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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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## **Employee Qualifications, Hiring, and Promotions**

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**Metropolitan Transportation Authority:  
New York City Transit, Manhattan and  
Bronx Surface Transit Operating Authority,  
MTA Bus Company, and  
Staten Island Railway**

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Report 2017-S-48

January 2019

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# Executive Summary

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## Purpose

To determine whether the Metropolitan Transportation Authority (MTA) uses similar hiring and promotion policies, procedures, and directives for New York City Transit (Transit), Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA), MTA Bus Company (MTA Bus), and Staten Island Railway (SIR). The audit also examined whether the MTA has established controls over the interagency movement of employees and if there are opportunities for improprieties in the hiring, promotion, or supervision of employees. The audit covered the period January 1, 2014 through September 5, 2017.

## Background

According to its mission statement, the MTA preserves and enhances the quality of life and economic health of the New York metropolitan region through cost-efficient provision of safe, on-time, reliable, and clean transportation services. Transit, a constituent agency of the MTA, provides subway and bus services to New York City (NYC). MaBSTOA, a subsidiary of Transit, operates buses in upper Manhattan and the Bronx. MTA Bus, a subsidiary of the MTA, provides bus services in the Bronx, Brooklyn, and Queens. SIR, a subsidiary of the MTA, provides rapid transit service on Staten Island. Transit is governed by the provisions of the New York State Civil Service Law (Law). MaBSTOA, MTA Bus, and SIR are not subject to the Law.

Section 1210 of the Public Authorities Law provides that the appointment, promotion, and continuance of employment of all Transit employees is governed by the provisions of the Law and is subject to the rules of the NYC Municipal Civil Service Commission. As such, Transit employees are assigned to job titles that are generally classified as competitive and non-competitive. Between January 2014 and July 2017, Transit had 41,929 active employees broadly categorized as operating (e.g., Train Operators, Conductors, Bus Maintainers, and Bus Operators) and non-operating (e.g., Transit Management Analysts, Electrical Engineers, and Attorneys). The hiring and promotion processes used by Transit are determined by title classification. Competitive titles are subject to a Civil Service examination to establish eligibility for appointment; non-competitive titles do not require an examination.

For Transit-specific titles, Transit administers all operating and non-operating title examinations. Transit is responsible for developing, administering, and scoring competitive Civil Service examinations. The resulting eligibility lists are provided to the NYC Department of Citywide Administrative Services (DCAS), which is responsible for administering the lists in accordance with the Law.

For job titles also used at other NYC agencies, the examinations are administered by DCAS. Transit uses the lists to appoint or promote employees in these titles. If there are no active lists, employees hired in these titles are deemed “provisional” until the DCAS examinations are held and the certified lists are available.

For operating titles, Transit administers the examinations for MaBSTOA and MTA Bus; from March

2013 to August 2016, Transit also administered the examinations for SIR operating titles.

For non-operating titles and, since August 2016, SIR operating titles, Job Vacancy Notices (JVNs), which include the required qualifications, are used to hire and promote without any examinations. A JVN is posted on the MTA website, applicants must submit a résumé and/or application for these positions, and then an interview panel selects a candidate. Transit officials also hire and promote using JVNs for these types of titles when a list is not available. However, Transit officials stated that their JVNs for non-operating titles mirror DCAS requirements, and MaBSTOA and MTA Bus JVNs mirror Transit JVNs.

Employees who are paid by one MTA agency but work for another are referred to as “Yogis.” MTA Headquarters (MTAHQ) permits these arrangements to allow MTA agencies to transfer qualified staff from other MTA agencies while allowing the staff to remain in the same pension system and tier and retain existing longevity and benefits. These transfers have also occurred due to consolidations in departments such as the Business Service Center, Legal, Treasury, and Procurement.

As of July 2017, MaBSTOA, MTA Bus, and SIR had a total of about 16,900 active employees. During the audit period, Transit, MaBSTOA, MTA Bus, and SIR, collectively, hired 16,776 employees, promoted 2,909, and hired and promoted 492.

## Key Findings

- Although Transit officials claim that their non-operating titles mirror MaBSTOA and MTA Bus, education and experience requirements at Transit, MaBSTOA, and MTA Bus are not similar for employees in the same/similar titles. Moreover, Transit, MaBSTOA, and MTA Bus JVNs do not mirror DCAS requirements for education and experience, and employees at these agencies did not meet the DCAS education and experience requirements. We found that 9 of 115 sampled non-operating employees were hired or promoted with lower education and experience requirements than those established by DCAS for Civil Service competitive titles and, in some cases, did not meet required qualifications in the JVNs.
- We also found that personnel records for our sample of 110 employees did not contain evidence that all operating employees who were hired and promoted had undergone drug/alcohol screening (71) and medical examinations (24) required for their job titles. As a result, the MTA lacks assurance that all employees, including Train Operators, Conductors, and Bus Operators, met the fitness level and qualifications to perform the job they were hired for or promoted into.
- Non-operating employees were hired and promoted to full-time Transit subway work by MaBSTOA through JVNs instead of through the Civil Service list after examination. We identified 51 employees in our sample who were hired or promoted at MaBSTOA who were assigned either to Transit subway work or central administrative departments. Other employees were hired or promoted by Transit using JVNs, despite the availability of certified lists for those titles.
- Since 2014, the MTA’s Interagency Transfers Policy requires a Yogi Request Justification Questionnaire and a pension evaluation to obtain MTAHQ approval of a request to remain on the original agency payroll while accepting a position in another agency. However, we found that required documentation was largely not completed. Inconsistencies within this process allowed employees to move freely across MTA agencies without resigning from their current agency of

employment, potentially leading to abuse and circumventing of the Civil Service process.

- We also found a lack of required documentation in employee files, including forms meant to prevent nepotism in the workforce, increasing the risk that required Human Resources (HR) policies are not being followed.

### **Key Recommendations**

- Ensure that employees hired or promoted meet all the requirements in the job specifications and that Transit JVN's follow all DCAS requirements.
- Comply with the Civil Service regulations that require the use of DCAS-certified lists when hiring/promoting employees at Transit.
- Ensure that employees doing Transit work at the support departments are hired by Transit using the Civil Service examination process.
- Review the education and experience requirements for all positions at all four agencies to identify any differences. Take steps to revise and document changes and advise all HR officials.
- Develop policies and procedures for Transit to use when creating job specifications/qualifications/examinations on behalf of MaBSTOA.
- Implement proper documentation policies to ensure all required forms are collected and retained in employee files.

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**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

January 17, 2019

Mr. Fernando Ferrer  
Acting Chairman  
Metropolitan Transportation Authority  
2 Broadway  
New York, NY 10004

Dear Mr. Ferrer:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the MTA's New York City Transit, Manhattan and Bronx Surface Transit Operating Authority, MTA Bus Company, and Staten Island Railway, entitled *Employee Qualifications, Hiring, and Promotions*. Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

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## Background

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According to its mission statement, the Metropolitan Transportation Authority (MTA) preserves and enhances the quality of life and economic health of the New York metropolitan region through cost-efficient, safe, on-time, reliable, and clean transportation services. New York City Transit (Transit), a constituent agency of the MTA, provides subway and bus services to New York City (NYC). The Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA), a subsidiary of Transit, operates buses in upper Manhattan and the Bronx. The MTA Bus Company (MTA Bus), a subsidiary of the MTA, provides bus services in the Bronx, Brooklyn, and Queens. Staten Island Railway (SIR), a subsidiary of the MTA, provides rapid transit service on Staten Island.

Transit is governed by the provisions of the New York State Civil Service Law (Law). Pursuant to Section 1210 of the Public Authorities Law, the appointment, promotion, and continuance of employment of all Transit employees is governed by the provisions of the Law and is subject to the rules of the NYC Municipal Civil Service Commission. As such, Transit employees are generally assigned to job titles classified as competitive or non-competitive. The hiring and promotion processes used by Transit are determined by the title classification. Competitive titles are subject to a Civil Service examination to establish eligibility for appointment; non-competitive titles do not require an examination.

Between January 2014 and July 2017, Transit had 41,929 active employees broadly categorized as operating (e.g., Train Operators, Conductors, Bus Maintainers, and Bus Operators) and non-operating (e.g., Transit Management Analyst, Electrical Engineers, and Attorneys). For Transit-specific titles, Transit administers all operating and non-operating title examinations. Transit is responsible for developing, administering, and scoring competitive Civil Service examinations. The resulting eligibility lists are provided to the NYC Department of Citywide Administrative Services (DCAS), which is responsible for administering the lists in accordance with the Law. DCAS administers the examinations for job titles shared among Transit and other NYC agencies (citywide titles).

When an eligibility list is not available, the MTA's Business Service Center posts Job Vacancy Notices (JVNs), which include the required qualifications, on the MTA's website. Transit employees are "provisionally appointed" until a Civil Service examination is held, an eligibility list is available, and a selection and appointment can be made. Transit uses the eligibility list to appoint or promote employees in these titles.

MaBSTOA, MTA Bus, and SIR are not subject to the Law and employees are not provisionally appointed. As of July 2017, these three transportation services had about 16,900 total active employees. Transit administers the examinations for MaBSTOA and MTA Bus; from March 2013 to August 2016, Transit also administered the examinations for SIR operating titles. JVNs are used to hire and promote without any examinations for non-operating titles and, since August 2016, for SIR operating titles. Applicants must submit a résumé and/or application, and then an interview panel selects a candidate.

According to an MTA official, MTA Headquarters (MTAHQ) permits MTA agencies to transfer qualified staff from other MTA agencies while allowing the staff to remain in the same pension system and tier and retain existing longevity and benefits. In 1990, the MTA Board consolidated certain departments (e.g., Management, Procurement, Treasury, Audit) into Centers of Excellence to leverage resources, savings, and efficiencies. As a result, if one agency needed the particular skillset of someone working in another agency, then it was in the best interest of the organization to move that particular person. Employees who are paid by one MTA agency but work for another are referred to as “Yogis.” However, Transit officials informed us that MaBSTOA employees working at Transit support departments (Capital Program Management [CPM], Operations Planning, and Human Resources [HR]) are not considered “Yogis” because Transit and MaBSTOA operations are under the same management.

During the audit period, for all four MTA agencies collectively, a total of 16,776 employees were hired, 2,909 were promoted, and 492 were hired and promoted, as shown below.

#### **Number of Employees Hired and/or Promoted by Agency**

<b>Agency</b>	<b>Hired</b>	<b>Promoted</b>	<b>Hired &amp; Promoted</b>	<b>Totals</b>
Transit	11,427	2,177	261	13,865
MaBSTOA	3,540	629	201	4,370
MTA Bus	1,668	86	23	1,777
SIR	141	17	7	165
<b>Totals</b>	<b>16,776</b>	<b>2,909</b>	<b>492</b>	<b>20,177</b>



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## Audit Findings and Recommendations

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We found that employees hired and/or promoted into MaBSTOA, MTA Bus, and SIR non-operating titles were not required to meet the same minimum qualifications as Transit employees hired and/or promoted for the same/similar titles despite Transit officials' claim that their non-operating titles mirror those of MaBSTOA, MTA Bus, and SIR. Nine of 115 sampled non-operating employees were hired or promoted with lower education and experience requirements than those established by DCAS for Civil Service competitive titles, which Transit is required to follow, and three of these employees were working at Transit despite being hired and promoted by MaBSTOA. Other employees were hired or promoted by Transit using JVN, despite the availability of certified lists for those titles.

We also found that personnel records do not contain evidence that all operating employees hired and promoted met the requirements for their job titles. In our sample of 110 employees, documentation was missing for the following number of employees:

- drug/alcohol screening – 71
- medical examination – 24
- operating license – 9
- education and license – 1

As a result, the MTA lacks assurance that all employees, including Train Operators, Conductors, Bus Maintainers, and Bus Operators, met the fitness level and qualifications to perform the job they were hired for or promoted into. Employees' files also lacked critical forms important to prevent nepotism and to ensure that proper controls are in place related to dual employment and residency.

Additionally, for non-operating titles, we found disproportionate hiring at MaBSTOA compared to Transit, based on their size. When we examined the work performed by these employees, we found that 51 of the 55 employees in our sample of non-operating titles worked on Transit projects. These employees were not on Transit's payroll and were not designated as Yogis. Moreover, even for those employees designated as Yogis, the required process was not always followed. This resulted in employees being allowed to move freely across MTA agencies without resigning from their agency of employment when they move and without the required MTAHQ approval. The nature of this process increases the risk that it may be used inappropriately to circumvent the Civil Service process.

### Hiring and Promotion

Transit develops, administers, and scores competitive Civil Service examinations for Transit-specific titles. Since August 2016 (according to an email), SIR has assumed responsibility for using JVN to hire and promote in its operating titles without any examinations. Previously, Transit had administered examinations for SIR operating titles. This change has limited oversight of hiring practices at SIR, creating a system without appropriate checks and balances. While Transit is still

responsible for administering examinations at MaBSTOA for Transit-specific operating titles, it has no policies or procedures for carrying out these responsibilities. For non-operating Transit-specific titles, Transit gives an examination and DCAS administers the list. However, for other non-operating titles, MaBSTOA can hire an individual into a position without an examination.

## Employee Qualifications

Job Vacancy Posting Program #6.46, issued February 27, 1998, requires that Transit post job vacancies so that current/prospective employees may apply for positions for which they are qualified. This policy applies to Transit, MaBSTOA, MTA Bus, and SIR. These postings include required qualifications.

### *Operating Titles*

We sampled 110 employees (60 hired and 50 promoted). All were required to pass drug/alcohol screening, but no documentation of that testing was provided for 71 employees, including Conductors, Bus Operators, and Train Operators at Transit and Locomotive Engineers at SIR. In addition, 76 of the 110 employees were required to pass a medical examination, but no documentation of those examinations was provided for 24 employees, including Bus Operators, Train Operators, and Conductors.

Additionally, of the 110 employees:

- 9 lacked a required driver's license; and
- 1 did not meet education and license requirements.

Transit did not ensure that it received the required documents to show that hired and promoted employees met the qualifications for their job titles. Therefore, the MTA lacks assurance that all employees, including Train Operators, Conductors, and Bus Operators, met the fitness level and qualifications to perform the jobs they were hired for or promoted into.

### *Non-Operating Titles*

Transit officials stated that their JVN for non-operating titles mirror the DCAS requirements and that MaBSTOA and MTA Bus JVN mirror Transit JVN. However, we found that Transit requirements do not mirror DCAS requirements and that Transit does not require employees who are hired or promoted in MaBSTOA, MTA Bus, or SIR non-operating titles to meet the same minimum qualifications as Transit. For 10 of 83 JVN we reviewed, we found that education and experience requirements differed from DCAS examination requirements, which Transit is required to follow. For example:

- A Transit JVN for the Assistant Electrical Engineer title required a Bachelor's degree in either electrical or electronic engineering, while DCAS required a degree in electrical engineering.

- A MaBSTOA JVN for the Assistant Electrical Engineer title required graduation from high school and six years' experience or satisfactory equivalent, while DCAS required a degree in electrical engineering.
- An MTA Bus JVN for the Associate Staff Analyst title required a satisfactory equivalent of combined education and experience, while DCAS required a minimum of a Bachelor's degree and three years' experience.

Further, we found that 9 of the 115 employees in our sample were hired or promoted with lower education/experience requirements than those established by DCAS for Civil Service competitive titles. For example:

- One employee was hired as a Staff Analyst at MaBSTOA. The JVN required a Bachelor's degree and two years of full-time experience working with the budget of a large public or private organization. We noted that the employee met the education qualification, but not the experience requirement.
- Another employee was hired as a Computer Associate at Transit. The JVN required a Bachelor's degree and two years of full-time experience in mainframe computer, mid-range computer, and/or LAN/WAN computer environments. We noted that the employee met the education qualification, but not the experience requirement.
- One employee promoted as an Assistant Electrical Engineer at MaBSTOA had a degree in Electrical Engineering Technology; the JVN required a degree in Electrical or Electronic Engineering, and DCAS required a degree in Electrical Engineering.
- Two employees promoted to the Computer Associate 3 title at MTA Bus did not have the required two years of full-time experience in mainframe computer, mid-range computer, and/or LAN/WAN computer environments.

Transit officials stated the education and experience requirements in some JVNs for the Assistant Electrical Engineer title contained errors, and agreed that some employees did not meet job requirements. They stated that two separate titles – Electrical Engineer and Electronic Engineer – were combined into the Electrical Engineer title, which caused the error. In regard to the Staff Analyst title, MTA Bus officials stated that when MTA Bus became a subsidiary of the MTA in September 2004, there was no degree requirement for employees in Analyst titles. To provide a path for qualifying candidates who did not possess a Bachelor's degree, MTA Bus continued its equivalent education/experience option, which is inconsistent with Transit requirements. The education requirement for this title was identified in our prior audit report, *New York City Transit Authority – Qualifications of Certain Employees at the Manhattan and Bronx Surface Transit Operating Authority* (Report 94-S-44, issued August 4, 1995). We therefore question why, after 14 years, MTA Bus JVNs still do not mirror Transit's qualifications for this title. In response to our preliminary findings, Transit officials stated that Transit and MTA Bus would review the possibility of reconciling the job requirements for newly hired and promoted Staff Analyst employees.

We noted that, in addition to the 9 sampled employees, 47 additional employees hired/promoted under ten JVNs did not meet DCAS' education and experience requirements.

## Recommendations

1. Maintain records of all required documentation to support that applicants or employees met all the necessary qualifications to be hired or promoted.
2. Review the education and experience requirements for all positions for all four agencies to identify any differences. Take steps to revise and document changes and advise all HR officials.
3. Ensure employees hired or promoted meet all the requirements in the job specifications and that Transit's JVN's follow all DCAS requirements.
4. Develop policies and procedures for Transit to use when creating job specifications/qualifications/examinations on behalf of MaBSTOA.
5. Revisit Transit oversight of SIR's hiring and promotion process.

## Employee Work Assignments and Interagency Transfers

We found disproportionate hiring at MaBSTOA compared to Transit, based on their size, for the following four competitive Civil Service titles: Electrical Engineer, Mechanical Engineer, Project Manager, and Staff Analyst. Significantly more employees were hired at MaBSTOA (468) than at Transit (59). Similarly, we found that promotions among three competitive Civil Service titles (Electrical Engineer, Project Manager, and Staff Analyst) were also disproportionate (201 at MaBSTOA compared to 38 at Transit), with a large number of MaBSTOA employees working in Transit support departments.

We reviewed the work history for 55 MaBSTOA employees and found that 51 did Transit work.

- 27 MaBSTOA employees worked in other departments, but we concluded that they were doing Transit work.
- 24 CPM employees were on MaBSTOA's payroll, even though they were performing only or primarily Transit work, according to CPM's Employee Project History Report.

MaBSTOA employees were working on Transit projects while on MaBSTOA's payroll and were not designated as Yogis. Transit officials stated that because Transit and MaBSTOA operations are under the same management, MaBSTOA employees working for Transit are not considered Yogis. However, this results in employees who were hired and promoted through MaBSTOA doing Transit work, thereby circumventing the Civil Service process, as Transit is required to follow Civil Service rules while MaBSTOA is not. Transit officials contend that the designation of "Transit work" in the support departments is not correct. They maintain that these departments support the operations of both Transit and MaBSTOA and, therefore, employees on both payrolls serve in the support departments. However, employees assigned to positions where the work is primarily or solely subway-related should be hired as Transit employees in accordance with Civil Service requirements.

Under certain conditions, MTAHQ permits MTA agencies to transfer qualified staff from other MTA agencies while allowing the staff to remain in the same pension system and tier and retain existing longevity and benefits. MTAHQ is a public benefit corporation whose employees are in the State Pension System; Transit is a NYC agency (for employment purposes), and its employees are in the NYC Pension System; MaBSTOA, a public benefit corporation, is neither an NYC nor a State agency and has its own pension plan.

MTA's Interagency Transfers Policy describes the process for transferring employees identified for a position at another agency, and states what should be verified by the receiving agency before proceeding with an offer (e.g., salary history and whether the employee has been in the current position for one year).

Since 2014, a Yogi Request Justification Questionnaire and a pension evaluation have been required to obtain MTAHQ approval of a request to remain on the current payroll while accepting a position in another agency. MTAHQ receives all the information, including pension impact, and considers whether the transfer would be in the best interest of the organization.

However, we found that MTA officials were not in compliance with the policy. For our sample of 50 employees who met the definition of a Yogi, documentation was provided for only 12. Of these, three had a pension evaluation that showed only the cost to the employee, and not the cost to the agency or whether it was in the best interest of the organization.

Moreover, the appointment of an employee as a Yogi is not standardized and, therefore, not applied consistently. Yogi transfers initiated prior to 2014 may not be documented, as the process has changed and the questionnaire process has been established. Additionally, the practice of sharing employees among bus operations has resulted in employees working at agencies other than their hiring and paying agency, circumventing the otherwise required Yogi process. The inconsistent application of the process creates a risk that the interagency transfer process may be used arbitrarily to change job positions for upward career mobility.

## Recommendations

6. Ensure that employees doing Transit work at the support departments are hired by Transit using the Civil Service examination process.
7. Assign employees to projects/initiatives within the agency that hired the employee.
8. Ensure required documentation is prepared and maintained for each interagency transfer.

## Documentation

Transit's HR uses Talent Acquisition Management/Personnel Action Request (TAM/PAR) approval to hire and promote employees. Specifically, TAM is used for JVN job postings, which can be filled by internal or external candidates. PAR is used for internal promotions only, which do not require JVN.

A 2012 TAM/PAR processing memo established a checklist of documents required in each PAR request folder. We found that personnel folders for 37 of 115 sampled employees were missing one or more of the forms required by the TAM/PAR process. The missing documents included:

- dual employment forms – 20
- residency waiver forms – 10
- applicant flow reports – 7

The lack of required documentation increases the risk that critical steps in the process were not completed and makes the process less transparent. For instance, the Applicant Flow Report provides information about the number of qualified candidates interviewed and selected by the interview panel. Without it, there is less assurance that all required candidates were considered.

### *Nepotism*

The MTA's All Agency Policy Directive 11-051 – Anti-Nepotism Employment Procedures, dated September 30, 2013, applies to all MTA agencies and states that, under State law and the MTA Code of Ethics, employees of a public authority are prohibited from participating in employment decisions of the public authority relating to family members. This memo further states that applicants are required to complete an Applicant Family Member Disclosure Form. An anti-nepotism process memo, issued on October 27, 2015 by the Vice President of Transit HR, states that, to ensure full compliance with MTA's anti-nepotism policy, a Family Member Disclosure Form must be completed by all candidates being considered for a position. All candidates must disclose whether a relative or member of their household is employed at Transit or any MTA subsidiary or affiliated agency. Interviewers must also complete an Interviewer Relationship Form confirming no familial relationship with any of the applicants to be interviewed, and employees complete a Familial Relationship Recusal Form if they learn that a family member will be working in the same Responsibility Center within Transit.

The Family Member Disclosure Form was not in the files for 30 (of 115) non-operating employees and 12 (of 110) operating employees. Transit HR officials stated that they did not use the anti-nepotism forms from 2013 to 2015. Also, for non-operating employees, MTA Bus HR officials informed us that the Interviewer Relationship Form was only implemented after February 2016. However, we did not receive forms for 15 non-operating employees hired or promoted after February 2016. They also informed us that, as part of the employment approval process, HR reviews the employment package for completed and signed Family Member Disclosure Forms. However, due to the large number of employees, they are unable to monitor whether employees are completing the forms as required. Transit HR officials told us they rely on tips from other employees informing them of familial relationships, which are then investigated.

There is a risk of nepotism in the hiring and promotion process due to non-disclosure of familial relationships, as required by MTA policy.

## Recommendations

9. Comply with stated TAM/PAR processing and nepotism policies, procedures, and directives.
10. Implement proper documentation policies to ensure all required forms are collected and retained in employee files.

## Provisional Appointments

Under the Personnel Rules and Regulations of the City of New York, when there is no appropriate eligibility list to fill a vacancy in the competitive class, a person may be nominated for non-competitive examination and, if deemed qualified, may be appointed provisionally to fill the vacancy until a selection and appointment can be made by competitive examination. A provisional appointment may not last more than nine months.

Transit employees are subject to the Law and are hired as provisional until an examination is given. Forty-four of the 115 sampled non-operating employees were hired or promoted at Transit during the scope period of our audit, 38 of whom were in competitive titles, subject to the Law. We reviewed their personnel files to determine if they were appointed appropriately from the DCAS examination eligibility list and obtained data from DCAS regarding when the examinations were held for these titles, if the lists were open, and, if not, the date the lists were closed. We noted long time periods between examinations, sometimes resulting in the lack of a certified list.

Of the 38 Transit employees in competitive titles, we found that:

- 24 were hired or promoted by JVN in the absence of DCAS-certified lists; and
- 6 were hired or promoted by JVN, despite the availability of certified lists for those titles.

We question why these six employees were hired or promoted using JVN instead of certified lists, as required under the Law.

We noted that 11 of the 30 provisional employees were in three titles (Assistant Transit Management Analyst [TMA], Associate TMA, and Associate Transit Customer Service Specialist [TCSS]) for which Transit gives examinations. The Assistant TMA examination was held by DCAS in April 2004, and that list closed in January 2009. The Associate TMA examination was held in January 2007, and that list closed in August 2012. Since then, there has not been a certified list for the Assistant and Associate TMA positions. Per Transit officials, there has been no examination history for the Associate TCSS since 1989. As there are no open certified lists for these titles, individuals are hired and promoted provisionally using JVN. In response to our preliminary findings, Transit officials stated that examinations for the TMA series would be held in 2018. They added that Transit HR officials will consider scheduling a TCSS examination in 2019. The remaining 19 provisional employees are in titles for which DCAS administers the examinations.

Employees hired/promoted by JVN at Transit are provisional until the competitive examination

is held and the list is established. We found that 26 of the 38 hired/promoted employees at Transit were provisional for more than nine months, including an Assistant TMA who has been provisional for nearly 14 years.

Transit officials stated that they have not scheduled TCSS and TMA series examinations because the urgent need to hire operating titles requires all of the Examinations Unit's resources. DCAS officials stated that they communicate with each agency, including Transit, once a year to discuss examination needs and to accommodate as many examinations as possible during the upcoming year. However, Transit did not request that DCAS hold examinations for non-operating citywide titles. Transit officials stated that, as a general rule, they do not attempt to affect the timing of examinations for citywide titles. In response to our preliminary findings, Transit said it would "advise DCAS of the citywide titles where Transit has current or anticipated vacancies, which information is already provided to DCAS, and request that examinations be scheduled consistent with Transit's workforce needs." This response does not address the need for Transit to request that DCAS schedule examinations to avoid provisional appointments lasting longer than nine months.

Due to the long time periods between examinations, there are no certified lists, and Transit has been hiring employees using JVN's instead of DCAS eligibility lists, circumventing the Civil Service process. When competitive class employees are hired at Transit using JVN's, they must be hired provisionally until the competitive examination.

## Recommendations

11. Comply with Civil Service regulations, which require the use of DCAS-certified lists when hiring/promoting employees at Transit.
12. Communicate with DCAS regarding examination needs for citywide titles and request that such examinations be held.
13. Hold Transit-specific examinations (e.g., TMA and TCSS) at regular intervals.

## Compensation Schedule and Biographical Information

Sections 2800 and 2806 of the Public Authorities Law require public authorities to submit an annual report to legislative leaders regarding compensation and biographical information and to post that report online. Since fiscal year 2013, the MTA has submitted its Annual Compensation Schedule and Biographical Information Reports to legislative leaders. However, it has not consistently posted these reports to the MTA website.

Based on our review of the reports for fiscal years 2014 through 2016, it appears that the number of managerial employees with an annual salary of over \$100,000 at Transit, MaBSTOA, MTA Bus, and SIR increased from 2,664 in 2014 to 3,112 in 2016.



MTA officials told us that the reports were not posted on their website due to an oversight by MTA Corporate Compliance within MTAHQ, stemming from procedural changes. As a result, these reports were not made available to the public on the MTA's website. These reports are now posted, but no longer specify where employees last worked, making the reports less transparent. The 2017 report also does not include SIR employees.

## Recommendation

14. Post the compensation schedule and biographical information on the MTA's website in the future and for all years missed since 2013.

## Audit Scope, Objectives, and Methodology

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Our audit determined whether the MTA uses similar hiring and promotion policies, procedures, and directives for Transit, MaBSTOA, MTA Bus, and SIR. The audit also examined whether the MTA has established controls over the interagency movement of employees and if there are any opportunities for improprieties in the hiring, promotion, or supervision of employees. The audit covered the period January 1, 2014 through September 5, 2017.

To accomplish our objectives and evaluate MTA, Transit, MaBSTOA, MTA Bus, and SIR internal controls as they related to their performance and our audit objectives, we reviewed relevant laws, regulations, and guidance. We met with key personnel to obtain an understanding of the policies, procedures, and directives in place over hiring, promotions, movement of employees between the agencies, and nepotism. We obtained a list of employees hired and promoted at the agencies during the period January 1, 2014 through September 5, 2017.

We selected a judgmental sample of 11 non-operating hired titles and 5 operating hired titles, as these were the titles with the most employees. We then picked a random sample of 65 employees from the non-operating titles and 60 employees from the operating titles. Similarly, we selected a judgmental sample of seven non-operating promoted titles and five operating promoted titles with the most employees and a random sample of 50 employees from the non-operating titles and 50 from the operating titles. We reviewed employee hard copy and electronic personnel files to determine if the employees met the education, experience, and other qualifying requirements, such as drug and medical testing, required by the job specification. Forty-four of the 115 sampled non-operating employees were hired and promoted at Transit, 38 of whom were in competitive titles, subject to the Law. We reviewed the personnel files to learn whether the employees were appointed appropriately from the DCAS examination list. We also obtained data from DCAS for these titles concerning when the examinations were held, whether the lists were open, and, if not, the date the lists were closed.

Additionally, we obtained a list of Yogi employees by agency from a report titled "Yogi Data" on August 23, 2017. This report provided details about the employees' job titles (operating or non-operating), agency of employment, pay, and start date. We selected a sample of 50 Yogi employees working at one agency and paid by another. We randomly selected 10 employees working at

Transit, 10 at MaBSTOA, 20 at MTA Bus, and 10 at SIR from operating and non-operating titles. We met with the hiring agencies and MTAHQ officials to obtain justification for why employees were working at one agency and being paid by another. We communicated our findings to the agencies' management and reviewed information they provided through August 7, 2018.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

## Reporting Requirements

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We provided draft copies of this report to MTA officials for their review and comment. We considered their comments in preparing this final report, and they are attached in their entirety at the end of it.

The MTA did not agree with our findings and conclusions and stated that it was in compliance with 8 of the 14 recommendations in the report. However, our review of the records provided did not support this statement because, as stated, the audit found: several individuals were appointed to job titles where they did not meet the qualifications stated in the JVN; interagency transfers were allowed and no documents were provided for 38 of the 50 sampled employees to justify the transfer and that it was beneficial to the organization; employees were hired or promoted by Transit using JVN, despite the availability of certified lists for those titles; and 37 of the 115 sampled employees were missing one or more of the forms required by the TAM/PAR process.

Within 90 days after the final release of this report, as required by Section 170 of the Executive law, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the

State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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## Contributors to This Report

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A team of accountability experts respected for providing information that decision makers value.

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To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

# Agency Comments and State Comptroller's Comments

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**Fernando Ferrer**  
Acting Chairman



**Metropolitan Transportation Authority**

State of New York

December 19, 2018

Ms. Carmen Maldonado  
Audit Director  
The Office of the State Comptroller  
Division of State Government Accountability  
59 Maiden Lane, 21<sup>st</sup> Floor  
New York, NY 10038

**Re: Draft Report #2017-S-48 (Employee Qualifications, Hiring, and Promotions)**

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Andy Byford, President, MTA NYC Transit, and Darryl C. Irick, President, MTA Bus Company which address this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Fernando Ferrer".

Fernando Ferrer

c: Veronique Hakim, MTA Managing Director  
Michael J. Fucilli, Auditor General, MTA Audit Services

Attachments

*The agencies of the MTA*

MTA New York City Transit  
MTA Long Island Rail Road

MTA Metro-North Railroad  
MTA Bridges and Tunnels

MTA Capital Construction  
MTA Bus Company

# Memorandum



**Date** December 18, 2018

**To** Fernando Ferrer, Acting Chairman, Metropolitan Transportation Authority

**From** Andy Byford, President, New York City Transit Authority  
Darryl Irick, President, MTA Bus Company

**Re** New York State Office of the State Comptroller Report 2017-S-48 – Employee Qualifications, Hiring, and Promotions

This information is provided on behalf of the New York City Transit Authority ("Transit"), its subsidiary the Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA"), MTA Bus Company ("MTA Bus"), and Staten Island Railway ("SIR") in response to the draft audit report of the New York State Office of the State Comptroller ("OSC") on Employee Qualifications, Hiring, and Promotions, which covers the period January 2, 2014 through September 5, 2017. The stated purpose of the audit was to determine whether the Metropolitan Transportation Authority ("MTA") uses similar hiring and promotion policies, procedures, and directives for Transit, MaBSTOA, MTA Bus, and SIR and to examine whether the MTA has established controls over the interagency movement of employees and if there are opportunities for improprieties in the hiring, promotion, or supervision of employees.

As discussed below, a number of the fourteen recommendations contained in the OSC's draft audit report are based upon findings that disregard or fail to account for relevant information provided to OSC, or make faulty and mistaken presumptions. The aforementioned results in factual conclusions by OSC, that are not supported by the record, and with which Transit, MaBSTOA, MTA Bus, and SIR strongly disagree.

**State Comptroller's Comment** – Our audit was conducted in accordance with generally accepted government auditing standards that "provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services. These standards provide the foundation for government auditors to lead by example in the areas of independence, transparency, accountability, and quality through the audit process." The purpose of fieldwork requirements is to establish an overall approach for auditors to apply in obtaining reasonable assurance that the evidence is sufficient and appropriate to support the auditors' findings and conclusions. As shown in our auditors' comments, the information provided by the MTA often did not meet either the legal requirements or the requirements of the MTA's own policies and procedures. While the MTA's practices may differ, auditors must

base their testing on the criteria currently in place. The MTA's comments about the findings, conclusions, and recommendations are thus without merit.

Our responses to the fourteen individual recommendations are below.

#### **EMPLOYEE QUALIFICATIONS**

1. **RECOMMENDATION 1: "Maintain records of all required documentation to support that applicants or employees met all the necessary qualifications to be hired or promoted."**

Transit already complies with this recommendation. It is the practice of Transit, MaBSTOA, SIR, and MTA Bus to maintain records verifying that each hired or promoted employee meets the qualification requirements of the job title. In addition to copies of documents, such as diplomas and licenses presented and reviewed at time of employment processing, the records include indications in the PeopleSoft system that the employee passed a drug/alcohol and/or medical examination, if required by the job title. The auditors were provided with all respective records from our computer system indicating that all employees hired or promoted had successfully completed the drug/alcohol and medical examinations required for their job titles.

**State Comptroller's Comment** - While the MTA may believe screenshots in PeopleSoft are adequate, they do not meet the requirements for medical examinations in DMV's regulations (which the MTA is required to comply with), nor what is stated on the applicable medical examination Form DS-874 "Medical Examination Report of Driver Under Article 19-A." This form clearly states that "THE CARRIER MUST KEEP THE ORIGINAL EXAMINATION REPORT (NOT A PHOTOCOPY) IN THE EMPLOYEE'S 19-A FILE. ANY PHOTOCOPIES MUST IDENTIFY THE LOCATION OF THE ORIGINAL." Additionally, the U.S. Department of Transportation (USDOT) Office of Drug & Alcohol Policy & Compliance's *Employer Record Keeping Requirements For Drug & Alcohol Testing Information* states in part that "employers may also keep electronic records for their own purposes, but DOT requires that paper records be kept." Moreover, in our prior audit report "Bus Driver Licensing" (2012-S-30), issued June 13, 2013, the MTA stated that it implemented our recommendation that "all completed medical records be sent to, reviewed and filed at the training facility." Using "indications in their PeopleSoft system" as the official record to support compliance with drug and alcohol testing is inconsistent, not only with what the MTA previously stated in writing that it would do, but with the requirements of DMV and USDOT.

Transit, MaBSTOA, SIR, and MTA Bus strongly disagree with any implication in the draft audit report that the agencies lack assurance that all employees hired or promoted into titles requiring a drug/alcohol test or medical examination have completed such requirements satisfactorily. Transit, MaBSTOA, SIR, and MTA Bus' hiring process is structured so as to ensure that no candidate is placed in a training class who has not successfully passed the laboratory test and medical examination required by the job titles. Safeguards in the PeopleSoft system and in our employment process prevent a candidate whose laboratory results are not satisfactory

from proceeding with the employment process and a candidate whose medical examination is not successful from being appointed. During the audit, the auditors were given screen shots from the PeopleSoft system showing that every sampled employee had satisfactorily passed all required drug/alcohol screenings and medical examinations.

2. **RECOMMENDATION 2: "Review the education and experience requirements for all positions for all four agencies to identify any differences. Take steps to revise and document changes and advise all HR officials."**

Transit agrees in part with this recommendation. It should be noted that Transit, as a practice, maintains the same education and experience requirements for the same positions at the four agencies. With regard to a difference in the Job Vacancy Notice ("JVN") requirements in the Staff Analyst title series at MTA Bus noted in the draft audit report, MTA Bus will undertake a review of the possibility of harmonizing job requirements for newly hired and promoted employees in the MTA Bus Staff Analyst series going forward, consistent with the current career mobility expectations of current MTA Bus incumbent employees.

3. **RECOMMENDATION 3: "Ensure employees hired or promoted meet all the requirements in the job specifications and Transit's JVN's follow all DCAS requirements."**

Transit already complies with this recommendation. It is Transit's practice to conduct a comprehensive verification of each candidate's qualifications at the time of hire or promotion in order to ensure that the employee meets the requirements for the position as determined by the New York City Department of Citywide Administrative Services ("DCAS"). In addition, the appointment of employees by Transit is subject to review and approval by DCAS. For Transit specific titles, Transit's Division of Human Resources ("Human Resources") establishes appropriate, job-related qualification requirements for each title and rigorously enforces those requirements, which are also subject to DCAS review and approval.

**State Comptroller's Comment** – Contrary to the MTA's assertions, education and experience requirements at the four agencies are not the same. For instance, the Job Vacancy Notice (JVN) for the Assistant Electrical Engineer title at Transit states that a bachelor's degree in either electrical or electronic engineering is acceptable while the MaBSTOA JVN states that graduation from high school and six years' experience or satisfactory equivalent is acceptable. NYC Department of Citywide Administrative Services (DCAS) requires a degree in electrical engineering for that title.

Transit specifically disagrees with the finding in the draft audit report that nine of 115 non-operating employees were hired or promoted with lower education and experience requirements than established by DCAS or in the JVN. Transit reviewed the nine



challenged job actions and provided a detailed response to OSC in a letter dated July 16, 2018. While Transit has acknowledged an error with regard to one job action, after reviewing the employment histories of the remaining eight employees, Transit continues to assert that its determinations to hire or promote the employees were proper for the reasons set forth in that letter. The aforementioned review by Transit of the nine challenged job actions and its respective findings, however, are not addressed in OSC's report.

**State Comptroller's Comment** - Transit has acknowledged an error with regard to one job action (Assistant Electrical Engineer at MaBSTOA with a degree in Electrical Engineering Technology while DCAS requires a degree in Electrical Engineering). For the remaining eight employees, Transit did not provide any documentation to support that the qualifications in the JVN were met. No documentation was provided related to either the required length of experience in years or the computer experience required. Instead, Transit provided various explanations as to why the employees were appointed. For example, one employee had a degree in Advertising; however, it was not one of the acceptable degrees in the JVN for Staff Analyst. This employee also did not have "2-years of FT professional experience working with the budget of a large public or private concern." Transit officials stated that, prior to 2017, data entry work was included in the qualification requirements. However, DCAS' Notice of Examination required experience in mainframe computers, LAN or WAN computer environment, and/or local desktop support and did not include data entry work.

**4. RECOMMENDATION 4: "Develop policies and procedures for Transit to use when creating job specifications/qualifications/examinations on behalf of MaBSTOA."**

Transit already complies with this recommendation. For MaBSTOA operating titles, Human Resources follows the procedures established by DCAS for the development and administration of Civil Service examinations. Human Resources also follows these procedures for the examinations it develops for Transit Civil Service titles, as provided for in a Memorandum of Understanding dated May 2011 between NYCT and DCAS. For MTA Bus operating titles, similar procedures exist and are described in a Memorandum of Understanding dated January 2006 between NYCT and MTA Bus Company. Copies of both MOUs were provided to OSC during the audit.

**State Comptroller's Comment** - The Memorandum of Understanding between Transit and DCAS relates only to Transit and not to MaBSTOA. No Memorandum of Understanding between Transit and MaBSTOA was provided.

**5. RECOMMENDATION 5: "Revisit Transit oversight of SIR's hiring and promotion process."**

Transit agrees with this recommendation; however, it should be noted that the draft audit report points to no specific issues relating to SIR's hiring and promotion process. Nevertheless, the appropriate parties in Human Resources, SIR, and the Department of Subways will meet to discuss the relationship between NYCT and SIR to ensure that SIR hiring and employment processes are managed appropriately.

**EMPLOYEE WORK ASSIGNMENTS AND INTERAGENCY TRANSFERS**

6. **RECOMMENDATION 6:** "Ensure that employees doing Transit work at the support departments are hired by Transit using the Civil Service examination process."

Transit disagrees with this recommendation. The recommendation regarding employee work assignments in the support departments is based upon the mistaken presumption that some distinct and measurable portion of the work performed in those departments can be categorized as "Transit work." This categorization, however, is not applicable to the support departments because the support departments provide services to support all of the operations of Transit and MaBSTOA, which provide an integrated network of transit and paratransit services across the City of New York. Further, providing support services in this unified manner achieves efficiencies and cost savings. By way of contrast to the support departments, because MaBSTOA operations do not directly involve the Department of Subways, Human Resources has safeguards in place to ensure that all personnel working in the Department of Subways are on the Transit payroll, with limited exceptions previously explained to the OSC during the audit.

**State Comptroller's Comment** - Transit is incorrect in stating that the recommendation is based on "mistaken presumptions that some distinct and measurable portion of the work performed in those departments can be categorized as 'Transit work.'" Rather, it was based on the work assignments provided by Transit being subway related. These assignments included "Station Reconstruction – Reconstruct Cortlandt St;" "ventilation facilities-Sandy: Fan Plants 3 Locs"; and "Subway Tunnel Structural- Rehab: Pacific to 59 Street- 4<sup>TH</sup> avenue line." In addition, we found disproportionate hiring and promotions at MaBSTOA compared to Transit based on their size.

7. **RECOMMENDATION 7:** "Assign employees to projects/initiatives within the agency that hired the employee."

Transit disagrees with this recommendation. The recommendation regarding assigning employees to projects/initiatives within the agency that hired the employee is based upon the mistaken presumption that all projects and initiatives exist only within a single agency. Projects and initiatives in the support departments of the four agencies commonly involve two, three, or all four of the agencies, which is not surprising as they are under common management.

**State Comptroller's Comment** - Transit is incorrect in stating that the recommendation is based on "mistaken presumptions that some distinct and measurable portion of the work performed in those departments can be categorized as 'Transit work.'" Rather, it was based on the work assignments provided by Transit being subway related. These assignments included "Station Reconstruction – Reconstruct Cortlandt St;" "ventilation facilities-Sandy: Fan Plants 3 Locs"; and "Subway Tunnel Structural- Rehab: Pacific to 59 Street- 4<sup>TH</sup> avenue line." In addition, we found disproportionate hiring and promotions at MaBSTOA compared to Transit based on their size.

**8. RECOMMENDATION 8: "Ensure required documentation is prepared and maintained for each interagency transfer."**

Transit does not agree with this recommendation in its entirety. Transit agrees with the OSC's assessment that the MTA Yogi approval process currently in place is appropriate with regard to the personnel moves that are covered by that process. However, the draft audit report's suggestion to implement a similar process to approve the movement of personnel within integrated bus operations would conflict with collectively bargained for rights and interfere with the efficient management and operation of surface transportation. Since 2008 the bus operations of Transit, MaBSTOA, and MTA Bus have been under a unified management structure. Under this unified management structure, the number of bus operators and bus maintainers at Transit and MaBSTOA, which comprise the overwhelming majority of surface transportation employees, is generally determined to correspond to staffing needs of specific bus depots, each of which includes a maintenance department. Depots are designated as MaBSTOA or Transit depots by borough. As signaled by its name, MaBSTOA bus depots are located in Manhattan and the Bronx, and Transit depots are located in Queens, Brooklyn, and Staten Island. There are also six maintenance facilities that provide shared services to the fleets of Transit, MaBSTOA, and MTA Bus. Similarly, the number of bus operators and bus maintainers at MTA Bus is determined based upon the staffing needs at the eight MTA Bus depots, which are located in Queens and the Bronx.

**State Comptroller's Comment** – The recommendation to apply the Yogi approval process uniformly is based on the differences in requirements between Transit and MaBSTOA. Transit is required to follow DCAS requirements for its titles while MaBSTOA is not subject to this requirement. In addition, we did not make a determination that the current Yogi process is "appropriate."

How bus operators and bus maintainers employed by Transit, MaBSTOA and MTA Bus are deployed is controlled by a number of long-standing collective bargaining agreements ("CBA"), memoranda of understanding, and agreements entered into with the Transport Workers Union, Local 100 ("TWU") and with Amalgamated Transit Union ("ATU") Locals 726, 1056, 1179, and 1181. For example, to provide efficient delivery of surface transportation in the City of New York, under the CBA between the TWU, Transit and MaBSTOA, represented bus operators and maintainers, whether Transit or MaBSTOA employees, can be assigned to jobs at any TWU Local 100 Transit or MaBSTOA depot or facility.

**DOCUMENTATION**

**9. RECOMMENDATION #9: "Comply with stated TAM/PAR processing and nepotism policies, procedures, and directives."**

Transit is already complying with this recommendation. Transit is in substantial compliance with its TAM/PAR processing and anti-nepotism policies, procedures, and directives and is taking steps to assure full compliance. The preliminary audit

report asserted that anti-nepotism forms were missing from the personnel records of 38 employees. In fact, 28 of these employees had been hired prior to new anti-nepotism procedures and forms being put into use in January 2016. These forms are used during the interviews and are intended to prevent employees from being involved in the interview or selection process of family members. The remaining 10 employees had effective hire dates after January 2016 but may have been interviewed prior to the utilization of the new forms. In any case, the new anti-nepotism procedures and forms are in place and are being used appropriately.

**State Comptroller's Comment** - MTA's All Agency Policy 11-051 dated September 30, 2013 regarding Anti-Nepotism Employment Procedures required the Applicant Family Member Disclosure Form, although Transit only put it into use in January 2016. Per Transit, Interview Summary Data Report (ISDR) forms were missing from the records of 15 employees because these employees were processed prior to implementation of this procedure on January 28, 2016. However, of these 15 employees, 11 were hired in May 2016 or later, including 4 hired in 2017, and therefore should have had the ISDR forms.

Similarly, the requirement that the Interview Summary Data Report (ISDR) be attached with the TAM was not implemented until January 28, 2016. This procedure and form were requested by the Department of EEO & Diversity in order to ensure transparency into candidates interviewed. The preliminary audit report asserted that ISDR forms were missing from the records of several employees. However, these employees were processed prior to the implementation of this procedure.

**10. RECOMMENDATION 10: "Implement proper documentation policies to ensure all required forms are collected and retained in employee files."**

Transit agrees with this recommendation. As Transit previously advised the OSC, it will update its current checklist to help ensure that all required documents are included with the TAM/PAR. Transit will also make changes to ensure that relevant documentation not attached to the TAM/PAR is readily available, if needed. Similarly, Transit concurs with the recommendation that all forms required by the Anti-Nepotism Employment Procedures effective September 30, 2013, should be obtained from hired and promoted employees. Human Resources staff, particularly those in the Client Services and Employment Units, will be reminded by Transit of the need to comply with these procedures.

**PROVISIONAL APPOINTMENTS**

**11. RECOMMENDATION 11: "Comply with Civil Service regulations, which require the use of DCAS-certified lists when hiring/promoting employees at Transit."**

Transit already complies with this recommendation. Transit complies with Civil Service regulations regarding the use of certified lists as we fully documented in our

case-by-case response to the preliminary report, dated July 16, 2018.

We do not agree that there was any non-compliance with DCAS processes for the employees sampled except for one individual who was retained as a provisional employee despite the existence for four years of a list for that title. Transit's case by case review and the explanation of DCAS processes provided by Transit to the auditors demonstrated that there had been no systemic non-compliance with Civil Service law or DCAS rules in the hiring process.

**State Comptroller's Comment** - Transit claims that it is in compliance with the recommendation but did not provide documentation for why five employees were hired or promoted by JVN despite the fact that there were certified lists for those titles that were open.

To the extent the draft audit report is critical of provisional appointments in Transit specific titles, we note that Transit currently schedules 40 – 50 examinations for its Civil Service titles every year, which more than doubles the number of examinations for these titles prior to the implementation of the a Memorandum of Understanding with DCAS in 2011 ("DCAS MOU"). Moreover, this represents a significant contribution to DCAS efforts to control the number of provisional employees serving in Civil Service titles.

DCAS rules and the Civil Service law provide for successive appointments of the same provisional employee where an examination does not produce a list adequate to fill all positions then held on a provisional basis. Despite the diligent efforts of DCAS and Transit to schedule and administer timely examinations for citywide and Transit-specific titles, the resulting lists are at times inadequate to replace provisional employees. The lack of candidates who have passed the Civil Service examination, rather than failure to schedule examinations or non-compliance with Civil Service law or DCAS rules, is the primary reason why provisional employees are retained for extended periods.

**12. RECOMMENDATION 12: "Communicate with DCAS regarding examination needs for citywide titles and request that such examinations be held."**

Transit already complies with this recommendation. As a preliminary matter, we note that DCAS is responsible for administering the Civil Service system for New York City agencies, certain agencies that have historically been treated as New York City agencies for Civil Service purposes, and other government entities that are not New York City agencies, including Transit. Among other functions, DCAS is responsible for creating, scheduling, and administering examinations for job titles used across the multiple agencies under its jurisdiction. Transit provides DCAS with access to all relevant Transit data required for the purpose of administering this system, which includes information about its vacancies, retirements, and all provisional hires.

**State Comptroller's Comment** - We question Transit's position that it is in compliance with the recommendation. According to DCAS, it communicates with each agency, including Transit, once a year to discuss examination needs. However, despite these communications, Transit did not request that DCAS hold any examinations. Transit officials advised, "As a rule NYCT does not attempt to affect the timing of examinations for city-wide titles." Given that the last examination for the Assistant Transit Management Analyst was in 2004, the list closed in 2009, and there were 133 provisional employees in January 2018, it is unclear why Transit did not request an examination.

Transit, through a cooperative relationship, has long sought to assure that its Civil Service hiring needs have been addressed by DCAS. Of particular note here, until 2011, DCAS was also responsible for scheduling examinations for job titles used exclusively by Transit. Under the DCAS MOU, which was amended in 2018, Transit is now responsible for scheduling examinations for Transit-specific job titles. Approximately 95% of Transit's Civil Service employees serve in these Transit-specific job titles. Prior to the 2011 DCAS MOU, DCAS would typically allot 20 exams on its annual examination schedule for Transit-specific job titles. The MOU entails a significant financial investment on the part of Transit, and currently, Transit schedules 40 or more exams per year for these titles. In addition to aiding Transit's ability to schedule exams for its own titles, the MOU has enabled DCAS to invest increased resources into its efforts to scheduling more exams, more frequently for city-wide titles.

Transit disagrees with any implication that it is at all responsible for any lack of examinations for citywide titles being administered by DCAS. Nevertheless, as part of its continuing dialogue with DCAS, Transit will continue to advise DCAS of the city-wide titles where Transit has current or anticipated vacancies, and request that examinations be scheduled to meet these workforce needs.

**13. RECOMMENDATION 13: "Hold Transit-specific examinations (e.g., TMA and TCSS) at regular intervals."**

Transit already complies with this recommendation. As explained above, Transit has administered 40 or more examinations for Transit-specific titles each year since the implementation of the 2011 MOU. By the end of 2018, examinations for all of the titles in the Transit Management Analyst series will have been held. Human Resources will consider scheduling an examination for Transit Customer Service Specialist in 2019. However, examinations for operating titles are generally given priority over examinations for administrative or analytical job titles. Exams for these operating titles are required to ensure that safety sensitive or critical operating vacancies are filled on time with qualified employees.

**State Comptroller's Comment** - Transit's compliance with this recommendation is also questionable because there has been no examination for Associate Transit Customer Service Specialist since 1989. A period of 30 years does not exemplify compliance.

**14. RECOMMENDATION 14: "Post the compensation schedule and biographical information on the MTA's website in the future and for all years missed since 2013."**

Transit already complies with this recommendation. Biographical information on the relevant employees of all MTA agencies is posted on the MTA website at (<http://web.mta.info/mta/compliance/disclosures.html>). For detailed salary information, a link was created in the Other Disclosures Document section.

**State Comptroller's Comment** - Transit took corrective action by posting biographical information for 2013 onwards to the MTA website in response to our preliminary findings.