



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

June 29, 2011

To: Jacqueline Mills
Acting Director of Human Resources

From: David Berry
Inspector General

A handwritten signature in black ink, appearing to read "D. Berry".

Subject: Inspection Report No. OIG-INS-62-11-03: Transit Subsidy

We initiated this inspection in January 2011 to evaluate the controls over the National Labor Relations Board's (NLRB or Agency) transit subsidy program. The scope of the inspection was the NLRB's transit subsidy program at Headquarters to include transit subsidy transactions during Fiscal Year (FY) 2010 and participants in the transit subsidy program who separated from the Agency between April 1, 2009 and September 30, 2010.

BACKGROUND

Federal agencies in the National Capital Region are required to have a transit pass fringe benefit program for their qualified Federal employees. Under this program, agencies provide transit passes in amounts approximately equal to employee commuting costs, not to exceed the maximum level allowed by law. In FY 2010, the maximum monthly transit benefit was \$230.

The Agency's program is administered by the Department of Transportation's Transportation Services, (TRANServe). Employees serviced by the Washington Metropolitan Area Transit Authority receive their transit subsidy benefits through SmartBenefits, which electronically assigns the dollar value of an employee's monthly commuting benefit directly to a SmarTrip card. SmarTrip cards are permanent electronic plastic fare cards that can be used for different commuting services. Employees who use commuting services that do not accept SmarTrip cards receive paper fare cards.

According to TRANServe records, there were 441 individuals listed as participants in the Headquarters transit subsidy program during FY 2010. Of those participants, 375 received transit subsidy benefits during FY 2010 in the amount of \$398,203.

SCOPE

We tested internal controls over the application process and the payment of the transit subsidy benefits. In the application process, we selected a statistical sample and also tested all participants with the maximum monthly benefit because we thought that there was a greater risk that these participants were not in compliance with the program. We also tested to determine if payments were made to employees who were on extended leave or employees who had separated from the Agency.

This review was done in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

TRANSIT SUBSIDY APPLICATION PROCESS

Internal Controls

The Federal Managers' Financial Integrity Act requires agency heads to establish controls to reasonably ensure that: (i) obligations and costs comply with applicable law; (ii) assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted for.

To meet these requirements in the transit subsidy program, the Office of Management and Budget (OMB) issued Memorandum 07-15, Federal Transit Benefits Program, dated May 14, 2007. The provisions of the OMB Memorandum require that applications include the employee's home and work address, a commuting cost breakdown, an employee certificate of eligibility; and independent verification of commuting costs and eligibility by an Approving Official. The Agency implemented OMB's requirements through its application process that requires supervisory review, approval by a Human Resources official, and that a copy of the employee's SmartTrip card be submitted with the application.

The OMB Memorandum also required the Agency to confirm in writing that certain minimum internal controls were implemented. In response to that requirement, the Agency responded to OMB stating that the NLRB's program required the employee's supervisor to review transit application, commuting cost breakdown, and documentation; and verify the information before forwarding it to Human Resources for processing. The Agency also represented that the program coordinator in Human Resources will review the commuting cost information.

For testing of the applications, we categorized participants into two groups. The first group consisted of participants who submitted applications for less than the maximum transit subsidy benefit. For those participants, we tested applications selected by a statistical random sampling, which we used because we believed that the likelihood of identifying employee misconduct that would result in disciplinary actions was low. Using the population of transit

subsidy participants who were Agency employees in FY 2010 and receiving less than the maximum benefit, we determined that our sampling universe contained 370 applications. A 90 percent confidence rate resulted in a sample size of 73 applications. The 90 percent confidence level is consistent with Government Accountability Office guidance and our expected deviation rate. The results of our test can be projected to the population. The second group consisted of 32 participants who claimed the maximum transit subsidy benefit. For those participants, we tested the applications of all the participants in the group.

Our testing was designed to determine whether Human Resources maintained the employee applications; whether the applications were properly completed to include documentation of the supervisor’s certification and the program coordinator’s approval; whether the application reflects the current benefit received by the employee; and if the documentation maintained by Human Resources included a copy of the SmarTrip card.

Although the system of internal controls as described in the documentation that we reviewed was adequate, we found that in the day-to-day management of the transit subsidy program, Human Resources did not utilize those controls.

The linchpin of the Agency’s transit subsidy program internal controls is the application process. The application documents the employee’s entitlement to the transit subsidy benefit, ensures supervisory and program management oversight, and provides a basis for the accounting of the transit subsidy transactions. When we reviewed the applications, we found that (1) the Agency did not maintain applications as required or that employees were not submitting the application; and (2) the applications that were available for review did not always reflect the current benefit that an employee was receiving. Below are specific findings:

		Statistical Sample	Maximum Benefit
Is the application on file?	Yes	78%	66%
	No	22%	34%
Does the application on file reflect the current benefit?	Yes	53%	33%
	No	47%	67%

As a result of not having all the applications available for review and allowing transit subsidy participants to receive a benefit greater than that stated on the application, we identified \$39,963 in unsupported costs for FY 2010 as a result of the management of the Agency’s transit subsidy program. An unsupported cost is defined by the Inspector General Act, as amended, as a cost that is questioned by the Office of Inspector General because at the time of the review, the cost is not supported by adequate documentation. Unsupported costs are reported in the Semiannual Report to Congress.

For the 78 applications that were available for review, we tested to determine if there was certification by the supervisor and approval by the program coordinator; if the detailed commuting cost information was provided; and if there was a copy of the SmarTrip card. The following table details our findings:

		Statistical Sample		Maximum Benefit	
		No.	Percent	No.	Percent
Did the supervisor certify the application?	Yes	36	63.16	10	47.62
	No	6	10.53	9	42.86
	Application Predates Requirement	15	26.32	2	9.52
Did the program coordinator approve the application?	Yes	49	85.96	16	76.19
	No	8	14.04	5	23.81
Did the application include detailed commuting costs?	Yes	39	68.42	17	80.95
	No	3	5.26	2	9.52
	Application Predates Requirement	15	26.32	2	9.52
Was a copy of the SmarTrip card included in application?	Yes	37	64.91	12	57.14
	No	4	7.02	5	23.81
	Application Predates Requirement	15	26.32	2	9.52
	Not Applicable – employee does not use Metro	1	1.75	2	9.52

In addition to our testing results, we observed that the error rates were higher for the current applications than for the noncurrent applications, which tended to be older. We believe that the disparity between the two sets of applications demonstrates that the utilization of the internal controls for the transit subsidy program has diminished over time.

PAYMENT OF TRANSIT SUBSIDY BENEFITS

Benefits in Excess of Expected Commuting Costs

Based on the information provided on the application by the employee and the fare information from transit providers' Web sites applicable during FY 2010, we recalculated the employees' commuting costs. Of the 37 current applications available for review, we identified 5 employees whose transit subsidy benefit was greater than the expected commuting costs. The difference between the elected monthly cost and our calculated cost ranged from \$22 to \$77. We also found that four of the five employees actually received a benefit greater than our calculated cost. We observed that either the employee's supervisor did not certify the application or Human Resources did not approve the application for all five employees.

Ineligible Participants

The Agency's policy states that employees serving on temporary appointments and volunteer employees are not eligible to receive the transit subsidy.

We identified four volunteer interns listed as active transit subsidy participants during FY 2010. Only one of the volunteers worked at the Agency during FY 2010. According to the intern's supervisor, the intern stated to him that the intern was eligible to receive the transit subsidy. The supervisor then certified the intern's application and forwarded it to Human Resources. The intern's application was approved by Human Resources. The intern's transit subsidy application noted that she was an intern. The intern then received the transit subsidy benefit for 1 month. The other three unpaid interns were at the Agency prior to FY 2010 and did not volunteer in FY 2010. Nevertheless, one of these interns received a transit benefit during FY 2010. The total amount of transit subsidy benefits received by the volunteer interns in FY 2010 was \$160.

As a result of this testing, we also found that two field employees were listed as participants in the Headquarters transit subsidy program. We did not find that either employee received a transit subsidy benefit as a result of this error.

Employees on Extended Leave

On the Transit Pass Application, employees certify that the information on the application is correct and that they will promptly advise Human Resources, Employee Relations Section, of any changes in their use in public transportation, including a period of extended leave. Two Headquarters employees who participated in the transit subsidy program during FY 2010 were on extended leave. One of these employees, who was on an indefinite suspension, received transit subsidy benefits in a total amount of \$378 for 2 months before separating from the Agency. The other employee, who was on leave without pay, remained active in the program, but did not receive a benefit during the extended leave.

Separated Employees

OMB requires that an agency's internal control procedures include the removal of transit benefits in exit procedures. Staff in Human Resources stated that they rely on the submission of the Form 4197, Certification of Release of Final Salary Check, to learn about separating employees so that they can contact TRANServe to remove the employee from the program. The form also identifies the amount of any unused subsidy so that it can be collected from the separating employee.

We tested to determine whether participants who left the Agency between April 1, 2009 and September 30, 2010, were removed from the program; whether Forms 4197 were maintained in Human Resources's records; whether participants received the transit benefit after leaving the Agency; and if unused subsidies were reimbursed.

Separated Participants and Form 4197

Between April 1, 2009 and September 30, 2010, there were 44 Headquarters separations of transit subsidy participants. For 31 separations, the employee was not removed from the Agency’s transit subsidy benefit program after separation. As a result of not removing separated employees, \$20,529 in Agency funds was at risk of loss.

For the 44 separations that occurred between April 1, 2009 and September 30, 2010, the Form 4197 was not completed in 13 instances (30 percent). The completion of the Form 4197, however, did not have an impact on removing the employee from the transit subsidy program. We found that the employee was removed from the transit subsidy program after his or her separation in only 10 of the 31 instances (32 percent) when the Form 4197 was completed. The results of our testing are shown on the table below:

		Was the employee removed from program?				Total
		Yes	Percent	No	Percent	
Was the Form 4197 completed?	Yes	10	32.26	21	67.74	31
	No	3	23.08	10	76.92	13
	Total	13	29.55	31	70.45	44

For the 13 separations resulting in removal from the program, the action did not occur in a timely manner. On average, the time to remove the individual from the program was approximately 43 days. This average time to remove the individual would have allowed the employee to potentially receive an extra month of the transit subsidy benefit.

In addition to the participants that separated between April 1, 2009 and September 30, 2010, we identified an additional 23 participants who separated from the Agency between FY 2006 and March 31, 2009, who were in the transit subsidy program during the time period between April 1, 2009 and September 30, 2010. We provided a list to Human Resources with non-employees who remained active participants in the Agency’s transit subsidy program with a suggestion that they should be removed from the program. We confirmed that as of May 3, 2011, all but one of these non-employees had been removed from the transit subsidy program.

Benefits Received by Separated Participants Not Removed

We identified eight individuals who are no longer employed by the Agency who received transit subsidy benefits during FY 2010 and FY 2011 (through April). The total amount of benefits received by the eight individuals was \$3,145.85. The benefit was only obtained in 1 month following separation for four of the eight former employees, and one additional employee received a benefit following separation for 2 months. The other three received the benefits for 5 or more months following separation. A list containing the eight employees was provided to Human Resources.

Two of the employees who received the benefit following separation transferred to other Federal agencies. We coordinated with the Offices of Inspector General at the separated

employees' current agencies to obtain additional information. As a result of that coordination, we obtained the following information:

- One employee transferred to an agency that does not use TRANServe to administer its transit subsidy program. There is no link between the service the other agency was using and TRANServe. As a result, the employee received transit subsidy benefits from both the NLRB and the other agency.
- One employee transferred to another agency that also uses TRANServe. The employee submitted a transit subsidy application at the new agency, but TRANServe did not process the application because the system will not allow participants to be active at two different agencies. As a result, the NLRB continued to be billed for the employee's transit subsidy for every month subsequent to separation.

Reimbursement of Unused Benefits

The Agency's policy states that if an employee leaves the Agency and has an unused benefit on a SmarTrip card, the employee must reimburse the Agency by writing a check for the amount of the unused fare. We identified 23 participants who received a transit benefit during the month that they separated. We estimate that 12 of these participants had unused transit subsidies totaling \$627.63 which were not reimbursed to the Agency.

Questioned Costs

As a result of our testing of the distribution of the transit subsidy benefit, as described above, we identified \$4,311 in questioned costs. A questioned cost is defined by the Inspector General Act, as amended, as a cost that is an alleged violation of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds. Questioned costs are reported in the Semiannual Report to Congress.

MANAGEMENT'S COMMENTS

The Acting Director of Human Resources provided comments that generally agreed with the findings and suggestions. Her comments also described actions that Human Resources has taken and is planning to take regarding the findings in the report.

The Acting Director also noted that the questioned costs identified could be less than reported because it appeared to her that individuals were counted twice under two separate testing groups. In light of that comment, we reviewed the questioned cost figure contained in this report to ensure that it does not contain amounts that were counted twice.

SUGGESTIONS

1. We suggest that Human Resources implement the internal controls that have been developed for the NLRB's transit subsidy program;
2. We suggest that Human Resources obtain applications from the employees who are currently receiving the transit benefit without an application on record;
3. We suggest that Human Resources request an updated transit subsidy application from any employee who is receiving a transit subsidy distribution that is greater than the amount stated on the employee's transit subsidy application;
4. We suggest that Human Resources review its procedures for the separation of employees and devise a method to notify the Employee Relations Section that an employee is separating from the Agency; and
5. We suggest that Human Resources attempt to recoup the \$4,311 in questioned costs.