes between those boroughs and Manhattan. See *About MTA Bus Co.*, METRO. TRANSP. AUTH., available at <http://web.mta.info/busco/about.htm> (last visited Aug. 1, 2019).

⁵ The operating budget figures in this section include non-reimbursable baseline expenses after certain below the line adjustments, as outlined in MTA’s 2019 adopted budget. See MTA 2019 Adopted Budget, Feb. Financial Plan 2019-2022, METRO. TRANSP. AUTH. (Feb. 2019) at II-1, available at https://new.mta.info/sites/default/files/2019-03/MTA-2019-Adopted-Budget-February-Financial-Plan_2019-2022.pdf.

Rapid Transit Operation, and Service Delivery. Maintenance of Way has six subdivisions: Track, Signals, Infrastructure, Elevator and Escalator, Electronic Maintenance, and Engineering.

In 2018, Transit overtime spending totaled \$899.2 million, an increase of \$123 million—or about 16%—from 2017.⁶ Overall, Transit spent \$4.82 billion on salaries and wages in 2018.⁷ Overtime thus accounted for approximately 18% of Transit’s overall payroll expenses in 2018.

2. Long Island Rail Road Company

LIRR provides rail transportation to passengers traveling between New York City and Long Island. LIRR has more than 7,500 employees and a 2019 operating budget of \$1.687 billion, which is approximately 10% of MTA’s consolidated operating budget.⁸ LIRR has three main operating divisions: Transportation Services, Engineering, and Maintenance of Equipment. Transportation Services oversees train crews and the operation of LIRR trains. Engineering maintains train infrastructure, including tracks, switches, and signals. Maintenance of Equipment inspects and maintains LIRR’s fleets.

In 2018, LIRR overtime spending totaled \$218.8 million, an increase of \$37 million—or about 20%—from \$181.6 million in 2017.⁹ Overall, LIRR wages and salaries increased \$90 million in 2018, or approximately 11%, to \$892.9 million.¹⁰ Overtime thus accounted for approximately 25% of LIRR’s total payroll expenditures in 2018.

3. Metro-North Commuter Railroad Company

Metro-North provides rail transportation to passengers traveling between New York City and Westchester, Dutchess, Putnam, Orange, and Rockland Counties in New York and New Haven and Fairfield Counties in Connecticut. Metro-North began operations in 1983, and it is thus one of the newest agencies within the MTA. Metro-North has approximately 6,700 employees and a 2019 operating budget of \$1.32 billion, which is approximately 8% of MTA’s

⁶ This includes both “reimbursable” and “non-reimbursable” overtime. “Reimbursable” means the overtime is incurred to support projects that are reimbursed from the MTA Capital Program and other funding sources. Compare MTA 2020 Preliminary Budget, July Financial Plan 2020-2023, Vol. 2, METRO. TRANSP. AUTH. (July 2019) at V-245 (Transit accrual statement, actual 2018), available at https://new.mta.info/sites/default/files/2019-07/MTA%202020%20Preliminary%20Budget%20-%20July%20Financial%20Plan%202020-2023%20Volume%20_0.pdf, with MTA 2019 Final Proposed Budget, Nov. Financial Plan 2019-2022, Vol. 2, METRO. TRANSP. AUTH. (Nov. 2018) at V-286 (Transit accrual statement, actual 2017), available at <https://new.mta.info/sites/default/files/2018-12/MTA-2019-Final-Proposed-Budget-Nov-Financial-Plan-2019-2022-Vol2.pdf>.

⁷ MTA 2020 Preliminary Budget, *supra* note 6, at V-245.

⁸ MTA 2019 Adopted Budget, *supra* note 5, at II-1.

⁹ Compare MTA 2020 Preliminary Budget, *supra* note 6, at V-62 (LIRR accrual statement, actual 2018), with MTA 2019 Final Proposed Budget, *supra* note 6, at V-70 (LIRR accrual statement, actual 2017).

¹⁰ *Id.*

consolidated operating budget.¹¹ Metro-North has four main operating divisions: Maintenance of Equipment, Maintenance of Way, Administration, and Transportation (which includes Train & Engine). Maintenance of Way has five subdivisions: Track, Structures, Communications & Signals, Power, and Grand Central Terminal.

In 2018, Metro-North overtime spending totaled \$127.8 million—an increase of approximately 10% from 2017—and overall spending on wages and salaries was \$701.8 million.¹² Overtime thus accounted for approximately 18% of Metro-North’s overall payroll costs in 2018.

4. MTA Bus Company

MTA Bus Co. operates bus routes in certain areas of New York City. It was created in 2004 to assume operations of seven bus companies that previously operated those routes under franchises granted by the New York City Department of Transportation. MTA Bus Co. has more than 3,900 employees and a 2019 operating budget of \$831 million, which is approximately 5% of MTA’s consolidated operating budget.¹³

In 2018, MTA Bus Co. overtime spending totaled \$74.6 million, an increase of \$8.4 million, or about 13%, from \$66.2 million in 2017.¹⁴ Overall, MTA Bus Co. spending on wages and salaries grew by approximately 6%, to \$374.7 million.¹⁵ Overtime thus accounted for approximately 20% of MTA Bus Co.’s overall payroll expenditures in 2018.

While MTA Bus Co. and Transit’s Department of Buses are treated separately in MTA’s budget, the MTA integrated the operations of the two entities in 2008 and MTA Bus Co. shares many administrative and management functions for bus operations with Transit’s Department of Buses. They thus are considered and referred to together as “Buses” in this Report.

5. Triborough Bridge and Tunnel Authority

Bridges and Tunnels operates in New York City, running the operation of seven toll bridges, two tunnels, and the Battery Parking Garage. Bridges and Tunnels has approximately 1,400 employees and a 2019 operating budget of \$574 million, which is approximately 3% of the MTA’s consolidated operating budget.¹⁶ In 2018, Bridges and Tunnels spent \$24 million on

¹¹ MTA 2019 Adopted Budget, *supra* note 5, at II-1.

¹² Compare MTA 2020 Preliminary Budget, *supra* note 6, at V-116 (Metro-North accrual statement, actual 2018), with MTA 2019 Final Proposed Budget, *supra* note 6, V-129 (Metro-North accrual statement, actual 2017).

¹³ MTA 2019 Adopted Budget, *supra* note 5, at II-1.

¹⁴ Compare MTA 2020 Preliminary Budget, *supra* note 6, at V-306 (MTA Bus Co. accrual statement, actual 2018), with MTA 2019 Final Proposed Budget, *supra* note 6, at V-365 (MTA Bus Co. accrual statement, actual 2017).

¹⁵ *Id.*

¹⁶ MTA 2019 Adopted Budget, *supra* note 5, at II-1.

overtime and \$152.4 million on total wages and salaries.¹⁷ The smallest MTA operating agency, Bridges and Tunnels is the only agency whose overtime expenses went down in 2018,¹⁸ and it appears to be the only MTA agency that consistently has kept overtime expenses under budget.

B. Other MTA Entities

1. MTA Headquarters

MTA HQ is the administrative arm of the MTA, providing support to all MTA agencies. Specifically, MTA HQ provides support in budget, cash management, finance, legal, real estate, treasury, risk and insurance management, and other services. MTA HQ operations also include the MTA PD, described further below. MTA HQ has more than 3,000 employees and a 2019 operating budget of \$906 million, which is approximately 5% of MTA's consolidated operating budget.¹⁹ In 2018, including payroll and overtime figures for the MTA PD, MTA HQ spent \$31.7 million in overtime and \$321 million in total wages and salaries.²⁰

2. MTA Police Department

MTA PD is the law enforcement agency of the MTA. It is empowered under the New York Public Authorities Law and commissioned in the State of Connecticut. The MTA PD's jurisdiction extends across fourteen counties in the two states where LIRR, Metro-North, and the Staten Island Railway operate. The MTA PD is not responsible for policing the New York City Subway system, which is within the jurisdiction of the Transit Bureau of the New York Police Department ("NYPD"), but MTA PD performs law enforcement functions elsewhere across MTA agencies. MTA PD is budgeted within MTA HQ and overtime expenditures for officers account for most of MTA HQ's overtime expenses.²¹

3. MTA Capital Construction Company

MTA Capital Construction provides oversight for the planning, design, and construction of current and future major MTA system-wide expansion projects. It has approximately 180 employees, who generally are not entitled to overtime. The projects MTA Capital Construction manages are funded by a combination of bond sales and federal, state, and local grants.²² When other MTA agencies pay their employees to work on capital construction projects (including overtime payments), MTA Capital Construction reimburses the agencies for their labor expenses.

¹⁷ MTA 2020 Preliminary Budget, *supra* note 6, at V-7 (Bridges and Tunnels accrual statement, actual 2018).

¹⁸ *Compare id.*, with MTA 2019 Final Proposed Budget, *supra* note 6, at V-10 (Bridges and Tunnels accrual statement, actual 2017).

¹⁹ MTA 2019 Adopted Budget, *supra* note 5, at II-1.

²⁰ MTA 2020 Preliminary Budget, *supra* note 6, at V-176 (MTA HQ accrual statement, actual 2018).

²¹ MTA 2019 Final Proposed Budget, *supra* note 6, at V-206.

²² *About MTA Capital Construction Company*, METRO. TRANSP. AUTH., available at <http://web.mta.info/capconstr/about.htm> (last visited Aug. 1, 2019).

Thus, work MTA agencies perform for MTA Capital Construction generally is captured in each agency’s budget under “reimbursable” labor costs. The overtime expenditures listed above for each agency include both regular or “non-reimbursable” overtime and “reimbursable” overtime that ultimately is paid by outside funding sources that flow through MTA Capital Construction.

V. REVIEW OF PRIOR ASSESSMENTS OF OVERTIME

Key Findings: Review of Prior Assessments of Overtime

- For many years, internal and external reviews have consistently identified high overtime and systemic causes for it.
- Despite these reports, MTA leadership and management have not been held accountable for implementing changes to address the findings and recommendations in these reviews.

For more than a decade, studies and audits focused on overtime pay have been undertaken by various entities, both MTA-affiliated and otherwise, including the MTA IG, the State Comptroller, the MTA Audit Committee, and the Empire Center for Public Policy (“Empire Center”), a think tank and government watchdog group based in Albany, New York. A review of these materials is instructive in evaluating the extent of overtime payments year to year, ultimately highlighting a pattern of systemic inefficiency and lack of accountability that has persisted at various MTA agencies.

These assessments also highlight how dramatically overtime spending has increased during the past few years. Without changes to the status quo, the MTA has projected total deficits of about \$500 million in 2020, soaring to \$1 billion in 2022.²³ To address these looming deficits, which pose a serious threat to the financial stability of the MTA,²⁴ the MTA has proposed a plan to cut costs elsewhere, including by streamlining the agency’s organizational structure and eliminating 2,700 jobs.²⁵ The full benefit of these proposals may not be realized, however, unless the MTA also addresses the pervasive, long-standing timekeeping inefficiencies that have been flagged for years as a major cost driver.

²³ MTA 2020 Preliminary Budget, July Financial Plan, Vol. 1, METRO. TRANSP. AUTH. (July 2019) at I-1, I-5, available at <https://new.mta.info/sites/default/files/2019-07/MTA%202020%20Preliminary%20Budget%20-%20July%20Financial%20Plan%202020-2023%20Volume%201.pdf>.

²⁴ Emma G. Fitzsimmons, *M.T.A. Warns of Fare Increases and Service Cuts as Budget Crisis Looms*, N.Y. TIMES (Nov. 15, 2018), <https://www.nytimes.com/2018/11/15/nyregion/mta-fare-hike-nyc.html?module=inline>

²⁵ AlixPartners, LLP, Preliminary Report: MTA Transformation Plan, METRO. TRANSP. AUTH. (June 30, 2019), available at <https://new.mta.info/sites/default/files/2019-07/MTA%20Transformation%20Plan%20-%20Preliminary%20Report.pdf>

A. Empire Center for Public Policy Studies

While the 2019 Empire Center Report recently has received considerable attention, particularly due to its identification of a number of individuals who earned large amounts of overtime in 2018,²⁶ Empire Center has flagged the issue of high overtime costs at the MTA repeatedly for years. Concerns regarding excessive overtime costs, therefore, are not a recent development and cannot be attributed solely to the unprecedented increase in work this past year. Set forth below is an illustrative summary of findings related to overtime at the MTA that the Empire Center has published during the last decade:

- **2010:** The MTA's payroll increased by \$71 million, or 1.4%, while its headcount declined by 852 employees, or 1.1%.²⁷
- 2010 was the third consecutive year in which more than 10% of the MTA's workforce—7,993 individuals—took home \$100,000 or more in total pay, including overtime and other extra pay. Roughly 268 MTA employees made at least double their base pay rate in that year, while three employees tripled their base pay.
- Of the 488 employees who earned more than \$150,000 that year, eleven were LIRR engineers who earned an average of \$169,431—\$94,041 in addition to their annual base pay rate of \$75,390.
- **2014:** The MTA paid \$849 million in overtime in addition to \$4.78 billion in regular earnings.²⁸
- **2015:** Overtime spending by the MTA rose 11%, making it possible for hundreds of employees to double their pay in that year.²⁹
- **2016:** Overtime increased to \$971 million, up 4% from \$934 million in the prior year.³⁰

²⁶ *Report: MTA paid railroad employee more than \$344,000 in overtime for 2018*, EMPIRE CENTER (Apr. 25, 2019), <https://www.empirecenter.org/publications/report-mta-paid-railroad-employee-more-than-344000-in-overtime-for-2018/>.

²⁷ *Fewer Employees Cost More at MTA*, EMPIRE CENTER (July 12, 2011), <https://www.empirecenter.org/wp-content/uploads/2014/11/STNY-Payroll-MTA-July-2011b.pdf>.

²⁸ Press Release, *One in Four MTA Employees Paid Six Figures*, EMPIRE CENTER (July 16, 2015), <https://www.empirecenter.org/publications/one-in-four-mta-employees-paid-six-figures/>.

²⁹ Press Release, *MTA Overtime Jumped \$84 Million in 2015*, EMPIRE CENTER (Mar. 9, 2016), <https://www.empirecenter.org/publications/mta-overtime-jumped-84-million-in-2015/>.

³⁰ Press Release, *Eight MTA Employees Top \$200k – In Overtime*, EMPIRE CENTER (May 1, 2017), <https://www.empirecenter.org/publications/eight-mta-employees-top-200k-in-overtime/>.

- **2017:** MTA pay totaled \$6.7 billion, including \$5.5 billion in regular time and \$1.2 billion in overtime pay.³¹
 - Regular earnings increased by \$198 million, or 4%, from 2016 to 2017, while overtime increased by 20%.
 - The bulk of the added MTA overtime in 2017 was collected by employees of Transit—a total of about \$750 million, up 26% from the prior year.
 - The highest MTA overtime earners were employed by LIRR, where 174 workers collected at least \$100,000 above their base pay—including nine employees who earned overtime of more than \$200,000, with the highest earner adding \$295,490 to his base pay of \$103,566.

These studies indicate that overtime spending has been increasing faster than total payroll during the past decade, growing from \$849 million in 2014 to a record \$1.324 billion in 2018, a 56% increase in only four years, while the Empire Center’s statistics indicate that regular pay increased 24% during the same period.³² The so-called “high earner” population—that is, the employees who are being paid the most overtime across all MTA agencies—has tended to be concentrated in LIRR, but high overtime is a problem across all agencies except Bridges and Tunnels.

B. Audits and Reports

1. MTA Inspector General’s Office

During the past 15 years, the MTA IG has flagged many instances of time theft, crew idleness, abuse of time, falsification of records, lack of productivity, and high and excessive overtime. These reports, however, do not appear to have generated much momentum on the part of MTA leadership to review and address systemic problems. Indeed, it does not appear that the bulk of the recommendations in these reports were acted upon by the MTA.

In one report on overtime at LIRR that was released in 2006 and is a representative example of the MTA IG’s past findings,³³ the MTA IG found that engineers and conductors earned more than \$30 million in overtime and penalty payments in 2004. Although much of this overtime spending was planned for or at least anticipated, the MTA IG concluded that the cost to LIRR did not end with the initial payment to the employee. Because the formulas used for calculating pensions, vacation pay, and payments to the applicable welfare fund were based on

³¹ Press Release, *MTA Overtime Tops \$1 Billion for First Time*, EMPIRE CENTER (Mar. 2, 2018), <https://www.empirecenter.org/publications/mta-overtime-tops-1-billion/>.

³² *Id.*; *One in Four MTA Employees Paid Six Figures*, *supra* note 28.

³³ Office of the NY State MTA Inspector General, Report MTA/OIG #2005-60, Penalties and Overtime Payments in LIRR’s Transportation Department (Feb. 2006), *available at* <http://graphics8.nytimes.com/packages/pdf/nyregion/LIRR/documents/full-review.pdf>.

current and prior years' earnings, the potential impact of penalty payments and overtime continued for many years after the overtime was paid.³⁴

As part of that same report, the MTA IG reviewed time cards and met with LIRR officials to determine the extent of controls in place to monitor overtime at the railroad yards. The MTA IG found that LIRR yards had no automated attendance controls, such as swiping in and out, that would record when crews went on and off duty each day.³⁵ Recommendations included implementing a fully electronic payroll system for engineers and conductors; collecting data on the specific reasons for each penalty payment or overtime assignment; routinely reviewing and analyzing this data to identify and reduce causes of penalty payments and overtime wherever possible; and considering additional costs for employees eligible for or nearing retirement when evaluating crew needs. In a separate report, the MTA IG found that overtime spending for the entire LIRR increased by 28% from 2004 to 2007.³⁶

More than a decade later, many of the issues identified by the MTA IG in the 2006 report and other similar reports remain, with few changes having been implemented to address them. It is critical that reports of the MTA IG be considered actively by MTA leadership and the Board and that the recommendations made therein be implemented when feasible.

While the MTA IG continues to review overtime and to identify issues, its ability to do so is hindered by the state of MTA's records. The lack of modernized and standardized timekeeping and overtime policies and procedures makes it difficult to determine the extent of overtime abuse (*i.e.*, overtime that is improperly earned or paid), and to identify and remedy overtime abuse at the time that it occurs.

2. Office of the New York State Comptroller

State Comptroller audits repeatedly have raised concerns regarding excessive overtime at the MTA. Most of these reports focus on a single agency, but the State Comptroller also has addressed the issue from a more systemic, MTA-wide perspective.

Overtime at many MTA agencies has increased steadily overall for more than a decade. As early as 2000, the State Comptroller found that Transit officials needed to take action to ensure that all scheduled and unscheduled overtime was necessary and that unscheduled overtime hours were reported.³⁷ The State Comptroller determined that many shifts at Transit included built-in overtime and that a representative sample of overtime payments was not always

³⁴ *Id.* at 10.

³⁵ *Id.* at 19.

³⁶ Office of the NY State MTA Inspector General, LIRR Work Assignment, Work Rules, and Pensions: Managing to Control Costs, METRO. TRANSP. AUTH., at 9 (Oct. 31, 2008).

³⁷ Office of the NY State Comptroller, Report 98-S-55 (follow-up report 2002-F-3), New York City Transit Selected Overtime Practices, at 2 (Aug. 2, 2002), available at <https://osc.state.ny.us/audits/allaudits/093002/02f3.pdf>.

adequately supported by documentation or explanation as to why overtime was necessary.³⁸ The State Comptroller also noted that Transit officials tended to organize shifts in a manner that did not maximize effective overtime distribution.³⁹

In 2010, the State Comptroller concluded that the MTA did not effectively manage or control overtime costs.⁴⁰ At the time, more than 3,000 employees' annual overtime pay exceeded their annual salaries, and more than 10,000 employees earned at least 30% of their annual salaries in overtime.⁴¹ The State Comptroller found "indications" that overtime often "was not necessary" and was incurred because track maintenance was scheduled either inefficiently, to cover for absent workers, or for unjustified or undocumented reasons.⁴²

The same 2010 report determined that the MTA failed to administer overtime effectively for the following reasons: it often accepted overtime without justification; it failed to work actively to reduce overtime costs; it failed to monitor agencies' overtime costs to ensure they were appropriate; it developed no formal policies for controlling overtime and lacked a definition of overtime, leading to inconsistencies; it oversaw "seriously flawed" overtime budgets at the agencies; and it failed to analyze overtime trends.⁴³ Strikingly, many of the same findings are equally applicable today.

Finally, in a 2011 study of Metro-North that identified similar overtime issues, the State Comptroller found a "pervasive culture of management acceptance of long-term practices, employee feelings of entitlement to additional compensation, and ineffective internal controls in Metro-North's payroll office" as root causes of inappropriate overtime use.⁴⁴ These findings were echoed in a 2014 study citing inadequate overtime documentation and approval procedures at Metro-North.⁴⁵ Also in 2014, the State Comptroller found poor controls, lack of oversight, lack of definition as to what qualified as overtime, and lack of follow-up between workers and supervisors as drivers of overtime issues at LIRR.⁴⁶

³⁸ *Id.* at 3-5.

³⁹ *Id.* at 3-6.

⁴⁰ Office of the NY State Comptroller, Report 2009-S-88, MTA Management and Control of Employee Overtime Costs, at 7-8 (Aug. 5, 2010), *available at* <https://osc.state.ny.us/audits/allaudits/093010/09s88.pdf>.

⁴¹ *Id.* at 13.

⁴² *Id.* at 13-14.

⁴³ *Id.* at 18-19.

⁴⁴ Office of the NY State Comptroller, Report 2010-S-60, Forensic Audit of Select Payroll and Overtime Practices and Related Transactions (Nov. 9, 2011), *available at* <https://osc.state.ny.us/audits/allaudits/093012/10s60.pdf>.

⁴⁵ Office of the NY State Comptroller, Report 2012-S-104, Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds – Metro-North Railroad (Jan. 2014), *available at* <https://www.osc.state.ny.us/audits/allaudits/093014/12s104.pdf>.

⁴⁶ Office of the NY State Comptroller, Report 2010-S-2, Overtime and Other Time and Attendance Matters Found in the Use of Certain Federal Funds – Long Island Rail Road (Jan. 2014), *available at* <https://www.osc.state.ny.us/audits/allaudits/093014/10s2.pdf>.

Taken together, these studies indicate a pattern of systemic inefficiency and lack of accountability that spans various agencies and has persisted for decades without appropriate attention and redress by MTA management and leadership at all levels.

3. The MTA Board’s Audit Committee

Reports by the MTA Audit Committee demonstrate that overtime has been on the Audit Committee’s radar for a significant period of time. Those reports found that the MTA has no uniform policy for overtime and timekeeping. This lack of uniformity, combined with the sheer size and scale of the MTA, makes auditing such a system challenging. Nevertheless, recent MTA Audit Committee reports provide some helpful insight into recurring patterns in overtime expenses.

The MTA Audit Committee found that from 2016 to 2017, Transit’s overtime expenses increased by 27.6%.⁴⁷ Between 2017 and 2018, Transit’s overtime expenses increased by a further \$123 million, or 16%.⁴⁸ Contributing factors include increased support required for the Subway Action Plan (“SAP”); various maintenance and weather related requirements; and vacancy and absentee coverage requirements.⁴⁹ Prior MTA Audit Committee reports, spanning 2014 through 2018, indicate that Transit overtime expenses steadily increased.⁵⁰ Throughout 2014-18, adverse weather events, unscheduled maintenance, and vacancy and absentee coverage requirements repeatedly were identified as drivers of overtime expenses. The consistency with which these factors are cited suggests that they are not atypical and that overtime related to these factors thus should be planned for and overtime budgeted accordingly.

* * *

As described above, the MTA IG, State Comptroller, and MTA Audit Committee as well as the Empire Center have issued a variety of reports and audits for many years regarding timekeeping and overtime. Those reports generally identify the same root causes and systemic issues, suggesting that little if any action was taken by MTA leadership and management to correct the issues from one year to the next. In addition, the reports often recommended how to improve processes and controls in order to better manage overtime costs and increase transparency. Nonetheless, as already stressed, there has not been a concerted response to these reports and their recommendations by management of the MTA agencies and MTA leadership to

⁴⁷ MTA Audit Committee Meeting: May 2019, METRO. TRANSP. AUTH., at 155 (May 20, 2019), *available at* http://web.mta.info/mta/news/books/pdf/190520_0800_Audit.pdf.

⁴⁸ *Compare* MTA 2020 Preliminary Budget, *supra* note 6, at V-245 (Transit accrual statement, actual 2018), *with* MTA 2019 Final Proposed Budget, *supra* note 6, at V-286 (Transit accrual statement, actual 2017).

⁴⁹ MTA Audit Committee Meeting: May 2019, *supra* note 47, at 155.

⁵⁰ MTA Audit Committee Meeting: Apr. 2018, METRO. TRANSP. AUTH., at 172 (Apr. 23, 2018), *available at* http://web.mta.info/mta/news/books/archive/180423_1500_Audit.pdf; MTA Audit Committee Meeting: Apr. 2017, METRO. TRANSP. AUTH., at 167 (Apr. 24, 2017), *available at* http://web.mta.info/mta/news/books/archive/170424_1415_Audit.pdf; MTA Audit Committee Meeting: Apr. 2016, METRO. TRANSP. AUTH., at 163 (Apr. 18, 2016), *available at* http://web.mta.info/mta/news/books/archive/160418_1445_Audit.pdf.

fix the underlying problems. This review has not found evidence that anyone within the MTA leadership or management ever was assigned the function of reviewing and following up on the implementation of the recommendations in the various reports. This failure is indicative of a lack of management oversight and accountability that needs to be corrected.

VI. OVERTIME POLICIES AND PROCEDURES

Key Findings: Overtime Policies and Procedures

- There is no consistency in overtime policies across MTA agencies.
- MTA timekeeping largely relies on paper forms and other outdated manual processes.
- The MTA has little to no real-time data on employee attendance, assignments, and overtime usage.

A review of attendance, timekeeping, and overtime policies MTA-wide reveals that many of the problems highlighted by the MTA IG and others have not been sufficiently addressed, leaving MTA functions susceptible to uncontrolled costs and potential waste, fraud, and abuse. There is no management function responsible for ensuring consistency in time, attendance, and overtime policies across MTA agencies or even within each of the agencies themselves (with a few exceptions). In practice, the vast majority of employee timekeeping relies on paper time cards, attendance sheets, or other manual processes, which vary between agencies, by operating division within each agency, and often by job title. The MTA spends millions a year on paper-driven processes and outdated technology to manage a complex workforce of more than 74,000 employees, and the result is little to no real-time data regarding employee attendance, assignments, and overtime usage. The failure of MTA’s leadership and management to take appropriate action to address these issues has allowed these problems not only to continue but to increase in scope and impact.

A. New York City Transit Authority’s Department of Subways

Subways has more than 27,000 employees—the majority of Transit’s workforce—and five operating subdivisions. Each operating subdivision maintains its own timekeeping and overtime policies and procedures, which rely almost entirely on paper timecards and overtime approval sheets that vary by operating subdivision and across 44 different job titles. It appears that policies and procedures are not maintained in any central location, and there appears to be no management or support function responsible for ensuring consistency across policies.

Timekeeping and overtime procedures within Subways are best understood within the broader context of Subways’ workforce management. The vast majority of Subways employees’ work assignments are “pick-based” (as are the assignments of most union employees within other MTA agencies). The “pick” is a process conducted at regular intervals (often annually, bi-annually, or quarterly, depending on the union’s CBA) in which union members select job

assignments and schedules based on employee seniority and job qualifications, among other factors. The results of each pick establish employees' regular schedules and pay.

Nearly all union employees manually fill in daily timesheets or another form of paper log to track attendance. Some employees, primarily within Transit's Capital Program Management division, also are required to swipe identification cards at electronic Kronos clocks when they arrive, depart, and take lunch breaks. Maintenance of Way employees, depending on their specialization, complete sign-in sheets or logbooks at field offices. Stations employees call an "operations support assignment center" to report as present for duty and they sign paper logs in station control booths. Car Equipment employees use punch cards at time clocks and sign their cards at the end of each week. Service Delivery employees sign paper attendance rosters, and "safety sensitive" Service Delivery employees, such as train operators, also submit to face-to-face fitness checks by train dispatchers.

Daily variations to the regular schedule (including absences, lateness, and overtime) are handled by "exception" processes that require employees to fill out paper forms manually and have the forms approved by a supervisor for submission to payroll. As daily scheduling and attendance is done on paper, any variations to regular pay for any of the more than 27,000 workers require that multiple paper forms be completed, approved, and entered manually into Subways' payroll systems. After years of effort, as of September 2018, Subways finally consolidated timekeeping data entry for its Maintenance of Way employees within a centralized group of 28 timekeepers under the Administration Department.⁵¹ Until then, timekeeping largely had been decentralized, with data entry responsibilities spread among more than 200 employees in different operating divisions, which reportedly led to inconsistencies and poor controls.

Subways' primary payroll system (for approximately 16,000 employees) is the Automatic Timekeeping System ("ATS"). ATS is an antiquated computer system, originally developed in 1988, that has been augmented through the years with Microsoft Access Database and Excel files to sustain its functionality. Payroll for another approximately 11,500 employees (primarily train operators and conductors within the Service Delivery Department and employees of the Staten Island Railway) is processed through a version of MTA Bus Co.'s primary payroll system, the Universal Timekeeping System ("UTS"), a 1990s-era system described further below. Reports to management on attendance and overtime lag a month or more behind the relevant work period because of ATS's age and lack of functionality, the time it takes to enter and process thousands of timesheets each pay period, and how data is split across ATS and UTS. Internal Transit reports conclude that Subways has virtually "no available data intelligence on employee activities [and] behaviors to provide meaningful reports," and that existing reporting capabilities are "ineffective in providing real-time reports" regarding workforce management, including overtime.

In the past, Subways has negotiated with its unions to institute overtime caps for individuals, requiring managers to monitor high earners of overtime more closely to ensure

⁵¹ Other divisions, however, still enter their own timekeeping data for their employees.

compliance with CBAs.⁵² In response to the 2017 MTA state of emergency for work related to the SAP, the caps were lifted temporarily; they were reinstated during the first quarter of 2019. Recently, Subways directed its operating subdivisions to ensure that all overtime be pre-approved except in the case of emergencies, and that policies and procedures include requirements that all overtime be approved only after exploring other means of completing necessary work. The Administration Department also recently instituted a standardized overtime preauthorization form that must be completed by supervisors before overtime is scheduled.

Subways' internal reports conclude that nearly half of the increase in overtime expenses that Subways experienced in 2018 was related to additional work on the SAP. Subways anticipated hiring more full-time employees for SAP-related work in late 2017, but disputes regarding whether New York City would fund half of SAP caused management to lower its hiring goals. Reportedly, Subways then had more work with lower headcount, necessitating additional overtime shifts.

Employee vacancies and low employee availability amplify the overtime issue by creating additional unscheduled "must-fill" positions that must be staffed on overtime. Track access appears to be a major driver of scheduled overtime because large maintenance projects cannot be done without extended periods of access to subway track bed. To minimize disruptions to commuters, entire lines of track are closed for 54 hours at a time on weekends (from Friday night to early Monday morning) and staffed with 12- and 16-hour shifts to complete as much work as possible while minimizing shift changes. For workers whose regular days off are Saturday or Sunday, their entire shifts are paid on overtime.

B. Long Island Rail Road Company

LIRR's 2018 actual budget has a reimbursable overtime to non-reimbursable overtime ratio that exceeds—by a significant margin—those of the other MTA agencies. Specifically, for every dollar that LIRR spends in overtime on projects that are not reimbursed from outside sources, it spends 45 cents that are reimbursed from outside capital sources.⁵³ That means that more of LIRR's overtime is paid by outside sources, including by bonds and government grants, than that of other agencies. While LIRR's large number of ongoing capital projects may help to explain this, the overtime ratio itself still is sufficiently high to be of note. Further, given that LIRR's Engineering Department has the most high earners of any other MTA department, MTA leadership should consider whether further attention is warranted to determine if there is a causal relationship between the overtime ratio and the high earners and, if so, take appropriate steps to address the issue.

⁵² Subway operators also are subject to hours of service rules that, for safety reasons, cap the number of consecutive hours they can work.

⁵³ As a comparison, for every dollar Metro-North spends that is not reimbursed, it spends 27 cents that are reimbursed; for every dollar Transit spends that is not reimbursed, it spends 31 cents that are reimbursed; and for every dollar Bridges and Tunnels spends that is not reimbursed, it spends one cent that is reimbursed.

LIRR has three primary operating divisions that in some ways operate as separate companies, with different timekeeping policies and procedures and independent payroll departments.

1. Transportation Department

The Transportation Department is responsible for train and terminal operations. The majority of Transportation Department employees use a crew dispatching system for timekeeping. Time is entered automatically into payroll processing based upon an employee's scheduled train runs, unless the employee works time outside their scheduled job or otherwise changes their schedule (*e.g.*, absences or extra time to complete a route due to train delays). For exceptions, employees must complete exception cards, crew swap sheets, and time slips to document what work was performed and why, including entering codes that define the effect on pay based on the applicable CBA. Every day, the Crew Management Office conducts a verification process for all exceptions, usually for about 1,200 to 1,500 "time claims" per week, in which payroll coordinators manually check the forms against train schedules and follow up with supervisors to confirm that the exceptions are valid. The applicable CBA then is reviewed to confirm that the employee entered the correct code for how the exception should be paid. The employee is not paid if any information is missing from these forms.

Overtime for train operators is assigned by seniority. To some extent, overtime arises as a function of train schedules because some tours must last more than eight hours in order to complete a trip. Unscheduled overtime is driven by train delays, special events (*e.g.*, extra trains for the Belmont Stakes or the PGA Tour), and emergencies, as well as low headcount and employee absences that create extra "must-fill" shifts. Operators are subject to federal hours of service regulations that cap the number of hours they can work on consecutive days. These regulations provide some limits on overtime, but also potentially create more overtime shifts and cause penalty payments because tours must be filled when an employee hits the hours cap. The Crew Management Office conducted an internal analysis around 2011 that reportedly found that hiring more employees in reaction to federal hours of service regulations would be more expensive than using overtime.

In addition to pure overtime, there are penalty payments. Penalty payments often are the product of antiquated work rules with little to no modern justification that entitle operators to extra pay for doing certain job tasks. Set forth below are select examples of these work rules:

- Within LIRR, train service is categorized into three "job boards"—Yard, Passenger, and Road—to which employees are assigned through a pick process, and any time management asks an employee to "switch boards" and do a slightly different job based on operational needs, the employee gets an extra day of pay.
- Employees receive an extra day of pay whenever they run an electric and a diesel locomotive during the same shift.
- Employees are entitled to "time on time"—meaning that if an employee spends an hour of their scheduled job doing a task not normally included in that job, they get paid an

extra hour for the “extra” work, even if the employee did not work more than their normal schedule.

Management reports spending a great deal of time trying to manage around these and other work rules and penalty payments.

2. Engineering Department

LIRR’s Engineering Department is responsible for all aspects of track maintenance and has more than 2,000 employees across five subdivisions (Signals, Communications, Track, Structures, and Craft). It is the MTA department that has the most high earners. Engineering’s timekeeping and payroll is a largely manual process. Employees manually complete daily labor sheets, which vary depending on the employee’s discipline. Generally a foreman fills out the sheet for an entire gang. Supervisors are supposed to review and approve the sheet, then scan and email it to payroll clerks who enter timekeeping data into yet another system. The Engineering Department tried to implement Kronos biometric clocks around 2013 or 2014 but abandoned the effort, reportedly because LIRR anticipated purchasing new systems that would have made the biometric clocks redundant. Technology issues with proper integration of Kronos biometrics into existing payroll systems also may have derailed the effort. To date, however, LIRR has not procured any system that would replace Kronos clock functionality.

Overtime shifts in the Engineering Department are given to the unions to canvass by seniority. Most overtime appears to result from issues with track availability because major track work must be completed during nights and weekends. In 1997, LIRR lost an arbitration regarding certain work rules and as a result the Engineering Department cannot establish regular night crews on straight-time pay without union consent or a change in the CBAs. Saturday work is paid as overtime and employees who work both Saturday and Sunday receive double time for work performed on Sunday.

Managers within LIRR’s labor relations and finance departments report that Engineering supervisors often fail to pre-approve overtime and that payroll data and time records frequently do not match. They also report that Engineering performs insufficient auditing of time sheets, in part because there are not enough business operations staff and operations staff are not sufficiently empowered to institute better auditing practices. Engineering also appears to have few resources to track workforce utilization and overtime or to prioritize projects. LIRR management has intervened to work directly with Engineering’s business support group to better manage to budget; however, it is not clear if any progress has been made as a result of that intervention. Engineering’s payroll group also has started to review each month’s “top earners” randomly to determine why they are incurring such high overtime hours.

Notably, LIRR’s track workers, who work on critical infrastructure daily, are not subject to federal hours of service regulations or similar rules that would cap the number of consecutive hours they are allowed to work. LIRR management has found a correlation between Engineering employee on-the-job injuries and the number of consecutive hours worked, including whether work was performed on overtime. The high number of track workers working hundreds of

overtime hours (in many instances more than 1,000 extra hours a year) may have serious safety implications that MTA leadership and management should examine closely.

3. Maintenance of Equipment Department

In comparison to the Engineering Department, Maintenance of Equipment reportedly features multiple best practices that keep overtime under control. Maintenance of Equipment has more than 2,100 employees who maintain LIRR's fleet across 15 yards. Because nearly all Maintenance of Equipment employees have a regular reporting location, Maintenance of Equipment already uses Kronos biometric clocks for attendance and timekeeping, which feed data directly into payroll. Overtime must be pre-approved on an authorization sheet by a supervisor, or it will not be paid. Payroll is handled by a Central Manpower Office with about 30 employees, who also handle various administrative duties, including personally contacting employees by phone to check on them when they are absent and other issues concerning leave.

Maintenance of Equipment, however, reports its own challenges controlling overtime costs, including a heavy workload to install positive train control hardware and software on all trains by the end of 2020. Issues with vendors reportedly delivering faulty equipment has led to additional work installing, testing, and re-installing these systems. Maintenance work often must be performed during night shifts and weekends, because LIRR cannot take trains out of service during peak commuting hours. Also, Maintenance of Equipment's training program is lengthy (nine months) and work rules prevent management from scheduling training during employees' regularly scheduled shifts. This makes it difficult to hold training without incurring overtime, raising the overall cost of hiring, and increasing the time it takes to onboard new employees.

C. Metro-North Commuter Railroad Company

Metro-North has five main operating divisions that maintain fairly unified timekeeping and payroll procedures, except for one that uses a separate system, as discussed below.

Metro-North's primary timekeeping system is Kronos, which is utilized for all management⁵⁴ and represented employees. The only division that does not use Kronos is Train & Engine. Employees using Kronos are required to swipe in and out at Kronos time clocks using their employee identification cards at the beginning and end of their shifts.⁵⁵ That time then is approved in the Kronos system by the employees' manager, supervisor, or timekeeper.⁵⁶ Overtime is calculated in the Kronos system based on the hours worked and according to the

⁵⁴ Management employees' hours are auto-populated, with a few exceptions (e.g., vacation or sick leave) that are entered by the employee or timekeeper.

⁵⁵ Maintenance of Way employees, who often work off-site, are required to swipe in and out at their headquarters location.

⁵⁶ Timekeepers are responsible for reviewing, editing and auditing weekly time records, attendance records, exception reports, etc., for their respective management centers.

CBAs. Those overtime hours are placed in a “hold bucket” until the written approvals⁵⁷ are received and reconciled, after which the timekeeper moves the approved overtime from the hold bucket to the appropriate overtime pay code. In short, the overtime hours are not automatically paid. Further, if the hours cannot be reconciled, they are not paid, but rather are labeled with the appropriate unauthorized overtime pay code. These steps occur before any information is sent to the MTA’s Business Service Center for payroll processing.

Train & Engine employees use the Crew Management System (“CMS”) rather than Kronos. CMS interfaces with Kronos at the end of each week. Employees using CMS sign in at a CMS terminal at crew base locations. Management approval of time and assignments is performed by Train Masters, Superintendents, and Managers of Manpower Control. Overtime is pre-planned and built into the job assignment, since the Train & Engine employees receive overtime based on the train schedules. If there is an exception for additional time worked (*e.g.*, because of train delays), then the employee enters a stand-alone claim for additional time in CMS, which is routed in the system for the appropriate supervisor’s approval or denial.

Overtime at Metro-North is assigned in two different ways. Some unions have seniority rules, which means that if people are needed to work overtime, management will select employees by order of seniority. Within other unions, if a department needs employees for overtime work, it will contact the local union shop, which assigns the overtime on an equalization basis so that overtime theoretically is distributed equally across all employees at that local union shop.

In addition to the above timekeeping controls, the Corporate Budget Department at Metro-North tracks overtime by creating monthly finance reports that include both reimbursable and non-reimbursable activity.⁵⁸ Those monthly reports break down overtime into various causalities for review by managers.⁵⁹

D. MTA Bus Operations

For purposes of this Report, Buses encompasses all MTA bus operations by all legal entities that are responsible for MTA bus operations, including MTA Bus Co., Transit’s Department of Buses, and its subsidiary MaBSTOA. In practice, bus service has been

⁵⁷ Written approvals are known as the Overtime Control Sheets and contain the employee’s name, number of hours authorized, overtime causality code, and accounting information. They are approved by managers and sent to the Timekeeping Unit, which supports the transfer from the “hold” bucket to the authorized overtime pay code.

⁵⁸ Metro-North Internal Overtime Decomposition (breakdown by division and department for both month and year-to-date dollars and hours); Overtime Decomposition Summary (breakdown by MTA causality for both month and year-to-date by dollars and hours, with high-level variance explanations); Metro-North Internal Month-to-Date Top 5 Hotspots by Management Center and Top 20 Overtime Dollars by Employees; Metro-North Internal Year-to-Date Top 5 Hotspots by Management Center and Top 20 Overtime Dollars by Employees.

⁵⁹ *E.g.*, Scheduled Service, Unscheduled Service, Programmatic/Routine Maintenance, Unscheduled Maintenance, Vacancy/Absentee Coverage, Weather Emergencies, Safety/Security/Law Enforcement, and Other.

consolidated across these entities, both administratively and in terms of service delivered to the public.⁶⁰

Due to differences in CBAs, some employees, mostly those employed by MTA Bus Co., use the Kronos system to swipe in and out with identification cards, while timekeeping for most other Buses employees begins with a manual punch card or some other paper log, which is reviewed by supervisors and entered into Buses' primary timekeeping system, UTS. UTS is a custom database and software system that covers pick, daily crewing, disciplinary tracking, and timekeeping for approximately 17,000 Buses employees.⁶¹ It was developed in-house in 1994 and has been supported and upgraded over time by MTA Bus Co.'s business intelligence group. UTS works in tandem with Buses' maintenance data system, SPEAR, which tracks bus maintainers' shifts, attendance, and work activities.⁶²

Broadly speaking, Buses has one set of policies and procedures for bus maintainers and facilities employees, and another set for bus operators. Bus maintainers and facilities employees report to depots and use punch cards to clock in and out. Clock punches feed into the SPEAR system and subsequently into UTS. At the conclusion of the week, employees sign their punch cards and submit them to supervisors, who must review and sign the cards for submission to payroll. Exceptions (*e.g.*, absences or overtime) are reviewed by depot supervisors for approval and entered into UTS with specific codes that define the effect on pay.

Bus operators report to depot crew supervisors at the beginning of bus runs to be cleared as fit for their tour. They complete trip sheets to track timeliness to stops along the route, time in traffic, time waiting to enter the depot ("ramp time"), and so on, and submit them to crew supervisors for review, approval, and manual entry into UTS. All time entry is based on these manual sheets, which are converted to data in the UTS system relatively quickly at the end of every work week.

For maintainers and facilities employees, location managers set overtime based on operational needs. Need is driven primarily by how much maintenance work must be performed, but low employee availability (*e.g.*, vacancies or absences) also leads to overtime shifts. Overtime shifts are presented to the unions to distribute among employees. Most unions have

⁶⁰ Whether an individual is employed by Transit's Department of Buses, Transit's subsidiary MaBSTOA, or MTA Bus Co., however, has important differences in what unions the individual belongs to and what CBAs and work rules apply to them. There also are differences in the application of New York State Civil Service Law—Transit is subject to Civil Service Law while MaBSTOA and MTA Bus Co. are not—which generally are beyond the scope of this Report. See Office of the NY State Comptroller, Report 2017-S-48, Employee Qualifications, Hiring, and Promotions (Jan. 17, 2019), available at <https://osc.state.ny.us/audits/allaudits/093019/sga-2019-17s48.pdf>.

⁶¹ It also provides similar functionality to approximately 11,000 Subways train operators and conductors and to approximately 500 Staten Island Railway employees.

⁶² UTS appears to work well for Buses, in part because Buses' business intelligence group maintains it in-house and works to develop it for the needs of Buses management. It reportedly works less well for Subways, in part because the Subways workforce is very different and thus has different needs for timekeeping and performance metrics.

seniority-based canvassing as part of their CBAs, which means the most senior employees in those unions get first pick at overtime assignments as long as they are qualified for the work.

Overtime for bus operators is, in part, built into the bus schedule when routes necessarily result in shifts longer than eight hours. Scheduled overtime also is due, in part, to increased maintenance that must be performed to keep the aging bus fleet operational. The majority of overtime, however, is unscheduled, created by additional runs that must be filled when employees are absent from assigned shifts. Low employee availability across all of Transit is an issue that creates overtime and is particularly acute in Transit's Department of Buses: on average, bus operators report for only 197 out of 260 annual workdays, which is the lowest average availability rate within all of Transit.

Bus operators are subject to the New York Vehicle and Traffic Law regulations and hours of service rules that cap the number of hours operators are allowed to drive on consecutive days. Employees of Transit's Department of Buses (but not MTA Bus Co.) also are subject to overtime caps negotiated as part of their relevant CBAs. UTS tracks and creates reports on these limits, flagging for managers when covered employees approach caps. Also, although time entry is primarily manual, Buses' operations have certain built-in checks, and UTS has fairly robust reporting capabilities. For example, buses have global positioning system tracking, bus operators are monitored by dispatchers throughout their runs, and bus operators drive their routes minutes ahead of and behind others driving the same routes.

Maintainers and facilities employees work in shops where depot supervisors generally are present. Their productivity in completing maintenance jobs is carefully tracked in SPEAR and is compared to budget targets, historical data, and performance at other depots. A centralized bus operations group tracks all aspects of time management, including overtime, across all depots on a weekly basis, and advises depot supervisors on business practices and strategies to maximize productivity. UTS operations and budget data also feed into modern data visualization software (Tableau) that management and depot supervisors can use to identify trends in budget and workforce management.

E. Triborough Bridge and Tunnel Authority

Bridges and Tunnels comprises two main divisions, Maintenance and Operations. Maintainer is a generalist "broadband" title, meaning the skills of related disciplines (*e.g.*, electrical, plumbing, or ventilation work) have been combined into one job for purposes of civil service laws. Maintainers are responsible for all aspects of maintenance, repair, and operation of Bridges and Tunnels equipment and facilities. Operations consists of Bridges and Tunnels Officers ("BTOs"), sergeants, and lieutenants who patrol and monitor the facilities and perform law enforcement, firefighting, emergency rescue, and revenue collection and control duties. A single consolidated timekeeping unit, the Central Control Unit ("CCU"), handles timekeeping for all divisions. Bridges and Tunnels has used Kronos biometric clocks since 2008, and those clocks have been fully integrated into Bridges and Tunnels' payroll, scheduling, and maintenance systems. Bridges and Tunnels is the only MTA agency with an apparently seamless, automated timekeeping system that provides robust monitoring and reporting capabilities.

Generally speaking, Bridges and Tunnels employees swipe in and out at Kronos clocks using their identification cards (or type in their employee numbers at a terminal) and scan their fingerprints on a pad to confirm their identities. Card swipes to unlock facility doors also are recorded in Kronos and provide an additional check on attendance, particularly if an employee forgets to clock in or out for the day. There also is a camera monitoring every Kronos clock.

Scheduled work assignments and planned overtime are tracked in scheduling software and unplanned and emergency overtime are tracked in a facilities logs program (“FLOGS”), both of which automatically feed data into the Kronos payroll software. When an unscheduled overtime assignment arises, a facilities director enters the assignment into the FLOGS computer application, including the reason for the overtime, the type of work, and the employees assigned. Years ago, Bridges and Tunnels streamlined the payroll codes it uses to track overtime and it now follows the simplified acronym “SWEAP” to identify overtime causality—security, weather, emergency, availability, and pre-planned work. A manager or supervisor must approve any overtime entries in FLOGS. The information then is sent to the CCU, which reconciles the FLOGS data with the time in and out as recorded in Kronos. A manager must approve this reconciliation again before the data is sent to payroll.

Under Bridges and Tunnels’ CBAs, overtime assignments are distributed equitably and the employees with the lowest amount of overtime hours are offered assignments first. Canvassing is performed by non-union supervisors or superintendents. Any maintainer can accept overtime assignments as they arise because maintainer is a broadband title. Management, however, has the ability to take into account each employee’s specialties (*e.g.*, electrical work) and level of seniority when staffing overtime jobs, and management generally can distribute overtime equitably among all employees in a given specialty or seniority level as needed. Bridges and Tunnels employees are not subject to federal Hours of Service regulations and are not subject to overtime or pay caps. BTOs, however, as law enforcement officers, are subject to rules that limit shifts to 16 hours and require a minimum number of hours of rest between shifts.

Integrated computer systems enable Bridges and Tunnels to internally audit its timekeeping, create regular reporting on attendance and overtime, and manage overtime assignments to budget. Computer systems automatically create and email to management (including to the Bridges and Tunnels President) reports that track weekly performance indicators. The systems also circulate exception reports—for example, when overtime logged at a facility in a single day is unusually high or exceeds budget. Every morning, the systems produce and send by email to management a report on year-to-date overtime usage. Another automated “on premises” report is circulated every four hours to show management who is present at each facility in near real time, including how many straight time and overtime hours employees have logged while on site. Due at least in part to these tools, Bridges and Tunnels appears to be the only MTA agency that consistently has kept its overtime hours below budget during the past few years. Bridges and Tunnels management attributes their culture of accountability and managing to budget, in part, to the efforts of a past president who, beginning around 2010, focused intently on controlling overtime costs and encouraging the development of automated systems and reporting.

The majority of overtime at Bridges and Tunnels is driven by availability. Bridges and Tunnels has some “must fill” shifts—for example, wrecker drivers must be on call to clear accidents—and it appears to face some of the same absence issues that are prevalent MTA-wide, including increasing sick leave and Family and Medical Leave Act (“FMLA”) absences. Bridges and Tunnels has addressed availability issues, in part, by centralizing reporting and recording of unscheduled absences in a Central Control Notification Unit (“CONUnit”) that is staffed by supervisors whom employees must contact when they will be absent from work. CONUnit supervisors check absence information in real time when employees contact them, which helps management recognize patterns and discourage unnecessary absences. Having a large proportion of broadband titles also helps management reassign absent employees’ work to employees already onsite instead of calling replacements for overtime.

The other drivers of overtime are pre-planned work, including BTO tours that sometimes must extend beyond eight hours, and large maintenance projects that must be scheduled during off-peak traffic hours to avoid inconveniencing the commuting public. Bridges and Tunnels management appears to control pre-planned overtime by keeping 30% of its maintenance staff on straight-time night shifts, to complete off-peak work without paying overtime.

VII. DRIVERS OF OVERTIME

Key Findings: Drivers of Overtime

- Broad systemic inefficiencies drive high overtime. These include complex CBAs and work rules; the historically high workload the MTA has faced in the past year; and vacancies, absences, and hiring issues.
- The lack of visibility caused by inefficient and outdated processes makes it difficult to control overtime, or to identify any possible fraud.
- MTA management and leadership have not been committed to making necessary changes.

Recent media attention has focused on particular individuals who have received high levels of overtime compensation. While the press has shined a much-needed spotlight on possible waste, fraud, and abuse, individual high earners of overtime represent only a small proportion of the overtime MTA-wide and are not necessarily illustrative of broader systemic drivers of high overtime. But, for example, systemic issues within LIRR help, in part, to explain why LIRR has the highest individual overtime earners. LIRR has work rules that can double, triple, and even quadruple an employee’s income from a single shift; seniority rules that give preference for overtime work to the most senior employees, who generally are the highest paid; no overtime caps; a current high demand for work; and weak management controls, especially in the Engineering Department, which generates most of the overtime incurred by LIRR.

Metro-North currently has high vacancy and attrition rates, and thus routine work often is performed on overtime. Transit has overtime caps that prevent individual employees from accruing excessive overtime, but antiquated processes likely lead to unnecessary inefficiencies.

MTA Bus Co., on the other hand, lacks overtime caps, thereby allowing workers to take advantage of seniority rules and build up overtime. While Bridges and Tunnels has been able to manage overtime to budget for a number of years, it has faced reduced headcount due to unplanned absences and vacancies, which may create more overtime hours.

In addition to the factors identified above, other factors, including a historically high workload this past year, the impact of CBAs, and issues surrounding vacancies, absences, and hiring, have contributed to the large and rapidly growing overtime costs incurred by the MTA. While many of these factors make it entirely possible for an individual employee to earn large amounts of overtime legitimately, the fact that extensive overtime can be earned without engaging in fraud does not answer the important question of whether overtime can be better managed. Some amount of overtime is economically desirable, but current processes and policies do not permit the MTA to determine whether or to what extent it is economically efficient to rely on overtime rather than hire additional employees or make other changes to better meet work needs.

A. High Workload

In June 2017, Governor Cuomo signed an executive order declaring a state of emergency for the MTA due to increasing systemic failures of transportation infrastructure.⁶³ MTA agencies had been experiencing widespread issues with providing on-time service.⁶⁴ Further, ridership on New York City subways and buses was declining.⁶⁵ As a result, during 2017 and 2018, the MTA undertook an unprecedented number of large and complex projects simultaneously, requiring extremely high output of work hours at all levels MTA-wide.⁶⁶ These projects required the MTA either to hire additional employees or to have existing employees work overtime. Recognizing that hiring permanent employees may prove to be more expensive than overtime, both because of the benefits that must be paid and because permanent employees will remain on the payroll after the immediate need ends, it may have been economically desirable to incur increased overtime versus hiring permanent full-time employees. The impact of these multiple projects on overtime pay is exacerbated because much of the infrastructure work has to be performed during evenings and weekends to minimize disruption of service, and that work often is performed on overtime.

⁶³ State of New York Executive Order No. 168, NYS GOVERNOR OFFICIAL WEBSITE (June 29, 2017), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Executive_Order_Disaster_Emergency.pdf.

⁶⁴ Office of the New York State Comptroller, Report 8-2019, Financial Outlook for the Metropolitan Transportation Authority, at 1 (Oct. 2018), <https://www.osc.state.ny.us/osdc/rpt8-2019-mta-financial-outlook.pdf>.

⁶⁵ *Fast Forward: The Plan to Modernize New York City Transit*, METRO. TRANSP. AUTH., at 4 (May 2018), http://www.mta.info/sites/default/files/mtaimgs/fast_forward_the_plan_to_modernize_nyct.pdf; Report 8-2019, *supra* note 64, at 1.

⁶⁶ *See generally, e.g.*, Report 8-2019, *supra* note 64.

Set forth below is a brief description of the current projects within each agency that may be driving overtime.⁶⁷

1. New York City Transit Authority

Subway Action Plan. The SAP was launched in July 2017 at the direction of Governor Cuomo.⁶⁸ It is an \$836 million plan aimed at stabilizing and improving subway service and laying the foundation for modernization of the subway system.⁶⁹ The scope of work has included signal malfunctions, car breakdowns, issues with power infrastructure, water-related damage, track fires, and other track issues. To date, the work has been performed by a combination of outside contractors and Transit workers.⁷⁰ According to a January 2019 MTA press release, much already has been accomplished under the SAP: 4,000 water leaks sealed; drains cleaned for 418 miles of track; 40,000 street grates cleared, preventing track fires; continuous welded rail installed across the system; 20,000 minor track defects repaired; 1,700 signals repaired or rebuilt; 200 signal stops rebuilt; a study of all doors on all fleets completed; and more than 1,000 door control units repaired.⁷¹ Transit leadership reportedly anticipated hiring more full-time employees to complete this work as part of an aggressive hiring plan in the fall of 2017; however, disputes regarding whether New York City would fund half of the SAP caused management to cut back on hiring for fear of excessive headcount if the SAP was left unfunded, potentially causing Transit to incur more overtime than originally budgeted.

Fast Forward. In May 2018, Transit proposed its own large capital investment plan called Fast Forward to restructure and update subway and bus operations.⁷² Fast Forward's five-year goals are as follows: install state-of-the-art signal systems on five lines; renovate 50 new subway stations to improve accessibility in accordance with the Americans With Disabilities Act ("ADA"); implement repair work at more than 150 stations; add more than 650 new subway cars; add 1,200 communications-based train control modified cars; redesign bus routes in all five boroughs; and add 2,800 buses.⁷³ Fast Forward has ambitious goals for the five years following this initial phase as well.

Save Safe Seconds. In 2018, Transit announced its Save Safe Seconds campaign and

⁶⁷ Buses does not have the same kind of major infrastructure projects as other MTA agencies, and as a result Buses is not included in the subsections below; however, other issues do increase Buses' workload and create the potential for increased overtime, including the growing maintenance needs of the aging bus fleet.

⁶⁸ *Id.* at 6.

⁶⁹ *Id.*

⁷⁰ *Id.* at 6-7.

⁷¹ Press Release, *MTA New York City Transit Announces Continued Progress on Subway Action Plan*, METRO. TRANSP. AUTH. (Jan. 20, 2019), www.mta.info/press-release/nyc-transit/mta-new-york-city-transit-announces-continued-progress-subway-action-plan.

⁷² Report 8-2019, *supra* note 64, at 7.

⁷³ *Fast Forward: The Plan to Modernize New York City Transit*, *supra* note 65; Report 8-2019, *supra* note 64, at 7-8.

plan to hire a team of engineers and other safety officials to work alongside signal maintainers to safely raise speed limits and repair faulty speed regulating signals.⁷⁴ This campaign is ongoing and reportedly has had some success.⁷⁵

Deep Clean Initiative. Launched in December 2018, the Deep Clean Initiative is a component of the SAP.⁷⁶ Its goal is to utilize various contractors to perform a one-time deep clean and refurbishing of 100 stations and up to 3,000 cars.⁷⁷ This project is at or near completion and has been a success.⁷⁸

Subway ADA Accessibility. In 2018, the MTA approved an amendment to its capital plan in order to increase its investment in ADA accessibility within Transit subway stations.⁷⁹ This increase was in addition to an already-funded plan to make 17 stations (now expanded to 22 stations) fully ADA-accessible.⁸⁰ This project is ongoing.

2. Long Island Rail Road Company

East Side Access. This project aims to provide LIRR service to the east side of Manhattan, giving LIRR customers a direct route to Grand Central Station.⁸¹ It involves building a new LIRR terminal, including all of the corresponding platforms and tracks.⁸² The project requires more than eight miles of tunneling and includes construction in Manhattan, Queens, and the Bronx.⁸³ LIRR hopes to have this service up and running by December 2022.⁸⁴

⁷⁴ William C. Vantuono, *NYCT: It's about time*, RAILWAY AGE (Dec. 11, 2018), <https://www.railwayage.com/cs/nyct-its-about-time/?RACHannel=home>; *MTA NYC Transit increases subway speed limits at 24 locations*, RAILWAY TECH. (Jan. 22, 2019), <https://www.railway-technology.com/news/mta-nyc-transit-increases-subway-speed-limits-at-24-locations/>.

⁷⁵ William C. Vantuono, *Byford: Subway Action Plan and Save Safe Seconds getting results*, RAILWAY AGE (Feb. 23, 2019), <https://www.railwayage.com/news/byford-subway-action-plan-and-save-safe-seconds-getting-results/>.

⁷⁶ *MTA New York City Transit Announces Continued Progress on Subway Action Plan*, *supra* note 71.

⁷⁷ *Id.*

⁷⁸ *How BMS Beautified Ten NYC Subway Stations: MTA Subway Cleaning Project*, BMS BUILDING MAINTENANCE SERVICE (July 26, 2019), <https://bmsbuildingservice.com/mta-subway-cleaning/>.

⁷⁹ *Funding for Subway Station ADA-Accessibility Approved*, METRO. TRANSP. AUTH. (Apr. 26, 2018), <http://www.mta.info/news/2018/04/26/funding-subway-station-ada-accessibility-approved>.

⁸⁰ *Id.*

⁸¹ *About East Side Access: Project Overview*, METRO. TRANSP. AUTH., http://web.mta.info/capital/esa_alt.html (last visited Aug. 1, 2019); James Bernstein, *MTA Sees Light at End of Tunnel for East Side Access Project, But Skeptics Remain*, LONG ISLAND PRESS (Feb. 26, 2019), <https://www.longislandpress.com/2019/02/26/mta-sees-light-at-end-of-tunnel-for-east-side-access-project-but-skeptics-remain/>.

⁸² *MTA Approves Final Major Contract for East Side Access Manhattan Caverns*, METRO. TRANSP. AUTH. (Jan. 27, 2016), <http://www.mta.info/news-east-side-access-lirr-grand-central-terminal/2016/01/27/mta-approves-final-major-contract-east>.

⁸³ *About East Side Access: Project Overview*, *supra* note 81.

Double Track Project. Due to increased ridership, LIRR launched the Double Track Project to introduce a second track between Farmingdale and Ronkonkoma, spanning 13 miles, as there previously had been only one track for this busy route.⁸⁵ This project was placed on an accelerated timeline in 2016 at the direction of Governor Cuomo and was completed in September 2018, a year ahead of schedule.⁸⁶

Main Line Third Track. In September 2018, LIRR's Third Track initiative kicked off.⁸⁷ This program is estimated to cost \$2.6 billion and includes 50 projects aimed at modernizing approximately 10 miles of LIRR's Main Line between the Floral Park and Hicksville stops.⁸⁸ The planned improvements involve adding a third track and modernizing infrastructure to provide more reliable commutes to riders.⁸⁹ This project is expected to continue until 2022.⁹⁰

Ronkonkoma/Mid-Suffolk Yard Expansion. In order to support the East Side Access Project, LIRR is expanding the Ronkonkoma Yard, which operates as a train storage yard, and building a new employee facility.⁹¹ This expansion, which was begun in 2015, ultimately will become the LIRR Mid-Suffolk Train Storage Yard.⁹² Beyond the construction of new employee

⁸⁴ *MTA Sees Light at End of Tunnel for East Side Access Project, But Skeptics Remain*, *supra* note 81.

⁸⁵ *LIRR Double Track Project Farmingdale to Ronkonkoma (Completed 09/2018)*, A MODERN LI, <http://www.amodernli.com/project/doubletrack/> (last visited Aug. 1, 2019); Joe McQueen, *LIRR opens new double tracks ahead of schedule*, THE STATESMAN (Oct. 1, 2018), <https://www.sbstatesman.com/2018/10/01/lirr-opens-new-double-tracks-ahead-of-schedule/>; *LIRR Assures Service Issues Related to 'Double Track' Project Will Dissipate and Major Relief is On Horizon*, CBS NEW YORK (Aug. 20, 2018, 7:02 p.m.), <https://newyork.cbslocal.com/2018/08/20/long-island-rail-road-double-track-project-ronkonkoma/>; *Governor Andrew Cuomo Announces Completion of Historic LIRR Double Track More Than a Year Ahead of Schedule*, NYS GOVERNOR OFFICIAL WEBSITE (Sept. 21, 2018), <https://www.governor.ny.gov/news/governor-cuomo-announces-completion-historic-lirr-double-track-more-year-ahead-schedule>.

⁸⁶ *LIRR Double Track Project Farmingdale to Ronkonkoma (Completed 09/2018)*, *supra* note 85; *LIRR opens new double tracks ahead of schedule*, *supra* note 85; *Governor Andrew Cuomo Announces Completion of Historic LIRR Double Track More Than a Year Ahead of Schedule*, *supra* note 85.

⁸⁷ *Governor Cuomo Announces Groundbreaking of LIRR Third Track*, METRO. TRANSP. AUTH. (Sept. 6, 2018), <http://www.mta.info/news/2018/09/06/governor-cuomo-announces-groundbreaking-lirr-third-track>.

⁸⁸ *Id.*; Alfonso Castillo, *Long Island's third-track LIRR makeover*, NEWSDAY, <https://projects.newsday.com/transportation/lirr-third-track-project/> (last visited Aug. 1, 2019); LIRR Expansion Project FAQs, <https://lirrexpansion.com/faqs/> (last visited Aug. 1, 2019).

⁸⁹ *Governor Cuomo Announces Groundbreaking of LIRR Third Track*, *supra* note 87; LIRR Expansion Project, <https://lirrexpansion.com/> (last visited Aug. 1, 2019).

⁹⁰ *Governor Cuomo Announces Groundbreaking of LIRR Third Track*, *supra* note 87; LIRR Expansion Project, *supra* note 89.

⁹¹ *LIRR Mid-Suffolk Train Storage Yard*, A MODERN LI, <http://www.amodernli.com/project/lirr-mid-suffolk-train-storage-yard/> (last visited Aug. 1, 2019); *Proposed Mid-Suffolk Yard*, METRO. TRANSP. AUTH., <http://web.mta.info/lirr/midsuffolkyard/index.htm> (last visited Aug. 1, 2019).

⁹² *LIRR Mid-Suffolk Train Storage Yard*, *supra* note 91; *Proposed Mid-Suffolk Yard*, *supra* note 91.

facilities, this project seeks to double the available storage tracks.⁹³

Positive Train Control. In 2008, the federal government passed the Rail Safety Improvement Act, which required the implementation of technology referred to as positive train control safety systems.⁹⁴ Positive train control is designed to prevent dangerous errors on commuter trains, such as collisions and derailments. This technology is supposed to be installed by LIRR by December 31, 2020, at the latest.

3. Metro-North Commuter Railroad Company

Positive Train Control. Metro-North also must install positive train control to meet the requirements of the Rail Safety Improvement Act.⁹⁵ Similar to LIRR, Metro-North expects this project to be completed by the end of 2020.

Additional Projects. Metro-North has a variety of additional labor-intensive projects on its docket. For example, Metro-North has been working on maintenance for the New Haven Line. Maintenance previously had been deferred, leading to track problems, and employees now have been tasked with working quickly to fix these issues. These fixes include significant work on Connecticut bridges. These projects are on top of ongoing significant infrastructure programs and standard capital projects, such as ongoing steel repairs and yearly bridge inspections.

4. Triborough Bridge and Tunnel Authority

Fare Evasion Task Force. In June 2019, Governor Cuomo announced a Fare Evasion Task Force to consist of 200 NYPD officers, 200 BTOs, 100 MTA PD officers, and 70 New York City Transit Eagle Team members.⁹⁶ Bridges and Tunnels anticipates pulling half of its BTOs from their current posts and deploying them to police major subway and bus routes. Management is watching its budget closely in anticipation that the BTOs’ additional duties may require increased overtime.

* * *

Many of the projects detailed above are scheduled to end within the next few years. The end of these projects and their respective logistical and personnel needs will provide an opportunity to reduce overtime costs.

⁹³ *Proposed Mid-Suffolk Yard*, *supra* note 91; *Mid-Suffolk Yard Project – LIRR: Project Overview*, METRO. TRANSP. AUTH. (Nov. 20, 2014), <http://web.mta.info/lirr/midsuffolkyard/images/MidSuffolkYardProjectOverview.pdf>.

⁹⁴ Report 8-2019, *supra* note 64, at 8.

⁹⁵ *Id.*

⁹⁶ The MTA “Eagle Team” began in 2007 as a collaboration between NYPD, MTA PD, and Transit to combat vandalism on subways and buses. See *Governor Cuomo Announces Agreement to Add 500 Additional Uniformed Officers to NYC Subway and Bus Stations to Improve Public Safety, Protect Workers and Combat Fare Evasion*, NYS GOVERNOR OFFICIAL WEBSITE, <https://www.governor.ny.gov/news/governor-cuomo-announces-agreement-add-500-additional-uniformed-officers-nyc-subway-and-bus> (last visited Aug. 1, 2019).

B. Collective Bargaining Agreements

1. Multiple CBAs Across MTA Agencies

Each agency must manage its workforce in compliance with multiple CBAs, which define different “work rules” relating to time and attendance and entitlement to extra pay, including overtime for certain kinds of work or under certain work scenarios. CBAs and their work rules often are arcane and characterized by highly technical terms of art. CBAs also may be augmented or modified by years of past union and management practices in ways that arguably establish additional work rules. Work rules ostensibly created through past practices are not always written or codified in any single place. CBAs may be modified and various work rules relating to pay may be established through grievance or arbitration processes.

The CBAs impact nearly every facet of how MTA agencies manage their respective workforces—particularly how much extra pay workers are entitled to earn for work management directs them to perform. Often the CBAs enable represented employees to amass what appears to be impossibly high overtime hours by granting the employees penalty payments or extra hours of pay based on various situations, rather than time actually spent on the job. Therefore, it is possible—and not uncommon—for an employee to earn overtime hours or, for example, to be paid for 16 hours of work in a day, while only working eight hours.

The large number of unions and CBAs illustrates the challenges management faces when attempting to direct labor effectively to maximize use of public funds. Within LIRR, as of December 31, 2018, almost all of the agency’s employees were represented by 11 unions in 19 bargaining units⁹⁷ and were covered by at least 10 CBAs. In Transit, including Subways and Buses divisions, there are 27 separate CBAs. Metro-North’s represented workers are covered by at least 10 unions, 25 bargaining units, and 15 CBAs. MTA Bus Co. employees are represented by five unions.⁹⁸

CBAs are the product of periodic negotiations between MTA management and the respective unions. When a union contract expires, the contract is generally deemed “amendable” and enters status quo, meaning existing work rules remain in force until a new contract can be negotiated or reached through arbitration. Because of the large number of CBAs across the MTA, labor negotiations are constantly ongoing, and often a contract will expire shortly after it is finalized.⁹⁹ The contract for the largest MTA union, the Transport Workers Union Local 100 (“TWU”), representing approximately 35,000 subway and bus workers, became amendable in May 2019, as did another Transit CBA covering approximately 3,500 Amalgamated Transit Union employees.¹⁰⁰ All of the CBAs for Staten Island Railway also expired by the end of 2018

⁹⁷ Consolidated Financial Statements as of and for the Years Ended December 31, 2018 and 2017, METRO. TRANSP. AUTH., at 19 (June 26, 2019), <https://new.mta.info/sites/default/files/2019-06/2018%20MTA%20Consolidated%20Financial%20Statements%20%28Issued%29%20.pdf>.

⁹⁸ *Id.* at 20.

⁹⁹ *See, e.g., id.* at 19-20.

¹⁰⁰ *Id.* at 20.

or expire in 2019.¹⁰¹ The TWU contract is often the model for CBAs across agencies, so renegotiation of this specific CBA is paramount if systemic changes to work rules are to be achieved.¹⁰² A new CBA between Metro-North and the Transport Workers Union Locals 2001 and 2055, covering 600 employees, was finalized in October 2018 (but retroactively covered the represented workers beginning on March 16, 2017) and will expire on August 31, 2019.¹⁰³ Metro-North has been engaged in labor negotiations for the remainder of its represented employees, as those contracts were amendable as of the end of 2018.¹⁰⁴ A CBA covering three of five unions operating within MTA Bus Co. also expired in May 2019; the remainder of its CBAs expire in 2019.¹⁰⁵

2. Work Rules

Due to their number, variety, and complexity, a detailed review of all MTA CBAs and work rules relevant to time, attendance, and overtime, is beyond the scope of this review. The examples below, however, illustrate the ways in which work rules can drive extra pay and high overtime. In particular, many work rules entitle workers to extra pay for time they do not work or for work performed during normal hours. It should be emphasized that overtime payments such as these are not fraudulent but are authorized by work rules agreed to by management and labor. It is possible, however, for employees to take advantage of the work rules to amass additional overtime or penalty payments without spending more time working, which could explain some of the extraordinarily high overtime amounts earned by certain MTA workers. Whether changing those work rules through collective bargaining should be prioritized is an important question for MTA leadership to consider.¹⁰⁶ Set forth below are examples of certain work rules within the MTA agencies that drive overtime and may no longer be appropriate—if indeed they ever had a legitimate basis:

Subways:

- **Dead-heading.** When a work rule allows an employee who begins work at one location but ends at another location to be paid to return to their home location, overtime can be paid if the travel extends beyond the worker's regular shift.
- **Penalty payments.** Extra pay granted to workers for disruptions in their regular schedule. For example, if certain employees are 10 minutes late to their scheduled lunch break for work-related reasons, or run 10 minutes over their scheduled shift, they are entitled to an extra 30 minutes of pay. Employees called in for emergency work, but

¹⁰¹ *Id.* at 20-21.

¹⁰² *Id.* at 19-21.

¹⁰³ *Id.* at 19.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 20.

¹⁰⁶ Multiple MTA agencies have raised certain work rule changes in current and in past CBA negotiations.

ultimately not put to work, are paid for six hours. Train operators or conductors who have to make an extra trip receive 1.5 times the pay rate, and if the trip takes more than one hour, they are paid at least four hours at the regular rate.

- **Overtime calculated on a daily rather than a weekly basis.** Employees are entitled to time and a half for any work in excess of eight hours in a day, regardless of whether they work less than 40 hours that week.
- **Non-productive paid time.** The TWU contract has more than 60 categories of non-productive paid time (*e.g.*, additional pay for working through lunch, 3.5 hours of pay for physical examinations taken outside of scheduled work, pay for mandated drug testing or trainings).

LIRR:

- **Second Class of Service.** Mandates that employees should receive double payment if asked to switch from one job to cover another job for a day.¹⁰⁷
- **Co-mingling.** Engineers receive double pay if they operate both a diesel and an electric engine during one work assignment.¹⁰⁸ This rule may have made sense a century ago when diesel and electric locomotives were very different machines that required different skills to run and had to run on different tracks, which meant that engineers rarely worked both. But today operating electric and diesel engines is basically the same.¹⁰⁹
- **Sheridan Shop.** Dating back to 1984, this rule states that only engineers may move engines at the Sheridan Shop for servicing—a job that only takes an hour—but must be paid for eight hours’ work for doing so.¹¹⁰
- **Rule 24 of the LIRR “Carmen” CBA.** Provides that almost all unfilled and vacant positions (*e.g.*, due to an absence or a vacancy left unfilled due to lack of need) must be covered on every shift, which means employees are asked to work overtime to cover these positions even if there is no work to be done.¹¹¹ The MTA IG found in a 2008 report that this rule, while only affecting a few positions, was “a classic example of a

¹⁰⁷ Office of the NY State MTA Inspector General, LIRR Work Assignments, Work Rules and Pensions: Managing to Control Costs, METRO. TRANSP. AUTH., at 5 (Oct. 31, 2008).

¹⁰⁸ *Id.* at 6.

¹⁰⁹ In fact, for decades, a substantial portion of LIRR’s fleet has been composed of dual-mode electro-diesel engines that operate mostly under diesel power and switch to third-rail electric power for trips into Penn Station. Dual-mode engines (treated as electrics for purposes of LIRR’s CBAs) can run anywhere in the LIRR system, making it more likely that engineers will switch from an electric to a diesel in one shift, and triggering more penalty payments. *See id.* at 6 n.2.

¹¹⁰ *Id.* at 6.

¹¹¹ *Id.* at 17.

completely unreasonable, illogical and costly rule that, when combined with other rules governing work-shift bidding procedures, provides senior employees with excessive overtime, significantly increasing their pension benefits.”¹¹²

Metro-North:

- **Seniority canvassing.** Among employees within the Maintenance of Way Department, overtime assignments can be offered to employees in order of seniority, rather than distributed equally among employees or based on other factors such as availability.
- **Consecutive work.** Under some CBAs working 16 consecutive hours in a 24-hour period entitles a worker to double-time pay for work past the 16th hour, as does working more than six consecutive days for work performed on the seventh consecutive day.
- **Extra hours.** Other rules entitle employees to extra hours of pay regardless of how many hours they actually work. For example, employees called to work on their scheduled rest day are paid for a minimum of three hours, or in some cases for a full eight-hour shift (which could be paid at straight time, time and one-half, or double time depending on how many consecutive days the employee has worked) regardless of whether they actually worked those hours.

Buses:

- **Seniority.** Within MTA Bus Co., senior employees can work enough to receive double time because they are given the opportunity to amass high hours in a week or consecutively in a single shift that could trigger penalty payments or other work rules that mandate double time under various circumstances.
- **Overtime caps.** MTA Bus Co. does not have a cap on seniority-based overtime, whereas Transit’s Department of Buses does have caps. MTA Bus Co. reportedly is seeking to impose a cap.
- **Shape Up.** A Transit Department of Buses and MaBSTOA 2005 CBA rule that allows senior maintenance employees to pick their daily work tasks in a process at the beginning of every shift called the “daily shape.” Shape Up results in a system where employees are not necessarily working the jobs they are most skilled at, which management believes drives overtime because it decreases efficiency.
- **Minimum time thresholds (within Transit’s Department of Buses).** Certain work rules entitle bus operators to be paid in excess of the actual overtime hours worked (*e.g.*, if required to work a second tour, bus operators are paid a minimum of 12 hours or 1.5 times the pay rate, whichever is greater; if a bus operator has to make an extra trip that takes more than an hour, they are paid for at least four hours).

¹¹² *Id.*

C. Vacancies, Absences, and Hiring Issues

All MTA agencies have difficulty filling key positions. Given the high demand for work across agencies, there are situations where only a limited number of employees have the necessary skills and certifications to operate certain machinery, and thus they may be called to work several days in a row and often earn overtime for that work.

For example, at Transit, crane operators, track-cutting tool operators, and signals maintainers are difficult positions to fill. Similarly, the Elevators and Escalators Unit of Transit has a shortage of employees because qualified workers can earn more in the private sector. Some of the overtime caps that are in place for Transit employees were specifically, and temporarily, lifted to address these issues; as a result, some of these types of employees were among the top overtime earners. Other agencies, such as Metro-North, also face higher than normal vacancy rates, as high as 10% for the Metro-North Maintenance of Way Department.

A related issue is the 2018 MTA-wide hiring freeze instituted for all non-essential employees. In addition, the MTA established an executive committee to ensure that every vacant MTA job is absolutely necessary before hiring someone new to fill that position. While there is evidence to suggest that some restrictions on hiring have been eased, the hiring freeze still is in effect. Given the number of departments, across all agencies, that need additional employees, the hiring freeze is making it difficult to fill key positions, resulting in increased overtime and fewer managers to engage in workforce oversight.

Employee absence from work also generates substantial amounts of overtime. When an employee calls in sick, or is otherwise unavailable to work as scheduled, it creates a domino effect—particularly for “must-fill” positions—in which another employee has to be called in to replace that employee and often receives overtime pay as a result. During the prime summer vacation months absences tend to be higher, and those positions are often filled with overtime-eligible employees. At some agencies, this is exacerbated by “overtime offset” or “OTO,” a provision in a number of CBAs that gives workers the choice to “bank” overtime as vacation hours. This means an employee who works eight hours overtime at time and a half could choose to be paid for 12 hours work, or receive eight hours’ pay and four hours’ vacation time—potentially increasing their time out of work and creating more shifts to be filled on overtime. Finally, the FMLA creates shortages when employees take leave, and those jobs also often have to be staffed with overtime-eligible employees.

For example, employee absences have been a growing driver of overtime for MTA Bus Co. and Transit’s Department of Buses. To handle the continuing decline in employee availability among bus operators, Buses formed an Employee Availability Group, which manages certain initiatives to improve availability and thus reduce the need for overtime. One initiative, known as Aware and Care, replaces the disciplinary approach to dealing with absences with an approach of talking to employees to try and understand why they are absent. A second initiative, known as the Recognition Initiative, highlights bus operators with perfect or exemplary attendance in an effort to improve morale. A third initiative involves the hiring of an

outside contractor to outsource FMLA administrative functions to ensure that employee requests for FMLA leave are processed properly.¹¹³

High absences may be, in part, a product of poorly calibrated worker incentives. Transit management suggested that, broadly speaking, some employees may be incentivized to miss work on days when they are regularly scheduled and otherwise would have received straight-time pay, and instead take overtime shifts at other times during the week to increase their total pay while working the same or fewer total weekly hours. Moreover, employee absences perpetuate the cycle by creating additional “must-fill” vacant shifts that are staffed on overtime. Thus, without a rule that takes into account whether or not employees work 40 hours of straight time or factors in absences in some other way for overtime eligibility, overtime may be incentivizing workers to miss regularly scheduled work. It appears that only Bridges and Tunnels maintainers have a work rule in place to discourage this practice, by making maintainers who miss work Friday ineligible to receive overtime assignments for Saturday and Sunday.

VIII. MANAGEMENT OVERSIGHT

Key Findings: Management Oversight

- No standardized overtime and timekeeping policies or procedures apply across MTA agencies.
- Kronos implementation is a step forward, but further integration with payroll systems is needed.
- CBAs and work rules are interpreted inconsistently across and within MTA agencies.
- Management has little accountability for controlling overtime or managing to budget.

In addition to the structural drivers of overtime, which are largely beyond the unilateral control of management, systemic and organizational issues limit management’s ability to reliably track and control overtime and identify the best steps that could be taken to significantly reduce overtime expenditures. Relatedly, MTA leadership and management have failed to demonstrate a commitment to controlling overtime costs, thus leading to a culture of acceptance within the MTA of overtime levels that by any measure are unacceptable.

A variety of overtime reports generated by the MTA agencies and MTA HQ identify high earners, meaning employees who are being paid significant overtime. Those reports, however, are not being used productively or effectively to control overtime costs or identify or defer potential fraud. Specifically, MTA managers often do not investigate or validate the overtime hours incurred by the individuals who reportedly work significant overtime each month. As a result, overtime lists are not being used to identify, deter, or prevent potential fraud, waste, or

¹¹³ Morrison & Foerster’s review did not include a detailed analysis of potential misuse of sick leave or the FMLA, but MTA leadership should consider further analysis of this issue.

abuse and do not serve the MTA well. The continuation of monthly overtime reports needs to be accompanied by new procedures that require investigation and validation of the overtime hours incurred with referrals of potential fraudulent overtime to the MTA IG for further investigation.

A. Overtime and Timekeeping Policies and Procedures

There is no standardized overtime and timekeeping policy or procedure that applies across and within all MTA agencies. Nor is there a unified policy for tracking, controlling, or reporting on overtime approvals or accruals. This lack of standardization contributes to confusion among employees and managers as to how overtime should be considered and approved and how it should be tracked, monitored, and budgeted. Inconsistency across and within agencies also makes it difficult to devise and implement effective trainings on overtime issues, since any training materials would need to account for and address the differences in policies within and across the agencies. The root of these problems is the same: the failure of MTA leadership to require that timekeeping and overtime policies and procedures be standardized.

B. Systems and Payroll

One systemic example of the lack of standardized procedures concerns the various timekeeping systems used both within and across the agencies. By and large, there is no reasonable justification for—and certainly no identifiable advantage to—using multiple different timekeeping systems within the MTA. Nor does there seem to be a legitimate reason for the different agencies, and departments within agencies, to use different pay codes (used, in part, to identify work performed as either regular time or overtime) for similar work, making comparisons across agencies and departments nearly impossible. The MTA could realize significant benefits from standardizing and integrating its various timekeeping and overtime systems to the greatest extent possible. For example, Metro-North recently discovered duplicate overtime payments for Train & Engine employees using the CMS system. Overtime could be better controlled if the MTA maintained a more unified and integrated timekeeping system.

While this type of integration would represent a significant undertaking, the MTA previously has integrated payroll and procurement services in a manner that has been effective and beneficial, and can serve as a positive case study. In 2007-08, the MTA moved to a shared services model that provided one platform for all of the agencies for a variety of services, such as payroll and procurement. Prior to that, each agency handled payroll and procurement independently, which was inefficient, unnecessary, and costly. The use of a single platform has been a success. In the past, when data regarding payroll was needed, it was necessary to obtain it from each of the different agencies. Now, it is all centralized at the Business Service Center, enabling a single response and aligned data.

The recent decision to implement Kronos biometric clocks more widely is a positive step in terms of overall timekeeping controls, but further integration would yield greater benefits. Currently, there is no plan to implement Kronos clocks in remote locations, or where employees do not report to a central location for their shifts. Nor is there a plan to integrate the Kronos clocks with existing time and attendance and payroll systems in a manner that would make

Kronos the primary tool for both timekeeping and payroll. The proposed integration is too narrow and, unless broadened in scope, fails to take advantage of an opportunity to integrate a large portion of the MTA’s system-wide timekeeping, attendance, and payroll systems into a single standardized system. Absent full integration, the Kronos biometric clocks primarily serve as a check against “buddy punching”—a species of time and attendance fraud where one employee signs in for another—which does not necessarily drive significant overtime excess, but should be eliminated nevertheless.

Lack of standardization also is an issue within MTA agencies. In particular, various departments within the same agency sometimes perform management functions differently, when they could—and should—be done in the same manner. This makes funneling information upwards cumbersome, time-consuming, and inefficient, and increases the difficulty of comparison across agencies and departments. While it may not be possible to track timekeeping and overtime in exactly the same way across all agencies, departments, and units, a greater level of standardization would facilitate effective tracking, interpreting, understanding, and controlling of timekeeping and overtime expenditures.

For example, the different operating departments within LIRR each have their own payroll units, and run payroll completely differently from one another. Even operating units within the Engineering Department at LIRR perform timekeeping differently with varying paper forms, although an internal audit published 10 years ago suggested consolidation. Some forms do not even have a printed employee name and identification number, making the use of those forms particularly ineffective for timekeeping and overtime control. LIRR reportedly is in the process of implementing consistent review processes and uniform paper labor sheets.

C. Interpretation of the CBAs and Related Work Rules

While certain work rules drive overtime at the various agencies, and present a challenge for controlling it, there is evidence that even similar or identical provisions in CBAs and related work rules are sometimes being interpreted differently. One unit may be interpreting the same CBA or work rule differently than another unit within the same agency—or there may even be differing interpretations within the same unit.

For example, in 2008, the MTA IG observed in an audit report that, “[b]ecause many of the rules are old, they may have been subjected to various interpretations over the years,” and, “[a]s a result, the rules as they exist in practice may bear little relationship to the rules as written.”¹¹⁴ Nevertheless, it appears that the various payroll and business support units within each agency often have nothing more than the original rules as written to inform them in making determinations about pay, instead of a practical guide on how the rules are being applied in practice and how they should be interpreted today. For example, in practice, certain shop locations might be paying employees an additional 10 minutes every day for a “wash up” period before the employees clock out, even though the relevant CBA does not require it. Reportedly,

¹¹⁴ Office of the NY State MTA Inspector General, LIRR Work Assignments, Work Rules and Pensions: Managing to Control Costs, METRO. TRANSP. AUTH., at 17 (Oct. 31, 2008).

sometimes when managers have attempted to document even informal guidelines to make CBA and work rule interpretations consistent across work locations, they have been deterred by the possibility that unions would challenge the guidelines in a grievance process. Relatedly, managers turn over far more frequently than union employees do, placing management at an informational disadvantage when employees claim that additional benefits or rules should be accepted as past practices. The MTA should examine further how labor relations groups within each agency could play a more substantial role in tracking CBA provisions and work rules that impact time allowances and pay, and assisting payroll and other business support functions by standardizing interpretations of those provisions.

D. Data Tracking for Timekeeping and Overtime

Lack of integration also appears to contribute to the MTA's basic inability to gather and track data in a systematic, timely, and orderly fashion. Even where pertinent data exists, most agencies have reported a time lag regarding information on timekeeping and overtime. The utility of these data significantly declines over time, and managers lose the ability to respond efficiently and promptly to issues that the data may reveal. Managers should have—but generally do not have—access to data on the employees they supervise within a reasonable time frame. Not being able to track and monitor timekeeping and overtime efficiently makes overtime costs difficult to control. Standardizing and integrating timekeeping policies also will allow the MTA to identify quickly, deter and rectify any fraud, waste, and abuse in overtime.

One particular challenge stems from the widespread use of manual time entry on paper time sheets. While some agencies are much better than others in tracking paper time entries and converting them to data quickly, that data conversion process is itself costly and time-consuming, and is a weak point in terms of controls. Apart from Bridges and Tunnels, all agencies have, in one form or another, a group or groups of employees who must spend substantial hours on timekeeping and payroll data entry every week. For example, paper time sheets and exception forms for more than 27,000 Subway employees must be collected, organized, and manually entered each week into two different computer systems, one of which is more than 30 years old. Moreover, Subways had not consolidated under one group the timekeeping data entry for its Maintenance of Way employees until September 2018, and timekeeping for some operating groups, such as Car Equipment, still has not been centralized. Only more recently has Subways been able to leverage the consolidation of Maintenance of Way's timekeeping to begin streamlining and standardizing overtime pre-approval forms.

Buses also relies on paper forms for nearly all timekeeping. Nevertheless, Buses has managed to create processes that convert all timecards for approximately 17,000 employees every week into data that can be analyzed by software to create customized budget and benchmark reports that are reviewed by management on a regular basis.

Similarly, at LIRR, timekeeping for the Engineering and Transportation Departments is all on paper forms, hindering quick analysis and raising the cost of controls. While the Transportation Department (which is responsible for all LIRR train operations) has a comprehensive daily time-slip verification process to confirm that exceptions to regular pay (*e.g.*, train delays, additional duty, or overtime) are substantiated, that process is extremely time-

intensive and requires seven payroll coordinators to spend many hours verifying pay for 1,600 employees. The Engineering Department appears to lack basic processes that would allow manual audit and tracking. As the Engineering Department is not able to audit its timekeeping properly, managers within the Labor Relations Department have started monitoring Engineering's payroll, reportedly finding frequent pay entries that appear incorrect or cannot be substantiated. In addition, the Engineering Department often does not have sufficient information to challenge the data provided, so the work that is authorized on various timekeeping sheets is different than the work that actually was performed, or is otherwise inconsistent.

Even after payroll data is compiled by all agencies and transferred to the Business Service Center at MTA HQ for payroll, it is difficult to run reports quickly that would give granularity on overtime. Final payroll data reflects the application of hundreds of time reporting codes, which vary by agency, to account for the effect of work rules that modify an employee's rate of pay or hours worked. This often makes the data impenetrable to meaningful analysis without further input from the various payroll functions within each agency.

By contrast, Bridges and Tunnels undertook an effort to streamline its overtime pay codes years ago (using the SWEAP acronym for security, weather, emergency, availability, and pre-planned work), which reportedly increased consistency among timekeepers, and also streamlined the process for managers to enter the codes into Bridges and Tunnels overtime pre-approval system, enabling real-time analysis of overtime accruals. Similar efforts across MTA agencies could prove beneficial.

Many managers within MTA agencies are aware of these deficiencies, and sometimes have suggested promising solutions, but they appear to struggle to obtain proper resources to implement them. In a positive development that should be further encouraged, the Operations Support team at Transit has proposed replacing the decades-old ATS with modern software to automate job pick, crew management, and timekeeping management, and deliver real-time reporting on personnel. Operations Support has estimated that its proposal also will result in a net savings of \$24.3 million through 2023 by eliminating inefficiencies and redundancies. Nonetheless, in the meantime, the agencies should try to leverage their resources and data to the extent possible in order to maximize tracking for timekeeping and overtime purposes.

E. Management Accountability and Budgeting

Managing to the budget needs greater attention by MTA management and leadership at all levels. More often than not, management has little accountability for overtime expenditures. This appears to be, in part, a product of demands on management (and all MTA employees) to maintain and improve service levels in an aging transit system that must run 24 hours a day, every day of the year, without sufficient resources or incentives. For example, there are some areas where, if overtime assignments were more tightly controlled by management, they could be spread out among employees rather than having the same employees earn the large majority of the overtime. Broadly distributing overtime might save costs, particularly where doing so redistributes work from a senior employee with a high hourly wage to a more junior employee with a lower hourly wage. The equitable distribution of overtime also would guard against declining workforce morale (and, by extension, declining productivity). Distributing overtime

more equitably also may help to ensure the safety of workers; the LIRR found that 91% of Engineering employees who sustained an on-the-job injury from 2016 through March 2019 worked overtime in the 14 days prior to injury, and 28% of these Engineering employees were working overtime the day they were injured.

Overall, it is critical for management to play an active role in overseeing the assignment of overtime to prevent small instances of overtime abuse from cascading into larger, systemic overtime issues. For example, during a 2015 internal audit of the LIRR Engineering Department, auditors found that management often could not supply a reason work needed to be performed on overtime, or why a certain number of people were needed for an overtime job. It is unclear what improvements management made to its controls in response. Certain managers reported feeling unable to reform processes and controls because their budget is too low and business support groups are understaffed with low morale. A number of MTA agencies (and certain operating divisions within agencies) have created centralized timekeeping groups that, with varying degrees of success, try to ensure that management-level supervisors pre-approve all overtime assignments. But some operating divisions still do not have effective centralized timekeeping groups, and Subways only implemented one as of September 2018, and even then not department-wide. In some instances, even those centralized timekeeping groups still are relying on represented supervisors—that is, employees who are in the same union as those they oversee—to approve overtime assignments. Management cannot be accountable and cannot effectively manage to budget if managers are not involved in approving overtime assignments. In addition, the existence of clear, standardized overtime policies and procedures would allow MTA leadership to measure and evaluate management’s use of overtime against those policies, while still considering individualized factors, including a manager’s budgetary constraints and perceived declining morale.

Improved data tracking also likely would improve managers’ ability to keep overtime accruals within budget, as demonstrated by the experience of Bridges and Tunnels. Even without real-time data, some agencies perform well on budgeting issues. Metro-North, for example, has been within its budget when it comes to operating overtime. Specifically, Metro-North has been running \$90-100 million of operating overtime, and \$23-37 million of reimbursable overtime. Where overtime is running higher than budget—for instance, with respect to reimbursable overtime—management has concluded that the variance is because of the unavailability of staff. Management at Transit appears to have undertaken efforts within the past year to improve managing to budget, as well as a more realistic budgeting process. Transit, however, still is hampered by outdated and manual workforce management processes that limit visibility into overtime accrual in real time.

Buses found that where management consciously engaged personally with bus operators and maintainers—taking time to note absences and inquiring about employees’ health—productivity improved. Higher productivity potentially could decrease the amount of overtime. In addition, Buses has fairly strong internal controls and budget tracking, all aided by robust data, thereby allowing management to justify overtime expenditures and any high earners.

F. Management Compression

Management compression arises because certain represented supervisors are eligible for overtime and can earn more money than their non-union management-level superintendents. As a result, there is a financial disincentive for supervisors to seek or accept promotion into a management-level position. In fact, some superintendents reportedly have requested demotion back to their former roles to return to their former union and overtime-eligible work so they can earn more.

The compression issue sometimes requires that managers be hired from outside of the MTA, rather than from within, where employees may be better qualified and have institutional knowledge that would benefit MTA operations. Compression also drives higher vacancies at entry-level management positions, which in turn results in additional work that must be pushed down to represented supervisors and increases the likelihood that work is performed on overtime. In addition, the compression issue creates friction between the management-level superintendents and their better-paid subordinates. In order for the MTA to be able to hire adequate management-level employees, both from within and outside of the MTA, it needs to address the compression issue.

IX. OTHER TRANSIT AUTHORITIES

Key Findings: Other Transit Authorities

- Transit authorities in other large cities have experienced similar issues with overtime.
- Centralizing policies, procedures, and timekeeping functions has proven effective for other major transit systems.
- Manager and employee training can help create a culture of compliance.
- Most major transit authorities opt for transit-specific timekeeping software combined with biometric clocks.

MTA is not alone in experiencing significant overtime issues. Other major transit authorities in cities across the United States have faced, or are currently facing, similar issues with respect to timekeeping and overtime. Implementing an effective, standardized, and cost-efficient timekeeping system has not been a simple task for many of those transit authorities. Other transit authorities also have faced difficulties in tracking and controlling overtime, because of insufficient controls or runaway costs, or both. This section provides a brief high-level overview of some of the issues faced by several major transit authorities and how they have addressed those issues, and a summary of some of the best practices employed with respect to timekeeping and overtime.

A. Timekeeping and Overtime Issues

1. Chicago Transit Authority

In 2012, the Chicago Transit Authority (“CTA”) began to transition from a manual, paper timekeeping process to a more automated system.¹¹⁵ The CTA sought to create a timekeeping process that was more centralized and to phase out old, ineffective systems—some of which had been used for 27 years.¹¹⁶ To that end, the CTA engaged an outside technology firm to provide a transit-focused software solution that would help streamline frequently performed operational tasks, including bidding, dispatching, timekeeping, workforce management, and yard management.¹¹⁷ Since the implementation of this new system, the CTA’s timekeeping policies largely have remained out of the news, but for a few articles evaluating how union rules contributed to high overtime payments between 2010 and 2014.¹¹⁸ A 2015 article reported that “[s]ince 2011, the CTA has wiped out a \$308 million structural deficit, rehabbed stations and rail lines, eliminated slow zones, upgraded nearly entire rail and bus fleets, reduced excessive overtime and developed a modern supply chain system.”¹¹⁹

2. Washington Metropolitan Area Transit Authority

In 2016, the Washington Metropolitan Area Transit Authority (the “Metro”) sought to deploy Kronos as its primary timekeeping system in response to a federal report that found that the Metro had weaknesses in payroll and human resource processes.¹²⁰ According to a 2019 audit by the Metro Inspector General, however, the decision to implement Kronos was made without studying alternative solutions or completing sufficient test runs, and Kronos was implemented while too many bugs remained in the system. These errors resulted in employees not being paid or being inaccurately paid, and the Kronos roll-out was suspended. In 2019, the Metro Inspector General made the following recommendations: (1) conduct mandatory training for all personnel that input and approve time; and (2) institute procedures to conduct periodic

¹¹⁵ *CTA Board Oks Contracts for New Timekeeping, Payroll Management Systems*, CHI. TRANSIT AUTH. (June 13, 2012), <https://www.transitchicago.com/cta-board-oks-contracts-for-new-timekeeping-payroll-management-systems/>.

¹¹⁶ *Id.*

¹¹⁷ *Chicago Transit Authority (CTA) Selects Trapeze Group for Comprehensive Operations Management System*, TRAPEZE GRP. (Oct. 5, 2012), <https://www.trapezegroup.com/news/article/chicago-transit-authority-cta-selects-trapeze-group-for-comprehensive-opera>.

¹¹⁸ See Jon Hilkevitch, *Runaway overtime spending at CTA*, CHI. TRIBUNE (Jan. 15, 2012, 2:00 a.m.), <https://www.chicagotribune.com/news/ct-met-cta-overtime-pay-20120115-story.html>; Michael Lucci, *Illinois’ Recipe for Exodus: 7 Different Tax Structures Proposed for 2015*, ILL. POLICY (Mar. 27, 2014), <https://www.illinoispolicy.org/illinois-recipe-for-exodus-7-different-tax-structures-proposed-for-2015/>.

¹¹⁹ *Gov.’s budget proposes \$169M cut in Chicago transit funding*, METRO MAGAZINE (Mar. 20, 2015), <https://www.metro-magazine.com/government-issues/news/293713/gov-s-budget-proposes-169m-cut-in-chicago-transit-funding>.

¹²⁰ *Results in Brief: Audit of WMATA’s Kronos Implementation Project*, WASH. METRO. AREA TRANSIT AUTH. (Apr. 17, 2019), <https://www.wmata.com/about/inspector-general/upload/19-09-Audit-of-WMATA-s-Kronos-Implementation-Project-2.pdf>.

reviews of all time and earning codes to ensure they are being used correctly and are set up in compliance with the CBAs and the Metro’s policies. The Metro plans to re-deploy Kronos in 2020.¹²¹

3. Los Angeles Department of Transportation

The Los Angeles Department of Transportation (“LA DOT”) experienced an overtime scandal in 2015, when an audit conducted by the Los Angeles City Controller identified a “staggering” amount of overtime in fiscal year 2013-14.¹²² The problem stemmed, in part, from the fact that the department’s overtime policies were outdated and inconsistent.¹²³ Also, the system made oversight nearly impossible (e.g., determining the amount of overtime worked by one employee could entail reviewing 25 separate reports).¹²⁴ The audit report made a number of recommendations, including the following: (1) implement automatic timekeeping systems or other sign-in/sign-out technologies; (2) place caps on hours employees are allowed to work in a day or week; (3) update overtime policies so that they are clear and consistent across departments; (4) maintain documentation on overtime—such as pre-approvals and summaries of work done—in a centralized location; (5) conduct periodic, documented reviews to verify that staff are complying with the policies; (6) design overtime reports that show who is working overtime, how much overtime is being worked, and trends across different departmental levels; (7) create more realistic overtime budgets and then enforce them; and (8) analyze whether hiring more employees would cut down on overtime.¹²⁵ There has been no public report as to whether these recommendations were implemented effectively.

4. Massachusetts Bay Transportation Authority

The Massachusetts Bay Transportation Authority (“MBTA”) has experienced issues with overtime since 2013. Some MBTA employees made more in overtime than their base salaries.¹²⁶ As a result, external and internal audits were conducted in 2016 by the MBTA’s Fiscal and Management Control Board and its outside auditor.¹²⁷ The audits highlighted the following three

¹²¹ *Id.*

¹²² Soumya Karlamangla, ‘Staggering’ overtime pay found in L.A. Department of Transportation unit, L.A. TIMES (May 26, 2015, 12:10 p.m.), <https://www.latimes.com/local/lanow/la-me-ln-transportation-overtime-audit-20150525-story.html>.

¹²³ *Id.*

¹²⁴ Los Angeles Office of the Controller, Overtime Controls and Practices at the Department of Transportation, at vi-vii (May 26, 2015), *available at* <http://documents.latimes.com/department-transportation-audit-overtime/>.

¹²⁵ Los Angeles Office of the Controller, DOT Traffic Control for Special Events: Overtime and Collections, at v-vi (June 30, 2015), *available at* <https://lacontroller.org/wp-content/uploads/2019/07/dotovertimespecialevents.pdf>.

¹²⁶ Nicole Dungca, *MBTA audits show substandard overtime practices*, BOSTON GLOBE (Feb. 22, 2016, 8:21 p.m.), <https://www.bostonglobe.com/metro/2016/02/22/high-earning-mbta-worker-his-own-overtime/n4dlaLwOQQDIZ34deIERJO/story.html>.

¹²⁷ Shira Schoenberg, *MBTA payroll database: Why are workers paid huge amounts of overtime?*, MASS LIVE (Mar. 3, 2016), https://www.masslive.com/politics/2016/03/mbta_payroll_database_why_are.html.

main issues: (1) insufficient employees to meet demand; (2) insufficient managers and supervisors overseeing employees; and (3) lack of a formalized timekeeping system.¹²⁸ Further, overtime policies were not regulated consistently throughout the MBTA and were found to vary between departments.¹²⁹ In response, the MBTA implemented various changes, including the following: (1) requiring advance approval of overtime, in writing, by a superintendent or higher; (2) mandating weekly reports on overtime that include why the overtime was necessary and to whom it was assigned; (3) purchasing of additional biometric scanners for more accurate timekeeping; and (4) changing the employee work selection process in certain divisions, thereby improving the ability to have planned maintenance take place during regular shifts rather than on overtime.¹³⁰

In 2019, MBTA's overtime payments again were in the news, as they had risen by 13% from 2017 to 2018.¹³¹ The MBTA explained that high overtime payments were due to a dramatic increase in capital construction and some employee vacancies, and outside experts noted that the MBTA at least "has a system" now and that fluctuations are to be expected following reforms.¹³²

5. San Francisco Municipal Transportation Agency

The San Francisco Municipal Transportation Agency ("SFMTA") has experienced various issues with its timekeeping system and high overtime expenditures. Between the years 2003 and 2012, the SFMTA's annual overtime expenditures increased by 70%.¹³³ Nonetheless, in the 2012-13 fiscal year, there was a 13% drop in overtime expenditures.¹³⁴ The drop was

¹²⁸ Overtime Audit, MASS. BAY TRANSP. AUTH., available at https://cdn.mbta.com/uploadedfiles/About_the_T/Board_Meetings/OvertimeAudit.pdf (last visited Aug. 1, 2019); *MBTA payroll database: Why are workers paid huge amounts of overtime?*, supra note 127; MBTA Overtime Audit, MASS. BAY TRANSP. AUTH., available at https://cdn.mbta.com/uploadedfiles/About_the_T/Board_Meetings/OTAuditandLeaveMgmtPolicies01042016.pdf (last visited Aug. 1, 2019).

¹²⁹ Overtime Audit, supra note 128; *MBTA payroll database: Why are workers paid huge amounts of overtime?*, supra note 127.

¹³⁰ Matt Rocheleau, *One-Third of MBTA Workers Made \$100,000 or more last year*, BOSTON GLOBE (Feb. 16, 2018, 11:05 a.m.), <https://www.bostonglobe.com/metro/2018/02/16/one-third-mbta-workers-made-more-last-year/m4ZrPQUQorMsdNFAphiamJ/story.html>.

¹³¹ Matt Rocheleau, *MBTA overtime spending spiked last year*, BOSTON GLOBE (Jan. 24, 2019, 11:12 a.m.), <https://www.bostonglobe.com/metro/2019/01/24/mbta-overtime-spending-spiked-last-year/jWWZnH6j9vCfkB4DrRZOxO/story.html>.

¹³² Sean Philip Cotter, *MBTA overtime jumped \$10M in 2018*, BOSTON HERALD (Jan. 11, 2019, 7:26 a.m.), <https://www.bostonherald.com/2019/01/11/mbta-overtime-jumped-10m-in-2018/>.

¹³³ Office of the Controller of City & County of San Francisco, FY 2011-12 Annual Overtime Report (Jan. 3, 2013), available at <https://sfcontroller.org/sites/default/files/FileCenter/Documents/3831-FINAL%20-%20Annual%20Overtime%20Report%201-2-13.pdf>.

¹³⁴ Office of the Controller of City & County of San Francisco, FY 2012-13 Annual Overtime Report (Jan. 30, 2014), available at https://sfcontroller.org/sites/default/files/FileCenter/Documents/5104-FY%2012-13%20Annual%20Overtime%20Report%20_%20FINAL_Feb%204%202014.pdf.

attributed to an expanded workforce and the publication of a San Francisco City Services Auditor's report, which outlined how the SFMTA could better regulate its timekeeping and address its high levels of unplanned overtime by instituting mechanisms to increase the accuracy of timekeeping records.¹³⁵ The report made the following recommendations, among others: (1) develop and implement procedures to verify and approve unscheduled overtime; (2) segregate the duties of approving and entering overtime hours into the timekeeping system (Trapeze); (3) thoroughly document all unscheduled overtime on overtime slips and retain the slips in accordance with policy; and (4) reconcile the timekeeping system to the payroll system after each pay period. There has been no public report as to whether these recommendations were implemented effectively. The 2017-18 fiscal year, however, saw an increase of 10% in overtime for the SFMTA, suggesting that the issue persists.¹³⁶

B. Best Practices

Given that many of the issues faced by other major transit authorities are similar to those facing the MTA, set forth below is a summary of some of the best practices employed by those agencies that may provide a roadmap for effectively dealing with timekeeping and overtime issues at the MTA.

Automated Timekeeping. Most transit authorities have opted for a transit-specific timekeeping software,¹³⁷ often combined with biometric clocks, in order to streamline, automate, and centralize timekeeping. Doing so enables supervisors and managers to create routine reports on overtime and to identify other timekeeping issues as they arise.

Centralization and Standardization of Policies. Most transit authorities faced the same problems of having multiple policies within each department, policies that vary from department to department, and no effective way for managers or employees to access a complete policy for a specific timekeeping issue. To the extent possible, streamlining policies within and across departments minimizes confusion among employees and managers. Having written, easily accessible, and clear policies in a centralized location enables managers and employees to know what is allowed for purposes of timekeeping and overtime and what is prohibited.

Manager and Employee Training. Both managers and employees benefit from training on expectations regarding overtime and timekeeping. Lower-level managers should be made aware that they are responsible for monitoring overtime and must be motivated and empowered to conduct that oversight. Employees must be briefed on the requirements for working overtime

¹³⁵ *Id.*; Office of the Controller of City & County of San Francisco, San Francisco Municipal Transportation Agency: SFMTA Lacks Effective Controls Over its Payroll Process and Timekeeping System for Transit Operators (Jan. 31, 2013), available at <https://sfcontroller.org/sites/default/files/FileCenter/Documents/3978-MTA%20Trapeze%20Report%20FINAL%20013113.pdf>.

¹³⁶ Office of the Controller of City & County of San Francisco, Fiscal Year 2017-18 Annual Overtime Report (Apr. 2, 2019), available at <https://sfcontroller.org/sites/default/files/Documents/Budget/FY%2017-18%20Annual%20Overtime%20Report%20FINAL.pdf>.

¹³⁷ Kronos and Trapeze are the most commonly used systems.

and for recording their time. Consequences for failing to comply with timekeeping and overtime policies must be enforced to create a culture of compliance.

Centralized Oversight of Timekeeping Function. A centralized oversight department or committee is a helpful function to track timekeeping and overtime across a vast agency. Such a unit can run reports, identify issues and trends, determine whether new policies and procedures are needed, and issue or propose appropriate policies and procedures. Centralized oversight setting the tone from the top is essential.

X. RECOMMENDATIONS

The persistence of significant overtime payments within the MTA has many causes, ranging from operating needs, to recent major capital programs, to requirements imposed by CBAs, to an inability to maintain a workforce of sufficient size and availability. The lack of real-time information and modern systems, standardized procedures, and accountability, however, compound the problem and contribute to an unacceptable culture where overtime is viewed as unavoidable and customary. The failure of MTA management and leadership at all levels to address these issues adequately and prioritize implementation of solutions has exacerbated and compounded high overtime costs. It is well past time for changes to be implemented.

Recommendation No. 1: Standardization of Timekeeping

Standardize timekeeping procedures across the MTA, including implementing Kronos biometric clocks as the standard timekeeping tool.

MTA leadership recognizes that nonstandard timekeeping policies and procedures across the MTA create significant challenges in tracking and monitoring overtime. For this reason, MTA leadership already has begun standardizing timekeeping procedures across the MTA, which is an important first step in addressing those challenges by creating accurate, consistent, and usable data for monitoring overtime. In particular, it is crucial for MTA leadership to continue to prioritize implementing Kronos biometric clocks as a timekeeping tool MTA-wide. Standardizing timekeeping tools will reduce the time employees spend manually completing timesheets and will create a unified way for managers and leadership to track, monitor, and assess workforce needs, as well as overtime trends, in close to real time.¹³⁸ January 2020 is the current target date for all MTA employees to be using Kronos biometric clocks as a timekeeping and attendance tool. Every effort should be made to achieve that goal.

¹³⁸ One particular challenge to note, however, will be how to utilize Kronos as a timekeeping tool for employees who do not report to work in a centralized location. Identifying and utilizing the mobile timekeeping capabilities of Kronos thus should be a priority.

Recommendation No. 2: Kronos Integration

Integrate Kronos with MTA-wide payroll systems, all of which should be standardized.

A critical step in creating usable data for tracking and monitoring overtime is to integrate timekeeping tools fully with MTA-wide payroll systems. While MTA leadership recognizes the importance of this type of integration, it has prioritized Kronos biometric clocks as the standard timekeeping tool throughout the MTA without devoting sufficient resources and attention to ensuring that Kronos is fully integrated with all payroll systems in a timely manner. In order to maximize the benefits of standardizing timekeeping procedures, the MTA should establish an aggressive timeframe for integrating Kronos with payroll systems. Integration will allow managers and MTA leadership to track overtime accruals in close to real time to help control overall overtime costs. It also will empower managers promptly to identify potential fraud, waste, or abuse and begin appropriate disciplinary proceedings or refer the matter for further investigation.

Integration has yielded positive results within Bridges and Tunnels, which currently uses fully integrated timekeeping (Kronos) and payroll systems. As a result, Bridges and Tunnels internally audits, tracks, and monitors its overtime accruals, including by running reports every four hours to show all employees currently performing work and whether that work is being billed as overtime. If the work is being performed on overtime, management has the ability to consider whether those employees should be released for the day to avoid excessive overtime accruals. As an agency, Bridges and Tunnels consistently manages overtime within budget.

While payroll functions already are centralized within the MTA's Business Service Center, the payroll timetables for some agencies still vary, and as a result, different data are available at different times for different agencies. Standardizing timetables would ensure that a unified, consistent set of data is available for MTA-wide comparison, which would improve the MTA's ability to track and monitor overtime accruals.

Recommendation No. 3: Minimum Requirements for Overtime Policies

Establish minimum requirements for MTA-wide overtime policies and procedures.

As with timekeeping, a single, standardized policy on overtime does not exist throughout the MTA. Instead, multiple, separate, nonstandard overtime policies and procedures exist, which contributes to confusion among employees and managers as to the prevailing expectations with respect to overtime approvals and overtime work and also can result in deliberate abuse of overtime. While the varying needs of each agency and the many CBAs impose a challenge to creating a single, unified policy on overtime, significant benefits and efficiencies can be realized by standardizing policies and procedures where practical. To that end, the MTA should develop a set of minimum requirements that all overtime policies and procedures must contain in order to be considered compliant.

Minimum requirements should include the following:

- Limiting overtime to certain identified tasks (with necessary exceptions for emergencies).
- Requiring prior supervisory approval in writing for overtime (except for emergency work).
- For overtime incurred without prior supervisory approval, including for emergency work, requiring a manager’s written explanation for the use of overtime and a written justification for deviating from the prior-approval requirement.
- Budgeting for overtime on a monthly basis, including budgeting for unplanned overtime.
- Requiring written justification when any department exceeds its monthly overtime budget.
- Requiring written approval from the relevant department or agency head for overtime budget increases.

Recommendation No. 4: Centralized Repository for Overtime Policies

Create a centralized repository for all timekeeping and overtime policies and procedures.

While individualized needs of specific MTA agencies pose certain obstacles to creating a single, standardized policy on timekeeping and overtime, all procedures should be gathered in a single repository that is easily accessible to all employees and managers. This centralized repository would ensure that relevant timekeeping and overtime policies and procedures are readily available throughout the MTA, thereby improving the transparency of the relevant policies and procedures, encouraging compliance, and fostering a culture of accountability throughout the MTA with respect to overtime issues. It also would ensure that MTA management has visibility into important factors driving overtime.

Recommendation No. 5: Employee and Management Training

Develop and require mandatory training for (i) all employees with respect to timekeeping procedures, including detailed training on Kronos, and (ii) all managers with respect to overtime approval authority, overtime policies and procedures, budgeting for overtime, and monitoring and tracking overtime.

All MTA employees should have a clear working understanding of timekeeping practices and procedures, particularly since a new timekeeping tool—Kronos—currently is being implemented. MTA leadership should coordinate and oversee the development and implementation of a comprehensive training program on timekeeping, including the use of Kronos, for all employees, and employees should be required to affirm their understanding of, and compliance with, the policies and procedures on an annual basis.

Similarly, all MTA managers who approve and oversee overtime should have a clear working understanding of overtime approval policies and procedures, including the circumstances in which overtime should be approved and how overtime approvals should be memorialized. MTA leadership should coordinate and oversee the development and implementation of a comprehensive training program for all managers with overtime approval authority, and managers should be required to affirm their understanding of, and compliance with, the policies and procedures on an annual basis.

Recommendation No. 6: Overtime Reports

Implement written periodic reports regarding applicable managers' progress managing overtime within budget, including a written explanation of any failure to do so.

Improving and standardizing timekeeping and payroll policies and procedures will enable monitoring of overtime accruals in close to real time. In order to use this data effectively, managers should be tasked with monitoring their overtime budgets and reporting the results to MTA leadership.

Recommendation No. 7: Management Accountability

Evaluate managers with overtime approval authority specifically on the implementation of overtime policies and managing overtime within budget.

Each manager with overtime approval authority should be held accountable for overtime accruals within that manager's agency, entity, department, division, or unit. Just as overtime accruals should be closely monitored, managers' ability to manage overtime to budget should be monitored and assessed as part of annual job performance evaluations.

Recommendation No. 8: Overtime Cost Metrics

Develop metrics to determine when it is more cost-efficient to use overtime, as opposed to new hires or other methods, to satisfy workload demands.

High workload has been a main driver of overtime, with job vacancies and hiring issues (including the 2018 hiring freeze as to all non-essential employees) furthering the need for overtime. While it is crucial for necessary work to be completed in a timely manner, management does not appear to analyze systematically the long-term financial impact of using overtime to complete required work. That void hampers management's ability to allocate work in the most cost-efficient manner and to assess fully the potential benefits of alternatives to overtime, including onboarding new hires, using temporary employees to fill short-term needs, or staggering work shifts to provide more time for work to be completed on regular time, as opposed to overtime. This information should be considered as part of any request to a department or agency head for an increase in budgeted overtime. Accordingly, MTA leadership should prioritize developing metrics to enable a full analysis of the systemic use of overtime to respond to increased workloads.

Recommendation No. 9: Internal Review of Hiring Freeze

Conduct an internal review of whether and how the current hiring freeze is impacting overtime costs, with conclusions reported to the Board.

Current workload demands have created a need for overtime, which may be compounded by the current hiring freeze. In order to assess the full impact of the hiring freeze on overtime accruals, the MTA should perform an internal study, the results of which should be presented to the Board and may inform whether further action is required.

Recommendation No. 10: High Earners Protocol

Develop a standard protocol for receiving and responding to monthly reports of high earners.

The equitable distribution of work is important in ensuring public confidence and maintaining positive morale and high productivity within the workforce. The levels of overtime earned by certain individuals can distract from the underlying substantive issues surrounding overtime and may indicate fraud or abuse. In addition, safety concerns may arise when an individual repeatedly works extremely long hours, particularly given the type of work required to operate a mass transit system. Thus, while represented employees are entitled to payment in accordance with relevant CBAs and work rules, MTA leadership should create a uniform protocol for monitoring high earners, conferring regularly with labor relations, and considering whether to negotiate for overtime caps, as appropriate, or other measures to address issues relating to high earners. At a minimum, monthly management reports of “high earners” should be analyzed on at least a quarterly basis to identify patterns indicative of potential fraud or abuse. Where appropriate, management should report potential indicators of fraud or abuse to MTA leadership for possible referral to the MTA IG.

Recommendation No. 11: CBAs and Work Rules

Provide labor relations departments with a guide on how the CBAs affect work rules that includes, at a minimum, the following: (i) a list of work rules that are relevant to timekeeping or overtime issues and how they are relevant; and (ii) any current interpretations of each listed work rule.

Represented employees often are entitled to overtime pay based on work rules and various CBAs. As a result, management is constrained in its ability to respond effectively to overtime that may be viewed as excessive, where that overtime was earned by represented employees and paid in accordance with the terms of relevant CBAs. Management should consider whether it is appropriate and feasible to negotiate changes to certain work rules, especially those that enable employees to accumulate particularly high amounts of penalty payments or earnings for hours not spent actually working.

MTA leadership, however, can harmonize the way various agencies, departments, and divisions within the MTA interpret the same or similar work rules that exist in various CBAs that apply throughout the MTA. Particularly where different interpretations exist within the MTA,

labor relations should work to standardize interpretations and should consider whether those interpretations should be the subject of negotiations with the relevant unions.

Recommendation No. 12: Standardization of Employee Availability Initiatives

Expand and standardize productive initiatives aimed at addressing employee availability issues.

Lack of worker availability contributes to the increased need for overtime, particularly where the unavailable worker is absent from a “must fill” position. While the Report does not include a full analysis of potential misuse of sick leave or the FMLA, the MTA should develop procedures to address lack of availability, or expand the use of procedures that already are in place at certain agencies. For instance, Buses has formed an Employee Availability Group, which manages certain initiatives to improve availability and thus reduce the need for overtime. These initiatives should be analyzed further and, if found to be effective, made standard throughout the MTA. Additional measures also should be considered.

Recommendation No. 13: Overtime Oversight

Appoint a specific office (or job title) at MTA HQ to implement the recommendations in the Report and report to the Board with the MTA IG monitoring that oversight.

While these recommendations provide concrete proposals for addressing a wide range of issues relating to overtime, further work is required to understand the full scope of timekeeping and overtime issues at the MTA. In addition, ongoing efforts will be necessary in order to implement these recommendations and foster lasting, systemic change within the MTA. Indeed, at least some of the overtime issues identified in the Report are in line with prior assessments made by other entities as early as 2000, yet none of those previous studies yielded enduring improvements to the MTA’s overtime policies, procedures, or practices. For these reasons, it will be critical to task a specific person (or office) at MTA HQ with continuing to assess overtime issues, implementing these recommendations, and providing progress reports to the Board.

It also will be crucial to empower an office with oversight responsibility in order to avoid the type of systemic complacency that has impeded previous efforts to address the MTA’s overtime issues. The newly appointed MTA Inspector General has indicated that overtime is a high priority and the office has vast past experience identifying overtime issues. The MTA IG thus appears well positioned to monitor the progress of implementing these recommendations and to ensure that MTA leadership remains focused on overtime issues. If significant overtime issues arise, the Board should consider commissioning its Audit Committee to perform a full-scale audit of overtime across all of the MTA, to the extent resources permit.

Recommendation No. 14: Annual Report on Overtime

Issue an annual public report on overtime by the Chairperson of the MTA, including reporting on whether the MTA managed overtime to budget, and if it did not, an assessment of why overtime accruals exceeded budget.

Overtime issues at the MTA have garnered substantial negative publicity, creating a public perception that needs to be adequately addressed. In order to improve transparency and create public accountability, the MTA Chairperson should provide an annual public report on overtime. The recommendations set forth herein will help ensure that the Chairperson has the data necessary for the annual report.

Recommendation No. 15: Timeframe for Implementation

Set firm deadlines for implementing each of the above recommendations.

Given the historic persistence of overtime issues at the MTA, it is critical to establish realistic, but aggressive, timelines for implementing the recommendations set forth in the Report. To that end, the suggested timeframes for implementing (or beginning to implement) the recommendations are as follows:

- No later than one (1) month from the date of the Report, MTA leadership should implement Recommendation 13 (Overtime Oversight) with periodic reports being sent to the Board beginning no later than six (6) months from the date of the Report.
- No later than three (3) months from the date of the Report, MTA leadership should develop a plan and commit to a timetable for implementing the following recommendations, some of which already are under way:
 - Recommendation No. 1 (Standardization of Timekeeping)
 - Recommendation No. 2 (Kronos Integration)
 - Recommendation No. 12 (Standardization of Employee Availability Initiatives)
- No later than three (3) months from the date of the Report, MTA leadership should implement the following recommendations:
 - Recommendation No. 4 (Centralized Repository for Overtime Policies)
 - Recommendation No. 10 (High Earners Protocol)
- No later than six (6) months from the date of the Report, MTA leadership should implement the following recommendations:
 - Recommendation No. 3 (Minimum Requirements for Overtime Policies)
 - Recommendation No. 11 (CBAs and Work Rules)

- No later than nine (9) months from the date of this Report, MTA leadership should implement the following recommendations:
 - Recommendation No. 5 (Employee and Management Training)
 - Recommendation No. 8 (Overtime Cost Metrics)
 - Recommendation No. 9 (Internal Review of Hiring Freeze)
- No later than twelve (12) months from the date of the Report, MTA leadership should implement the following recommendations:
 - Recommendation No. 6 (Overtime Reports)
 - Recommendation No. 7 (Management Accountability)
- Beginning at the conclusion of fiscal year 2020, the Chairperson of the MTA should issue an annual public report on overtime in accordance with Recommendation No. 14 (Annual Report on Overtime).

* * *

The current tone from the top reflects a long overdue effort to effect broad, systemic change. To that end, the recommendations provided above focus on concrete steps to standardize and improve the procedures for managing, tracking, monitoring, and reporting overtime, and to improve accountability. These recommendations will facilitate the collection and dissemination of better and timelier data and allow for greater attention to and control of overtime, hopefully changing the culture to one that demands action and accountability rather than acquiescence and acceptance of the status quo. These recommendations also will help to ensure that overtime is paid only when appropriate, and that the MTA will have the ability to control its levels of overtime, thus minimizing and deterring any fraud, waste, or abuse.

APPENDIX
KEY TERMS DEFINED

Term/Phrase	Definition/Description
ADA	Americans with Disabilities Act
ATS	Automatic Timekeeping System
Board	The MTA Board
Bridges and Tunnels	Triborough Bridge and Tunnel Authority
BTO	Bridges and Tunnels Officer
Buses	Encompasses all MTA bus operations by all relevant MTA legal entities, including Transit’s Department of Buses, MaBSTOA, and MTA Bus. Co.
CBA	Collective bargaining agreement
CCU	Central Control Unit
CMS	Crew Management System
CONUnit	Central Control Notification Unit
CTA	Chicago Transit Authority
Empire Center	Empire Center for Public Policy
FLOGS	Facilities logs program
FMLA	Family Medical Leave Act
LA DOT	Los Angeles Department of Transportation
LIRR	Long Island Rail Road Company
MaBSTOA	Manhattan and Bronx Surface Transit Operating Authority
MBTA	Massachusetts Bay Transportation Authority
Metro	Washington Metropolitan Area Transit Authority
Metro-North	Metro-North Commuter Railroad Company
MTA	The Metropolitan Transportation Authority

Term/Phrase	Definition/Description
MTA Audit Committee	The MTA Board’s Audit Committee
MTA Bus Co.	MTA Bus Company
MTA Capital Construction	MTA Capital Construction Company
MTA HQ	Metropolitan Transportation Authority Headquarters
MTA IG	MTA Inspector General’s Office
MTA PD	MTA Police Department
NYPD	New York Police Department
State Comptroller	Office of the New York State Comptroller
Subways	Department of Subways
Transit	New York City Transit Authority
SAP	Subway Action Plan
SFMTA	San Francisco Municipal Transportation Agency
SIRTOA	The Staten Island Rapid Transit Operating Authority
SPEAR	Maintenance data system used by the Department of Buses
Staten Island Railway	The rapid transit line on Staten Island and its operating authority SIRTOA.
TWU	The Transport Workers Union Local 100
UTS	Universal Timekeeping System