



**Office of Inspector General
City of New Orleans**

Follow-Up Report: “Interim Recommendations for the Policy Memorandum No. 5 (R) Revised and Issued on April 18, 2009 in Response to the OIG’s Interim Report on the Management of the Administrative Vehicle Fleet”

AR11FOL005

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April 18, 2009 ...”
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Follow-Up #1: The City did not calculate the value of the fringe benefit on a quarterly basis.

Follow-Up #2: The City did not calculate the Personal Use of a Take-home Vehicle for all four quarters of 2010.

Follow-Up #3: The City did not quantify the cost and personal use benefit or fuel consumption for each employee.

Follow-Up #4: The City did not quantify the cost and personal use benefit of each take-home vehicle.

Follow-Up #5: The City incorrectly included and or excluded the cost of fuel under the methods used to calculate the use benefit.

Follow-Up #6: The City was unable to determine whether the take-home use charge was adequate to cover the fringe benefit to the employee.

Follow-Up #7: No follow-up necessary. The City did not agree with the original recommendation.

Follow-Up #8: The City established but did not enforce the minimum personal insurance requirements for those employees provided a take-home vehicle.

EXECUTIVE SUMMARY

In July 2009, the Office of Inspector General (OIG) issued “Interim Recommendations for the Policy Memorandum No. 5 (R) Revised and Issued on April 2009 in Response to the OIG’s Interim Report on the Management of the Administrative Fleet,” (the 2009 Report) which made recommendations concerning the City’s revision of its Policy Memorandum No. 5(R) (“Vehicle and Equipment Policy”)¹. In the response received from the City dated August 20, 2009 (“City Response”), the former CAO² stated that management had “implemented additional guidelines to address some of the findings in the MIR”³. The OIG, as a matter of policy, conducted a follow-up⁴ to that report to determine the status of the City’s compliance with the responses to the eight recommendations in the 2009 report⁵.

The follow-up revealed that the City did not implement seven of the eight recommendations that were addressed in its response. One of the eight findings (Finding #7) did not require a follow-up because the City did not agree with the finding and therefore did not provide a corrective action.

The City did not report income or tax liabilities related to take-home vehicles as required by the IRS. (Findings # 1 & 2). The City’s consultant estimated the tax liability for the additional Federal income taxes, FICA taxes, interest and penalties for failure to report income related to take-home vehicles was \$1,052,225⁶. Additionally, the City did not document the personal use and fuel consumption properly for each take-home assignment. (Findings # 3, 4 & 5). The City’s take-home use charge was inadequate to cover the fringe benefit for all employees with a take-home vehicle. (Finding # 6). The City did not verify that the driver of a take-home vehicle had adequate personal insurance coverage to protect the City from unnecessary financial exposure. (Finding # 8).

The OIG will perform a second follow-up on the City responses prior to yearend.

Report or Policy Issued	Date issued	Issued in Response to:
City Policy Memorandum 5(R) (1st revision)	April 28, 2009	OIG Administrative Vehicle Fleet Interim Report, December 2008
OIG Interim Recommendations for Policy Memorandum No.5(R)	July 8, 2009	City Policy Memorandum 5(R), revised on April 28, 2009 (1st revision)
City Policy Memorandum No.5(R) (2nd revision) ⁷	August 1, 2010	OIG Interim Recommendations for Policy Memorandum No.5(R)

¹ Policy Memorandum # 5(R) was a corrective action from the City’s response to the Interim Report on the Management of the Administrative Vehicle Fleet released in December of 2008. 5(R) is a comprehensive “Vehicle and Equipment Policy” which combined outdated CAO Policies 5(R) and 40(R), effective as of April 28, 2009.

² The former CAO served under Mayor Ray Nagin.

³ The MIR refers to the July 2009 report.

⁴ The City issued a second revision to Policy Memorandum #5(R), effective August 1, 2010, which the OIG used during follow-up testing.

⁵ The City issued a third revision to Policy Memorandum #5(R), effective March 1, 2012. This revision will be used at the 2013 follow-up to the City’s uncorrected responses.

⁶ This computation included the City and employee’s liability.

⁷ A third revision to City Policy Memorandum 5 (R) was issued on March 1, 2012.

I.OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the follow-up report was to determine whether the City's responses to the 2009 Report on "Interim Recommendations for Policy Memorandum 5(R) ... "were implemented.

The scope of this follow-up was limited to the City's responses to the seven findings⁸ and recommendations addressed in the City's Response to the 2009 Report. The City was not in agreement with Finding #7 and therefore provided no response.

The period January 1, 2010 through December 31, 2010 was used as the test period for this follow-up.

The audit methodology was developed in accordance with the *Principles and Standards for Offices of Inspector General* (the Green Book)⁹, and included the following:

- Conducted interviews with personnel to gain an understanding of the current processes and controls in place in the following areas contained in the 2009 Report:
 - Take-home Vehicle Benefit Reported;
 - Take-home Vehicle Personal Use and Record Keeping;
 - Take-home Use Charge;
 - Take-home Criteria for Vehicles; and
 - Take-home Insurance Requirements.
- Evaluated the City's responses to the OIG's 2009 Report to determine if the recommendations were adopted and effectively implemented in 2010.

Computer-processed data was provided and relied on, which detailed information on the City of New Orleans vehicle fleet for the period of the follow-up. Although a formal reliability assessment of the computer-processed data was not performed, the auditors determined that hard copy documents reviewed were reasonable and generally agreed with the information contained in the computer-processed data. No errors were found that would preclude the auditors from using the computer-processed data to meet the follow-up objectives or that would change the conclusions of this report.

⁸ The City responded to Findings # 1-6 and #8. The City disagreed with Finding # 7 and therefore did not provide a response.

⁹ Published by the Association of Inspectors General, 2004.

II. FOLLOW-UP: "INTERIM RECOMMENDATIONS FOR POLICY 5 (R)..."

Take-Home Vehicle Benefit Reported

Finding #1: "The City may owe additional Federal income taxes, interest and penalties for failure to report income of employees with a take-home vehicle."

Recommendation #1: "The CAO, with the help of the department heads, should quantify the current take-home use cost and personal use benefit for previous and current employees assigned a take home vehicle for the period commencing with the third quarter of 2005 through the present. For those employees where the value of the fringe benefit exceeds the take-home vehicle use charge the fringe benefit should be added to the regular wages of the employee. The applicable payroll taxes should be computed, including Federal income, social security, and Medicare taxes and the City should file amended W-2's for all employees affected."

City Response #1: "The City and affected employees may owe additional Federal income taxes, interest and penalties for failure to report income related to take home vehicles. However, we are working to determine the extent of that liability with BMO¹⁰. Upon this determination, BMO and the administration will initiate contact with IRS in an effort to resolve any potential liability. ..."

Follow-up #1: The City did not implement its response. The value of the fringe benefit was not calculated on a quarterly basis and was not added to the regular wages of those employees assigned take-home vehicles. The City's consultant calculated a potential liability of \$ 1,052,225¹¹; but did not contact the IRS to resolve any potential liability, and the tax returns were not amended. The City's potential liability continued to accumulate in 2010 and 2011.

Finding #2 "City's employees may owe additional Federal income taxes, interest and penalties for failure to report income related to take-home vehicles."

Recommendation #2: "Each department should look at each individual take-home assignment and quantify the cost and personal use benefit by examining the individual commuting distance and the quantity of personal use and fuel consumption for each take-home assignment. Each department should make a determination as to whether the benefit received by the employee is greater than, equal to or less than the take-home use charge. For those employees where the value of the fringe benefit exceeds the take-home vehicle use charge the fringe benefit should be added to the regular wages of the employee. The applicable payroll taxes must be computed, including Federal income, social security, and Medicare taxes and the City should file amended W-2's for all employees affected."

¹⁰ BMO was used by the City to determine the potential tax liability for unreported personal use benefits.

¹¹ This computation included the City and employee's liability.

City Response #2: “The City and affected employees may owe additional Federal income taxes, interest and penalties for failure to report income related to take home vehicles. However, we are working to determine the extent of that liability with BMO [Financial Group]. Upon this determination, BMO and the administration will initiate contact with IRS in an effort to resolve any potential liability...”

Follow-up #2: The value of the fringe benefit was neither complete nor properly calculated on a quarterly basis. The City did not perform the Personal Use of a Take-home Vehicle calculation for the 4th Quarter in 2010; therefore, the fringe benefit was not properly included in the wages of those employees’ assigned take-home vehicles. The City calculated a potential liability of \$ 1,052,225 (employee and employer portion); but did not contact the IRS to resolve any potential liability, and the tax returns were not amended. The City’s potential liability continued to accumulate in 2010 and 2011.

Take-Home Vehicle Personal Use and Record Keeping

Finding #3: “[The City was not in compliance] with IRS requirements for documentation of personal use of vehicles at the department level.”

Recommendation #3: “Record keeping or meeting substantiation requirements is an important requirement for take-home vehicle users. Per Internal Revenue Service Publication 15-B, if the employee doesn't do his own substantiation or meet the requirements, the employee is presumed to have driven the vehicle for his own use and that value will be considered income for tax purposes. If the personal use is not documented and quantified, all use is considered personal. Per Internal Revenue Service Publication 15-B, personal use is taxable and should be included on the employee's W-2. The auditor recommends that the CAO seek whatever documentation is available, if any, from each employee assigned a take-home vehicle and include the value attributable to the employee's personal use of the vehicle in the employee's gross income.”

City Response #3: “The City is currently amending the Vehicle Policy to provide specific guidelines to departments and employees relating to PVU¹² as a taxable fringe benefit. Specifically, the administration has implemented the daily recordkeeping regarding PVU and PFU¹³ as well as departmental requirements to compile such employee PVU records on a monthly basis. These items will be included in any future revisions and/or amendments to Policy Memorandum 5(R). The City will value and account for PVU and PFU as separate fringe benefits provided to City employees for inclusion in the employees' income.”

Follow-up #3: The City amended but did not enforce the policy. The City failed to quantify the cost and personal use benefit of fuel consumption for each employee.

Finding #4: “[The City was not in compliance] with IRS requirements for documentation of personal use of vehicles at the employee level.”

¹² Present Vehicle Usage is the current personal use benefit of each employee assigned a take-home vehicle.

¹³ Present Fuel Usage is the current fuel consumption for all personal miles driven per employee.

Recommendation #4: “Record keeping or meeting substantiation requirements is an important requirement for take-home vehicle users. Per Internal Revenue Service Publication 15-B, if the employee doesn't do his own substantiation or meet the requirements, the employee is presumed to have driven the vehicle for his own use and that value will be considered income for tax purposes. If the personal use is not documented and quantified, all use is considered personal. Per Internal Revenue Service Publication 15-B, personal use is taxable and should be included on the employee's W-2. The OIG recommends that the CAO seek whatever documentation is available, if any, from each employee assigned a take-home vehicle and include the value attributable to the employee's personal use of the vehicle in the employee's gross income.”

City Response #4: “The City is currently amending the Vehicle Policy to provide specific guidelines to departments and employees relating to PVU as a taxable fringe benefit. Specifically, the administration has implemented the daily recordkeeping regarding PVU and PFU as well as departmental requirements to compile such employee PVU records on a monthly basis. These items will be included in any future revisions and/or amendments to Policy Memorandum 5(R). The City will value and account for PVU and PFU as separate fringe benefits provided to City employees for inclusion in the employees' income.”

Follow-up #4: The City issued a second revision to Policy 5 (R) effective August 2010, but did not enforce the policy. The City did not quantify the cost and personal use benefit of each take-home vehicle. Because personal use was not documented and quantified, the IRS requires that all use is included in gross income on the employees' W-2s.

Finding #5: “[The City was not in compliance] with IRS requirements to value and include separately the fringe benefit received from fuel provided to City employees [and include the fringe benefit] for inclusion in the employee's income.”

Recommendation #5: “For those previous and current employees that utilized the Lease Value Rule, as established in Internal Revenue Service Publication 15-B to determine the amount of the fringe benefit received by employees with a take-home vehicle; the CAO, with the help of the department heads, should quantify the fringe benefit received by employees as a result of the City providing fuel at no charge to these employees. The value of the fuel is a separate fringe benefit to be added in addition to any benefit calculated under the Annual Lease Value calculation. For those employees where the value of the fringe benefit from the fuel plus the fringe benefit under the Annual Lease Value method exceeds the take-home vehicle use charge the fringe benefit should be added to the regular wages of the employee. The applicable payroll taxes should be computed, including Federal income, social security, and Medicare taxes and the City should file amended W-2's for all employees affected.”

City Response #5: “The City is currently amending the Vehicle Policy to provide specific guidelines to departments and employees relating to PVU as a taxable fringe benefit. Specifically, the administration has implemented the daily recordkeeping regarding PVU and PFU as well as departmental requirements to compile such employee PVU records on a monthly basis. These items will be included in any future revisions and/or amendments to Policy Memorandum 5(R). The City will value and account for PVU and PFU as separate fringe benefits provided to City employees for inclusion in the employees' income.”

Follow-up #5: The City revised but did not enforce the policy. The City incorrectly included the cost of fuel when the take-home vehicle charge was calculated under the Cents-per-Mile¹⁴ Method. In other instances, the City incorrectly excluded the cost of fuel when the take-home vehicle charge was calculated under the Annual Lease Value Method¹⁵.

Take-Home Use Charge

Finding #6: “The City's take-home use charge is not adequate to cover fringe benefits for all employees with a take-home vehicle.”

Recommendation #6: “Each department has to look at each individual take-home assignment and make the determination as to whether the take-home use charge is adequate to cover the fringe benefit to the employee. The City should quantify the take-home Use cost and personal use benefit for each individual assigned a take-home vehicle. For those employees where the value of the fringe benefit exceeds the take-home vehicle use charge, the fringe benefit should be added to the regular wages of the employee. The applicable payroll taxes must be computed including Federal income, social security, and Medicare taxes; additionally, the City should file amended W-2's for all employees affected.”

City Response #6: “The City notes that in order for us to come to this conclusion, for each employee we have to determine the FMV of the vehicle used, the PVU, and the PFU for each employee. It is possible that the Take Home Use Charge may be adequate for cars with low FMVs. However, as part of its "best practices," the City commits to determine the FMV for its vehicle fleet on an annual basis, maintain records relating to daily PVU and PFU, and determine on a quarterly or more frequent basis whether the affected employee owes additional income and other taxes relating to such fringe benefits.”

¹⁴ The Cents-per-mile Method values the benefit received as personal miles driven times the standard IRS mileage rate, which includes the value of maintenance, insurance and fuel.

¹⁵ The Annual Lease Value Method values the benefit received as the annual lease value of the vehicle times the percent of personal miles out of total miles driven. The Annual Lease Value Method does not include the value of fuel you provide to an employee for personal use.

Follow-up #6: The City did not implement this response. The City did not consistently perform an annual FMV analysis and did not enforce the policy requiring proper documentation. Because the fringe benefit for employees with take-home vehicles was not accurately calculated by the employees, the City was unable to determine whether the take-home use charge was adequate to cover the fringe benefit to the employee. In addition, the applicable payroll taxes on the fringe benefit were not accurately computed.

Take-Home Criteria for Vehicles

Finding #7: “The City's new take-home policy¹⁶ may not be in compliance with Louisiana State statute¹⁷.”

Recommendation #7: “The CAO should seek an opinion of the Office of the Attorney General of Louisiana regarding the legality of all take-home vehicle assignments for every City employee assigned a vehicle purchased or leased by the City. If the Attorney General opines that the use of the take-home vehicle violates Art. VII, Section 14(A) of the Louisiana Constitution, the take-home vehicle assignment should be eliminated.”

City Response #7: “We disagree with major finding #7. The MIR states that take-home vehicle use may be construed as violating Louisiana Constitution (1974) Article 7 Section 14, which generally prohibits the state and its political subdivisions from loaning, pledging or donating public funds, assets or property to persons, associations or corporations, public or private. The OIG recommends that the City seek an opinion of the Attorney General regarding the legality of every take home vehicle assignment.”

While we appreciate the OIG's recommendation to seek an opinion of the Attorney General, we believe that seeking an opinion in connection with each existing and particularly each new car assignment is impractical in everyday application and is not warranted. Currently, each Department reviews each take home assignment to ensure that it conforms to the Cabela's case law standard cited in the MIR to ensure compliance with the constitutional prohibition against the donation of public funds.”

Follow-up #7: The City did not agree with the original recommendation to seek an opinion of the Office of the Attorney General of Louisiana regarding the legality of all take-home vehicle assignments. No plan of action was provided: no testing was necessary.

¹⁶ The former Chief Administrative Officer issued revised Policy Memorandum No. 5(R) (Policy No. 5(R) on April 28, 2009. This replaced the previous Policy Memorandum No. 5(R), which was issued on March 18, 2002 and which eliminated Policy Memorandum No. 40(R) dated April 21, 1994. The second revision to Policy No. 5(R) was, issued with an effective date of August of 2010.

Findings # 1-6 relate to the first revision of April 28, 2009.

Finding # 7 related to the Louisiana Constitution, art. VII, §14.

Finding # 8 related to the second revision dated August 2010.

¹⁷ Finding # 7 incorrectly referenced “Louisiana State statute”: the correct reference is to the Louisiana Constitution.

Take-Home Insurance Requirements

Finding #8: “The City's vehicle policy fails to establish the minimum personal insurance requirements for employees provided with a take-home vehicle to cover damage related to an employee acting beyond the scope of their authority.”

Recommendation #8: “As a general rule the liability, uninsured motorist and medical portions of a personal auto insurance policy will follow the driver and provide coverage for the driver when operating another vehicle such as a take-home vehicle provided by the City.

If an employee with a take-home vehicle is involved in an accident when acting beyond the scope of their authority then the personal insurance policy of the employee may be treated as the primary policy to cover the cost of the repairs to the City vehicle as well as pay for additional damage to other vehicles.

Since the City's vehicle fleet is self-insured, the City must make certain that the driver of a take-home vehicle has adequate personal coverage to protect the City from any unnecessary financial exposure when the driver damages City property while acting beyond the scope of his authority.”

City Response #8: “Policy Memorandum 5(R)¹⁸ will be amended to reflect the establishment of the following minimum personal insurance requirements for PVU:

- Each Department will require that every employee with a take-home vehicle shall provide a copy of their current personal automobile insurance policy to the appointing authority. It shall be the responsibility of each department to ensure that insurance policies or proof of insurance coverage are submitted as they are renewed. Copies shall be provided to the City's Risk Manager. Please be advised that personal vehicle usage is not covered by the City's self insurance program.
- Every employee with a take-home vehicle should endorse their current Personal Automobile Policy to ADD coverage for Use of Non-Owned Autos - Broad Form including Physical Damage Coverage.
- The following not less than minimum personal automobile insurance limits shall be required of every employee with a take-home vehicle:
 - Bodily Injury and Property Damage Liability - Mandatory State Minimum Financial Responsibility Limits
 - Medical Payments - \$1,000
 - Uninsured Motorists - No less than the Minimum Financial Responsibility limits, or your liability limits, whichever is greater

¹⁸ The City is referring to amending the first revision dated April 2009 in its response.

- Comprehensive and Collision the deductible will be the sole responsibility of the employee and will not be borne in any way by the City, and all property damage losses will be paid to the City.”

“Any employee with a take-home vehicle that does not own a personal vehicle or have a Personal Automobile Insurance policy must purchase a Personal Non-Owned - Broad Form Liability Automobile Policy, including Physical Damage coverage. The liability limits shall be at least the Mandatory State Minimum Financial Responsibility Limits.”

Follow-up #8: The City’s second revision to Policy 5 (R¹⁹) required drivers with take-home vehicles to maintain adequate personal coverage; however, the City did not follow its amended policy. The City did not obtain copies of the employee’s personal vehicle insurance and therefore failed to enforce the minimum personal insurance requirements for employees provided a take-home vehicle.

¹⁹ The second revision to Policy 5 (R) had an effective date of August of 2010.