

## **SPECIAL REVIEW 19-01**

### **Use of TRANServe Benefits During the FY 19 Government Shutdown (Dec 22, 2018 – Jan 25, 2019)**



**July 31, 2020**

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**FEDERAL ELECTION COMMISSION  
Office of Inspector General**



## Table of Contents

Page

I. EXECUTIVE SUMMARY .....	3
II. INTRODUCTION AND OBJECTIVE .....	4
III. RESULTS .....	5
IV. RECOMMENDATIONS .....	9
V. BACKGROUND AND SCOPE.....	10
VI. CONCLUSION.....	16
APPENDIX A: RELEVANT STATUES, POLICIES, AND GUIDANCE.....	17
APPENDIX B: ACRONYMS.....	19
APPENDIX C: MANAGEMENT RESPONSE.....	20

## I. EXECUTIVE SUMMARY

### FEC Office of Inspector General Special Review



### USE OF TRANSERVE BENEFITS DURING THE FY 19 GOVERNMENT SHUTDOWN

July 1, 2020

#### WHY WE CONDUCTED THE REVIEW

We received information through the OIG hotline that three FEC employees allegedly violated the FEC Transit (TRANServe) Program rules by utilizing their transit benefits for personal use during scheduled telework days.

The OIG opened an investigation into the matter on May 22, 2019. As a result, we did not find definitive evidence to prove or disprove that the subject employees were using their TRANServe benefits for personal use on telework days as alleged; however, we identified anomalies in TRANServe benefits during the FY 19 government shutdown (December 22, 2018 through January 25, 2019).

#### WHAT WE DID

In efforts to provide FEC management insight into the TRANServe program's internal controls and operations, we sought answers to the following questions:

- Did FEC employees misuse their TRANServe benefits during the FY 19 shutdown?

- Has management established adequate internal controls to monitor compliance with FEC Commission Directive 54, Employee Transit Benefit Program?

#### WHAT WE FOUND

The 35-day shutdown consumed four out of five weeks in January 2019. Specifically, FEC employees were permitted to use their TRANServe benefits on 4 out of 21 (19%) working days in January 2019; thus, any TRANServe usage over 20% indicate potential abuse. As a result of our review, we found:

1. Data indicating that 30 employees used more than 20% of their January 2019 TRANServe benefits are indicia that those employees potentially violated Commission Directive 54, Section VI, part C (10)(a).
2. That FEC Office of Human Resources (OHR) does not periodically review employees' SmarTrip usage to identify unusual commuting patterns and recognize significant changes in commuting activity or potential abuse of the program, as provided in FEC Commission Directive 54, Section V, part C(4).

#### WHAT WE RECOMMENDED

We developed three recommendations to improve the operations and monitoring of the FEC TRANServe Program. These recommendations serve to enhance the integrity and effectiveness of the FEC TRANServe Program and the accuracy of the agency transit subsidy allocations.

## II. INTRODUCTION AND OBJECTIVE

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The Federal Election Commission (FEC) Office of Inspector General (OIG) received an allegation through the OIG hotline that three FEC employees allegedly abused the FEC Transit Program by utilizing their transit benefits for personal use during scheduled telework days. The FEC Transit Subsidy Program is administered by the U.S. Department of Transportation (DOT) and is designated as the “TRANServe Program.”

The OIG opened an investigation into the matter on May 22, 2019. Based on the evidence obtained, we could not determine whether employees had used their TRANServe benefits for personal use on telework days as alleged; however, we identified anomalies in TRANServe benefit usage during the fiscal year (FY) 19 government shutdown.<sup>1</sup> The 35-day government shutdown occurred from December 22, 2018, through January 25, 2019.<sup>2</sup>

On September 6, 2019, the OIG closed the investigation and initiated this Special Review to evaluate employee use and agency monitoring of FEC Transit Subsidy benefits during the FY 19 government shutdown. FEC Commission Directive 54, Employee Transit Benefit Program, provides in pertinent part that, “*The objective of the FEC Transit Subsidy Program is to encourage FEC employees to use mass transit for commuting from their residence to and/or from their official duty station in efforts to reduce air pollution, noise, and traffic congestion.*”

Therefore, the OIG sought answers to the following questions:

- Did FEC employees misuse their TRANServe benefits during the FY 19 shutdown?

- Has management established suitable internal controls to monitor compliance with Commission Directive 54, Employee Transit Benefit Program?

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<sup>1</sup> A government shutdown occurs during a lapse in appropriations when Congress has not approved a federal budget for the upcoming fiscal year and non-essential functions close until lawmakers can agree on a budget.

<sup>2</sup> FEC employees received their first furlough notice on December 26, 2018, in which FEC employees were instructed not to return to work unless required. A second furlough notice not to exceed 30 days was issued January 23, 2019 to continue the shutdown for all furlough status employees. On January 25, 2019, the FY 19 government shutdown was resolved and employees were notified to return to work on their next regularly scheduled work day.

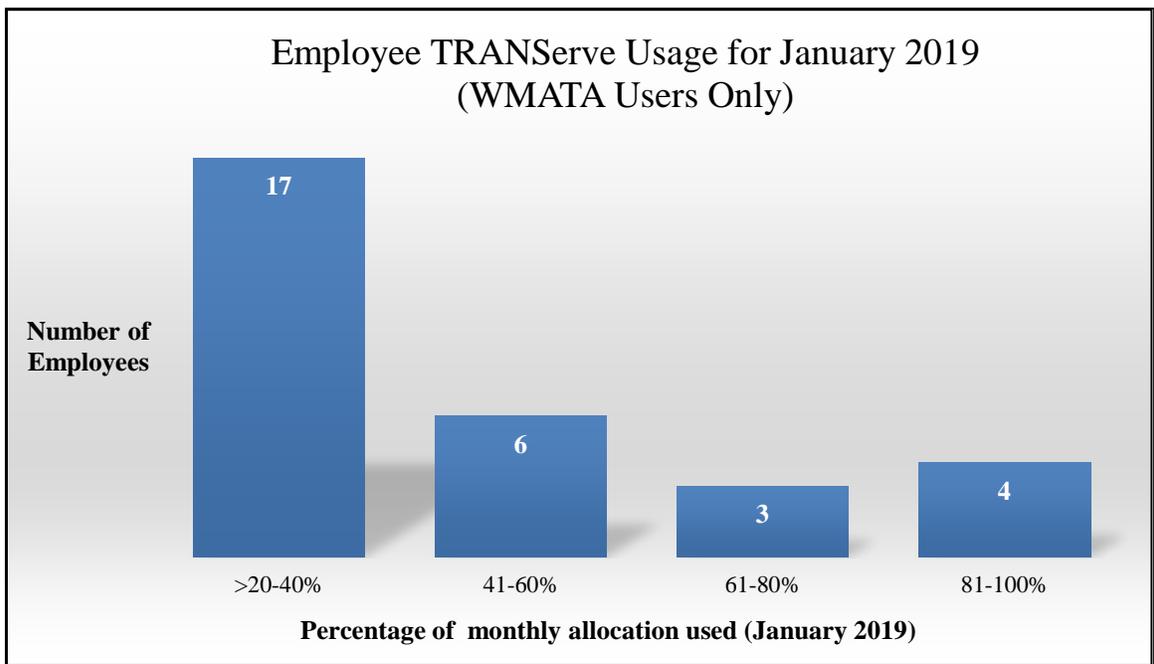
### III. RESULTS

After gathering data from multiple sources and interviewing FEC staff and DOT representatives, the OIG identified the following findings:<sup>3</sup>

- 1. Data indicating that 30 employees used more than 20% of their January 2019 TRANServe benefits are indicia that those employees potentially violated Commission Directive 54, Section VI, part C (10)(a).

The 35-day shutdown consumed four out of five weeks in January 2019; thus, any used TRANServe allocations over 20% indicate potential misuse. FEC Commission Directive 54 specifically provides that participants should not use the transit subsidy for any purpose other than commuting to the employees’ official duty stations and that any other uses constitutes “personal use.” As shown in Figure 1, this review identified 30 FEC employees whose use exceeded 20% during January 2019. Figure 1 further illustrates that seven of those 30 users expended more than 61% of their January 2019 monthly benefits.

**Figure 1**



TRANServe program rules concerning SmarTrip card usage likely exacerbated this problem. Specifically, Commission Directive 54 advises, but does not require, employees to obtain two SmarTrip cards from WMATA: one to contain transit subsidy benefits and one for personal use.

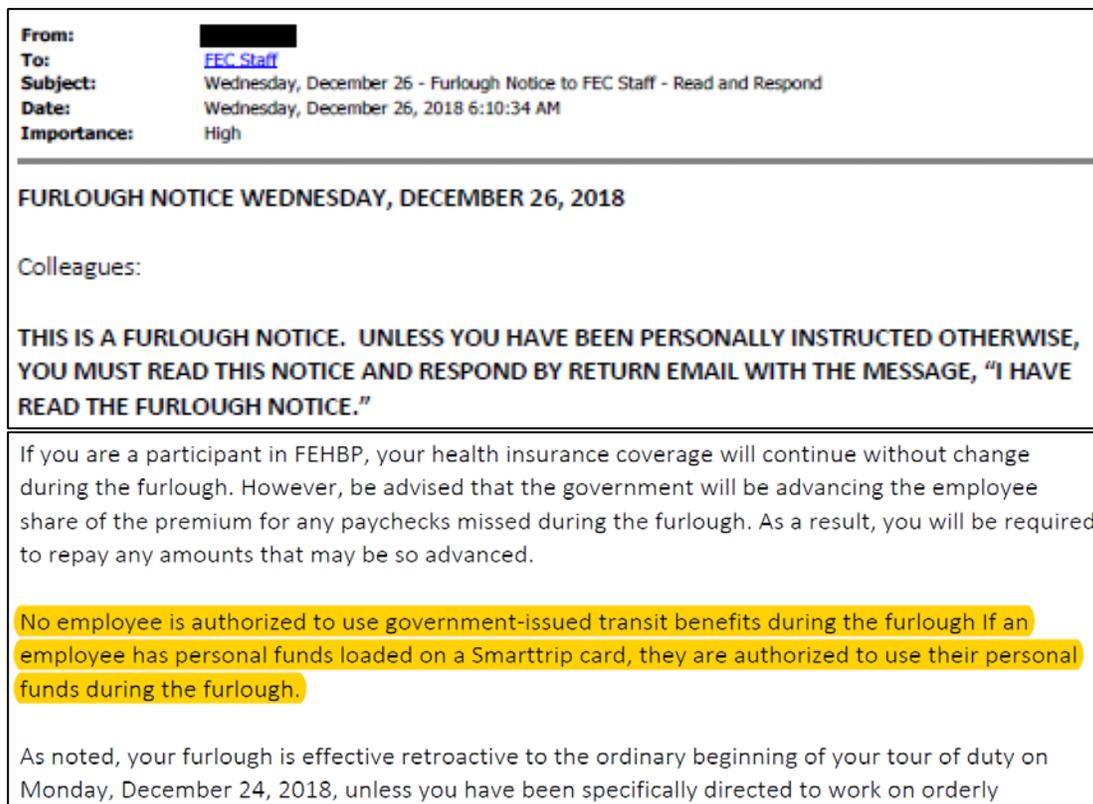
<sup>3</sup> The OIG gathered data from the DOT and cross-referenced the figures with information obtained from FEC OHR.

According to WMATA<sup>4</sup> and DOT,<sup>5</sup> if a government employee elects to use only one SmarTrip card, the money is deposited into two separate “purses,” one for TRANServe benefits and the other for personal use. An employee can add money to their SmartTrip card either online or via a kiosk, but if an employee adds money to the card, it is deposited directly to the personal use purse. WMATA will deduct funds from the personal use account if the TRANServe purse is empty and/or if the individual pays for parking. Transit subsidy funds are non-transferable from one account to another.

As a result, it is not clear if the 30 employees in question each utilized one SmarTrip card in January 2019 for both business and personal use.<sup>6</sup> Additionally, it is not clear if those employees that utilized one SmarTrip card knowingly and willfully used their January 2019 TRANServe allocations for personal use. Accordingly, we determined that the excess usage potentially violated FEC policy but was not dispositive in such a determination.

The FEC Staff Director directed agency employees not to use transit benefits during the FY 19 government shutdown in an email dated December 26, 2018 (see Figure 2).

**Figure 2 – Relevant Excerpts of Staff Director’s Email of December 26, 2018**  
**(Highlighted Emphasis Added)**



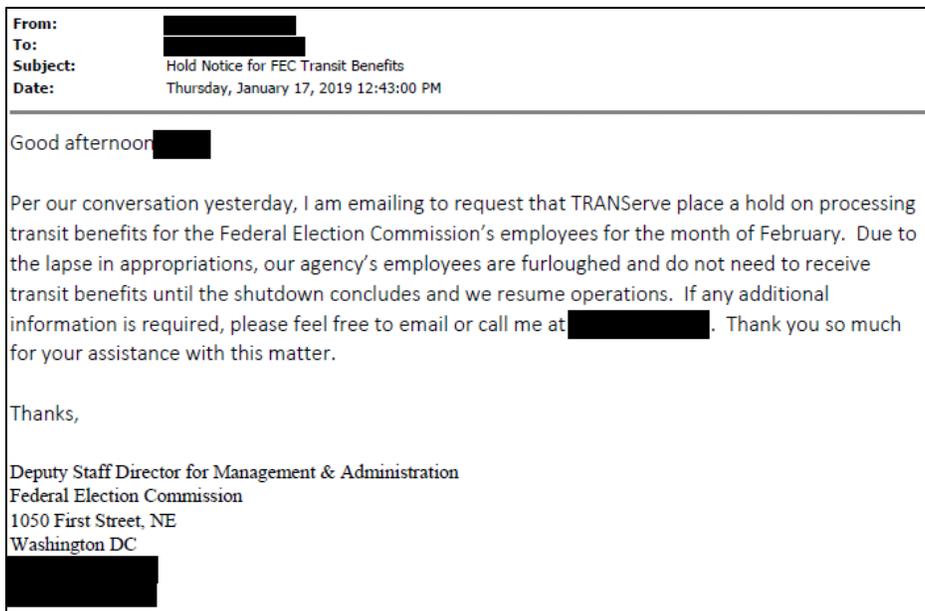
<sup>4</sup> Retrieved from [Washington Metropolitan Area Transit Authority - Claiming Transit or Parking Benefits.](#)

<sup>5</sup> Retrieved from [U.S. Department of State Transit Subsidy Federal Employee Assistance Program \(FAQs\).](#)

<sup>6</sup> There may be a legitimate explanation for the apparent excess charges but FEC management should inquire further into each employee's TRANServe usage to reconcile the disparities identified in this report and take such action as may be warranted.

During the FY 19 government shutdown, FEC remained proactive by requesting that DOT TRANServe suspend all employee TRANServe benefits for February 2019 if the shutdown continued into February (see Figure 3). Agencies are required to notify DOT TRANServe before the 20<sup>th</sup> of each month if an agency determines to suspend TRANServe benefits for the succeeding month. Therefore, if the FEC sought to suspend TRANServe benefits for the month of January 2019, the agency would have been required to make that request prior to December 20, 2018, a time when the shutdown was not in effect.

**Figure 3 – Email Request to Suspend FEC February 2019 TRANServe Benefits**



In efforts to review external guidance related to the use of transit benefits during a government shutdown, the OIG reviewed the *DOT Transit Benefit Approver Guide* and the *DOT Transit Benefit Applicant Guide*, both dated July 2012, but found no relevant supplementary information. Additionally, the OIG reviewed the *DOT Transit Benefit Application System Applicant Training* PowerPoint presentation updated September 2017; however, that training did not provide guidance associated with the use of transit benefits in the event of a government shutdown. As a result, the OIG proposes that the agency should provide additional guidance in its annual training and recertification process.

2. That FEC Office of Human Resources (OHR) does not periodically review employees' SmarTrip usage to identify unusual commuting patterns and recognize significant changes in commuting activity or potential abuse of the program, as provided in FEC Commission Directive 54, Section V, part C(4).

The OIG found that FEC management did not conduct any reviews of employee SmarTrip accounts following the FY 19 government shutdown. The Transit Subsidy Benefits Program Manager stated that the FEC OHR could manually review DOT TRANServe monthly reports upon request; however, OHR examines such reports on occasion when deemed necessary. DOT routinely generates monthly agency reports, but agencies must request a password from DOT to access the protected documents. The agency lacks a formalized procedure to identify and address employee monthly allocation and expenditure anomalies. Further, FEC does not have a mechanism or internal controls in place to assist management with identifying unusual commuting patterns or misuse of TRANServe benefits (i.e., personal use).

Moreover, the FEC relocated to a new physical location in March 2018; as such, the OIG found that nine of the 30 employees under review lacked current business addresses documented on their TRANServe applications. This data suggests that employee transit applications are not updated regularly and that at least nine applications are not accurate, as allocations are calculated by mileage to and from employees' official duty stations and home addresses.

FEC should ensure internal controls are implemented into the FEC transit benefit program to:

- Identify and prevent non-compliance with the transit benefit policy;
- Deter employees from abusing or misusing program funds;
- Ensure that FEC OHR is forecasting its budget accurately; and
- Certify that FEC is expending its annual funds efficiently and effectively.

Further, in efforts to expend all FEC program dollars effectively and efficiently, the Office of the Chief Financial Officer (OCFO) advised the OIG that it contacts each program office on a quarterly basis to evaluate office budget projections for the remaining FY. If there appears to be an excess of program funds, the OCFO will work with each office to redistribute those funds to other programs in need to meet mission requirements.<sup>7</sup> OCFO confirmed that it redistributes outstanding TRANServe funds to other FEC programs in need when warranted.

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<sup>7</sup> The agency is issued one-year funds, therefore, any excess of funds is returned/lapsed to the U.S. Department of Treasury at the end of each FY.

## IV. RECOMMENDATIONS

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Based on the foregoing findings, the OIG recommends the following actions for management to implement in efforts to enhance the effectiveness of the FEC TRANServe Program and to strengthen agency operations during a government shutdown.

1. That FEC regularly request, retrieve, and review monthly TRANServe subsidy benefit reports from the DOT in efforts to monitor benefit usage and prevent fraud, waste, and/or abuse of government funds.
2. That FEC management incorporate guidance into Commission Directive 54 that addresses transit benefits for furloughed and non-furloughed employees in the event of a government shutdown.
3. That FEC management include specific guidance related to the use of transit benefits during a government shutdown within the annual transit recertification application and within the agency PowerPoint training.

## V. BACKGROUND AND SCOPE

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In 2017, the OIG conducted an investigation (INV 16-06) regarding the misuse of employee transit benefits and found that OHR staff were not reviewing employee SmarTrip benefits on a periodic basis as required by Commission Directive 54. The findings were documented in Report of Investigation (ROI) dated March 3, 2017. In response, FEC management advised the OIG that OHR had implemented and administered the agency’s transit benefit program through TRANServe, a web-based application managed by the DOT.

Over a four-year period (FY16 – FY 19), the FEC received an average of \$410,265.50 annually to allocate towards the TRANServe Program (see Figure 4).<sup>8</sup> During that period, FEC has obligated an average of 87% of those funds annually.<sup>9</sup> Moreover, in FY 19 the percentage of obligated funds decreased by 18% from FY18 in large part due to the FY 19 government shutdown.

**Figure 4 – FEC TRANServe Subsidy Benefits Budget From FY16 to FY 19**

<b>FY</b>	<b>Transit benefits budget</b>	<b>Obligated amount</b>	<b>Percentage used</b>
2016	\$425,000.00	\$394,818.00	93%
2017	419,500.00	349,780.00	83%
2018	380,745.00	365,925.00	96%
2019	415,817.00	324,552.00	78%
<b>Average</b>	<b>\$410,265.50</b>	<b>\$358,768.75</b>	<b>87%</b>

At the OIG’s request, the FEC OHR provided the names of 245 employees who were enrolled in the TRANServe benefits program from December 2018 through January 2019. The information included each employee’s monthly allocation and usage rates. The OIG narrowed the scope of this review to focus on the month of January 2019 in efforts to determine if FEC employees misused transit benefits during the FY 19 government shutdown.

The OIG analyzed and evaluated 245 transit users and determined that 215 users would be excluded from further review and/or complied with agency guidance for the reasons detailed herein:

- 34 employees were excepted from the shutdown by FEC management and continued to work.
  - The OIG requested and received a list of 49 FEC employees whom the agency excepted from the FY 19 government shutdown. The OIG found that 34 of the 49

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<sup>8</sup> All figures provided by the FEC OCFO.

<sup>9</sup> The FEC Budget Director defines “obligated” as funds that are committed based on terminology provided by the U.S. Government Accountability Office (GAO)/OMB Circular A-11.

excepted employees were enrolled in the TRANServe Program.<sup>10</sup> The OIG determined that the foregoing employees should be excluded from further review.

- 136 employees utilized 20% or less of their January 2019 allocated TRANServe benefits.
  - The OIG excluded from further review employees who utilized less than 20% of their monthly allocation benefits since the shutdown took effect four out of the five weeks in January. Employees (not deemed mission critical) who used less than 20% of their January 2019 TRANServe benefits appeared to comply with Commission Directive 54. Accordingly, the OIG determined that an employee who used less than 20% of their January 2019 allocation should be excluded from further review.
- 30 employees had identical expenditure amounts for December 2018 and January 2019, which indicated that the employees were potentially enrolled in an automatic payment deduction through various transit vendors each month.
  - If an employee enrolls with CommuterDirect or directly with a service such as the Virginia Railway Express (VRE)/Maryland Rail Commuter (MARC), the employee may elect to have recurring orders for their TRANServe benefits. Allowing reoccurring orders will enable the employee to automatically receive their monthly TRANServe benefits without manually logging into the system to purchase tickets. The OIG determined that an employee with a regular and recurring payment should be excluded from further review.
- 14 employees utilized VRE, MARC, automobile, bus, or a combination thereof (which may also include WMATA).<sup>11</sup> This increases the likelihood that a user would be enrolled in a regular and recurring payment system.
  - In additional efforts to capture accurate data for this review, we focused on reviewing users who solely utilized WMATA metrorail assuming that those trips required employees to swipe their respective metro card each time a metrorail was used.
- 1 FEC employee was detailed to the Department of Justice beginning January 7, 2019. As a result of this detail assignment, the employee was not subject to the shutdown furlough and excluded from this review.

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<sup>10</sup> OPM provides in its *Guidance for Shutdown Furloughs*, dated September 2015, “In the context of shutdown furloughs, the term “excepted” is used to refer to employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations. Excepted employees may include employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work.”

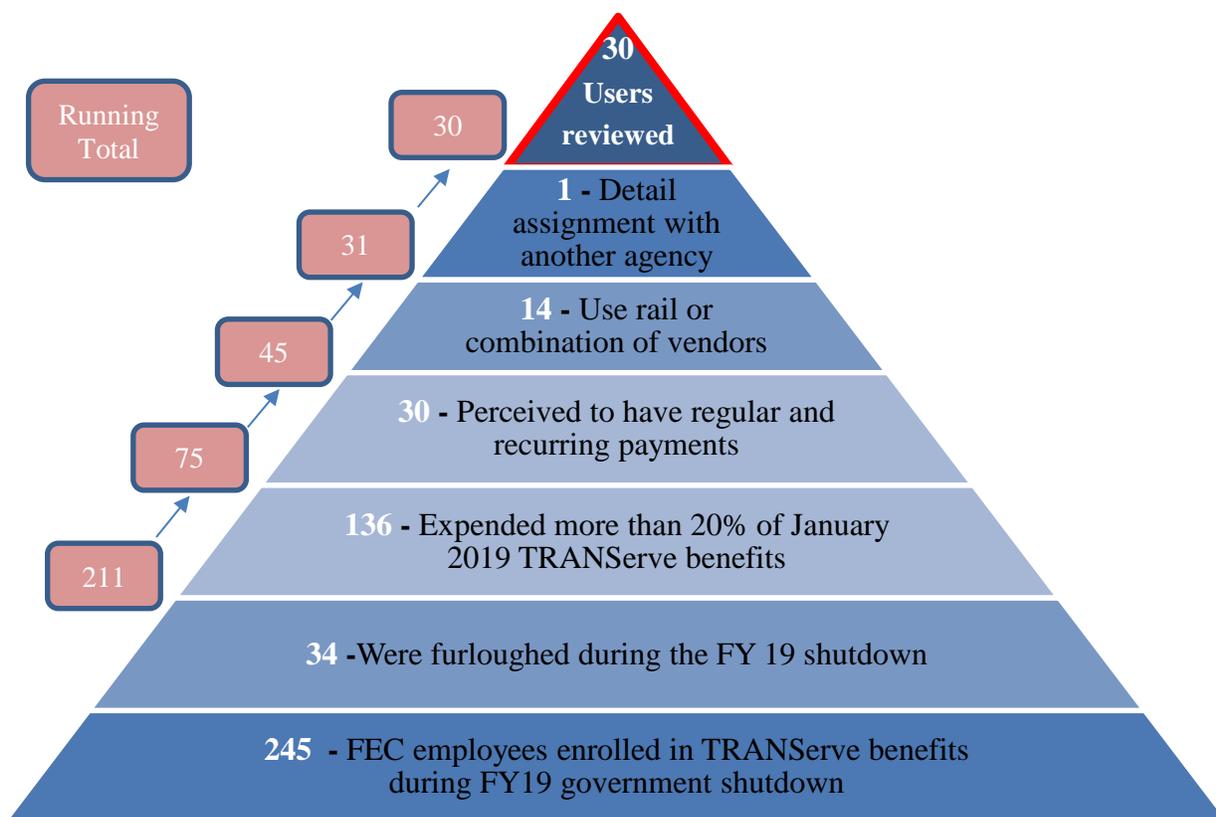
<sup>11</sup> WMATA includes Metrorail and/or Metrobus.

As a result, the OIG focused this review on **30 (12% of TRANServe users) FEC employees** who:

- Were furloughed during the FY 19 shutdown;
- Expended more than 20% of their January 2019 TRANServe benefits;
- Did not appear to have a regular or recurring monthly payment activated; and
- Solely used WMATA metro for commuting purposes.

Figure 5 provides a graphic illustration of the breakdown of the criteria and aforementioned data used to scope this review.

**Figure 5 – Criteria Used to Narrow FEC TRANServe Users Under Review**



Certified WebTA timesheets of the second pay period for FY 19 provided additional information related to the number of days that the 30 employees under review commuted to work in January 2019 following the shutdown. Figure 6 indicates that the 30 employees under review traveled to work an average of 2.60 days in January 2019. Additionally, the OIG reviewed the employees' certified TRANServe applications in conjunction with their timesheets to determine the maximum commuting expense for January 2019.

**Figure 6**

<b>Number of days that employees were permitted to commute to work in January 2019</b>	<b>Number of employees that commuted to work</b>
1	2
2	14
3	8
4	6

Based on our review, we conclude that 30 employees used more than 20% of their January 2019 TRANServe benefits. Figure 7 provides individual transit totals for January 2019 calculated by multiplying daily commute cost by the number of commutes the employee made to the FEC following the furlough.<sup>12</sup> Collectively, these individuals should not have exceeded a total of \$547 in subsidized transit benefits during the last week of January. However, the actual total expenditures for these individuals were \$1,459, which may represent excessive disbursement of \$911, and is indicia that those employees violated Commission Directive 54. As a result, in efforts to ensure accountability, we have provided the names and related data of those employees to management for action deemed appropriate.

**Figure 7 – Commuting Expenses Calculated Using Transit Applications and Timesheets Per Employee<sup>13</sup>**

<b>Employee</b>	<b>Daily expense<sup>14</sup></b>	<b>Authorized number of commutes in January 2019<sup>15</sup></b>	<b>Authorized expenses for January 2019</b>	<b>Actual expenses for January 2019<sup>16</sup></b>	<b>Potential unauthorized excess</b>
1	\$8.00	2	\$16.00	\$32.20	\$16.20
2	\$4.80	3	\$14.40	\$24.00	\$9.60
3	\$18.30	3	\$54.90	\$35.60	(\$19.30) <sup>17</sup>
4	\$6.90	4	\$27.60	\$80.10	\$52.50
5	\$11.10	3	\$33.30	\$76.80	\$43.50
6	\$5.20	2	\$10.40	\$44.00	\$33.60

<sup>12</sup> The daily commute cost for the employee was provided by the most current TRANServe application on file with the agency during the review. The certified WebTA timesheets for January 2019 provided the number of commutes the employee made to the office.

<sup>13</sup> The OIG will refer this data along with employee names to FEC management for further evaluation regarding whether each employee exceeded their TRANServe benefit allocation for January 2019 and such further action as may be warranted.

<sup>14</sup> Per the employee's most current certified TRANServe application.

<sup>15</sup> Per the employee's certified WebTA timesheet from the second pay period of 2019.

<sup>16</sup> Per data provided by the Department of Transportation.

<sup>17</sup> The data reflects that this employee commuted to the office three days at \$18.30 per day, but only expended \$35.60, implying that the individual did not use TRANServe funds for at least one daily commute. However, this individual's expenditures are included because he/she expended 22 percent of his/her January 2019 benefits.

7	\$9.10	2	\$18.20	\$25.20	\$7.00
8	\$4.50	1	\$4.50	\$28.25	\$23.75
9	\$4.50	4	\$18.00	\$38.10	\$20.10
10	\$6.00	1	\$6.00	\$33.40	\$27.40
11	\$12.00	2	\$24.00	\$108.75	\$84.75
12	\$4.50	2	\$9.00	\$35.00	\$26.00
13	\$7.00	3	\$21.00	\$32.75	\$11.75
14	\$4.00	4	\$16.00	\$21.55	\$5.55
15	\$8.90	2	\$17.80	\$27.70	\$9.90
16	\$6.00	4	\$24.00	\$49.60	\$25.60
17	\$7.60	3	\$22.80	\$56.45	\$33.65
18	\$6.50	3	\$19.50	\$48.40	\$28.90
19	\$8.30	2	\$16.60	\$127.00	\$110.40
20	\$4.50	2	\$9.00	\$51.45	\$42.45
21	\$5.30	4	\$21.20	\$24.65	\$3.45
22	\$4.50	2	\$9.00	\$34.75	\$25.75
23	\$6.00	2	\$12.00	\$29.35	\$17.35
24	\$5.90	4	\$23.60	\$26.05	\$2.45
25	\$10.20	2	\$20.40	\$173.00	\$152.60
26	\$1.70	3	\$5.10	\$8.50	\$3.40
27	\$4.50	3	\$13.50	\$85.80	\$72.30
28	\$12.80	2	\$25.60	\$31.80	\$6.20
29	\$10.30	2	\$20.60	\$41.10	\$20.50
30	\$6.50	2	\$13.00	\$27.25	\$14.25
<b>Total</b>	-	-	<b>\$547.00</b>	<b>\$1,458.55</b>	<b>\$911.55</b>

Additionally, the agency did not complete any subsequent reviews of TRANServe program expenditures following the FY 19 government shutdown, nor has it done so on a regular and recurring basis to determine unusual spending and/or abuse of government funds. The FEC relocated to a new physical location in March 2018 and as such, the OIG found that nine employee TRANServe applications did not reflect the agency’s current address. Figure 8 reveals that on average, the 30 applicants had not recertified their transit benefits in 326 days. The longest period between benefit recertification exceeded 486 days.

**Figure 8 – Time Since Certification Per Employee**

<b>Employee</b>	<b>Date of last certification</b>	<b>Number of days since certification</b>
1	2/28/2018	326
2	9/21/2017	486
3	8/2/2018	171
4	2/15/2018	339
5	9/20/2017	487

6	9/21/2017	486
7	9/21/2017	486
8	12/6/2018	45
9	3/5/2018	321
10	10/3/2018	109
11	3/14/2018	312
12	2/22/2018	332
13	6/12/2018	222
14	9/21/2017	486
15	2/22/2018	332
16	12/18/2018	33
17	2/22/2018	332
18	9/21/2017	486
19	2/22/2018	332
20	3/5/2018	321
21	2/22/2018	332
22	9/21/2017	486
23	5/7/2018	258
24	2/15/2018	339
25	9/19/2017	488
26	10/3/2018	109
27	8/2/2018	171
28	9/21/2017	486
29	2/15/2018	339
30	2/22/2018	332

## VI. CONCLUSION

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As a result of our review, it is not clear if the 30 employees in question utilized one SmarTrip card in January 2019 for both business and personal use. Additionally, it is not clear if those employees that utilized one SmarTrip card knowingly and willfully used their January 2019 TRANServe allocations for personal use. Accordingly, we determined that the excess usage potentially violated FEC policy but was not dispositive in such a determination.

The OIG found that FEC management did not conduct any subsequent reviews of employee SmarTrip accounts following the FY 19 government shutdown. The agency does not have a procedure in place to address employee monthly allocation and expenditure anomalies. Further, FEC does not have a mechanism or internal control(s) in place to assist management with identifying unusual commuting patterns or misuse of TRANServe benefits (i.e., personal use).

FEC management remained proactive during the FY 19 government shutdown by providing continuous updates to staff and implementing steps to suspend agency TRANServe benefits. However, when the agency transitioned to TRANServe in 2017, Commission Directive 54, “Employee Transit Benefit Program,” was not updated to reflect changes resulting from the new service. The agency should update the FEC transit program policy and improve and strengthen the design of its internal controls related to the monitoring of the TRANServe program in efforts to eliminate fraud, waste, and/or abuse.

Considering the agency’s current state of remote operations due to the coronavirus (COVID-19) pandemic, we highly encourage FEC management to review employee TRANServe expenditures as recommended in this report in efforts to prevent fraud, waste, and/or abuse of government funds.

## APPENDIX A: RELEVANT STATUTES, POLICIES, AND GUIDANCE

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A. FEC, Commission Directive 54, Employee Transit Benefit Program, signed January 8, 2013, provides in pertinent part:

Section I:

The objective of the FEC Transit Subsidy program is to encourage FEC employees to use mass transit to commute from their residence to and/or from their official duty station in order to reduce air pollution, noise and traffic congestion.

Section V (C)(4) The Director of Human Resources shall:

4. periodically review employee's SmarTrip card usage to ensure no unusual commuting patterns, significant changes in commuting activity or potential abuse of program; and

Section V (F)(3) The Transit Subsidy Benefits Program Manager shall:

3. Monitor program integrity by ensuring completion of required internal controls and reviewing any Office of Inspector General or other review reports on the transit subsidy program;

Section VI (C)(10) Personal Use; Temporary Conditions Impacting Full Use of Subsidy.

(a) Participants should not use the transit subsidy for any purpose other than commuting to the Official Duty Station (ODS). Use for a purpose other than commuting to the ODS constitutes "personal use." Employees are advised, though not required, to obtain two SmarTrip cards from WMATA: one to contain transit subsidy benefits and be used for commuting, and one for personal use.

- B. U.S. Office of Management and Budget (OMB), OMB Circular No. A-11, 2019, provides in pertinent part:

Section 124.2 Agency heads, in consultation with their general counsels, must develop and maintain plans for an orderly shutdown in the event of a lapse in appropriations.

- C. U.S. OPM, Guidance for Shutdown Furlough, dated September 2015, provides in pertinent part:

Section B (1)(A) Who are “excepted” employees?

In the context of shutdown furloughs, the term “excepted” is used to refer to employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations. Excepted employees include employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work. Agency legal counsels, working with senior agency managers, determine which employees are designated to be handling “excepted” and “non-excepted” functions.

## APPENDIX B: ACRONYMS

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DOT	U.S. Department of Transportation
FEC	Federal Election Commission
FY	Fiscal Year(s)
GAO	U.S. Government Accountability Office
MARC	Maryland Rail Commuter
OCFO	Office of Chief Financial Officer
ODS	Official Duty Station
OHR	Office of Human Resources
OIG	Office of Inspector General
OMB	U.S. Office of Management and Budget
OPM	U.S. Office of Personnel Management
ROI	Report of Investigation
VRE	Virginia Railway Express
WMATA	Washington Metropolitan Area Transit Authority

## APPENDIX C: MANAGEMENT RESPONSE

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 30, 2020

## MEMORANDUM

To: Christopher Skinner  
Inspector General

From: Kate Higginbotham  
Deputy Staff Director for Mgmt. & Admin.

Subject: Management Response to Special Review 19-01:  
Use of TRANServe Benefits during the FY 19 Government Shutdown

This memorandum responds to the findings and recommendations from the Office of Inspector General's (OIG) Special Review 19-01 "Use of TRANServe Benefits During the FY 19 Government Shutdown (Dec 22, 2018 – Jan 25, 2019)," which were transmitted to Federal Election Commission (FEC) management by email dated July 1, 2020.

FEC management is committed to working with OIG regarding the agency's transit benefit program, as evidenced by management's in-depth review of the report and preliminary feedback while it was in draft form, and detailed communications with members of the OIG team while the report was being developed. FEC management takes the findings and recommendations of OIG's report seriously and has developed the following planned corrective actions to address the recommendations in the Special Review.

Recommendation 1: *That FEC regularly request, retrieve, and review monthly TRANServe subsidy benefit reports from the Department of Transportation (DOT) in efforts to monitor benefit usage and prevent fraud, waste, and/or abuse of government funds.*

The Office of Human Resources (OHR) is creating a TRANServe Control Program, wherein it will annually review use of the TRANServe program and perform monitoring activity regarding employees' usage of transit benefits utilizing the reports available from DOT. This review will ensure that all employees who participate in the program have updated their transit applications to reflect the correct address for the FEC headquarters and monitor the percentage of benefits used by employees to assess potential anomalies in employees' commuting patterns. During times in which normal employee commuting patterns are suspended, OHR will monitor the use of TRANServe at a time deemed appropriate based on the situation causing the suspension of

normal commuting patterns. For example, in cases where the agency is using extended telework, OHR will monitor the use of TRANServe on an ongoing basis, as it is currently doing while the agency is under an evacuation order due to the COVID-19 pandemic. In any future government shutdowns, OHR will evaluate the use of TRANServe once the agency is permitted to resume normal operations to avoid potential violations of the Anti-Deficiency Act.

Recommendation 2: *That FEC management incorporate guidance into Commission Directive 54 that addresses transit benefits for furloughed and non-furloughed employees in the event of a government shutdown.*

Management plans to draft an updated version of Commission Directive 54 to address employee use of transit benefits during a government shutdown, as recommended by OIG. Any updates to Directive 54 are subject to approval by the Commission. The Federal Election Campaign Act (FECA) requires that the Commission have a quorum of four or more commissioners to carry out many agency functions. The FEC has been without a quorum since July 4, 2020. Due to this loss of quorum, the Commission is currently unable to approve any new or revised Commission Directives. Therefore, timing for the adoption of a revised version of Directive 54 is contingent on when the Commission regains a quorum.

Recommendation 3: *That FEC management include specific guidance related to the use of transit benefits during a government shutdown within the annual transit recertification application and within the agency PowerPoint training.*

To address OIG's concerns about management giving staff specific guidance related to the use of transit benefits during a government shutdown, management plans to update the FEC's Plan for Agency Operation in the Absence of an Appropriation ("shutdown plan") to include a requirement for OHR to send a separate, standalone email to staff regarding use of transit benefits during a government shutdown. OHR will send this email to all agency employees at the start of any future shutdown. This email will be in addition to including information about transit subsidy use in the furlough notice emails that are sent to all staff, and is similar to the standalone emails that have been sent to employees regarding transit benefits during the COVID-19 pandemic. Additionally, management will work with the Office of the Chief Information Officer to update the TRANServe training materials, which were developed by DOT, to include guidance covering the use of transit benefits during a government shutdown. This training is mandatory for all new program participants before they can receive transit benefits from the agency.

#### Other Proposed Management Action

In addition to the three primary recommendations, OIG's report suggests that management should inquire further into the TRANServe usage of the employees who utilized more than 20 percent of their normal monthly benefit during January 2019 to reconcile the disparities identified in the report and take such as action as may be warranted. Management appreciates OIG sharing the specific findings from its view and takes seriously any potential misuse of transit subsidy funds by employees. However, at this time, management does not plan to inquire further into these specific employees' TRANServe usage during the shutdown to reconcile the apparent disparities identified in the Special Review given the amount of time that has elapsed

since the time period in question and the relatively small amount of funds potentially misused. Since the FY 2019 partial federal government shutdown ended on January 25, 2019, which was over 18 months ago, we do not believe that questioning employees regarding commuting anomalies during that period is likely to yield actionable information, especially when TRANServe records do not provide enough information to substantiate findings of waste, fraud, or abuse on a per-employee basis, as noted in OIG's report. Additionally, of the list of 30 employees who potentially misused funds, which OIG supplied to management during the draft phase of the report, five of the individuals are no longer employed with the Commission.

Furthermore, the Special Review identifies potential issues regarding a total of \$911.55 in transit benefits for all agency employees during the period of time that was the subject of this review. The agency allocated \$324,552 to the transit benefit program for FY 2019. As such, the amount potentially in question in the Special Review represents only 0.28 percent of the funding that the agency allocated to the transit benefit program for FY 2019. Given the de minimis amount of the potential misuse, we do not believe that further inquiry would be the best use of management and OHR staff resources. We also note that, during the agency's fourth quarter meeting with TRANServe on July 23, 2020, the FEC's DOT account representative stated that TRANServe does not currently have a mechanism for an employee to repay their TRANServe account if they find that transit benefit funds were misused, whether accidentally or otherwise, for personal purposes.

Due to the length of intervening time since the government shutdown, the low dollar amount of aggregate transit benefits in question, and the number of employees no longer at the agency, management does not believe it is prudent to inquire further into each employee's TRANServe usage during the FY 2019 partial government shutdown. We believe that our other proposed corrective actions, which are aimed at curbing any future misuse of transit subsidy funds, will be the most effective ways to address the findings of this report on a forward-looking basis.

Management appreciates the opportunity to provide a response to OIG's Special Review 19-01 "Use of TRANServe Benefits During the FY 19 Government Shutdown (Dec 22, 2018 – Jan 25, 2019)," and plans to move forward implementing the corrective actions described herein. If there are any questions regarding this response, please feel free to reach out to me at (202) 694-1594 or [khigginbothom@fec.gov](mailto:khigginbothom@fec.gov), or Lauren Lien, Human Resources Director, at (202) 694-1135 or [llien@fec.gov](mailto:llien@fec.gov).

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