

ACTIVITIES REPORT

January 2022 – March 2022

Office of the Inspector General

Fraud, Waste, and Abuse Investigations

The OIG investigates indications of fraud, waste, or abuse regarding BART’s programs, operations, and suppliers. Employees, contractors, and citizens are encouraged to report their observations.

Every individual, regardless of religion, race, immigration or documentation status, or national origin, is safe to obtain assistance from the OIG.

Audits

The OIG conducts performance audits that contribute to public accountability and transparency by providing independent and objective analysis of the efficiency and effectiveness of BART programs, operations, and activities.



Message from the Inspector General

The public puts their trust in government employees with the expectation that they make decisions that are in the public’s best interests. That is why even the appearance of a financial conflict of interest can damage that trust. It is fair to say that complete removal of all such appearances is impossible. Yet government employees must still do their part to thoughtfully evaluate how relationships with others impact their work, document those considerations, and recuse themselves from work that creates a financial conflict, even a remote one.

My office has received a fair number of complaints about conflicts of interest as of late. We recently completed one of those investigations and released our report on [April 8, 2022](#). The investigation prompted conversations with both internal and external BART stakeholders about what it means to have a conflict of interest, financial or otherwise. Simply put, conflicts of interest arise in situations in which two or more parties have opposing concerns or goals. Like two people in a boat paddling in different directions, the efforts are resistant to each other, making them incompatible.

My team has done preliminary work on the other conflict of interest cases we have received and noted that there are differences in federal, state, and local laws and policy regarding conflicts of interest. This creates a problem because people may consider a set of circumstances as conflicts of interest based on one set of laws or policies when another, more restrictive law or policy may be applicable. That is why our investigations will look into best practice improvements that will help BART set policy that gives the public assurance that their interests are considered first.

Harriet Richardson

Accomplishments & Efforts



We continued with our commitment to do the work expected of an Office of Inspector General (OIG) and accomplish the goals we set for our office. This last quarter, we:



- Completed six investigations. The first addressed a financial conflict of interest between a BART employee and a firm that has contracts with BART. The remaining five addressed allegations of theft of time.
- Continued work on 16 investigations and began work on 13 new allegations. We sought outside Certified Fraud Examiner services to assist us with a large-scale fraud investigation. We expect that work to start in early April 2022. We also began the process for obtaining outside services to assist us with three investigations that have similar noncompliance themes.



- Conducted an in-depth evaluation of our new fraud, waste, and abuse cases, as well as our existing caseload, to best prioritize our resources. We received a record number of new complaints this quarter, requiring that we reevaluate our priorities and determine how best to allocate our investigators' time to address our case backlog.



- Presented to the Audit Committee on [January 18, 2022](#), and the Board of Directors at their [January 13, 2022](#), and [January 27, 2022](#), meetings. We discussed our [budgeting needs](#) for fiscal years 2023-2024 and our [FY22-24 Audit Plan](#) with both the Audit Committee and the Board of Directors, and our [October-December 2021 Activities Report](#) with the Audit Committee.



- Continued our conversations for additional funding. We had discussions with Board Directors and BART's Office of External Affairs team on the best path forward for us to increase our budget so that we may tackle the many whistleblower complaints we have received and take on more of the audits on our [audit plan](#).



- Conducted follow up on our completed investigations to determine what action management has taken to address our recommendations. We also began development on a process to follow up on cases that we have forwarded to BART management for investigation.



- We reviewed and discussed a draft copy of the financial structure audit with our consultant [Sjoberg Evashenk Consulting](#). They are currently adding some information to the report regarding the benefits of their proposed recommendation.



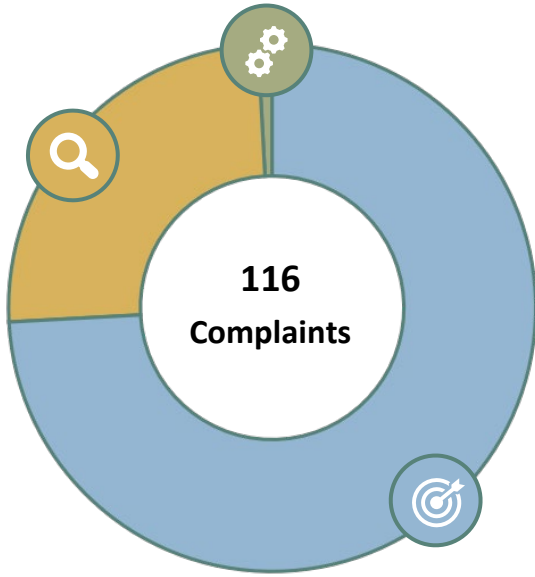
- Along with two Board Directors and the Assistant General Manager of External Affairs, met with Senator Steve Glazer to discuss changes to the OIG's legislation that he introduced in [Senate Bill 1488](#).



- Celebrated staff accomplishments: Assistant Inspector General Claudette Biemeret earned her Certified Inspector General designation and Principal Investigative Auditor Jeffrey Dubsick earned his Certified Inspector General Investigator designation.

- Received and evaluated 29 new allegations of fraud, waste, or abuse:
 - 13 allegations accepted as investigations: all under various stages of active investigation
 - 10 declined for being outside our scope of services or providing insufficient information
 - 6 allegations forwarded to BART management for investigation

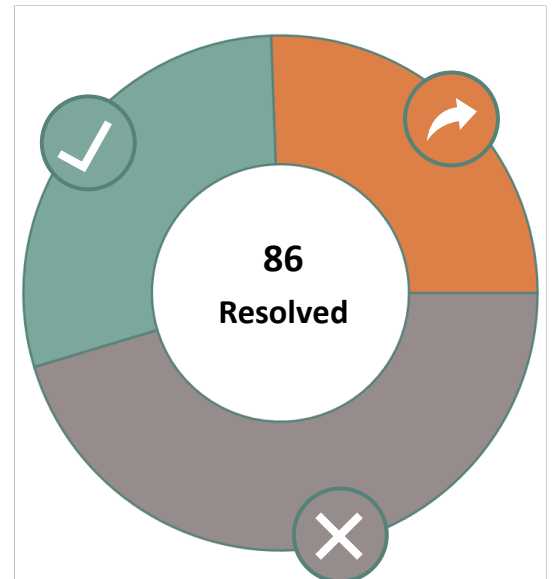
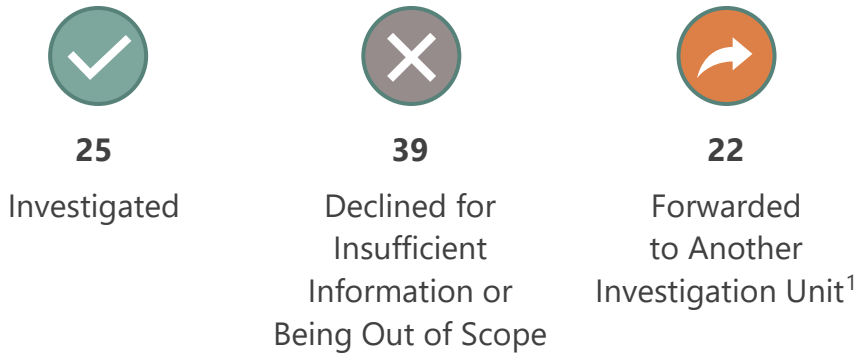
Investigations at a Glance



116 Complaints Received Since OIG Inception



86 Cases Resolved Since OIG Inception



Most Common Allegations

Fraud

We received **23** complaints alleging fraud or misappropriation. Timesheet and contracting fraud are the most common suballegations.

Unprofessional Conduct

We received **23** complaints alleging unprofessional conduct. Conflict of interest and harassment are the most common suballegations.

Compliance

We received **27** complaints alleging noncompliance. Unfair competition, conflict of interest, and policy and procedural noncompliance are the most common suballegations.

¹ The OIG is starting a process to follow up on allegations we forward to other BART offices or departments. These remain in resolved status because we have taken appropriate action but we are tracking them for resolution outside of our office.

Major Activities

Investigations & Audits Underway



We were actively investigating 29 allegations of fraud, waste, or abuse as of March 31, 2022. We completed six investigations last quarter, one of which was pending a response from BART management that was not yet due to us. We also received 29 new allegations since January 1, 2022, marking the highest number of new cases we received in a single quarter – double our average. We evaluated each new case and reevaluated our existing case load to make the best use of our resources. This required that we prioritize some of our cases and determine where we could contract for services to assist. We identified four cases for which we sought outside consulting services and started the contracting process. We expect to start one contract early in April 2022 and the other sometime in May 2022. Because our cases are ongoing, we cannot provide details on the allegations or specifics on the work we have done to date.

Our organizational assessment of BART’s financial structure audit is nearly complete. We contracted with [Sjoberg Evashenk Consulting \(SEC\)](#) to conduct the audit and they delivered a draft report to us in March. SEC held an exit conference with BART management, the Board President and Vice-president, and us to discuss their findings and recommendation. After receiving some insightful feedback from the attendees, we determined it would provide the best value to BART to include some additional information regarding the benefits of the proposed recommendation. SEC is currently working on those additions. We cannot yet share the audit results with you, but we believe that SEC’s recommendation will provide a great opportunity for BART to take an approach that is flexible, thoughtful, and capable of making the most of its revenues using a financial structure that is best for the District not just today but also for the next 50 years and beyond.

The constraints on our office forced us to delay movement on our span of control audit. As we have shared before, we are an office of three with a continually growing case load of fraud, waste, or abuse allegations. The 29 new allegations we received last quarter required realignment in how we are addressing our case backlog and used a significant amount of our time. Also, in February, we had two major events requiring that we take a step back and evaluate what we can reasonably accomplish. The first was our financial conflict of interest investigation, which required a careful, thoughtful, and time-consuming assessment of a complex matter. The second was the absence of one of our employees who was out on medical leave for most of February. That was effectively a loss of one third of our staff. These events demonstrated to us how delicate the balance is of our ability to maintain functionality. We are continuing to seek additional funding to help alleviate the stress on our office. Although our resource restrictions put us at a disadvantage, we move ever forward in doing our best to meet the expectations of our office and help the District in its mission to provide safe, reliable, clean, quality transit service for riders.



Major Activities



Recommendation Follow Up

We obtained updates from BART management on their progress toward implementing our recommendations. We are pleased to report that they continued to take action and implemented three recommendations since our December 2021 activities report. The actions they took strengthen BART's internal controls by developing or amending procedures and planning for contractual needs beyond one year. Management also agreed to take action on the two recommendations from our report [Summary of Theft of Time Investigations](#), which we are issuing on April 15, 2022. Those recommendations aim to improve oversight of employee timekeeping. [Appendix I](#) provides detail on the progress management made toward implementing open recommendations since December 31, 2021, and [Appendix II](#) provides detail on the new recommendations that management agreed to implement. In all, management has accepted 27 recommendations, implemented 24 of them, and is actively working to address the three open recommendations. Of our 33 total recommendations, six have not been accepted, which we reported on in our [October-December 2021 Activities Report](#). There are no unaccepted recommendations from this quarter.

We also issued nine recommendations from our report [Potential Conflict of Interest May Require Voiding a \\$40 Million Construction Management Contract and Not Paying \\$5.4 Million of Invoices](#). We investigated an allegation of a financial conflict of interest between a BART manager and a construction-management firm doing work for BART. We determined that both the manager and firm failed to meet their responsibilities to disclose the potential conflict of interest in compliance with BART's Codes of Conduct and that the manager did not formally disclose the financial conflict of interest on their annual Fair Political Practices Commission Forms 700, Statement of Economic Interests, as required by law. We issued our recommendations to address the factors that allowed for that to happen. Management verbally agreed to our recommendations and took immediate action to implement some of them as well as took some additional steps on their own.. However, their formal, written responses to use were not due before the end of the quarter. Therefore, they are not included in our above metrics. We will provide information on management's actions in our next report.

Achievements & Looking Ahead

OIG Employee Achievements

We are proud to announce that Assistant Inspector General Claudette Biemeret earned her Certified Inspector General designation and Principal Investigative Auditor Jeffrey Dubsick earned his Certified Inspector General Investigator designation. Both attended the [Association of Inspectors General Institute](#) in March and aced their exams. The designations demonstrate their commitment to excellence and are a tremendous value to our office. They participated in the training event to advance their skills and knowledge in their respective areas of focus. Ms. Biemeret's focus was on leading an Inspector General's Office, and Mr. Dubsick's focus was on conducting fraud, waste, and abuse investigations. Congratulations to both of them on their outstanding achievements!



BART Supported Us in Seeking Additional Funding – Thank You!

We continued with our commitment to seek additional funding by having discussions with Board Directors and BART's Office of External Affairs team on how best to increase our budget. We also presented our [budget needs](#) to the Board of Directors on [January 27, 2022](#), with the majority of the Board voting in favor of amending the 2022 State Legislative Advocacy Program to include the pursuit of additional funding for our office. That was an exciting and promising moment for us and we are grateful for the Board's support. There is a long road ahead of us to get the funding we need so that we may meet the legislative mandates set forth in [California Public Utilities Code \(PUC\) §28841](#), but we remain confident that there is a solution for us and that we will be able to increase our resources.

Following Up on Forwarded Cases

We receive a number of complaints that are outside our purview, which we forward to other BART offices or departments for action. Generally, these are allegations are related to unprofessional behavior such as harassment, bullying, or poor customer service. As a matter of best practice, we have decided to implement a follow up process so that we may document what action BART took to address the issues. We met with the General Manager and Deputy General Manager to discuss our goals and they were receptive to our proposal to develop a follow-up process. They agreed that doing so was an excellent way to capture metrics on the issues we have forwarded. We will include the new process in our regular follow up activities and provide summary information in our activities reports moving forward.



Education on Twitter

Starting soon, we will be sending out regular Tweets to help inform the public. One of the great ideas that our team picked up at the Association of Inspectors General Institute was to develop a series of images and messages that we can put into regular rotation on Twitter. It is a great way to share our message and to provide information about what we do. Tweets will range from explaining what fraud is to describing the standards that guide our work. Look for those in the coming months [@oigsfbart](#).

**Office of the
Inspector General**



**Harriet Richardson
Inspector General**



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**Providing Independent
Oversight of the District's
Use of Revenue**

**Stop Fraud, Waste, and Abuse
Report What You See to the OIG**



**24/7 Fraud, Waste, & Abuse
Whistleblower Hotline**



www.bart.gov/OIGHotline



510-464-6100



Appendix I: Recommendation Follow Up

No Evidence of Fraud but Employees Would Benefit from Training on Their Fiduciary Responsibilities (8/13/21)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
<p>Develop training and guidance to assist BART employees in fulfilling their fiduciary responsibility in reviewing and approving invoices. Include examples that demonstrate common invoice errors and methods by which vendors might attempt to or could submit false information.</p> <p>Require personnel to complete the training before they are inserted into the PeopleSoft invoice approval workflow. Training need not be in person and can be achieved through online tutorials and videos.</p>	<p>Management concurs with the recommendation. AP will coordinate with HR, OCIO, and IA to develop a training plan that will provide guidance and assistance to BART employees on how to conduct and perform a proper review of invoices. Currently OCIO conducts ‘Purchase Requisitions and Receiving’ and ‘Creating and Approving Expense Reports’ training on a quarterly and ‘as needed/requested’ basis, both including approval processes. Due to shelter-in-place, the frequency of training has diminished. OCIO will return to scheduled training as soon as possible. All the current training materials are also posted and available in Employee Connect.</p> <p>Performance & Innovation (P&I) performed an Accounts Payable Improvement Initiative in FY21 that resulted in the development of invoice process desk guides for AP staff. Both the online and P&I training materials focus on the PeopleSoft process and not necessarily on fraud detection. IA will work with AP to conduct fraud awareness training, and training materials will be enhanced to include fraud awareness and prevention techniques to detect fraud and fraud red flags.</p> <p>To prevent instances of inappropriate segregation of duties, the OCIO will check the system configuration in PeopleSoft to</p>	<p>Partially Implemented</p>	<p>1) February 2022</p> <p>2) Early-April 2022</p> <p>3) April 2022</p>	<p><u>3/23/22</u></p> <p>1) Desk guides updated to include fraud tips and distributed to AP manager.</p> <p>2) Draft fraud awareness and training material developed and under review for specific application to BART.</p> <p>3) OCIO has proposed solution for not allowing a non-BART employee to be designated as project manager invoice approver during project set-up. Internal Audit, Finance, and OCIO performing evaluation for how to proceed with recommendation to minimize impact on BART project staff.</p>
			<p>----</p> <p>Spring 2022</p>	<p><u>12/29/21</u></p> <p>AP, Performance & Audit, and OCIO are working to determine the extent of the training, which will drive the training materials. Current desk guides apply only to Accounts Payable staff for processing invoices. Staff will need to develop training material for an online course.</p>
			<p>1) December 2021</p> <p>2) Late-January 2022</p>	<p>1) Desk guides were updated by AP staff to reflect updates requested by staff. The revised desk guides were received in December 2021. Fraud detection tips will be added to the desk guides by the end of January 2021.</p> <p>2) Draft has been prepared and will soon go out for review.</p>

No Evidence of Fraud but Employees Would Benefit from Training on Their Fiduciary Responsibilities (8/13/21)

Recommendations	Original Management Response	Status	Implementation Dates	Management Updates
	<p>determine if there is a way to prevent or not allow subcontractors and contractors from being inserted as a fiscal approver of invoices. In cases where it is necessary to obtain concurrence from the contractor or subcontractor due to the nature of the work they were engaged to perform, the system will be configured to allow them to be inserted only as 'reviewer'. IA will also add a review of invoice approval policies and procedures to its master audit plan.</p> <p>Approval by District staff knowledgeable about the charges being billed will always be required. It should be noted that BART AP staff would be required to adhere to existing procedures for fiscal approval, regardless of 3rd party reviewers.</p>		<p>3) 10/13/2021</p> <p>Early 2022</p> <p>-----</p> <p>N/A</p>	<p>3) OCIO modified the PeopleSoft workflow to only allow a BART employee to be inserted as an approver into workflow. Sub-contractors may be added as a reviewer only. This change was completed on 10/13/2021.</p> <p>Internal Audit, Finance, and OCIO are evaluating the PeopleSoft workflow to ensure that a BART employee is the final invoice approver. Next steps will be based on the evaluation that will take place early in 2022.</p> <p><u>9/27/21</u> (V. Thomas) HR spoke with AP and advised they will need to work with M&E, who is responsible for managing the Pathlore Training system to coordinate district wide training - CLOSED</p> <p>(D. Markham) Operations Training & Development, AP, OCIO, and Performance & Audit (Internal Audit) are working together to:</p> <ol style="list-style-type: none"> 1) review AP desk guides to determine where specific fraud detection tips should be added; 2) develop and configure fraud awareness and prevention training material; 3) determine if and how security roles in PeopleSoft and other enterprise software can be updated to ensure that contract staff cannot be final approvers of certain workflows. <p>Item #3 is the most difficult and will take the most time to implement once an approach is determined. Current timing is TBD. Item #2 is in progress and projected deployment is no earlier than early in calendar 2022. Item #1 is in development and planned to be deployed in October 2021.</p>

Circumvention of Procurement Rules Risks Disruption to Payroll (8/13/21)

Recommendations	Original Management Response	Status	Implementation Date	Management Updates
Plan for long-term contractual needs for maintaining and updating PeopleSoft beyond one fiscal year.	Identify contractual needs for the next three years.	Implemented	<p>Some contracts already in place. Others over next few months as there are several contracts. Expect all in place June-August 2022.</p> <p>January 2022</p>	<p><u>3/23/22</u> Contractual needs for the next 18 months have been identified. Procurement using CMAS and in progress. PMO tracking the procurement process and reviewing future needs as required.</p> <p><u>9/17/21 & 12/29/21</u> In progress. Scheduled to be completed by Jan 2022.</p>
<p>Note: We consider this recommendation implemented because the OCIO identified contractual needs for the next 18 months. Our recommendation was to plan for a period beyond one fiscal year, which the OCIO has done.</p>				

Misunderstanding of the NASPO Program Led to BART Making Purchases Without Proper Contracts in Place (8/13/21)

Recommendations	Management Response	Status	Implementation Dates	Management Updates
<p>Institute procedures whereby Procurement verifies that proposed purchases are covered by NASPO agreements prior to submitting the EDD to the Board. Require the department requesting the purchase provide Procurement with a copy of the Master Agreement, California Participating Addendum, or Letter of Authorization.</p>	<p>Review all current and ongoing EDD's for adherence to this recommendation to ensure the Purchase/Scope of Work is in line with the NASPO Agreement and CA PA requirements and require Staff to provide documentation as stated. Develop and document formal NASPO Procurement procedures and update the Procurement Manual.</p>	<p>Implemented</p>	<p>1/31/2022</p> <p>-----</p> <p>1) September 2021</p> <p>2) October 2021</p> <p>3) October 2021</p> <p>4) In progress, early 2022</p> <p>-----</p> <p>10/31/2021</p>	<p><u>3/23/22</u></p> <p>Items 1 - 3 completed previously. Item 4 has been completed. The Procurement manual has been updated to include a Cooperative Agreement Section.</p> <p><u>12/29/21</u></p> <p>1) Review current EDD's to ensure compliance with the NASPO procedure.</p> <p>2) Developed formal NASPO procedure.</p> <p>3) Communicated to staff when processing a NASPO purchase use the newly documented NASPO procedure and ensure all documents are provided prior to concurrence to the EDD.</p> <p>4) Updated Procurement Manual with Cooperative Agreements Section in review.</p> <p>Recommendations 1-3 have been implemented.</p> <p><u>9/17/21</u></p> <p>In progress</p>

Misunderstanding of the NASPO Program Led to BART Making Purchases Without Proper Contracts in Place (8/13/21)

Recommendations	Management Response	Status	Implementation Dates	Management Updates
<p>Institute procedures whereby staff are required to cite the specific NASPO Master Agreement or California Participating Addendum on EDDs submitted to the Board, or state that BART received a Letter of Authorization from DGS.</p>	<p>Review all current and ongoing procurements for adherence to this recommendation prior to processing. Develop and document formal NASPO Procurement procedures and update the Procurement Manual.</p>	<p>Implemented</p>	<p>1/31/2022</p> <p>-----</p> <p>1) September 2021</p> <p>2) October 2021</p> <p>3) October 2021</p> <p>4) In progress, early 2022</p> <p>-----</p> <p>10/31/2021</p>	<p><u>3/23/22</u></p> <p>Items 1 - 3 completed previously. Item 4 has been completed. The Procurement manual has been updated to include a Cooperative Agreement Section.</p> <p><u>12/29/21</u></p> <p>1) Review current EDD's to ensure compliance with the NASPO procedure.</p> <p>2) Developed formal NASPO procedure.</p> <p>3) Communicate to staff to ensure NASPO procedure is used on all NASPO purchases and all documents are provided prior to concurrence on the EDD.</p> <p>4) Updated Procurement Manual with Cooperative Agreement Section in review.</p> <p>Recommendations 1-3 have been implemented.</p> <p><u>9/17/21</u></p> <p>In progress</p>

Appendix II: New Recommendations

Summary of Theft of Time Investigations (4/15/22)

Recommendations	Management Response	Status	Implementation Date
<p>To allow for proper oversight of timekeeping, BART should require supervisors to enter the information that SEIU employees are required to provide when conducting union business - location, area of the activity, estimated time needed, and specific nature of the union business involved - into the timekeeping comment field, when they manually clock out SEIU union representatives who leave their worksites during their work shifts to conduct union business. This is in addition to ensuring supervisors enter the appropriate union code into the timekeeping system when they make time adjustments to account for union business time.</p>	<p>At Issue: We are currently working with payroll to increase the input of information on fields explaining the nature of the business. The persons inputting time will be required to fill all applicable fields for a person to be paid Union Business. That pay code will require the inputter to fill in all fields with information for the payroll to be accepted by the system, if the required fields are not filled in properly the employee in question will have an error status. Which will trigger a secondary review of the persons payroll.</p> <p style="text-align: center;">-----</p> <p><u>OIG Note:</u> We spoke with BART management to gain clarification on their response, and they do intend to implement the recommendation. Management’s goal is to capture the union time and identify location, area of the activity, estimated time needed, and specific nature of the union business involved in the time keeping system. Still under evaluation is whether it is possible to add new data fields to the time keeping system vs. using the comment field and, if so, what the time frame is for making those changes.</p>	Open	TBD
<p>To allow for proper oversight of timekeeping, BART should require utility workers assigned to graffiti car cleaning shifts to use the TCD machines to clock out of their shifts at the yards at which they are conducting the cleaning, regardless of which yard they are regularly assigned to work.</p>	<p>At Issue: Assistant Chief Leo Pica has investigated this issue and the following direction in process will be reinforced. A worker should clock in at their headquartered location and clock out when their shift is completed, and they are released. If this cannot be accomplished due to travel or change of start location, the Foreworker in charge of graffiti remediation will manually enter the time of the crew.</p> <p style="text-align: center;">-----</p> <p><u>OIG Note:</u> We spoke with BART management to gain clarification on their response, and they do intend to have the utility workers use the time collection devices at the yard at which they conducted the car cleaning to remove the graffiti. This removes the need for the workers to return to their headquartered location, at which they may have started their workday, to clock out of their shifts.</p>	Open	TBD