



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

April 30, 2014

Office of the
Inspector General

MEMORANDUM FOR KENNETH ZAWODNY, JR.

Associate Director
Retirement Services

FROM:

MICHAEL R. ESSER 
Assistant Inspector General for Audits

SUBJECT:

Potential Transit Benefits Program Violations within Retirement Services
Claims Division

This memorandum communicates the results of our review into allegations of potential transit benefits violations within the Retirement Services (RS) Claims Division (Claims).

In February 2011, an attorney in the Office of the General Counsel (OGC) issued a memorandum to the Deputy General Counsel reporting that the review of transit subsidy information for 165 RS Claims employees revealed that a number of the employees may have received questionable transit benefits subsidies from October 2007 through June 2008. As a result, OPM's Policy and Internal Control (PIC) office performed a review and determined that 50 of the employees may have received overpayments after June 2008. At the OGC's request, our office performed a review of the transit benefits for the RS Claims employees identified by PIC. After an initial review, we added 17 employees to the 50 identified by PIC, resulting in a total of 67 employees in our review.

Our review determined that 58 of the 67 employees appear to have received excess transit benefits totaling \$58,785 between December 2008 and June 2011. Additional steps, which we did not perform after consultation with [REDACTED] of Employee Services, such as interviewing the employees, are necessary in order to know with certainty if this is what occurred. Details of our review are provided in an attachment to this memo.

Background

Executive Order 13150¹ and Office of Management and Budget memorandum M-07-15² implemented the current transportation fringe benefit program and internal controls over the

¹ Signed on April 21, 2000, required Federal agencies to implement a transportation fringe benefit program to qualified Federal employees.

² Issued in May 2007, to the Heads of Departments and Agencies, the guidance required Agencies to implement a minimum number of internal controls for the administration of the Federal Transit Benefit Program, including (1) Application requirements for each employee requesting benefits and a signature that no false statements were made on the application; (2) Independent verification of eligibility information by approving officials; and (3) Implementation of procedures by the agencies including checking transit benefit applicants against parking records; adjusting benefits due to travel, leave or address changes; and removal from the program when an employee leaves his/her Agency.

program, respectively. The Department of Transportation (DOT) is responsible for administering the transit benefit program for Federal Agencies.

OPM is responsible for managing its employee transit benefit program, including ensuring that employees complete the transit benefit application, comprised of the Fare Benefits Application (OPM form 1710), Public Transportation Benefit Expense Worksheet, Public Transportation Benefit Program Application (OPM form 1648), and that they submit SmarTrip information (card numbers, amount requested, etc.).

Employees utilizing OPM's transit benefits program are required to make certain assurances on their application, including certifications that the employee:

- is not named on a parking permit (carpool member) with OPM or another Federal agency;
- is eligible for a public transportation fare benefit;
- will receive the benefit for the purpose of commuting to and from work;
- acknowledges that if his/her usual commuting costs are less than estimated during any month that the appropriate adjustment will be requested during the next quarterly disbursement;
- acknowledges that the monthly transit benefit being received does not exceed his/her actual commuting costs; and
- has included the usual monthly commuting costs per month and per quarter.

The employees are also required to sign and date the application, which includes a warning statement that “[f]alsifying a Government form is a serious disciplinary offense, which may result in loss of benefit, reprimand, suspension and/or removal”.

Prior to February 2011, Local AFGE 32 Counsel (Counsel), representing the Retirement Services Program (RSP) claims division employees involved in arbitration with OPM, requested a list of employees who worked in the claims division during 2007 and the status of each employee's transit subsidy benefit from October 2007 through June 2008. The information was intended to be used to present claims that OPM should be held liable for the commuting costs of the employees, approximately 165, temporarily required to abandon an established telework arrangement from October 2007 through June 2008.

In February 2011, an attorney in the OGC issued a memorandum to the Deputy General Counsel stating that their review of the information requested by Counsel on the 165 RSP employees revealed that a number of employees were receiving transit subsidies consistent with commuting five days a week rather than two days, which was the norm for the group when teleworking. In addition, it appeared that one employee received transit benefits and was a prime holder of a car pool parking pass, which was stated as a violation of both the car pool and transit benefits rules.

During March 2011, the OGC sent a memorandum to OPM's Facilities, Security, and Contracting (FSC) office requesting that they ensure that the amount of transit benefits paid to the employees in question was correct given the number of days the employees commuted to the office, and to deal with any past overpayments that may have been made to the employees. The OGC also suggested that the matter be referred to the Inspector General if initial conclusions were confirmed.

OPM's Deputy Chief Financial Officer requested that OPM's Policy and Internal Control (PIC) office evaluate the information provided by the OGC. PIC performed a review of the initial list of

names provided by OGC and determined that 136 employees received questionable benefits and that 50 of the employees may have received overpayments after June 2008.

At the OGC's request, our office agreed to perform a review of the transit benefits for the RS Claims Division employees identified by PIC. After our initial review of the 136 employees who received questionable benefits, we added an additional 17 employees to the 50 identified by PIC, resulting in a total of 67 employees in our final review.

Objective

The objective of our review was to determine whether the 67 RS employees reviewed received transit benefits in excess of their actual commuting costs.

Scope and Methodology

The scope of the review consisted of transit benefits received by the 67 employees from December 2008 through June 2011.

For the 67 RS employees reviewed, we obtained all or portions of the following data:

- daily OPM Theodore Roosevelt Building (TRB) access data for the period December 2008 through June 2011;
- employees' transit benefit amounts received from December 2008 through June 2011; and
- telework agreements, including completed Fare Benefits Applications, Public Transportation Benefit Program Applications³, and Public Transportation Benefit Expense Worksheets⁴.

FSC provided the daily TRB access data. The Chief Financial Officer provided the employees' transit benefit reimbursements, as received from the Department of Transportation. OPM's transit benefit coordinator provided the Telework agreements⁵.

For some of the employees in our review, all or a portion of the data requested from OPM was not available. Therefore, our office made the following basic assumptions:

- we used work schedules of 8 hours a day, 5 days a week, for employees with no work schedule provided in their telework agreement, and

3 Fare Benefits Applications and Public Transportation Benefit Program Applications are agreements between OPM and the employee that state the amount of fare subsidy the employee will receive. Employees also certify that they are eligible for benefits; the amount of monthly and/or quarterly transit costs they incur, excluding parking; that they are not requesting more benefits than necessary; and that they do not have a federally subsidized parking permit. In addition, the applications contain a false statement warning informing employees that any false, fictitious, or fraudulent statements on their signed applications may subject them to criminal prosecution.

4 Public Transportation Benefit Expense Worksheets detail the employees' mode of transportation (metro, vanpool, commuter rail/bus); departure location; daily, weekly and/or monthly travel expenses; whether the employees work a compressed work schedule (9 or 10 hour workdays) or a regular 8-hour workday; and how many days per month the employee is scheduled to work.

5 Telework agreements are voluntary contracts between OPM and the employee to participate in an alternative worksite (telecommuting) program. The agreement includes the alternative worksite location; phone numbers; guidelines on protecting personally identifiable information and equipment; and other work related guidelines.

- we recorded employees as “absent” from the TRB on days for which building access data was not available.

Our review was based on the documentation obtained and the general assumptions mentioned above. Based on our consultation with [REDACTED] of Employee Services, we decided that we would not interview the employees to determine if there were any special circumstances or other relevant information to justify the excess transit benefit payments.

Conclusion

Our review determined that 58 of 67 employees appear to have received excess transit benefits in the amount of \$58,785. Since we did not conduct interviews with the affected employees, our results do not include a final determination on whether the benefits were in fact excess and should not have been received by the employees. Therefore, we recommend that employee interviews be performed before any actions are considered against the employees in question to document any special circumstances or other relevant information. To assist you in your follow-up, documentation obtained during our review is available.

If you have any questions related to our review, please contact me on [REDACTED] or you may have a member of your staff contact [REDACTED] Group Chief, Internal Audits Group, at [REDACTED]
[REDACTED]

Attachment

Cc: [REDACTED] Deputy Assistant General Counsel
Office of the General Counsel

[REDACTED] Counsel
Office of the General Counsel

[REDACTED] Supervisory Human Resources Specialist
Employee Services

OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE INSPECTOR GENERAL
INTERNAL AUDITS GROUP

Transit Benefit Review Results
December 2008 through June 2011

RETIREMENT SERVICES CLAIMS DIVISION EMPLOYEES THAT RECEIVED EXCESS TRANSIT BENEFITS	AMOUNT OF EXCESS TRANSIT BENEFITS RECEIVED	VANPOOL RIDER? (YES/NO/UNKNOWN)	CARPOOL RIDER? (YES/NO)	MISSING ALL OR PORTIONS OF TELEWORK AND/OR TRANSIT BENEFIT DATA? (YES/NO)	MISSING TRB ACCESS DATA? (YES/NO)
██████████	\$1,870.00	Unknown	No	Yes	Yes
██████████	\$3,600.00	Unknown	No	Yes	Yes
██████████	\$63.38	No	No	No	No
██████████	\$49.60	No	No	No	No
██████████	\$3,031.00	Yes	No	No	Yes
██████████	\$1,155.80	No	No	Yes	No
██████████	\$65.50	No	No	No	No
██████████	\$217.00	No	No	No	No
██████████	\$2,275.00	Unknown	Yes	Yes	No
██████████	\$720.00	Unknown	Yes	Yes	Yes
██████████	\$140.50	Yes	Yes	No	No
██████████	\$370.90	No	No	No	No
██████████	\$475.00	Unknown	No	Yes	No
██████████	\$1,858.67	No	Yes	No	No
██████████	\$2,413.85	No	No	Yes	No
██████████	\$568.11	Yes	No	Yes	No
██████████	\$328.60	Unknown	No	Yes	No
██████████	\$525.90	Yes	No	Yes	No
██████████	\$3,028.25	Yes	No	No	Yes
██████████	\$112.10	Unknown	No	Yes	No
██████████	\$375.60	No	No	No	No
██████████	\$1,968.55	Yes	No	No	No
██████████	\$1,178.50	No	Yes	No	No
██████████	\$136.00	No	No	Yes	No
██████████	\$802.55	No	No	Yes	No
██████████	\$75.75	No	No	Yes	No
██████████	\$576.00	No	No	Yes	No
██████████	\$2,795.00	Unknown	No	Yes	No
██████████	\$957.65	Unknown	No	Yes	No
██████████	\$130.50	No	No	Yes	No
██████████	\$674.00	No	Yes	No	No
██████████	\$632.25	No	No	Yes	No
██████████	\$2,340.90	No	Unknown	Yes	No
██████████	\$2,141.50	Yes	No	Yes	No
██████████	\$32.00	No	No	Yes	No
██████████	\$3,350.00	Unknown	No	Yes	No
██████████	\$437.55	No	No	Yes	No
██████████	\$3,110.00	Unknown	No	Yes	No
██████████	\$835.00	Unknown	No	Yes	No
██████████	\$2,162.95	No	No	Yes	No
██████████	\$65.00	No	No	No	No
██████████	\$320.00	Unknown	No	Yes	No
██████████	\$338.85	No	No	Yes	Yes
██████████	\$1,224.35	No	No	Yes	No
██████████	\$518.95	No	No	No	No
██████████	\$207.80	No	No	Yes	No
██████████	\$716.15	Unknown	Yes	Yes	Yes
██████████	\$365.22	Yes	No	Yes	No
██████████	\$93.48	No	No	Yes	No
██████████	\$206.00	No	No	Yes	No
██████████	\$223.50	Yes	No	Yes	No
██████████	\$360.00	Unknown	No	Yes	No
██████████	\$1,195.00	Unknown	No	Yes	No
██████████	\$384.15	No	No	Yes	No
██████████	\$1,020.00	Unknown	Yes	Yes	No
██████████	\$475.00	Unknown	No	Yes	No
██████████	\$2,275.00	Unknown	No	Yes	No
██████████	\$1,215.00	Yes	No	Yes	Yes
58	\$58,785				



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1100

OFFICE OF
THE INSPECTOR GENERAL

May 14, 2014

MEMORANDUM FOR KENNETH ZAWODNY, JR.

Associate Director
Retirement Services

FROM:

MICHAEL R. ESSER 
Assistant Inspector General for Audits

SUBJECT:

Supplemental Memorandum - Potential Transit Benefits Program
Violations within Retirement Services Claims Division

On April 30, 2014, our office released a memorandum reporting on potential Transit Benefits Program violations within the Retirement Services (RS) Claims Division. The memorandum reported that 58 employees appear to have received excess transit benefits in the amount of \$58,785, but recommended that in-person interviews were still needed to assess whether individual employees had engaged in wrongdoing.

As a result of meetings with the Office of the General Counsel (OGC) and Employee Services (ES) since the issuance of the memorandum, it is apparent that there is some confusion regarding the work we performed. We are therefore issuing this supplemental memorandum to further clarify our work and results by formally providing additional facts, that while previously communicated to OGC, ES, and/or RS, were not included in the April 30 memorandum.

Results of Investigation

On April 18, 2011, the case was referred to our Office of Investigations. On May 19, 2011, the case agent discussed the specifics of the case and the number of suspects with the United States Attorney's Office for the District of Columbia. The Assistant U.S. Attorney declined the investigation due to the small dollar amounts associated with each suspect and the potential of having more than 50 individual cases. After internal discussion, the case was referred to the Office of Audits for review in June 2011.

Attempted Employee Interviews

In May 2012, our office began developing a work plan to perform interviews of the 58 RS employees identified as possibly receiving excess transit benefits. During this time, we contacted OGC and confirmed that they were still interested in our office proceeding with the interviews. OGC also informed us that the RS employees were entitled to have union representation, if requested. Unfortunately, at this point our work on this review was significantly delayed due to one staff member's retirement and other projects having higher priority, and in June 2013 we notified OGC that the review would be postponed until the first quarter of 2014.

On January 16, 2014, we held a meeting with you and the OGC to provide a synopsis of the work completed by our office and receive confirmation that you wanted us to move forward in performing the employee interviews. After our meeting, we provided you with a listing of the individuals identified to have potentially received more than \$500 in excess transit benefits to begin scheduling the interviews.

Interviews were scheduled to occur during the first three weeks of February 2014, and on February 3, 2014, we asked your office for confirmation that if any of the employees requested union representation it would be available for the scheduled meetings. On February 5, 2014, we met with two RS employees, who appeared without representation, at OPM's Union Square Building. After informing the RS employees of their rights and obligations, both employees requested union representation before speaking with our office.

On February 5, 2014, the President of the American Federation of Government Employees (AFGE) Local 32 requested the names of all bargaining unit employees with whom our office requested to meet regarding the Transit Benefits Review. The Local 32 AFGE President further stated that "...I am requesting all meetings are stopped immediately until arrangements have been made to include Local 32 as the official representative." On February 7, 2014, based on the email from the Local 32 AFGE President and input from ES, the decision was made to cancel the remaining interviews. In reaching this determination, we took into account (1) the availability of pertinent information regarding payment of transit benefits from documentary sources; (2) the interest of both our office and OPM in the issuance of a report at the earliest feasible time; (3) the absence of a mandatory process through which our office could have compelled employees to provide information to our auditors; (4) the fact that even if our office had conducted interviews with employees, the agency would have had to conduct further proceedings vis-à-vis the employees in order to collect the excess benefits or to impose disciplinary measures; and (5) our office's inability to directly impose disciplinary measures against OPM employees.¹

Therefore, we focused our April 30, 2014 memorandum on reporting the information we had obtained from records reviews which covered all 58 employees who we had originally identified as potentially receiving excess transit benefits. Our recommendation that OPM personnel conduct interviews to obtain additional information reflected our view that investigative capacity and the skills needed to conduct employee interviews are not limited to the Office of the Inspector General, but are a basic tool of management in dealing with employees in administrative disciplinary situations. Indeed, in nearly all situations involving employee misconduct, it is the supervisor that "interviews" the employee to ascertain what events transpired.

Supporting Documentation

In our memorandum, we stated that our analysis consisted of reviewing (1) daily OPM Theodore Roosevelt Building (TRB) access data for the period from December 2008 through June 2011, (2) employees' transit benefit amounts received from December 2008 through June 2011, and (3) telework agreements, including completed Fare Benefits Applications, Public Transportation Benefit Program Applications, and Public Transportation Benefit Expense Worksheets. If you need

¹ If an OPM employee refused to answer questions posed by his or her supervisor, the refusal could be considered to be insubordination, potentially making that employee subject to disciplinary actions.

any copies of the documentation or would like to meet with my staff to obtain clarification of our analytical techniques and results, it is available at your request. We would also be happy to share the employee interview questions we had planned to use.

If you have any questions related to our review, please contact me on 606-2143 or you may have a member of your staff contact [REDACTED] Chief, Internal Audits Group, at [REDACTED]

Attachment

Cc: [REDACTED] Deputy Assistant General Counsel
Office of the General Counsel

[REDACTED], Counsel
Office of the General Counsel

[REDACTED] Supervisory Human Resources Specialist
Employee Services