

**Los Angeles County  
Metropolitan Transportation Authority  
Office of the Inspector General**

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**UTU-MTA Health and  
Insurance Benefits Trust Fund  
Policies, Procedures and Board  
Governance Review**

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Report No. 18-AUD-07

April 16, 2018





**Metro**

**Los Angeles County  
Metropolitan Transportation Authority**

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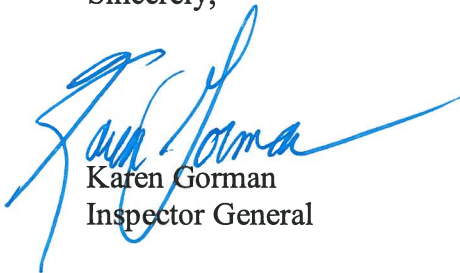
Metro Board of Directors  
Metro Management  
UTU SMART Trust Fund Board of Trustees

This is a report on the review of policies, procedures and governance best practices of the UTU (SMART)-MTA Health and Insurance Benefits Trust Fund.

The review was performed by the Office of the Inspector General with the assistance of a consultant experienced in trust fund management, BCA Watson Rice.

Please direct any questions you may have concerning this report to the Office of the Inspector General.

Sincerely,



Karen Gorman  
Inspector General

Attachment



# **LOS ANGELES METRO**

## **Office of the Inspector General**

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**UTU– MTA**  
**Health Insurance Benefits Trust Fund**

**Review of Policies, Procedures and  
Governance Best Practices**

**April 2018**

***Submitted by***

**BCA Watson Rice LLP**

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## **1. Executive Summary**

### **Background**

In September 1972, the United Transportation Union<sup>1</sup> (UTU) and the Southern California Rapid Transit District (now the MTA) entered into an agreement to create the UTU-SCRTD Health and Insurance Benefits Trust Fund (currently called the UTU-MTA Trust Fund).

The Trust agreement specified that the Trust be administered by a Board of Trustees consisting of seven persons: five selected by the Union and two designated by the MTA. This has since been modified by the labor agreement providing for six Union Trustees and two MTA Trustees.

The Board of Trustees is authorized to “formulate and promulgate any and all necessary rules and regulations to facilitate the proper functioning of this Trust” as long as they are consistent with the Trust agreement.

### **Scope and Methodology**

The primary objective of this review was to determine how effectively the Board of Trustees has been in directing and overseeing the Trust. This was accomplished by identifying and evaluating Trust enabling documents, policies, procedures, and practices to the extent possible. Comparisons of Trust policies with requirements and best practices were also completed to the extent possible.

### **Review Results**

The following sections summarize the key conclusions and recommendations from this review.

#### **Board Decision Making and Oversight**

Basic principles of good governance require that the responsibility for setting policy and making decisions for an organization be clearly assigned. Effective governance also requires that formal structures and practices define how the Board carries out its duties. Many Boards have developed specific bylaws, policies, and procedures that clearly define the specific role of the Board and Board members, and what actions are appropriate in specific situations.

The National Labor Relations Act (NLRA) generally prohibits payments from employers to labor organizations. The Act also provides exceptions to this prohibition, including payments held in trust to pay health benefits such as the payments from Metro to the Trust. A specific condition to qualify for this exception is that employees and employers

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<sup>1</sup> In August 2014, UTU merged with the Sheet Metal Workers' International Association to form the International Association of Sheet Metal, Air, Railroad and Transportation Workers (known as SMART).



are equally represented in the administration of the funds. The current Board representation is not consistent with the NLRA. We found the other trusts involving Metro and two other Unions (Transportation Communications International Union and the Amalgamated Transit Union) both provide for equal Board representation of employees and employer. We recommend Metro management, the SMART Union and UTU-MTA Trust Fund Trustees consider revising the Trust Agreement for the Trust Fund to provide equal representation by employees and employer consistent with the National Labor Relations Act and other Trust agreements between Metro and other Unions.

The Trust Agreement provides very basic direction on how the Board of Trustees is to govern and oversee the Trust. It does give the Board the authority to develop and implement any rules and regulations needed. However, the Board of Trustees has not developed nor adopted any such rules and regulations except for a recently adopted travel and expense reimbursement policy.

Effective Board decision making requires regular times be set aside for Board review and discussion of issues and for making decisions. Based on the review of information available, the Board of Trustees for the Union has historically only formally met once each year. This meeting was for the annual approval of the Health Insurance providers.

It is a common and best practice for Board members to receive materials related to decisions that must be made from several days to a week prior to Board meetings. The Board of Trustees for the Trust Fund do not receive background information on decision items for review prior to meetings.

Board minutes provide formal documentation of discussion and decisions made by a Board. It is a common and best practice for Board members to maintain and refer to minutes from past Board meetings to provide a reminder of past decisions, document decisions made, and provide historical context for current decisions. Board minutes also create transparency for members about Trust Fund activities and accountability. Until recently the Board of Trustees for the Union did not develop nor maintain formal minutes of Board meetings including decisions made during those meetings.

### **Board of Trustee Policies**

Effective administration of an organization requires clear articulation of the policies, procedures or approaches to be implemented to effectively and efficiently accomplish the mission, goals and objectives of the organization.

According to the Internal Revenue Service (IRS), a conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, or manager, can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

A conflict of interest policy defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that can help identify conflicts of interest, and specifies procedures to be followed to



document and manage conflicts of interest. The Board of Trustees for the Trust Fund has not developed nor adopted a conflict of interest policy and procedure.

A document retention and destruction policy identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records. The Board of Trustees for the Trust Fund has not developed nor adopted a document retention policy.

According to the IRS, a whistleblower policy encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation, and identifies those staff or board members or outside parties to whom such information can be reported. The Board of Trustees of the Union has not developed nor adopted a whistleblower policy for the Trust.

An investment policy is intended to outline the policies for maximizing the efficiency of the cash management system, prudent investment of funds, and provide guidelines for suitable investments and ensure solvency. The primary goals of the investment policy are to protect principal, maintain liquidity, and maximize investment income. The Board of Trustees for the Trust Fund has not developed nor adopted an investment policy to guide the investment of Trust assets that range between \$30 and \$40 million.

Developing and maintaining adequate policies and procedures for procurement and contracting are important to ensure Trust resources are protected and goods and services are procured in the best interest of the Trust and their beneficiaries. These policies include competitive bidding requirements, negotiating prices and change orders, and providing contract oversight and compliance. Policies and procedures for procurement of goods and services and contracting have not been developed nor adopted for the Trust.

The Trust agreement states:

They (Trustees) shall be reimbursed from the Trust for all reasonable and necessary expenses which they may incur in the performance of their duties for which prior authorization has been obtained.

It is important that the Trust has a comprehensive and effective policy defining the process for obtaining approval and payment of business-related expenses including business travel. The Board of Trustees adopted a travel and expense reimbursement policy in November 2017 that addresses some of the requirements and best practices for such policies.

### **Establishment of Effective Internal Controls**

Whatever the size of an organization, it should establish effective internal controls and procedures that protect its assets, create reliable financial reporting, promote compliance with laws and regulations, and facilitate effective and efficient operations. They relate to accounting, to reporting, and to the organization's communication processes. Internal controls typically include the following:



- Designing of accounting policies and procedures manual
- Segregation of duties and delegation of authority
- Information technology general controls
- Cash management, payroll, accounting, vendor payments and other controls

In our review of the Trust Fund's independent auditor's reports for the past several years, we noted that there were recurring significant audit findings that were attributed by the lack of effective internal controls within the organization. It is important that the Board of Trustees establish and implement strong internal controls and adopt corrective measures of those significant audit findings raised by the independent auditors. Instituting and applying an effective internal control environment is a sign of proper governance and proactive management. Moreover, a strong internal control environment assists the organization in fulfilling its fiduciary duties of safeguarding the Trust fund assets.

## **2. Background**

In September 1972, the United Transportation Union (UTU) and the Southern California Rapid Transit District (SCRTD) entered into an agreement to create the UTU-SCRTD Health and Insurance Benefits Trust Fund. Both organizations have since changed their organization and name. The UTU is now part of the Sheet Metal, Air, Rail and Transportation (SMART) Union. The SCRTD is now the Los Angeles County Metropolitan Transportation Authority (Metro). The agreement states that it is binding on successors or assigns of the UTU.

The Trust agreement specified that the Trust be administered by a Board of Trustees consisting of seven persons: five selected by the UTU and known as the UTU Trustees, and two designated by the District, known as District Trustees.

The agreement specified that four of the UTU Trustees be the chairman of each the Locals, and the Chairman of the "General Committee of Adjustment" be the fifth Trustee and the Chairman of the Board of Trustees. Their term on the Board of UTU Trustees is consistent with their terms with the locals or other positions. The term of the District Trustees is at the pleasure of the District.

The Trust Agreement does not provide for the removal or replacement of UTU Trustees. It does state that "In the event of any Trustee's death, or should he be removed or otherwise become incapable of acting hereunder, his alternate Trustee shall act in his stead until a new Local Chairman or General Chairman is appointed."

A quorum is required to conduct business and requires at least four Trustees, one of which must be the Chairman or Vice-Chairman. All decisions are made by majority vote, with the ability to select an "umpire" in the event of a deadlock.





The Board of Trustees is authorized to “formulate and promulgate any and all necessary rules and regulations to facilitate the proper functioning of this Trust” as long as they are consistent with the Trust agreement.

The Trust Fund includes “all contributions made or payable by the contributors defined herein, together with all hospital, dental and medical service contracts, insurance policies, dividends, refunds or other sums payable to the Trustees on account of such contracts, policies or contributions, and any other money, assets, claims or property received and held by the Trustees for the uses and purposes set forth in this Trust Agreement.”

Participants include all persons eligible for the benefits provided by the Fund in accordance with the Rules governing eligibility adopted by the Trustees. The Trust Agreement also established the position of “Administrator” as “that person or persons engaged by the Trustees to assist them in the execution of their duties.”

The Trust Agreement was modified in the agreement between Metro and the SMART that covers the periods 2014 to 2017 and 2017 to 2022. These agreements state:

The funds contributed by the Authority pursuant to Section 1 of this Article shall be administered by the Board of Trustees of the UTU-MTA Health and Insurance Benefits Trust Fund. The Board of Trustees of said Trust shall consist of six representatives of the Union and two representatives of the Authority and at least one LACMTA Trustee must be present for a quorum. Any Trustee may call for a meeting of the Board of Trustees with at least 72 hours’ notice. The Union Trustees shall be selected from members of the General Committee of Adjustment. The representatives of the Authority shall be appointed by the Chief Executive Officer of the Authority. The said Trust shall be a successor Trust to the UTU-MTA Health and Insurance Benefits Trust Fund and shall assume all of the assets and liabilities thereof. Any request for information by the Authority representatives shall be provided within 72 hours of the request.

### **3. Objectives and Methodology**

The primary objective of this review was to determine how effectively the Board of Trustees has been in directing and overseeing the Trust. This includes identifying and evaluating Trust enabling documents, policies, procedures, and practices to the extent possible.

In evaluating the Trust, we:

- ✓ Obtained and reviewed the original Trust agreement, current agreements between the Union and Metro, and Trust policies and procedures to the extent they were provided or available.
- ✓ Developed a matrix outlining the current status of Trust policies based on the information gathered.
- ✓ Identified policy minimum requirements and compared with current Trust policies.



- ✓ Identified best practices policies for similar Trusts.
- ✓ Compared current Trust policies with minimum and best practice policies to identify current gaps.
- ✓ Developed conclusions, findings and recommendations.

## 4. Review Results

### Board Decision Making and Oversight

For any organization's operations to be effective requires several key components. These include a clear Board structure including clear roles and responsibilities, effective decision making by the Board, and adequate documentation of decisions made.

### Representation on the Board of Trustees

The National Labor Relations Act (NLRA) generally prohibits payments from employers to labor organizations. The specific section outlining this prohibition states:

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value -- to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

The NLRA does provide for several exceptions to this prohibition, including payments held in trust to pay health benefits such as the payments from Metro to the UTU-MTA Health Insurance Trust Fund. The exception includes specific conditions that must be met to qualify for this exception, including that employees and employers are equally represented in the administration of the funds. The specific section outlining this exception states:

Provided, that (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and **employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon.....**



**Finding 1: The current Board representation is not consistent with the National Labor Relations Act (NLRA).**

The original 1972 Trust agreement specified that the Trust be administered by a Board of Trustees consisting of seven persons: five selected by the UTU and known as the UTU Trustees, and two designated by the District, known as District Trustees. The most recent labor agreement changed this representation somewhat by stating that the "Trust shall consist of six representatives of the Union and two representatives of the Authority and at least one LACMTA Trustee must be present for a quorum." Neither the original trust agreement nor the latest labor agreement provisions provide equal representation by the employees and employer as set forth in the NLRA.

Metro participates in two other trusts similar to the UTU-MTA Trust Fund. These include:

- The Transportation Communications International Union-Los Angeles Metropolitan Transportation Authority Health & Welfare Trust Fund is a non-profit trust, which provides medical, dental, vision benefits and accident and life insurance to eligible MTA employees and their dependents ("Participants") who belong to the collective bargaining unit represented by the Transportation Communications International Union Lodge 1315. **The Board of Trustees, which consists of an equal number of MTA and TCU Lodge 1315 representatives, is solely responsible for administering the Fund.**
- The MTA-ATU (Amalgamated Transit Union) Health and Welfare Fund is administered by Metro, with oversight by the MTA-ATU Health and Welfare Board. The labor agreement between Metro and the ATU provides that **Metro and the ATU will each appoint three directors to serve on the Fund's Board of Directors.** It also provides that (1) an independent Director, be appointed by the other Directors of the Fund, who serves as Chair of the Board, (2) the Board will act by majority vote, and (3) each present Director has one vote.

We also found that it is a common practice for trust funds set up to provide health benefits for employees to have equal representation on their boards. Many of the current issues facing the UTU-MTA Trust may be the result of the current unequal representation on the Board resulting in an inability to adequately address issues, a lack of independence and lack of adequate oversight.

***Recommendation 1: Metro management and the SMART Union should consider revising the Trust Agreement for the UTU-MTA Health and Insurance Benefits Trust Fund to provide equal representation by employees and employer consistent with the National Labor Relations Act and the Trust agreements between Metro and other Unions and periodically updating the Trust agreement.***

**Board of Trustees Structure and Practices**

Basic principles of good governance require that the responsibility for setting policy and making decisions for an organization be clearly assigned. Effective governance also requires that formal structures and practices define how the Board carries out its duties.



Many Boards have developed specific bylaws, policies, and procedures that clearly define the specific role of the Board and Board members, and what actions are appropriate in specific situations. Specific areas that policies are most often needed include the role of Board members, and the relationship between the Board and management.

Both Boards and organizations operate most effectively when there is a clear definition and understanding of the Board's role, management's role, and the line between the two. The Board's role should be to provide policy direction and oversight, and management's role is to execute or implement that direction.

It is also important for the Board and its members to recognize that the Board's authority only exists when acting as a body. Individual members of the Board should have no authority to make decisions or direct the Administrators or other Trust staff. Only decisions and directives of the Board as a whole, acting as a body, are authoritative and binding.

***Finding 2: The Board of Trustees has not developed any bylaws or policies that define roles and responsibilities of Trustees or how decisions are to be made.***

The Trust Agreement provides very basic direction on how the Board of Trustees is to govern and oversee the Trust. It does give the Board the authority to develop and implement any rules and regulations needed. However, the Board of Trustees has not developed nor adopted any such rules and regulations.

***Recommendation 2: The Board of Trustees should strengthen and enhance its governance of the Trust by:***

- ***Developing a governance policy that specifically defines roles and responsibilities of Board of Trustee members, decisions to be made by the Board, and the specific process for making those decisions.***
- ***Defining specific actions to be taken if members of the Board believe that other members of the Board are not adequately or appropriately fulfilling their governance responsibilities.***
- ***Prohibiting individual members of the Board of Trustees, including the Chairman, from directing staff to take specific actions.***
- ***Conducting annual reviews and discussions of how the Board of Trustees is fulfilling its responsibility as the governance body for the Trust, including identifying and resolving any governance issues.***
- ***Clearly defining the role and responsibilities of Trust staff, including the line between the policy-making role of the Board and the direct management responsibility of the Trust Administrator and staff.***

### **Board Decision Making**

Effective Board decision making requires regular times be set aside for Board review and discussion of issues and for making decisions. The Trust Agreement states:



Regular meeting of the Board of Trustees shall be held at a time to be fixed by the Board of Trustees. Such regular meetings may be cancelled by the Chairman if, after consultation with the Administrator and/or the Secretary-Treasurer, he determines that no such meeting is necessary. The Chairman shall give reasonable notice to the members of the Board of Trustees of the cancellation of any regular meeting.

***Finding 3: The Board of Trustees historically has not scheduled nor conducted regular periodic meetings of the Board.***

Based on the review of information available, the Board has historically only formally met once each year. This meeting was for the annual approval of the Health Insurance providers. While this is certainly an important decision for the Board of Trustees, it is not the only decision required to effectively oversee the operations of the Trust. The Board has begun to meet more often beginning in late 2017.

***Recommendation 3: The Board of Trustees should schedule and conduct regular periodic meetings of the Board.***

#### **Board Meeting Notice and Preparation**

Effective Board decision-making requires that Board members have adequate time to review information in advance of having to make a decision. This requires meeting materials be received by Board members prior to the Board meetings.

It is a common and best practice for Board members to receive materials related to decisions that must be made from several days to a week prior to Board meetings. Typically, this would include each agenda item that requires the approval of the Board. Examples are approval of contracts, contract payments, travel, and personnel changes.

***Finding 4: The Board of Trustees do not receive background information on decision items for review prior to meetings.***

The only information provided to Trustees is copies of the agenda for the upcoming meeting. Formal documentation could also assist Board members in reviewing and understanding past decisions.

***Recommendation 4: The Board of Trustees should require information on agenda items requiring Board approval be provided to Board members a week in advance of the meetings. This should include at a minimum:***

- ***Background information to provide a context for the decision. Board Trustees should be entitled to retain Board reports and any documents provided such as audit reports provided to the Board for receive and file or approval.***
- ***Potential benefit to the Trust, including contribution to specific Trust goals.***
- ***Information on any process used to arrive at the decision item (procurement process, personnel selection, and assessment of conferences / travel).***



- ***Recommendation of the Board member or Administrator requesting the decision.***

### **Board Meeting Minutes**

Board minutes provide formal documentation of discussion and decisions made by a Board. It is a common and best practice for Board members to maintain and refer to minutes from past Board meetings to document decisions made and provide a reminder of past decisions and to provide historical context for current decisions.

***Finding 5: Until very recently the Board of Trustees did not develop nor maintain formal minutes of Board meetings including decisions made during those meetings.***

A question on the Internal Revenue Service's Form 990 asks if the organization contemporaneously document the meetings held or written actions undertaken during the year by the governing body. For Tax Year ending September 30, 2016, the response provided on this form was "yes." However, a review of documents provided by the Trust showed formal minutes were not prepared prior to late 2017. There were cryptic, hand written notes from a meeting held in August 2016. However, these notes were not formal and did not provide any reasonable representation of discussion or actions undertaken by the Board of Trustees.

***Recommendation 5: The Board of Trustees should develop and maintain formal minutes for Board meetings including decisions made during those meetings and all records of Board decisions should be maintained in a central file accessible by all Board members.***

### **Trustee Training and Education**

The International Foundation of Employee Benefit Plans is a nonprofit organization, dedicated to providing the diverse employee benefits community with objective, solution-oriented education, research and information. The Foundation delivers research findings, education and networking opportunities to thousands of benefits professionals.

***Finding 6: Members of the Board of Trustees could potentially benefit from training and education on the role and responsibilities of trustees of employee benefit trusts.***

The Foundation provides training specifically designed for trustees of employee benefit trusts such as this one. The Foundation's *New Trustees Institute — Level I: Core Concepts* is designed for trustees who have served for less than two years, or who have not previously attended an International Foundation educational program. This course provides an overview of the role and responsibilities of trustees as well as an exploration of the key areas of legal and legislative compliance, trust fund accounting, health care and pension funds, investment and fund assets, and plan administration. Other key topics include: how to be a good trustee, trustee meetings/agendas/minutes, trustee orientation, financial statements, and the role of the administrator.



The Foundation has a second course specifically for trustees (*New Trustees Institute - Level II: Concepts in Practice*). This course covers topics including: mitigating fraud, trustee expenses, prohibited transactions, deadlocks and arbitration, and policies and procedures. It also provides information on managing trust investments.

***Recommendation 6: The Board of Trustees should consider requiring all Trustees to attend the New Trustees Institute courses offered by the International Foundation of Employee Benefit Plans.***

### **Role and Accountability of the Trust Administrator and Staff**

Establishing clear expectations through clear job descriptions, performance objectives, and conducting periodic formal employee performance evaluations is a basic element of organizational and human resource management. Regular performance evaluations are an important way of keeping employees informed as to where they stand in relation to expectations and documents how their performance compares to specific job standards.

***Finding 7: Job descriptions for the Trust Administrator and staff have historically not existed.***

Without clear job descriptions that outline the role and responsibilities of key personnel and staff and annual written performance evaluations, employees do not clearly know how well or poorly they are performing and where improvements are required. The lack of consistent performance evaluations generally tends to result in staff performing below the optimal performance levels. We were able to obtain a newly developed job description for the Trust Administrator that was created in order to advertise for and recruit a new Trust Administrator following the retirement of the previous Trust Administrator.

Clear job descriptions and an annual employee performance management process is part of a positive, performance-based culture. It fosters employee competence and productivity, supports achievement of organizational goals and objectives, and provides documentation of employee's strengths and areas needing improvement.

***Recommendation 7: The Board of Trustees should develop job descriptions and annual performance objectives for the Administrator and key staff of the Trust and conduct annual performance reviews.***

### **Board of Trustee Policies**

Effective administration of organizations requires a clear articulation of the policies, procedures or approaches to be implemented to effectively and efficiently accomplish the mission, goals and objectives. An effective organization must have mechanisms in place to provide adequate controls to ensure adopted policies and procedures are being followed. The following sections discuss the policies and procedures for the MTA-UTU Trust.



## Conflict of Interest Policy

According to the Internal Revenue Service (IRS), a conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, or manager, can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

A conflict of interest policy defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that can help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest.

### ***Finding 8: The Trust has not developed nor adopted a conflict of interest policy and procedure.***

As part of this review, we requested the conflict of interest policy for the Trust. We also reviewed the Form 990 (Return of Organization Exempt from Income Tax) filed with the Internal Revenue Service by the Trust.

We were not provided a conflict of interest policy and noted that the Trust checked “no” to the question on whether the Trust has a conflict of interest policy on IRS Form 990 for the most recent tax year available (fiscal year ending September 30, 2016).

The following exhibit 1 shows conflict of interest policy requirements and best practices.

Exhibit 1	
Conflict of Interest Policy Requirements and Best Practices, and Comparison with UTU-MTA Trust Fund Adopted Policies	
Requirement / Best Practice	In Trust Policies?
1. The policy should be in writing and the board (and staff) should review the policy regularly. <sup>1</sup>	No written policy.
2. Require those with a conflict (or who think they may have a conflict) to disclose the conflict/potential conflict. <sup>1</sup>	No written policy.
3. Prohibit interested board members from voting on any matter in which there is a conflict. <sup>1</sup>	No written policy.
4. Minutes of board meetings should reflect when a board member discloses that s/he has a conflict of interests and how the conflict was managed, such as that there was a discussion on the matter without the board member in the room, and that a vote was taken but that the “interested” board member abstained (board members with a conflict are “interested” – board	No written policy.





Exhibit 1	
Conflict of Interest Policy Requirements and Best Practices, and Comparison with UTU-MTA Trust Fund Adopted Policies	
Requirement / Best Practice	In Trust Policies?
members without a conflict are “disinterested”). <sup>1</sup>	
5. Circulate a questionnaire each year to find out whether any board member (or staff member) has a conflict of interest. Typically, the questionnaire asks board and staff members to disclose existing conflicts and reminds them to disclose any that may crop up in the future. <sup>1</sup>	No written policy.
Source: <sup>1</sup> Best Practices for Conflict of Interest Policies obtained from the National Council of Non-Profits ( <a href="http://www.councilofnonprofits.org">www.councilofnonprofits.org</a> )	

**Recommendation 8: The Board of Trustees should develop a Conflict of Interest policy for the Trust consistent with the requirements and best practices identified.**

### Document Retention Policy

A document retention and destruction policy identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records.

**Finding 9: The Trust has not developed nor adopted a document retention policy.**

As part of this review we requested the document retention policy for the Trust. We also reviewed the Form 990 (Return of Organization Exempt from Income Tax) filed with the Internal Revenue Service by the Trust.

We were not provided a document retention policy and noted that the Trust checked “no” to the question on whether the Trust has a document retention policy on IRS Form 990 for the most recent tax year available.

The following exhibit 2 shows the requirements and best practices for a document retention policy.

Exhibit 2	
Record Retention Policy Requirements and Best Practices, and Comparison with UTU-MTA Trust Fund Adopted Policies	
Requirement / Best Practice	In Trust Policies?
1. Identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the	No written policy.



Exhibit 2	
Record Retention Policy Requirements and Best Practices, and Comparison with UTU-MTA Trust Fund Adopted Policies	
Requirement / Best Practice	In Trust Policies?
organization's documents and records. <sup>1</sup>	
2. Destruction of documents that are subject to review in litigation is prohibited. <sup>2</sup>	No written policy.
3. Identifying what types of paperwork (and electronic files) your nonprofit generates. <sup>3</sup>	No written policy.
4. Determining the appropriate (and legal) length of time to retain them. <sup>3</sup>	No written policy.
5. Recording those retention times on a written schedule. <sup>3</sup>	No written policy.
Source: Requirements obtained from the <sup>1</sup> Internal Revenue Service Instructions for Form 990, Return of Organization Exempt From Income Tax, <sup>2</sup> Sarbanes-Oxley Act of 2002, and Best Practices for Record Retention policies obtained from the <sup>3</sup> National Council of Non Profits ( <a href="http://www.councilofnonprofits.org">www.councilofnonprofits.org</a> )	

***Recommendation 9: The Board of Trustees should develop and adopt a Record Retention policy for the Trust consistent with the requirements and best practices identified.***

### **Whistleblower Policy**

According to the IRS, a whistleblower policy encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation, and identifies those staff or board members or outside parties to whom such information can be reported.

***Finding 10: The Board of Trustees has not developed nor adopted a whistleblower policy for the Trust.***

As part of this review we requested the whistleblower policy for the Trust. We also reviewed the Form 990 (Return of Organization Exempt from Income Tax) filed with the Internal Revenue Service by the Trust.

We were not provided a whistleblower policy and noted that the Trust checked “no” to the question on whether the Trust has a whistleblower policy on IRS Form 990 for the most recent tax year available (2015).



The following exhibit 3 shows the requirements and best practices for a whistleblower policy.

Exhibit 3	
Whistleblower Policy Requirements and Best Practices, and Comparison with Trust Policies	
Requirement / Best Practice	In Trust Policies?
1. Encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization. <sup>1</sup>	No written policy.
2. Specifies that the organization will protect the individual from retaliation. <sup>1</sup>	No written policy.
3. Identifies those staff or board members or outside parties to whom such information can be reported. <sup>1</sup>	No written policy.
4. A prohibition of retaliation against whistleblowers. <sup>2</sup>	No written policy.
5. Adopt a set of principles to guide a nonprofit organization's decision making and activities, as well as the behavior of its employees, volunteers, and board members. These principles might be called the nonprofit's "statement of values" or "code of conduct." <sup>3</sup>	No written policy.
6. Provide employees, volunteers, and board members with guidelines for making ethical choices and to ensure that there is accountability for those choices. <sup>3</sup>	No written policy.
Source: Requirements obtained from the <sup>1</sup> Internal Revenue Service Instructions for Form 990, Return of Organization Exempt From Income Tax, <sup>2</sup> Sarbanes-Oxley Act of 2002, and Best Practices for Whistleblower policies obtained from the <sup>3</sup> National Council of Non Profits ( <a href="http://www.councilofnonprofits.org">www.councilofnonprofits.org</a> )	

***Recommendation 10: The Board of Trustees should develop and adopt a Whistleblower policy for the Trust consistent with the requirements and best practices identified. This should include putting a notice on the Trust's website or other postings that concerns about fraud, waste or abuse should be referred to the Metro Office of the Inspector General.***

## Investment Policy

An investment policy is intended to outline the policies for maximizing the efficiency of the cash management system, the prudent investment of funds, and to provide guidelines for suitable investments. The primary goals of the investment policy are to protect principal, maintain liquidity, and maximize investment income to enhance economic status.

The Trust Agreement states:

The Trustees shall have the right to invest and reinvest such part of the Trust Fund and income therefrom as in their absolute discretion they shall deem advisable in any investments permissible by the laws then prevailing for the investment of trust funds under the laws of the State of California. In this



connection, they shall have all rights, powers and privileges of any other owner of investments.

***Finding 11: The Trust has not developed nor adopted an Investment policy to guide the investment of Trust assets.***

Based on the most recent audited financial statements, the Trust has between \$30 and \$40 million in assets invested during each fiscal year. As part of this review we requested the investment policy for the Trust. We were not provided an investment policy.

The following exhibit 4 shows requirements and best practices for an investment policy.

Exhibit 4	
Investment Policy Requirements and Best Practices, and Comparison with Trust Policies	
Requirement / Best Practice	In Trust Policies?
1. Outline the policies for maximizing the efficiency of the cash management system, the prudent investment of funds, and to provide guidelines for suitable investments. <sup>1</sup>	No written policy.
2. The primary goals of the investment policy are to ensure compliance with the law; provide protection of principal; maintain liquidity; and maximize investment income to enhance economic status. <sup>1</sup>	No written policy.
3. Must define the investment objectives that will best support the nonprofit's mission. <sup>2</sup>	No written policy.
4. Write the objectives into an investment policy statement and use it continually as a guide for its investment managers and its own decisions. <sup>2</sup>	No written policy.
Source: Requirements obtained from the <sup>1</sup> California Government Code Section 53646 (Although this statute applies specifically to cities and not to non-profits, the principles apply.), <sup>2</sup> National Council of Non Profits ( <a href="http://www.councilofnonprofits.org">www.councilofnonprofits.org</a> ).	

***Recommendation 11: The Board of Trustees should develop and adopt an Investment Policy to direct investment of the Trust's financial assets for the Trust consistent with the requirements and best practices identified. The Board of Trustees should annually review the policy and update it as needed.***

### Procurement and Contracting Policy

Developing and maintaining adequate policies and procedures for procurement and contracting are important to ensure Trust resources are protected and goods and services are procured in the best interest of the Trust and their beneficiaries. These policies include competitive bidding requirements, negotiating prices and change orders, and providing contract oversight and compliance.

The Trust Agreement states:

The sums contributed to the Funds pursuant hereto shall be used by the Trustees for the sole purpose of providing the benefits mentioned in this



Declaration of Trust for the Participants, for the necessary costs of administering the Trust Fund, and for the establishment and accumulation of such reserve funds as the Trustees, in their discretion deem necessary or desirable for the proper execution of the Trusts herein created and for investment thereof.

Documentation of the procurement process is necessary in order to ensure compliance with the procurement requirements. Contract compliance and oversight is also important to ensure that contractors are providing the goods or services they are being paid for within the constraints provided by the contract.

Based on the most recent financial statements, the Trust spent about \$620,000 on claims examination and processing fees, \$145,000 on consulting fees, \$80,000 on audit and accounting fees, and \$50,000 on legal fees. It is important to ensure Trust resources are protected and goods and services are procured in the best interest of the Trust and their beneficiaries.

***Finding 12: Policies and procedures for procurement of goods and services and contracting have not been developed nor adopted for the Trust.***

We requested copies of the Trust's policies on procurement and contracting and did not receive any such policies.

The following exhibit 5 shows best practices for a procurement and contracting policy.

Exhibit 5
Procurement and Contracting Policy Best Practices
1. <b>Establish internal controls</b> - Internal controls are mechanisms in the procurement process that help reduce exposure to inappropriate, unauthorized or unlawful expenditures. Internal controls help ensure that purchases have been authorized, that goods or services have actually been received, and that funds exist to meet the expenditure. Assigning responsibilities and establishing an approval authority schedule are essential internal controls that promote the integrity of the procurement process.
2. <b>Plan before purchasing</b> - Organizations should plan adequately for all purchases, whether they are recurring or onetime purchases. Identify what product or service the organization requires, or if the requirement can be filled using existing resources, an estimate of the total cost of the procurement, the procurement method (informal, invitational, open competitive or non-competitive), internal approvals and timeline to complete the purchase, and the duration of the contract.
3. <b>Develop Criteria</b> - Organizations should have a process in place to review bids before the competitive process begins. This includes specifying what criteria prospective vendors have to meet in order to qualify for a contract award for goods or services. The organization should determine the importance of each criterion and assign a weighting, i.e., "number of points" for each item. The organization should also determine if there are any mandatory criteria that must be met for a bid to be considered. To maintain fairness and transparency, the criteria and weighting should be set prior to the start of the procurement. For more substantial procurements, an evaluation team should be assigned, and a description of how the winning contractor will be selected.
4. <b>Canvass the Market</b> - Gather information about potential vendors prior to procuring goods or services in order to ensure that the organization is as well-informed as possible. This may include using a Request for Information or Request for Proposals.
5. <b>Purchase</b> - The organization should "right size" the procurement method to the procurement's value and risk. For example, it would be impractical for an organization to seek Board of Directors' approval for each low dollar, routine purchase. Conversely, procurements of medium to high dollar value should be managed utilizing the appropriate procurement strategy to ensure appropriate value for money. The procurement can be informal, or formal and competitive depending on the value of the



Exhibit 5	
Procurement and Contracting Policy Best Practices	
procurement.	
6. <b>Document the transaction</b>	- At the end of the selection process, a contract between the organization and the successful supplier should be drawn up. A contract is the formal agreement between the two parties that includes the product details or the service to be provided, and the payment schedule.
7. <b>Keep records</b>	- Organizations should keep records of procurement, as well as any other pertinent information, for reporting and auditing purposes.
8. <b>Manage contracts responsibly</b>	- The agreement between the organization and the successful vendor should be formally set out in a contract signed by the parties. The contract should include items specified in the procurement documents, such as cancellation and termination clauses, any options to extend the agreement and a dispute mechanism. The organization should monitor the vendor's performance and verify all invoices and payments against the terms of the contract.
9. <b>Review and improve</b>	- Develop a time frame, for example, once a year, to review procurement policies to make sure they still apply to the organization's present business and operational needs. Monitor procurement expenditures, such as invoices, regularly, based on budget allocation or business plan. Monitor contracts, vendor performance and satisfaction with the procurement process regularly, and introduce improvements as necessary.
Source: Procurement Best Practices published by the BPS Supply Chain Secretariat, Toronto, ON	

***Recommendation 12: The Board of Trustees should develop and implement policies and procedures for procuring goods and services and entering into contracts consistent with best practices for such policies.***

### Travel and Expense Policy

The Trust agreement states:

They (Trustees) shall be reimbursed from the Trust for all reasonable and necessary expenses which they may incur in the performance of their duties for which prior authorization has been obtained.

It is important that the Trust have a comprehensive and effective policy defining the process for obtaining approval for such travel, and for payment of related expenses.

***Finding 13: The Trust adopted a travel and expense reimbursement policy in November 2017 that addresses some of the requirements and best practices for such policies.***

We reviewed the *Travel Policy and Guidelines for Expense Reimbursement* developed and adopted by the Board of Trustees and compared it with both requirements and best practices for such policies. The following exhibit 6 shows these requirements and best practices and the results of our comparison with the Trust's policy and guidelines.



<b>Exhibit 6</b>	
<b>Travel Policy Requirements and Best Practices, and Comparison with Trust Policy</b>	
<b>Requirement / Best Practice</b>	<b>In Trust Policy Adopted November 2017</b>
1. A procedure is used for reimbursing employees for expenses such as meals, entertainment, travel, and transportation incurred for business purposes on behalf of an employer. <sup>1</sup>	Yes, Travel Policy outlines procedure for reimbursing employees for expenses such as meals, entertainment, travel, and transportation incurred for business purposes on behalf of an employer.
2. A plan is an accountable plan if the employer requires the employee to adequately account for all business expenses and to return any excess reimbursements. <sup>1</sup>	Yes, policy requires: "All requests for reimbursement of paid business expenses should be made using the Trust Fund Trustee Expense Reimbursement Form (the "Expense Form"), which may be updated periodically.
3. The expense must have a business connection. Expenses must be incurred while performing services as an employee on behalf of the employer. <sup>1</sup>	Yes, policy states: "Individuals shall be reimbursed under these Guidelines only for their actual, necessary, and reasonable expenses that are directly related to their duties as the Trust Fund's Trustee, for which prior authorization from the Board of Trustees or the Administrator has been obtained."
4. Expenses must be submitted timely. Expenses must be adequately accounted for within a reasonable period of time. <sup>1</sup>	Yes, policy states: Expense Forms must be signed by the respective Trustee, approved by the Administrator and submitted for processing within a reasonable period of time (not to exceed 60 days) upon return from the business trip or incurring the expense.
5. Overpayment of expenses must be returned in a timely manner. Any excess reimbursement or allowance paid to an employee must be repaid to the employer within a reasonable period of time. <sup>1</sup>	No, policy does not require timely return of overpayment of expenses.
6. Plan covers both payments and reimbursements. <sup>2</sup>	Yes, policy states: "The Trust Fund will only pay for expenses in advance of meetings and/or educational conferences if a formal written request detailing reasonable anticipated expenses is presented, with agreement to provide a subsequent submission documenting actual expenses."
7. Require pre-approvals by requiring employees to provide justification in advance of the funds being spent. This provides a significant savings through cost avoidance. Then, once the actual expenses are incurred, they can be tied to the Pre-Approval upon submission and any variance can be examined. <sup>3</sup>	Partial, policy requires all travel and travel expenses be authorized in advance. However, there does not appear to be a travel expense pre-approval form resulting in an inability to match pre-approved expenses with those incurred.
8. Use a corporate credit card, with a requirement that all expenses be tied to expense reports prior to payment. <sup>3</sup>	No, policy does not address the use of the Trust credit card. Policy does state: "Trustees must use a non-Trust fund credit card to pay for non-Trust fund related travel costs that may arise during the travel on behalf of the Trust Fund."
9. Clearly document the approval process including	No, policy states that all travel and travel



Exhibit 6	
Travel Policy Requirements and Best Practices, and Comparison with Trust Policy	
Requirement / Best Practice	In Trust Policy Adopted November 2017
clearly defined roles, responsibilities, and delegation of authority and a clear approval matrix. <sup>3</sup>	expenses must be approved in advance by the Administrator or Board of Trustees but does not specify the process for obtaining approval.
Source: Requirements obtained from the <sup>1</sup> Internal Revenue Service Instructions for Form 990, Return of Organization Exempt From Income Tax, Best practices for Travel policies obtained from the <sup>2</sup> National Council of Non Profits ( <a href="http://www.councilofnonprofits.org">www.councilofnonprofits.org</a> ), and excerpts from <sup>3</sup> Top 10 Travel Expense Management Best Practices published by Anne Becknell.	

As this exhibit shows, the Travel Policy and Guidelines for Expense Reimbursement developed and adopted by the Board of Trustees adequately addresses most of the requirements and best practices for such policies. However, the policy and guideline could be strengthened.

**Recommendation 13: The Board of Trustees should consider revising the Travel and Expense Reimbursement policy for the Trust to include:**

- **Requirements for the timely return of any overpayment of expenses, either by Trust credit card or through reimbursement.**
- **Developing and implementing a travel expense pre-approval form and process to provide the ability to match pre-approved expenses with those incurred.**
- **Requirement that reimbursements for lodging and meal expenses will be made using the government per diem rate (as provided at [www.gsa.gov](http://www.gsa.gov)) and that any exceptions be explained and approved prior to reimbursement.**
- **Expanding the travel policy to specifically include the use of Trust credit cards (including use of credit cards for travel) or create a separate credit card policy. The credit card policy should:**
  - **Provide guidance on allowable purchases and prohibited purchases (including alcohol).**
  - **Require that original itemized receipts are maintained and turned in by the credit cardholder for reconciliation to the monthly credit card statements and maintained as documentation for the purchases.**
  - **Require that purchases should be used for only Trust business purposes.**
  - **For local business meals, require that the business purpose and name(s) of attendees be documented and submitted as justification for the business meal expense.**





- *Require that credit card purchases be pre-approved, with the exception of emergencies and travel.*
- *When cardholders are provided Trust Fund credit cards, require them to acknowledge in writing that they have been given a copy of the credit card policy, understand the policy, and will adhere to the policy.*
- *Prohibit Trustees from permanently holding a Trust credit card, except for periods of travel.*
- *Document the review and approval process including clearly defined roles, responsibilities, and delegation of authority, a clear approval matrix, and a process for reporting/resolving discrepancies or violations of the Trust's policies on expenses.*

## Effective Internal Controls

The Trust Agreement states:

The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited annually by a Certified Public Accountant, or at such lesser periods as the Trustees in their discretion deem appropriate, and a report made to the Trustees. A Statement of Account of the Fund shall be available for inspection by the District and by the participants at the offices of the Fund during the regular business hours.

The current agreement between the MTA and Union provides the following requirement for the Trust:

An independent audit conducted in accordance with all generally accepted accounting principles sufficient to form an opinion on the trust financial statements and verification that the assets of Trust were dispersed, maintained, and/or invested in accordance with the requirements of the Trust Document will be conducted and computed each year and copies of the audited financial statement will be provided to each of the Trustees, the Union and the Authority within thirty (30) days after it is completed. The audited financial statement must be made available to the Trustees, the Union and the Authority, no later than September 30th annually. The accounting firm selected to conduct the audit(s) will be selected by the Trust from among the 15 largest accounting firms in Los Angeles County and will be paid by the Trust.

***Finding 14: The Trust had recurring significant audit findings for several years that were attributed to the lack of effective internal controls within the organization.***

In our review of the Trust Fund's independent auditor's reports for several years, we noted that there were recurring significant audit findings that were attributed to the lack of effective internal controls within the organization. It is therefore important that the



Board of Trustees establish and implement strong internal controls and adopt corrective measures for those significant audit findings raised by the independent auditors. Also, there were no minutes to Board meetings that indicated the Trust Board members received copies of the annual auditor's report, discussed the auditor's findings and conclusions, and initiated actions to resolve or correct the auditor's findings on lack of internal controls.

Internal controls are designed to safeguard organization's assets from error, loss, theft, misuse, misappropriation, and fraud. Effective programs of internal controls provide reasonable assurance that these objectives are met consistently. Internal controls play an important role in preventing and detecting fraud and protecting the organization's resources. Instituting and applying an effective internal control environment is a sign of proper governance and proactive management. Moreover, a strong internal control environment assists the organization in fulfilling its fiduciary duties of safeguarding the Trust Fund assets.

The following Best Practices of Internal Controls are derived from the American Institute of Certified Public Accountants ([www.aicpa.org](http://www.aicpa.org)), the National Council of Non-Profits ([www.councilofnonprofits.org](http://www.councilofnonprofits.org)) and the Internal Revenue Service ([www.IRS.gov](http://www.IRS.gov)), which we believed are applicable in managing the Trust Fund.

- **A well-defined accounting policies and procedures manual.** Formal documentation of accounting policies and procedures is an essential component in providing effective controls over accounting and financial reporting, as well as providing a comprehensive framework of internal controls. Accountability requires a well-designed system of documenting accounting policies and procedures. Documentation can also provide a useful training tool for financial staff.
- **General organization-level controls.** Organizations should prepare an annual revenue and expenditures budget as well as quarterly (preferably monthly) reports that compare actual receipts and expenditures to the budget. Reports should include timely variance explanations.
- **Information technology (IT) general controls.** IT controls should specify protocol for accessing, inputting, and changing electronic data maintained by the organization; for preserving electronic records, ensuring data compatibility, and creating a records retention policy.
- **Segregation of duties.** Effective checks and balances hinder embezzlement by segregating duties. No single individual should be responsible for writing and signing checks or vouchers and receiving, recording, securing, and depositing cash and other receipts. These functions should be assigned to different individuals.
- **Creation of an Audit Committee.** An audit committee is either a task force or a standing committee that has been given authority by the board of directors to provide accountability for the organization's independent audit. While the full board retains oversight authority, the audit committee's smaller size allows it to carry out its responsibilities in a more manageable environment. The committee is not involved in the organization's daily accounting functions, but instead oversees the



independent audit process which often entails hiring and evaluating the independent auditor(s). Where applicable, the audit committee may also be the body that is accountable to make sure that recommendations made by the auditor, perhaps in statements that appear in the auditor's letter to management, are implemented. The audit committee may also serve as the "ombudsperson" for the organization, and if so, would be specifically charged with the responsibility to address complaints about financial mismanagement, and may be identified in the organization's Whistleblower Policy as having the board-delegated authority to review complaints about financial mismanagement.

To ensure that the audit process is objective, ideally an audit committee is as "independent" as possible, which is accomplished by having volunteer board members serve on the audit committee. (The committee would not be independent if someone who is employed by the organization or audit firm served on the committee). Such independence frees the audit committee to make unbiased judgments about internal financial procedures and the performance of the organization's staff - as well as the performance of the auditors - without undue pressure that would exist if the members of the audit committee were employees of the organization (or the audit firm).

A mechanism for Reporting of Fraud, Abuse and Questionable Practices. Most cases of fraud, abuse or questionable accounting or auditing practices, come to the attention of those responsible through employees or members of the public. In addition, accounting and auditing standards require financial reporting systems to be designed to detect fraud and abuse. They also detect any questionable accounting or auditing practices that could jeopardize the integrity of the financial reporting system.

- **Organizational Approaches to Effective Internal Controls.** In addition to the best practices mentioned in the foregoing pages, the organization should have a positive, constructive attitude toward internal control, including;
  - A healthy control environment – a demonstrated commitment to sound controls and ethical practices set by the leadership of the organization.
  - Ongoing risk assessments of where things could possibly go wrong.
  - Proper methods of dissemination and communication of financial information to make sure that all the relevant information is recorded in the accounting system.
  - Effective monitoring of internal controls, to ensure that all the activities listed above have actually been implemented properly.

***Recommendation 14: To promote transparency, the Board of Trustees should:***

- ***Ensure all Trust Board members receive copies of the annual auditor reports.***
- ***Have the auditor discuss the findings and recommendations of the annual audit at a Board meeting.***



- *Establish and implement strong internal controls and adopt corrective measures for those significant audit findings raised by the independent auditors.*



## Appendix A: Request for Proposal Review Criteria and Results

Exhibit 7 shows the review criteria outlined in the Request for Proposals for this review and the results of our review of the Board of Trustees relative to these criteria.

UTU-MTA Trust Fund Review Criteria and Review Results	
Review Criteria	Review Results
Annual auditor reports are promptly provided to all Trustees at the same time, as well as any other special audit or staff reports, and with adequate opportunity to review, evaluate, and discuss before board meetings, and to ask for actions to be taken as appropriate.	No - No formal minutes of Board meetings prior to late 2017 appear to exist. Interviews conducted by OIG Investigator indicate all Board members stated they had not received nor been made aware of any audit reports or audit issues.
The Board has the authority to direct an audit or investigation with a report to be provided to the full Board as directed.	Yes on an audit – The Board has the authority to direct an audit. Trust document states: The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited annually by a Certified Public Accountant, or at such lesser periods as the Trustees in their discretion deem appropriate, and a report made to the Trustees.  No on investigation – No specific authority to direct an investigation. Board does have the authority to develop and adopt rules that could include rules for conducting investigations as needed.
The fund administrator is required to immediately notify all Trustees of any indication of fraud, material (in excess of \$100) noncompliance with policies or procedures, or criminal activity.	No – No conflict of interest, whistleblower or ethics policy that would require or encourage the Trustees, the Administrator, or other staff to report fraud, material noncompliance with policies or procedures, or criminal activity.
The frequency of meetings, comprehensiveness of the agendas, and opportunity of the trustees to add to the agenda and review reports prior to the meetings.	No – Historically the Board of Trustees has not held regular periodic meetings, have not had formal agendas, provided information to Trustees on agenda items prior to meetings for review. Meetings have been limited to one per year for the approval of health insurance providers.  More frequent Board meetings have been held since October 2017.
The attendance of a board secretary and recordation of meetings to ensure documentation and transparency.	No – Historically, there have been no formal minutes of meetings held. The Trust agreement assigns the position of Secretary but does not define the role or responsibilities of the Secretary. The Board does



<b>UTU-MTA Trust Fund Review Criteria and Review Results</b>	
<b>Review Criteria</b>	<b>Review Results</b>
	have the authority to develop and adopt rules that could include defining the role of the Secretary and other Board Officers
Fair and equal representation makeup in the number of board members between Metro and the entity to ensure the funds and beneficiaries of the trust fund are protected. Evaluate the ratio of entity appointed trustees to Metro appointed trustees, the process to select/rotate Board Chair, and policies/procedures governing how the Board operates.	<p>No – The original Trust Agreement stipulates seven Trustees with five representing the Union and two representing Metro. The five Union Trustees are specifically defined based on roles with the Union. The Chairman of the Board is the Chairman of the Union. There are no provisions for any other chair of the Board, or for any other selection or rotation of the Board Chair. A quorum requires four Trustees, one of which must be the Chairman or Vice Chairman – both Union Trustees.</p> <p>The current agreement between Metro and the Union changed the number of trustees to eight, with six representing the Union and two representing Metro. Requires at least one MTA Trustee be present to have a quorum. The current agreement provides that Union Trustees are selected from members of the General Committee of Adjustment. It is unclear whether this would allow for an alternate selection or rotation of the Chair of the Board.</p>



## Appendix B: Schedule of Recommendations and Proposed Actions

UTU-MTA Trust Fund Recommendation Summary and Proposed Actions					
No.	Recommendation	Staff Assigned	Agree or Disagree	Proposed Action	Completion Date Estimate
1	Metro management and the SMART Union should consider revising the Trust Agreement for the UTU-MTA Health and Insurance Benefits Trust Fund to provide equal representation by employees and employer consistent with the National Labor Relations Act and the Trust agreements between Metro and other Unions and periodically updating the Trust agreement.				
2	The Board of Trustees should strengthen and enhance its governance of the Trust by: <ul style="list-style-type: none"><li>• Developing a governance policy that specifically defines roles and responsibilities of Board of Trustee members, decisions to be made by the Board, and the specific process for making those decisions.</li><li>• Defining specific actions to be taken if members of the Board feel that other members of the Board are not adequately or appropriately fulfilling their governance responsibilities.</li><li>• Prohibiting individual members of the Board of Trustees, including the Chairman, from directing staff to take specific actions.</li><li>• Conducting annual reviews and discussions of how the Board of Trustees is fulfilling its responsibility as the governance body for the Trust, including identifying and resolving any governance issues.</li><li>• Clearly defining the role and responsibilities of Trust staff, including the line between the policy-making role of the Board and the direct management responsibility of the Trust Administrator and staff.</li></ul>				
3.	The Board of Trustees should schedule and conduct regular periodic meetings of the Board.				
4.	The Board of Trustees should require information on agenda items requiring Board approval be provided to Board members a week in advance of the meetings. This should include at a minimum: <ul style="list-style-type: none"><li>• Background information to provide a context for the decision. Board Trustees should be entitled to retain board reports and any</li></ul>				



<b>No.</b>	<b>Recommendation</b>	<b>Staff Assigned</b>	<b>Agree or Disagree</b>	<b>Proposed Action</b>	<b>Completion Date Estimate</b>
	documents provided such as audit reports provided to the Board for receive and file or approval. <ul style="list-style-type: none"><li>• Potential benefit to the Trust, including contribution to specific Trust goals.</li><li>• Information on any process used to arrive at the decision item (procurement process, personnel selection, and assessment of conferences / travel).</li><li>• Recommendation of the Board member or Administrator requesting the decision.</li></ul>				
5	The Board of Trustees should develop and maintain formal minutes for Board meetings including decisions made during those meetings and all records of Board decisions are maintained in a central file accessible by all Board members.				
6	The Board of Trustees should consider requiring all Trustees to attend the New Trustees Institute courses offered by the International Foundation of Employee Benefit Plans.				
7	The Board of Trustees should develop job descriptions and annual performance objectives for the Administrator and key staff of the Trust and conduct annual performance reviews.				
8	The Board of Trustees should develop a Conflict of Interest policy for the Trust consistent with the requirements and best practices identified.				
9	The Board of Trustees should develop and adopt a Record Retention policy for the Trust consistent with the requirements and best practices identified.				
10	The Board of Trustees should develop and adopt a Whistleblower policy for the Trust consistent with the requirements and best practices identified. This should include putting a notice on the Trust's website or other postings that concerns about fraud, waste or abuse should be referred to the Metro Office of the Inspector General.				
11	The Board of Trustees should develop and adopt an Investment Policy to direct investment of the Trust's financial assets for the Trust consistent with the requirements and best practices identified. The Board of Trustees should annually review the policy and update it as needed.				





<b>No.</b>	<b>Recommendation</b>	<b>Staff Assigned</b>	<b>Agree or Disagree</b>	<b>Proposed Action</b>	<b>Completion Date Estimate</b>
12	The Board of Trustees should develop and implement policies and procedures for procuring goods and services and entering into contracts consistent with best practices for such policies.				
13	<p>The Board of Trustees should consider revising the Travel and Expense policy for the Trust to include:</p> <ul style="list-style-type: none"><li>• Requirements for the timely return of any overpayment of expenses, either by Trust credit card or through reimbursement,</li><li>• Developing and implementing a travel expense pre-approval form and process to provide the ability to match pre-approved expenses with those incurred,</li><li>• Requirement that reimbursements for lodging and meal expenses will be made using the government per diem rate (as provided at <a href="http://www.gsa.gov">www.gsa.gov</a>) and that any exceptions be explained and approved prior to reimbursement.</li><li>• Expanding the travel policy to specifically include the use of Trust credit cards (including use of credit cards for travel) or create a separate credit card policy. The credit card policy should:<ul style="list-style-type: none"><li>○ Provide guidance on allowable purchases and prohibited purchases (including alcohol).</li><li>○ Require that original itemized receipts are maintained and turned in by the credit cardholder for reconciliation to the monthly credit card statements and maintained as documentation for the purchases.</li><li>○ Require that purchases should be used for only Trust business purposes.</li><li>○ For local business meals, require that the business purpose and name(s) of attendees be documented and submitted as justification for the business meal expense.</li><li>○ Require that credit card purchases be pre-approved, with the exception of emergencies and travel.</li><li>○ When cardholders are provided Trust Fund credit cards, require them to acknowledge in writing that they have been given a copy of the credit card</li></ul></li></ul>				



<b>No.</b>	<b>Recommendation</b>	<b>Staff Assigned</b>	<b>Agree or Disagree</b>	<b>Proposed Action</b>	<b>Completion Date Estimate</b>
	<p>policy, understand the policy, and will adhere to the policy.</p> <ul style="list-style-type: none"><li>○ Prohibit Trustees from permanently holding a Trust credit card, except for periods of travel.</li><li>• Document the review and approval process including clearly defined roles, responsibilities, and delegation of authority, a clear approval matrix, and a process for reporting/resolving discrepancies or violations of the Trust's policies on expenses.</li></ul>				
14	<p>The Board of Trustees to promote transparency should:</p> <ul style="list-style-type: none"><li>• Ensure all Trust Board members receive copies of the annual auditor reports.</li><li>• Have the auditor discuss the findings and recommendations of the annual audit at a Board meeting.</li><li>• Establish and implement strong internal controls and adopt corrective measures for those significant audit findings raised by the independent auditors.</li></ul>				