



Office of Inspector General Pension Benefit Guaranty Corporation

November 2, 2016

MEMORANDUM

TO: Patricia Kelly
Chief Financial Officer

FROM: Conrad J. Quarles
Assistant Inspector General
for Investigations

CONRAD QUARLES
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Date: 2016.11.02 12:22:01 -0400

SUBJECT: Inspection of PBGC’s Employee Mass Transit Benefit Program –
Report No. INSP-2017-1/16-0110-C

I am pleased to transmit the final report on the inspection of the Employee Mass Transit Benefit (EMTB) program. We conducted this inspection to assess whether there were adequate internal controls in place, and to determine compliance with PBGC policies for the program. During the course of our inspection, we identified several opportunities for improvement, and the details are discussed below.

Background

In December 1993, the Federal Employees Clean Air Incentives Act was enacted “to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.” In 2000, Executive Order 13150 required Federal agencies to immediately implement the Act through agency-specific transportation benefits programs. The programs would provide financial incentives to employees, in order to encourage them to commute by mass transportation, vanpool or carpool.

In May 2007, OMB issued a Memorandum for the Heads of Departments and Agencies (M-07-15), “Federal Transit Benefits Program,” in response to Government Accountability Office (GAO) testimony that reported fraud and abuse in the Federal Transit Benefits Program. The memorandum required agencies to confirm in writing that they have implemented (at a minimum) internal controls listed in the Memorandum attachment, “Transit Benefit Internal Controls.” The internal controls included:

- Application Requirements – Employee home address, employee work address, commuting cost breakdown, employee certification of eligibility, and a warning against making false statements in the benefit application.
- Independent Verification of Eligibility – Commuting cost verified by an Approving Official and eligibility verified by an Approving Official.
- Implementation – Applicants checked against parking benefits records; benefits adjusted due to travel, leave, or change of address; and removal from transit benefits program included in exit procedures.

PBGC provides employees with the opportunity to enroll in the EMTB program. Through this program, the Corporation provides employees with a pre-tax benefit for all or a portion of their mass transit commuting costs within the limits set under the Internal Revenue Code. To participate in the EMTB program, employees must complete the PBGC Form 535 (Mass Transit Benefit Application), certifying their expected monthly commuting costs. Employees must commute to and from their permanent duty station via mass public transportation or a vanpool on a regular basis (at least 75 percent of the time). Employees may not receive transit benefits from PBGC if they are also receiving another form of commuter benefit, such as participating in the subsidized parking program. The following are the amounts spent by fiscal year and the number of participants in the program for the last two fiscal years:

FY	Maximum Benefit	Number of Employees	Expenditures
2014	\$130.00	769	\$877,741
2015	\$130.00	751	\$850,000

As of June 30, 2016, 729 PBGC employees were participating in the EMTB program.

The Payroll/Travel Office (PTO) within the Financial Operations Department (FOD) is responsible for overseeing the EMTB program. The program is managed by a PTO Administrative Officer/Division Manager. PTO Contractors are responsible for submitting the information for program participants into the Washington Metropolitan Area Transit Authority (WMATA) system, which is how EMTB funds are dispersed to participants. They also update benefit information in the system and assist employees in setting up their accounts. A Contracting Officer Representative oversees these contractors. A federal employee within PTO runs monthly reports to track EMTB recipients, including the overall number of employees in the program and how much each participant used in EMTB funds for the month.

Findings

1. The Payroll/Travel Office did not ensure that only current employees received transit benefits.

PBGC Directive GA 10-10 (Directive), Transportation Benefit Program, states: "All participants must be PBGC employees (full- or part-time)."

Our inspection identified one former PBGC employee who was still receiving transit benefits. According to the Human Resources Department, this individual was a student trainee in the Standard Terminations Compliance Division, and worked for PBGC from July 18, 2011 to October 19, 2013. This employee used \$2,755.05 in EMTB funds after the date of separation. As of August 8, 2016, this person was no longer participating in the EMTB program. *(Individual's name reported separately to OCFO)*

PTO also conducted an internal review of the mass transit benefit program, and identified two additional employees who continued to receive mass transit benefits after their departure dates. One employee left in November 2013, but was not removed from the program until March 2016; the other employee separated in August 2014, but was not removed from the program until April 2016. These two employees used \$289.50 in EMTB funds after their dates of separation. All three of these employees completed the Separation Clearance for Federal Employees forms when they separated.

2. The Payroll/Travel Office failed to identify one executive who was participating in the transit benefit program and receiving free parking benefits.

The Directive states that "employees who are members of carpools and employees who have been issued an executive, medical or any other special parking permit are not eligible to participate in the EMTB Program." Additionally, Section D. Employee Certification of PBGC Form 535 requires the EMTB applicant to certify that the applicant is not "a carpool participant, permit holder of an authorized participating vanpool, or permit holder of any other type of workplace parking." Lastly, the application eligibility section on PBGC Form 535 states the following:

Employees who are members of carpools and employees who have been issued an executive, night shift, or any other special parking permit are not eligible to participate in the EMTB Program. Employees who are listed as carpool members or who have been issued parking permits must have their name removed from

the parking system before submitting their application for participation in the EMTB Program.

Employees who are eligible for executive parking must fill out an Application for Executive Parking (PBGC Form 611), which also notes the prohibition on receiving both executive parking and mass transit benefits.

Our inspection identified one executive who was participating in both the EMTB program and the subsidized parking program. *(Individual's name reported separately to OCFO)* This executive was authorized to receive from \$25 to \$30 per month in transit benefits and also a free parking space in PBGC's garage.

On a monthly basis, PTO staff conducts an audit to ensure EMTB participants are not parking in the building. As part of the audit, PTO staff compares the list of mass transit participants to the list of subsidized parking participants using Excel spreadsheets; however, the audit failed to ensure the executive employee was not participating in both programs.

During our inspection, we learned that the executive had obtained and relied upon a legal opinion from the Office of General Counsel which concluded that it was permissible for this executive to utilize a free parking space provided under the lease.

3. The Payroll/Travel Office processed incomplete transit benefits applications and/or failed to document its approval on applications it processed.

The PBGC Directive states the following:

All PBGC employees wishing to participate in the EMTB Program must complete and sign PBGC Form 535, Mass Transit Benefit Application, available on the PBGC intranet. This form must be completed in its entirety and forwarded to PBGC's PTO for processing.

Our inspection showed that PTO did not always verify that the applications were complete before processing and entering the information into the WMATA web site. Seventeen percent (16 out of 93) of the applications reviewed had missing or incomplete information. For example, some applications did not have the "Employment Status" section (i.e., Full-Time Federal, Part-Time Federal, or Student) completed, and two applications were not signed by the employees.

Additionally, on none of the applications reviewed was “Section E: FOD Payroll/Travel Office Use Only” completed. This section has a specific box to indicate whether or not the application was approved by the FOD PTO, who approved it, and the amount approved.

4. The Payroll/Travel Office did not ensure that transit benefits participants were commuting via mass transit at least 75 percent of the time.

The Directive states that employees participating in the EMTB program “must commute to and from their permanent duty station via mass public transportation or a vanpool on a regular basis (at least 75 percent of the time).” On the EMTB Application (PBGC Form 535), it also states that “employees must commute to and from work via mass public transportation or a commuter highway vehicle on a regular basis (at least 75 percent of the time).” Furthermore, PBGC Form 535, Section D. “Employee Certification” requires the applicants to certify that they are “eligible for a transit benefit” and that they will be using public transportation or a commuter highway vehicle for their “daily commute to and from work.”

We reviewed employee badge data from the PBGC parking garage for the period March 1, 2016 to June 30, 2016. This data was compared to the list of employees that were participating in the EMTB program. There were 87 possible workdays during the time period reviewed. According to the 75 percent rule, the acceptable number of days commuting via non-mass transit during that time would have been 22 days (25 percent of 87). Our inspection identified 64 employees participating in the EMTB program that used the parking garage elevators at least 23 days over the relevant time period. In other words, nine percent of the program participants were not in compliance with the 75 percent rule.

The executive employee referenced in finding number two (who received both parking and mass transit benefits) was also identified as not complying with the 75 percent rule. This employee has since withdrawn from the EMTB program and repaid \$155.40 in EMTB funds received.

According to the PTO staff, each month they complete a report to ensure EMTB participants are using their mass transit benefits. The report shows how much was spent and how much was left. If an employee is not using the mass transit benefits over a three-month period, PTO will send the employee a reminder. If the employee does not use the EMTB over the next two months the employee will then be removed from the program. However, we found PTO did not ensure participants were consistently using their transit benefits in accordance with the program’s requirements (i.e., 75 percent of the time), and they continued to be approved to participate.

Conclusion

Our inspection determined program controls should be improved to ensure: (1) only eligible employees participate in the EMTB program and (2) those who are participating in the program comply with the law, OMB requirements, and PBGC Directive. In summary, we found: a former employee still receiving transit benefits; an executive employee receiving both parking and transit benefits; 17 percent of EMTB applications we reviewed were not properly completed by applicants and/or PTO staff; and 9 percent of EMTB program participants did not commute to and from work via mass transportation the required 75 percent of time.

Recommendation No. 1 (OIG Control Number OI-1)

We recommend that PBGC:

Update EMTB policies, procedures, and related control activities to address the compliance risks identified in this inspection.

PBGC Response and OIG Evaluation

Resolved. PBGC agreed with the recommendation. FOD will revise their directive and it will be submitted no later than November 8, 2016 for agency-wide review and approval. FOD also updated their internal procedures to ensure all sections of the EMTB applications are completed. This recommendation can be closed when PBGC completes the revised directive.

Recommendation No. 2 (OIG Control Number OI-2)

We recommend that PBGC:

Recover EMTB funds paid to ineligible participants, where possible.

PBGC Response and OIG Evaluation

Resolved. PBGC has initiated debt collection actions for all three former employees. This recommendation can be closed upon issuance of the report.

APPENDIX A: OBJECTIVE, SCOPE AND METHODOLOGY

Objective

To determine whether employees complied with PBGC policies and directives for the EMTB program, and to assess whether there were adequate internal controls in place for the EMTB program.

Scope

The scope of this inspection covered the period of March 1, 2016 through June 30, 2016. The focus was on comparing the list of current EMTB program participants to PIV card data, participants in the subsidized parking program, and current PBGC employees. We conducted this inspection from July through August 2016 at PBGC Headquarters in Washington, DC.

Additionally, records and data was reviewed to determine compliance with the following requirements from the PBGC policy:

- Employees receiving EMTB must commute to and from work via mass public transportation or a commuter highway vehicle on a regular basis (at least 75 percent of the time).
- Employees who are members of carpools and employees who have been issued an executive, medical or any other special parking permit are not eligible to participate in the EMTB Program.
- Contractors, members, consultants, and individuals detailed from other agencies are not eligible to participate in the EMTB Program.

Methodology

To accomplish our inspection objectives, we:

- Reviewed laws, regulations, policies, and procedures applicable to the EMTB program;
- Reviewed relevant prior reports by the Corporate Controls and Reviews Department (CCRD);
- Interviewed key personnel from CCRD, Financial Operations Department, and other departments; and

- Obtained and analyzed documentation/data from the Workplace Solutions Department and the Financial Operations Department.

This inspection was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we plan and perform the inspection to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our inspection objectives.

FEEDBACK

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If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 326-4030.




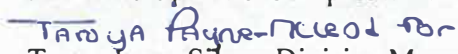
Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington D.C. 20005-4026

October 31, 2016

MEMORANDUM

TO: Conrad J. Quarles,
Assistant Inspector General
for Investigations 

THROUGH: Theodore Winter, Director
Financial Operations Department


FROM: Tanya Jones Silver, Division Manager
Financial Operations Department

SUBJECT: FOD's Response to OIG's Inspection Report - FY 2016 Employee Mass Transit Benefit Program (EMTB) (Revised)

Thank you for providing your report on the Mass Transit Benefits Program. We have addressed the findings and are taking immediate actions to resolve the issues identified in the report. Please see our responses below.

1. The Payroll/Travel Office did not ensure that only current employees received transit benefits.

FOD Response:

The Payroll/Travel Office (PTO) previously identified the 3 former employees who continued to receive benefits upon completing the Unclaimed Benefits review in March. They were immediately removed from the program. Because of the access limitations of the reports that we can access from the WMATA system, PTO had to wait to receive reports from WMATA older than a year to fully assess the total amounts owed by each former employee. Debt collection actions have now been initiated for all 3 former employees. (See Attachment 1)

2. The Payroll/Travel Office failed to identify one executive who was participating in the transit benefit program and receiving free parking benefits.

During our inspection, we learned that the executive had obtained and relied upon a legal opinion from the Office of General Counsel which concluded that it was permissible for this executive to utilize a free parking space provided under the lease.

FOD Response:

The referenced executive had access to a free parking space at 1200 K Street expressly provided for in the lease. FOD will revise section 6.c of the Transportation Benefit Program Directive GA-10-10 to indicate that PBGC may obtain limited parking privileges through alternative means other than the purchase of monthly passes from the parking vendor (e.g., parking space acquired through building lease agreement) and that use of these alternatively acquired parking spaces are not considered part of the Subsidized Parking Program. The revised directive will be submitted no later than November 8, 2016 for agency-wide review and approval.

As part of PTO's review of mass transit applications, all employee names are compared to the parking list provided by WSD to ensure that the employee is not in the parking program. There were no employees in both the parking and EMBT programs.

3. The Payroll/Travel Office processed incomplete transit benefits applications and/or failed to document its approval on applications it processed.

FOD Response:

PTO was stamping and initialing to indicate the application approval in lieu of completing Section E of the application. However, we have updated our procedure to complete the bottom portion of the EMTB application as intended as well as ensuring that all required information is filled in on the application by the employee (See Attachment 3a). We have also created a checklist that is used to verify that all procedures have been followed (See Attachment 3b). In addition, we are working with IT to implement an actual electronic signature.

4. The Payroll/Travel Office did not ensure that transit benefits participants were commuting via mass transit at least 75 percent of the time.

FOD Response:

FOD will revise sections 7.a.(3) and 7.a.(8) of the Transportation Benefit Program Directive GA-10-10 to further clarify what is meant by the term "75 percent of the time" and to specify that employees who do not use their benefits (i.e., at least 75 percent of the time) for three consecutive months will be automatically removed from the EMTB Program. The revised directive will be submitted no later than November 8, 2016 for agency-wide review and approval.

When referring to an employee's use of the transit benefit, the reference to "...commuting via mass transit at least 75 percent of the time", was in reference to an employee's official work schedule that would take into account recurring telework, alternate work schedules (i.e., 5/4/9 and maxi-flex) and part-time employees, as reflected in Section B of the application. For example, an employee who only comes into the office 3 days a week, due to their documented flexible work schedule, is required to regularly commute at least 2.25 days a week to maintain their current benefit. Any usage less than that, they are required to amend their benefit request.

We have already updated the language on the mass transit benefit application to reflect the intent of what it means to commute on a regular basis (See Attachment 4a).

Prior Language on the Application Form:

“2. Employees must commute to and from work via mass public transportation or commuter highway vehicle on a regular basis (at least 75% of the time). A commuter highway vehicle is a vehicle that transports people for hire and seats a minimum of 7 adults including the driver.”

New Language on the Application Form:

“2. Employees must commute to and from work via mass public transportation or commuter highway vehicle on a regular basis (having an established commuting pattern). Occasional or sporadic use of public transportation does not qualify. A commuter highway vehicle is a vehicle that transports people for hire and seats a minimum of 7 adults including the driver. Employees must submit a mass transit application to request only what they will actually use to commute to and from work or they will be removed from the program.”

Section B of the application:

In computing your average monthly cost, use 23 work days or projected actual work days at PBGC's offices (e.g., 5/4 9, maxiflex, part-time employee, telework). DO NOT include WMATA metrorail parking.

Additional OIG Observation - Reviewed employee badge data from the PBGC parking garage for the period March 1, 2016 to June 30, 2016. This data was compared to the list of employees that were participating in the EMTB program. There were 87 possible workdays during the time period reviewed. According to the 75 percent rule, the acceptable number of days commuting via non-mass transit during that time would have been 22 days (25 percent of 87). Our inspection identified 64 employees participating in the EMTB program that used the parking garage elevators at least 23 days over the relevant time period. In other words, 9 percent of the program participants were not in compliance with the 75 percent rule.

FOD Response

In PTOs review of the monthly Claimed Benefits, we are identifying those employees who are not using their benefits at least 75% of the time and following up with them via email to confirm whether they remain eligible to continue participating in the Mass Transit Benefit Program.

Additional OIG Observation - According to the PTO staff, each month they complete a report to ensure EMTB participants are using their mass transit benefits. The report shows how much was spent and how much was left. If an employee is not using the mass transit benefits over a three-month period, PTO will send the employee a reminder. If the employee does not use the EMTB over the next two months the employee will then be removed from the program. However, we found PTO did not ensure participants were consistently using their transit benefits in accordance with the program's requirements (i.e., 75 percent of the time) and they were continued to be approved to participate.

FOD Response

We began reviewing usage of the mass transit benefit beginning with the July 2016 Claimed Benefits Report. We started sending emails to remind people of using their benefit or adjusting their benefit request at that time (See Attachment 4b).

Thanks again for your feedback on how we can improve PBGC's Employee Mass Transit Benefit Program.

Attachments (5)

Cc: Robert Westbrooks
Patricia Kelly
Walt Luiza
Tanya Payne-McLeod