



**U.S. Department  
of Transportation**

**OFFICE OF THE  
GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Office of the Secretary  
of Transportation

August 2, 2024

The Honorable Hampton Dellinger  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street NW, Suite 218  
Washington, DC 20036

Re: OSC File No. DI-21-000339

Dear Mr. Dellinger:

By letter dated March 29, 2021, the Special Counsel (then Henry J. Kerner) referred for investigation a whistleblower's allegation that Federal Railroad Administration (FRA) officials knowingly violated federal regulations by permitting FRA employees to receive pay at a rate different from the rate established for their worksites. The whistleblower also alleged that FRA officials allowed permanent teleworkers (which FRA refers to as "remote workers") to avoid required drug testing screenings. The referral required the U.S. Department of Transportation (DOT) to investigate these issues.

The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. The Department's Office of the Assistant Secretary for Administration prepared the Report of Investigation (ROI) in this matter. I enclose the ROI with this letter.

The investigation partially substantiated the allegations related to pay rates. For two of the three FRA employees involved, the investigation found that their telework arrangements did not comply with Office of Personnel Management (OPM) regulations, in that they failed to require each employee to spend at least two days per pay period at their official worksite in Washington, DC (DOT Headquarters). Rather, the arrangements required each employee to spend an entire week at DOT Headquarters every other pay period. Although this resulted in more total time required at the Headquarters building, the arrangements violated OPM regulations and have been corrected. The employees have been converted to remote workers, and their pay rates now correspond to their respective worksites in Upstate New York and New Jersey. According to the investigation, neither employee worked remotely full time during the relevant time period and the arrangements were not an attempt to violate OPM regulations. As for the third employee, the investigation uncovered potential wrongdoing on the part of the employee to obtain a higher pay rate, and resulted in a referral to DOT's Office of Inspector General. The FRA employee ultimately pleaded guilty to theft of government property.

Page 2  
The Honorable Hampton Dellinger

The investigation did not substantiate the allegations related to drug testing avoidance.

As a result of the investigation, FRA has corrected two employees' work arrangements to conform to OPM regulations and is preparing additional training for FRA managers on telework arrangements and their impact on locality pay. The investigation also uncovered the third FRA employee's misconduct as described in the enclosed report, and the FRA is taking appropriate administrative action.

We have appreciated the opportunity to review this important matter and the whistleblower's diligence in raising concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Subash Iyer', with a stylized flourish at the end.

Subash Iyer  
Acting General Counsel

Enclosure

**Office of the Assistant Secretary for Administration  
Report of Investigation**

**In response to:**

**U.S. Office of Special Counsel (OSC)**

**File DI-21-000339**

**August 2, 2024**

## Executive Summary

The Assistant Secretary for Administration of the U.S. Department of Transportation (DOT) was delegated responsibility to investigate a U.S. Office of Special Counsel (OSC) whistleblower disclosure (OSC File No. DI-21-000339) referred to DOT on March 29, 2021. The Assistant Secretary's Office has conducted that administrative investigation and completed this report.

The anonymous whistleblower alleged that from 2016 through 2020 (i.e., the relevant time period), Federal Railroad Administration (FRA) officials violated Office of Personnel Management (OPM) locality pay regulations at 5 CFR §§ 531.604-531.605 by knowingly permitting employees to improperly receive locality pay for Washington, DC, even though the employees permanently teleworked outside of the Washington, DC locality pay area, and that these same FRA officials permitted the employees to avoid agency drug testing screenings in violation of 49 CFR § 219, Subpart G.<sup>1</sup>

The whistleblower specifically alleged that: (1) three named FRA employees – [REDACTED] Engineer #1, [REDACTED] Engineer #2, and [REDACTED] Technical Specialist ([REDACTED] Technical Specialist) – improperly received locality pay for DOT headquarters (HQ) in Washington, DC, even though they permanently teleworked outside of the designated region for the locality pay; (2) FRA officials, including [REDACTED] Director, [REDACTED] Staff Director ([REDACTED] Staff Director), and [REDACTED] Officer ([REDACTED] Officer), were aware the incorrect locality pay rate was being used, but did not take steps to correct the relevant agency personnel systems; (3) FRA officials, including [REDACTED] Director, [REDACTED] Staff Director, [REDACTED] Officer, and Supervisor [REDACTED] ([REDACTED] Supervisor), circumvented FRA drug testing regulations by failing to require the FRA employees who permanently teleworked outside the locality area to appear for drug testing; and (4) [REDACTED] Staff Director misled drug testing technicians about the availability of the teleworking employees for testing on multiple occasions between 2016 and 2020.

As a terminology matter, this report generally will refer to “remote work,” as opposed to “permanent telework.” Effective November 30, 2021, FRA adopted Order 3602, *Remote and Mobile Work Policy*, eschewing use of the term “fulltime telework” and defining work arrangements in which an employee is not expected to report to the agency’s official location on a regular or recurring basis as “remote work.” Because FRA uses the term “remote work,” this report will as well.

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<sup>1</sup> 49 CFR § 219, Subpart G governs drug testing for the railroad industry and does not apply to the named employees. That error notwithstanding, FRA does have a drug testing program, as set forth in FRA Order 3700.5, dated March 30, 2006, which requires the named employees to be subject to random drug testing. Thus, the investigation sought to determine whether FRA officials and employees complied with the requirements of FRA’s random drug testing program.

The DOT Office of the Assistant Secretary for Administration, in consultation with the Office of the General Counsel, initiated its investigation in April 2021. All witnesses, except for [REDACTED] Technical Specialist, cooperated fully with the investigation, voluntarily disclosing information and documentation in response to the investigative team's requests. So as not to delay the portions of the administrative investigation that were unrelated to [REDACTED] Technical Specialist, DOT provided OSC with a draft report of investigation (ROI) in July 2021 covering its draft findings and recommendations pertaining to [REDACTED] Engineer #1 and [REDACTED] Engineer #2. DOT now follows up with this final report.

As for [REDACTED] Technical Specialist, the Office of the Assistant Secretary for Administration referred the relevant locality pay portion of the matter to the DOT Office of Inspector General (OIG) for investigation (including potential criminal investigation). In coordination with the U.S. Attorney's Office for the Middle District of Pennsylvania, OIG conducted its own investigation into the conduct of [REDACTED] Technical Specialist. Following the completion of OIG's investigation, on August 4, 2023, [REDACTED] Technical Specialist pleaded guilty in the U.S. District Court for the Middle District of Pennsylvania to one count of theft of government property. After [REDACTED] Technical Specialist was sentenced on April 23, 2024, OIG provided the Office of the Assistant Secretary for Administration with a report of investigation detailing the findings from its criminal investigation on June 3, 2024. This ROI incorporates OIG's findings as to [REDACTED] Technical Specialist's establishment of his duty station and the corresponding theft of government money.

DOT's investigation partially substantiated the allegation that certain FRA employees improperly received locality pay for DOT HQ while permanently teleworking outside of the Washington, DC pay locality area. However, the investigation did not find that FRA officials were aware that an incorrect locality pay rate was being used or that they knowingly failed to correct it. Rather, the investigation found that [REDACTED] Engineer #1 and [REDACTED] Engineer #2 entered into telework arrangements with the approval of their supervisor, [REDACTED] Staff Director, and that the parties intended to comply with OPM locality pay regulations. Those arrangements permitted the employees over two consecutive biweekly pay periods (i.e., four weeks) to telework for three straight weeks outside of the Washington, DC pay locality area and then report to DOT HQ for one whole week. The employees were not permanently teleworking (i.e., "remote work") outside of the Washington, DC pay locality area, as alleged in the whistleblower disclosure. Nor was there evidence that their arrangements were entered into for nefarious reasons. To the contrary, the investigation found that the arrangements were entered into to allow the employees to deal with ongoing family matters outside of the Washington, DC area, and that the parties believed the arrangements complied with OPM regulations. The investigation did not find that any FRA officials were aware that [REDACTED] Engineer #1 and [REDACTED] Engineer #2 were receiving incorrect locality pay, such that they could have taken steps to correct the error.

Nevertheless, the investigation did find that the telework arrangements for [REDACTED] Engineer #1 and [REDACTED] Engineer #2 violated OPM regulations, which required the employees to report to DOT HQ at least twice each biweekly pay period in order to receive Washington, DC

locality pay. While the employees' arrangements required them to report to DOT HQ for five days in a four-week period, they were not required to report twice each biweekly pay period. As a result, their locality pay should have corresponded with their telework locations. Under his telework arrangement, [REDACTED] Engineer #1 teleworked from his personal residence in [REDACTED], [REDACTED], which falls within the Rest of the United States (RUS) pay locality area and provides lower locality pay than that offered to employees with Washington, DC as their official duty station. On the other hand, [REDACTED] Engineer #2 teleworked from [REDACTED], [REDACTED], which falls within the New York City pay locality area and provides higher locality pay than the Washington, DC locality pay that he received over the relevant period of time.

As for [REDACTED] Technical Specialist, he reported to a different supervisor during the relevant time period (i.e., [REDACTED] Staff Director ([REDACTED] Staff Director)). The investigation found that from his date of hire in 2014 until January 2018, [REDACTED] Technical Specialist operated under an *ad hoc* telework agreement in which he occasionally teleworked from his residence in [REDACTED], [REDACTED],<sup>2</sup> but otherwise reported to DOT HQ where he received locality pay that corresponded with his official duty station in Washington, DC. In January 2018, [REDACTED] Technical Specialist was converted to remote work, after applying for a remote work position using a resume which identified his home address as [REDACTED], [REDACTED], instead of [REDACTED], [REDACTED]. The SF-50 that was generated following the conversion of [REDACTED] Technical Specialist to remote work changed his official duty station from Washington, DC to [REDACTED], [REDACTED]. His official duty station remained [REDACTED], [REDACTED] until January 15, 2023, and he received the corresponding New York City locality pay over this period of time.<sup>3</sup> The investigation found that despite changing his official duty station to [REDACTED], [REDACTED], [REDACTED] Technical Specialist continued to telework from [REDACTED], [REDACTED], intentionally utilizing a false address and official duty station to procure higher locality pay than he was entitled to. Following OIG's investigation in conjunction with the U.S. Attorney's Office, [REDACTED] Technical Specialist was charged with theft of government property, and he admitted to his misconduct through a guilty plea. FRA has also initiated a process to take appropriate administrative action against the employee, given the circumstances. That matter is still pending. The investigation did not reveal that any other FRA employee or official was complicit in the conduct of [REDACTED] Technical Specialist.

As for the remaining assertions in the whistleblower disclosure, the investigation did not substantiate the allegation that FRA officials circumvented FRA drug testing regulations by allowing certain employees to avoid drug testing, nor did it substantiate the allegation that

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<sup>2</sup> [REDACTED], [REDACTED] is identified as the personal residence and approved duty station of [REDACTED] Technical Specialist in his telework agreements over the relevant time period. Furthermore, [REDACTED] Technical Specialist and his supervisor, [REDACTED] Staff Director, regularly referred to [REDACTED], [REDACTED] as his home and telework location over the course of the investigation. However, [REDACTED] Technical Specialist provided a more precise home address in the Employee Express personnel system, identifying [REDACTED], a borough in [REDACTED], [REDACTED], directly adjacent to [REDACTED], [REDACTED], as his place of residence. Both [REDACTED] and [REDACTED] fall within the RUS pay locality area. To avoid any confusion, [REDACTED], [REDACTED] is used in this ROI when referring to the home and telework location of [REDACTED] Technical Specialist, unless specified otherwise.

<sup>3</sup> At the request of OIG, FRA refrained from correcting the official duty station of [REDACTED] Technical Specialist at an earlier point in time, so as not to alert the employee to the existence of the criminal investigation.

██████████ Staff Director misled drug testing technicians about the availability of his employees for testing. In particular, the investigation found that on the occasions where ██████████ Engineer #1 and ██████████ #2 were selected for drug testing, they were properly deemed “unavailable” in accordance with FRA policy and not required to report for testing. This is because the employees were either on approved leave at the time or teleworking from a location more than a three-hour commute from the drug testing site. Consequently, the investigation found no evidence that ██████████ Engineer #1 or ██████████ Engineer #2 evaded FRA’s drug testing program, or that any FRA officials aided them in doing so.

Similarly, the investigation did not find that ██████████ Technical Specialist circumvented FRA’s drug testing program. As noted above, ██████████ Technical Specialist did not report to the same supervisor as ██████████ Engineer #1 and ██████████ Engineer #2. Instead, he has reported to ██████████ Staff Director since he began working at FRA in 2014. Washington, DC only served as the official duty station for ██████████ Technical Specialist from 2014 to 2018. For the rest of the relevant time period, his official duty station was designated as ██████████, ██████████. The investigation revealed that ██████████ Technical Specialist’s name did not appear on the drug testing list for the Washington, DC area in 2017 or 2018, the relevant years for ██████████ Technical Specialist in which drug testing was conducted in Washington, DC. Furthermore, his supervisor, ██████████ Staff Director, testified that he did not recall the name of ██████████ Technical Specialist ever appearing on a drug testing list during the relevant time period, to include the time from 2018 to 2020, when his duty station was identified as ██████████, ██████████. As a result, there is no indication in the record that ██████████ Technical Specialist evaded the requirements of FRA’s drug testing program.

As a result of the preliminary findings, when DOT submitted a draft ROI to OSC in July 2021, the Assistant Secretary for Administration instructed FRA, upon the conclusion of the COVID-19 maximum telework posture, to monitor OPM and DOT guidance on “return to office” requirements and to bring the telework arrangements and official duty stations of ██████████ Engineer #1 and ██████████ Engineer #2 into compliance with all applicable rules. Consistent with the instructions from the Assistant Secretary for Administration, effective November 6, 2022, FRA converted ██████████ Engineer #1 and ██████████ Engineer #2 to remote work, such that their alternative worksites became their official duty stations, and they received locality pay based on their alternate work locations, as prescribed by OPM locality pay regulations.<sup>4</sup>

Given the absence of evidence that ██████████ Engineer #1 or ██████████ Engineer #2 circumvented OPM locality pay regulations for financial gain, the Assistant Secretary recommended that FRA use its discretion regarding any corrective action with monetary implications for these employees (i.e., back pay or indebtedness). Accordingly, since the July

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<sup>4</sup> While ██████████ Technical Specialist was not addressed in the July 2021 draft ROI, FRA later corrected ██████████ Technical Specialist’s official duty station as well, changing it from ██████████, ██████████ to ██████████, ██████████, effective January 15, 2023, to ensure that he would begin receiving the appropriate locality pay moving forward.

2021 submission of the draft ROI to OSC, FRA has not sought reimbursement from [REDACTED] Engineer #1, nor has it issued back pay to [REDACTED] Engineer #2.

In order to avoid similar challenges in the future, the Assistant Secretary for Administration recommended training for all FRA managers and any appropriate administrative action for [REDACTED] Staff Director to remind FRA officials of the need to strictly adhere to OPM locality pay regulations when reviewing and approving telework arrangements. FRA is in the process of developing specialized training regarding the duty location of remote employees and the importance of avoiding pay discrepancies for all of its supervisors, [REDACTED] Staff Director included, based on the Assistant Secretary's recommendations, with the goal of rolling the training out in late summer 2024. After an evaluation of the record, however, FRA has determined that administrative action against [REDACTED] Staff Director is not warranted at this time.

### **Detailed Findings**

**Allegation 1:** *Certain FRA employees improperly receive locality pay for DOT headquarters, but permanently telework outside of the designated region for the locality pay.*

#### **Finding: Partially Substantiated**

Upon interviewing [REDACTED] Engineer #1, [REDACTED] Engineer #2, and their supervisor, [REDACTED] Staff Director, and reviewing their respective telework agreements, the investigation found that the engineers entered into telework arrangements with the approval of their supervisor, which resulted in violations of the OPM locality pay regulations. Specifically, [REDACTED] Staff Director approved telework arrangements for [REDACTED] Engineer #1 in 2017 and [REDACTED] Engineer #2 in 2018 where, every two consecutive biweekly pay periods, both were permitted to telework for three consecutive weeks outside of the Washington, DC pay locality area. Then they were required to report to DOT HQ for the entirety of the fourth week of the second pay period. In effect, the employees' work schedules required them to report for work in Washington, DC every other biweekly pay period instead of each biweekly pay period. [REDACTED] Engineer #1 was approved to telework from his personal residence in [REDACTED], and [REDACTED] Engineer #2 was approved to telework from his personal residence in [REDACTED], [REDACTED]. After entering into these telework arrangements, both [REDACTED] Engineer #1 and [REDACTED] Engineer #2 retained Washington, DC as their official duty stations and continued to receive Washington, DC locality pay.

OPM regulations for determining the official duty station for teleworking employees require the vast majority of teleworking employees (including [REDACTED] Engineer #1 and [REDACTED] Engineer #2) to report to their regular worksite at least twice each biweekly pay period. Otherwise, an employee's telework site must serve as their official duty station. *See* 5 CFR § 531.605(d):

For an employee covered by a telework agreement, the following rules apply:



(1) If the employee is scheduled to work at least twice each biweekly pay period on a regular and recurring basis at the regular worksite for the employee's position of record, the regular worksite (where the employee's work activities are based) is the employee's official worksite [(i.e., official duty station)]. However, in the case of such an employee whose work location varies on a recurring basis, the employee need not work at least twice each biweekly pay period at the regular official worksite (where the employee's work activities are based) as long as the employee is regularly performing work within the locality pay area for that worksite.

(2) An authorized agency official may make an exception to the twice-in-a-pay-period standard in paragraph (d)(1) of this section in appropriate situations of a temporary nature, such as the following:

- (i) An employee is recovering from an injury or medical condition;
- (ii) An employee is affected by an emergency situation, which temporarily prevents the employee from commuting to his or her regular official worksite;
- (iii) An employee has an extended approved absence from work (e.g., paid leave);
- (iv) An employee is in temporary duty travel status away from the official worksite; or
- (v) An employee is temporarily detailed to work at a location other than a location covered by a telework agreement.

(3) If an employee covered by a telework agreement does not meet the requirements of paragraphs (d)(1) or (d)(2) of this section, the employee's official worksite is the location of the employee's telework site.

Furthermore, an employee's locality pay is based on his or her official duty station as established under 5 CFR § 531.605(d). *See* 5 CFR § 531.604(b). Because the telework arrangements for [REDACTED] Engineer #1 and [REDACTED] Engineer #2 did not require them to report to DOT HQ each biweekly pay period, the arrangements violated OPM locality pay regulations by permitting them to maintain Washington, DC as their official duty stations and receive Washington, DC locality pay. During the relevant time period, [REDACTED] Engineer #1 received the higher Washington, DC locality pay when he should have been receiving the lower RUS locality pay associated with his residence in [REDACTED], [REDACTED]. On the other hand, [REDACTED] Engineer #2 received the lower Washington, DC locality pay when he should have been receiving the higher New York City locality pay associated with his residence in [REDACTED], [REDACTED].

Investigative interviews of [REDACTED] Engineer #1, [REDACTED] Engineer #2, and [REDACTED] Staff Director revealed that they did not intentionally violate OPM locality pay regulations. To the contrary, each of these individuals believed the telework arrangements were in compliance with

OPM locality pay regulations since [REDACTED] Engineer #1 and [REDACTED] Engineer #2 were required to report to work in Washington, DC five days over two consecutive biweekly pay periods, which is *more* time in the office than an employee reporting just two days each biweekly pay period. The interviews also revealed that the telework arrangements were made for family reasons and work-life balance, not for financial gain. This finding was reinforced by testimony and email correspondence that demonstrated the two named employees unsuccessfully requested remote work arrangements at different times following the approval of their telework arrangements. Their efforts to become remote workers, which would have resulted in a change to their duty stations and locality pay, indicate that [REDACTED] Engineer #1 and [REDACTED] Engineer #2 did not have nefarious motives when they entered into their telework arrangements.

Finally, as indicated above, the investigation found that contrary to the whistleblower's allegation, neither of the two named employees was permitted to permanently telework (i.e., "remote work") outside of the Washington, DC pay locality area.

Based upon the interview statements, review of relevant personnel documents and policies, and OPM locality pay regulations, the allegation that certain FRA employees improperly received locality pay for DOT HQ is substantiated, but the allegation that these same employees permanently teleworked outside of the designated region for the locality pay is not substantiated. As a result, the allegation, taken as a whole, is partially substantiated.

As for [REDACTED] Technical Specialist, he reported to a different supervisor during the relevant time period (i.e., [REDACTED] Staff Director). [REDACTED] Staff Director indicated that [REDACTED] Technical Specialist worked under an *ad hoc* telework agreement shortly after he was hired by FRA in 2014 until January 2018. The supervisor explained that during this time, [REDACTED] Technical Specialist occasionally teleworked from [REDACTED], [REDACTED], but that he reported to DOT HQ on a regular basis. Consistent with the supervisor's testimony, a June 6, 2017, telework agreement for [REDACTED] Technical Specialist shows his approved duty station as Washington, DC, and his approved telework site as his "[p]ersonal residence in [REDACTED], [REDACTED]." On or around June 23, 2017, [REDACTED] Technical Specialist changed his home address in the Employee Express personnel system to a UPS box in [REDACTED], [REDACTED], [REDACTED], shortly after establishing it. In or around August 15, 2017, in email correspondence, [REDACTED] Staff Director encouraged [REDACTED] Technical Specialist to apply for an upcoming vacancy announcement which would allow him to work remotely while retaining his job title and responsibilities. [REDACTED] Staff Director noted in the email that [REDACTED] Technical Specialist "would lose a few bucks in locality pay," to which he replied, "Yes, I would like to do that." On or around November 1, 2017, [REDACTED] Technical Specialist applied for the remote work position in response to the job announcement, which expressly referenced locality tables and locality pay. Both on the resume and application he submitted in response to the job posting, [REDACTED] Technical Specialist listed his home address as the UPS box location in [REDACTED], [REDACTED], [REDACTED].

Effective January 21, 2018, [REDACTED] Technical Specialist was selected and reassigned to the remote work position. His official duty station on the corresponding Standard Form 50 was recorded as [REDACTED], [REDACTED], [REDACTED], and his salary included a locality-based payment of 32.13%, which

coincided with New York City locality pay. From this point forward until January 15, 2023, when the agency corrected his official duty station to reflect his alternate work location in [REDACTED], [REDACTED], [REDACTED] Technical Specialist received locality pay that was roughly 17% higher than the RUS locality pay that he would have otherwise been entitled to.

That [REDACTED] Technical Specialist's actions might be willful was demonstrated by, among other things, his March 18, 2020, telework agreement, which continued to indicate that his approved duty station and alternative work location was [REDACTED], [REDACTED]. In addition, the investigation revealed that [REDACTED] Technical Specialist accessed the Employee Express personnel system on or about April 27, 2021, a mere 13 days after learning of the existence of this administrative investigation, and changed his home address from [REDACTED] [REDACTED], [REDACTED] back to [REDACTED], [REDACTED].<sup>5</sup> As a consequence of this information and other developments in the investigation, DOT referred the portion of the investigation concerning the locality pay of [REDACTED] Technical Specialist to OIG. OIG accepted the referral for investigation and proceeded to gather evidence related to the establishment of [REDACTED] Technical Specialist's official duty station and his receipt of locality pay. Following its investigation, OIG referred the matter to the U.S. Attorney for the Middle District of Pennsylvania for criminal prosecution. After obtaining additional inculpatory evidence, the U.S. Attorney's Office criminally charged [REDACTED] Technical Specialist with theft of government property. In August 2023, [REDACTED] Technical Specialist pleaded guilty in the U.S. District Court for the Middle District of Pennsylvania, admitting that he intentionally misled the FRA regarding his actual residence in order to profit from the significant difference in locality pay. [REDACTED] Technical Specialist admitted that his misconduct resulted in an overpayment to him in the amount of \$123,641.32. In April 2024, [REDACTED] Technical Specialist was sentenced to probation, and ordered to pay fines, fees, and restitution of the locality pay that he received, but was not entitled to. As noted above, FRA has also initiated a process to take appropriate administrative action against the employee.

The investigation did not reveal any evidence that the supervisor of [REDACTED] Technical Specialist, or any other FRA official, was aware of the misconduct. The actions of [REDACTED] Technical Specialist were isolated and distinct from those of [REDACTED] Engineer #1 and [REDACTED] Engineer #2 and were not indicative of procedural or practical failings on the part of FRA management.

**Allegation 2:** *Certain FRA officials are aware that the incorrect locality pay rate is being used, but they have not taken steps to correct the agency personnel systems.*

**Finding: Not Substantiated**

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<sup>5</sup> Changes to the home address of an employee in the Employee Express personnel system do not automatically trigger changes to the official duty station and locality pay of an employee. [REDACTED] Technical Specialist did not take any affirmative steps outside of the Employee Express personnel system to correct his official duty station and locality pay. Those corrections were made by the agency.

The whistleblower alleged that the [REDACTED] [REDACTED] [REDACTED] Director, [REDACTED] Staff Director, and [REDACTED] [REDACTED] Officer were aware that incorrect locality pay rates were being used for the three named employees, but they failed to take steps to correct the agency personnel systems.

Through investigative interviews, the [REDACTED] [REDACTED] [REDACTED] Director and the [REDACTED] [REDACTED] Officer indicated they were never involved in any discussions or approvals of telework schedules for the employees named in the whistleblower disclosure. As a result, they were not aware that the three named employees were receiving incorrect locality pay, such that they could have taken steps to correct it. [REDACTED] Staff Director stated that he had not consulted any of these officials for guidance when approving the telework schedules for [REDACTED] Engineers #1 and #2, since the schedules did not constitute remote work arrangements. Under FRA policy and practice at the time, only remote work arrangements required higher, second-level approval from the [REDACTED] [REDACTED] Officer.

Moreover, as discussed above, the investigation revealed that [REDACTED] Staff Director believed that the telework arrangements for [REDACTED] Engineer #1 and [REDACTED] Engineer #2 complied with OPM locality pay regulations and thus that they were receiving the proper locality pay. [REDACTED] Staff Director did not address the telework arrangement for [REDACTED] Technical Specialist, as he was not his supervisor. [REDACTED] Staff Director, who was [REDACTED] Technical Specialist's supervisor, stated that he was not aware of the discrepancy regarding [REDACTED] Technical Specialist's locality pay, such that he could have corrected it. The investigatory record supported [REDACTED] Staff Director's statement.

In summary, the investigation team did not find any evidence corroborating the whistleblower's allegation that FRA officials had awareness that incorrect locality pay rates were being used and failed to take corrective action.

**Allegation 3:** *Certain FRA officials circumvented FRA drug testing regulations by failing to require the FRA employees who permanently teleworked outside the locality area to appear for drug testing.*

**Finding:**        **Not substantiated**

[REDACTED] Engineer #1, [REDACTED] Engineer #2, and [REDACTED] Technical Specialist hold jobs that are classified as Testing Designated Positions (TDPs). As such, during the relevant timeframe (i.e., 2016 through 2020), the employees were subject to random drug testing under FRA's policy outlined in FRA Order 3700.5, dated March 30, 2006.

Under FRA's drug testing program, SAATO is responsible for selecting FRA employees for inclusion on drug testing lists. SAATO's selection process does not revolve around individual employees or their unique identifiers. Instead, it is based on the Metropolitan Statistical Area (MSA) within which an employee's official duty station falls. Specifically, SAATO utilizes contracted-for software to randomly designate MSAs for drug testing and to randomly select

employees whose official duty stations fall within the MSAs for inclusion on drug testing lists. In accordance with FRA policy, only those employees who appear on a drug testing list may be subject to random drug testing at a given time.

However, even where an employee appears on a drug testing list, FRA policy expressly excuses certain employees from random drug testing based on their availability on the date of the drug test. Specifically, employees who are on travel to or from a temporary duty station, on their regular day off (RDO), or on approved leave are not required to report for drug testing. Similarly, during the time period relevant to this referral, employees were not required to report for drug testing when their commute by car to the drug testing site would exceed three hours.

On the day of the drug test, the supervisor of the employees whose names appear on the drug testing list are responsible for informing the Drug Program Coordinator (DPC) whether an employee is available and if not, the reason why. If the employee is unavailable for a legitimate reason as prescribed by policy (e.g., leave, RDO, travel), the DPC will notify the contractor-drug testing technician and annotate the drug testing list. Significantly, in order to preserve the integrity of the drug testing program, supervisors are prohibited from disclosing an impending drug test to their employees until the day of the test. On the day of the test, supervisors notify their available employees that they have been selected and instruct them to report for drug testing. But, per FRA policy, the supervisor will only notify the employee that they have been selected for drug testing when the employee is deemed available for testing.

From their dates of hire until they were converted to remote workers on November 6, 2022, [REDACTED] Engineer #1 and [REDACTED] Engineer #2 maintained Washington, DC as their official duty stations. The Washington, DC duty station falls within the Washington, DC MSA. According to FRA records and statements from [REDACTED] Human Resources Specialist, the Washington, DC MSA was not selected for random drug testing by SAATO's contracted-for software in 2016 or 2020. As a result, [REDACTED] Engineer #1 and [REDACTED] Engineer #2 were not subject to testing those years.<sup>6</sup> On the other hand, the Washington, DC MSA was selected for random drug testing for three consecutive years from 2017 through 2019.

[REDACTED] Engineer #1's name appears on the 2017 drug testing list for DOT HQ. However, the annotation on the list indicates that [REDACTED] Engineer #1 was "Not on Site" the day of the test and was deemed unavailable pursuant to FRA policy. [REDACTED] Engineer #1's supervisor, [REDACTED] Staff Director, stated that the annotation was consistent with information he would have relayed to the DPC at the time given that [REDACTED] Engineer #1 was regularly teleworking in 2017 from [REDACTED], [REDACTED]. [REDACTED], [REDACTED] is more than a three-hour drive from the DOT HQ drug testing site in Washington, DC. As indicated above, under FRA's policy, [REDACTED] Engineer #1 would have been excused from reporting to DOT HQ for drug testing on the day in question since he was teleworking from [REDACTED], [REDACTED].

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<sup>6</sup> Washington, DC was also the official duty station of [REDACTED] Technical Specialist in 2016, so he similarly would not have been subject to random drug testing that year as an employee stationed there.

Both [REDACTED] Engineer #1's and [REDACTED] Engineer #2's names appear on the 2018 drug testing list for DOT HQ. Once again, the "Not on Site" annotation appears next to [REDACTED] Engineer #1's name indicating that he was unavailable and not required to report for drug testing. [REDACTED] Staff Director testified that the annotation was consistent with [REDACTED] Engineer #1 teleworking from [REDACTED], [REDACTED] at the time and that he would have relayed [REDACTED] Engineer's #1's unavailability to the DPC for annotation on the drug testing list. As for [REDACTED] Engineer #2, the annotation "On Leave" appears next to his name on the drug testing list. The [REDACTED] Staff Director testified that he would have also conveyed this information to the DPC at the time and that the information was accurate. As explained above, because [REDACTED] Engineer #2 was out on approved leave the day of the drug test, he was not required to report under FRA policy.

Finally, [REDACTED] Engineer #2's name appears on the 2019 drug testing list for DOT HQ. This time, the annotation "NOS" appears next to his name. [REDACTED] Staff Director confirmed that "NOS" is an acronym for "Not on Site" and that he would have conveyed [REDACTED] Engineer #2's unavailability to the DPC at the time based on his teleworking from a location more than a three-hour drive from the drug testing site. As indicated above, in 2018 [REDACTED] Engineer #2 adopted the same regular telework schedule that [REDACTED] Engineer #1 began in 2017, except that [REDACTED] Engineer #2 teleworked from his residence in [REDACTED], [REDACTED]. [REDACTED] is more than a three-hour drive from the DOT HQ drug testing site.

Consistent with FRA policy, neither [REDACTED] Engineer #1 nor [REDACTED] Engineer #2 were informed that their names appeared on drug testing lists in 2017, 2018, or 2019, as [REDACTED] Staff Director deemed them unavailable for testing. As such, they could not have taken steps to evade FRA's drug testing program on these occasions.

Furthermore, the evidence from the investigation is consistent and uncontroverted that [REDACTED] Staff Director acted in accordance with FRA policy when he deemed [REDACTED] Engineer #1 and [REDACTED] Engineer #2 unavailable for testing in 2017, 2018, and 2019.

As noted above, [REDACTED] Technical Specialist has worked under a different supervisor – [REDACTED] Staff Director – from his date of hire in 2014 to the present day. Washington, DC remained his official duty station leading into 2018 when he converted to a remote work position and changed his official duty station to [REDACTED], [REDACTED]. In 2017 and a portion of 2018, [REDACTED] Technical Specialist's official duty station fell within the Washington, DC MSA. As a result, were he to have been drug tested during this period of time, his name would have appeared on the Washington, DC MSA drug testing list. His name did not appear on the list for those years. Furthermore, the supervisor of [REDACTED] Technical Specialist, [REDACTED] Staff Director, stated during the investigation that since [REDACTED] Technical Specialist onboarded in 2014, he has never been notified that his name appeared on a drug testing list such that he would need to report for drug testing. [REDACTED] Staff Director explained that on other occasions, when he has been notified that one of his employees was selected for drug testing, he has complied with his obligation to instruct the

employees to appear for drug testing. However, such an occasion never presented itself with respect to [REDACTED] Technical Specialist.

Lastly, the whistleblower alleged that, in addition to [REDACTED] Staff Director, FRA's [REDACTED] Director, [REDACTED] Officer, and [REDACTED] Supervisor circumvented FRA drug testing regulations by failing to require that the three named employees appear for drug testing. But the investigation revealed that while FRA's drug testing program fell within the jurisdiction of FRA's Office of Human Resources, the [REDACTED] Director played no direct role in the administration of the program and had no input into whether employees reported for drug testing. The same is true of the [REDACTED] Officer whose only role in the administration of the random drug testing program was submitting to drug tests himself or notifying his direct reports that they were selected for drug testing. The three named employees in the whistleblower disclosure were not his direct reports and thus, he played no role in determining their availability for testing. As for [REDACTED] Supervisor, the investigation revealed that she also had no influence over which FRA employees were required to report for random drug testing. While SAATO was responsible for putting together the drug testing lists that FRA used, SAATO did so by utilizing a contracted-for software program, which randomly selected MSAs, their underlying duty stations, and the employees assigned to those duty stations for inclusion on the drug testing lists.

In sum, while the investigation confirmed that the three named employees were not drug tested from 2016 through 2020, the lack of testing was not due to evasion or circumvention of FRA policy. To the contrary, the named employees and the relevant FRA officials involved in the administration of the drug testing program conducted themselves in accordance with FRA policy. Since the time period relevant to this referral, FRA has made changes to its process to ensure that employees who are selected when remotely working or teleworking are called into a FRA office or assigned to a local testing site near their remote or telework duty station.

**Allegation 4:** [REDACTED] *Staff Director misled drug testing technicians about the availability of the teleworking employees for testing on multiple occasions between 2016 and 2020.*

**Finding:**      **Not substantiated**

There is no evidence that [REDACTED] Staff Director misled the DPC to mark [REDACTED] Engineer #1 and [REDACTED] Engineer #2 as unavailable on drug testing lists in 2017, 2018, and 2019, when they were, in fact, available.<sup>7</sup> On the contrary, the evidence gathered from the investigation indicates that the two named employees were properly designated as unavailable under FRA policy. Moreover, the investigation finds that [REDACTED] Staff Director did not engage in direct communications with the contractor-drug testing technicians. As such, the allegations are unsubstantiated that [REDACTED] Staff Director directly or indirectly misled the contractor-drug

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<sup>7</sup> [REDACTED] Staff Director did not supervise [REDACTED] Technical Specialist, and thus, he was not involved in his drug testing process.

testing technicians about the availability of [REDACTED] Engineer #1 and [REDACTED] Engineer #2 for testing from 2016 through 2020.

### **Actions Taken as a Result of the Investigation**

As noted above, the Assistant Secretary for Administration instructed FRA, after it exited its maximum telework posture under COVID-19, to bring the work schedules and official duty stations of [REDACTED] Engineer #1 and [REDACTED] Engineer #2 into compliance with the OPM locality pay regulations and any other applicable requirements. Furthermore, given the absence of a nefarious motive on the part of the named employees involved and their supervisor's approval of their work arrangements, the Assistant Secretary recommended that FRA use its discretion regarding any potential indebtedness or entitlement to back pay arising out of [REDACTED] Engineer #1's and [REDACTED] Engineer #2's receipt of the incorrect locality pay over the relevant time period. Pursuant to the Assistant Secretary's instructions and recommendations, FRA converted [REDACTED] Engineer #1 and [REDACTED] Engineer #2 to remote workers, effective November 6, 2022, such that their alternative work locations became their official duty stations. In addition, the employees began receiving locality pay at this time in accordance with their alternate work locations, as prescribed by OPM regulations. To date, FRA has refrained from pursuing reimbursement from [REDACTED] Engineer #1 for the excess locality pay that he received or from issuing backpay to [REDACTED] Engineer #2, in accordance with the recommendation of the Assistant Secretary for Administration.

### **Recommendations and Pending Actions**

As a result of this investigation, the Assistant Secretary recommended that FRA provide training to its managers, and take any appropriate administrative action toward [REDACTED] Staff Director, in order to reinforce the need for all officials to comply with OPM regulations and to seek guidance from the FRA Office of Human Resources when reviewing and approving work arrangements in which an employee is not required to report to their official duty station at least twice each biweekly pay period. In response, FRA embarked on an effort to develop mandatory training for all of its supervisors, [REDACTED] Staff Director included, based on the recommendations provided by the Assistant Secretary. Specifically, FRA is planning to provide supervisory training regarding duty locations and remote work employees, and the importance of ensuring accuracy to prevent pay discrepancies. The training is currently in development with the first session slated to begin in August 2024, and biannual sessions planned for subsequent years. In addition, FRA is developing an informational email to all FRA supervisors regarding the importance of ensuring accurate duty locations, proper procedures to follow when employees request to change their duty locations, and a tasker to check the accuracy of the duty stations of all assigned employees. Finally, FRA is incorporating information regarding the importance of maintaining an accurate duty station into the materials presented to all new employees during their on-boarding process. In response to the recommendation to take any appropriate administrative action toward [REDACTED] Staff Director, FRA reviewed the draft ROI submitted to OSC in July 2021 and determined that it did not substantiate misconduct on the part of [REDACTED] Staff Director, such that administrative



action was warranted. Upon review of this final ROI, FRA will reevaluate whether administrative action is warranted.

### **Investigation Methodology**

The investigation occurred by delegation from the General Counsel to the DOT Office of the Assistant Secretary for Administration, further delegated to the Departmental Office of Human Resource Management, Policy and Oversight Division, which conducted the investigation in consultation with the DOT Office of the General Counsel.

The investigative team analyzed personnel records and documents, agency policies, and telework agreements obtained from the FRA Office of Human Resources, along with random drug testing lists and policies from SAATO. The team also conducted qualitative interviews with individuals named in the whistleblower disclosure and other FRA officials to establish and corroborate facts.

Interviews were conducted with the following individuals:

- [REDACTED] Engineer #1, [REDACTED]
- [REDACTED] Engineer #2, [REDACTED]
- FRA [REDACTED] Director
- [REDACTED] Staff Director
- FRA [REDACTED] Officer
- Supervisor [REDACTED]
- [REDACTED] Human Resources Specialist, FRA [REDACTED]
- Staff Director, [REDACTED]<sup>8</sup>

With OSC’s approval, the investigation was held in abeyance from September 2021 to April 2024, to permit OIG to conduct its investigation of the allegations related to [REDACTED] Technical Specialist, as explained above. On June 3, 2024, OIG provided the DOT Office of the Assistant Secretary for Administration with a report detailing the findings of OIG’s criminal investigation. The Office of the Assistant Secretary for Administration now relies on OIG’s report to supplement and finalize the draft ROI originally submitted to OSC in July 2021. This ROI incorporates OIG’s findings as to [REDACTED] Technical Specialist and addresses the allegations in the whistleblower disclosure as to all three named employees.

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<sup>8</sup> Refer to Appendix A for Index of Names.