



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF THE BUDGET
STATE CAPITOL
ALBANY, NEW YORK 12224

Andrew M. Cuomo
Governor

Robert L. Megna
Director of the Budget

BUDGET BULLETIN	B-1197	November 14, 2011
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TO: ALL DEPARTMENT AND AGENCY HEADS

FROM: Robert L. Megna *Robert L. Megna*

SUBJECT: Management/Confidential Salary Actions

In order to save a recurring \$450 million included in the 2011-12 Enacted Budget, the Governor has engaged in collective bargaining with the State's public employee unions. The Civil Service Employees Association (CSEA) and the Public Employees Federation (PEF) recently ratified collective bargaining agreements that provide significant recurring savings, including a Deficit Reduction Program in SFY 2011-12 and 2012-13. In addition, both CSEA- and PEF-represented employees have received performance advances ("steps") as well as longevity payments at the start of the fiscal year.

This bulletin applies to Management / Confidential (M/C) employees in executive branch agencies and public benefit corporations funded in the Executive Budget and/or having governing boards with a majority of members appointed by the Governor who are not afforded collective bargaining rights. In an effort to treat such employees similar to CSEA- and PEF-represented employees, eligible M/C employees will be paid performance advances or longevity payments retroactive to April 1, 2011. M/C employees will also be subject to a 2011-12 and 2012-13 Deficit Reduction Plan. Details of these salary actions are provided below.

SFY 2011-12 and 2012-13 Deficit Reduction Plan

Impacted M/C employees will be provided with the equivalent of nine days of Deficit Reduction Leave (DRL) to be used before the end of SFY 2012-13 (DRL will be prorated for less than full-time employees). State agencies are instructed to ensure that each employee who requests use of DRL is permitted to use such DRL.

For the 2011-12 DRP, affected employees will have reduced compensation for nine consecutive pay periods beginning in payroll period 16 for employees on the Institution Lag payroll calendar (paid December 1, 2011) and payroll number 17 for employees on the Administration Lag payroll calendar (paid December 7, 2011). For the 2012-13 DRP, affected employees will have reduced compensation beginning in payroll period 25 for employees on the Institution Lag payroll calendar (paid April 5, 2012) and payroll period 26 for employees on the Administration Lag payroll calendar (paid April 11, 2012).

The cash value of each affected employee's DRP reductions will be repaid to the employee in equal bi-weekly installments over 39 consecutive payroll periods beginning in the paycheck which includes April 1, 2015.

As directed in the CSEA and PEF programs, the flexible design of the DRP will facilitate agency management in scheduling coverage of all needed shifts without the use of additional overtime. Agency management must ensure that overtime is not worked or utilized that would not have otherwise been worked or utilized in the absence of the DRP. The DRP provides an important part of the recurring \$450 million Financial Plan savings; this savings must not be offset by additional and unanticipated overtime expenses. The Division of the Budget will closely monitor biweekly agency overtime reports to track changes in overtime use compared to corresponding biweekly periods in the 2010-11 SFY.

Additional information on the Deficit Reduction Plan is available from the Office of the State Comptroller (Payroll Bulletin) and from the Department of Civil Service (Attendance and Leave Manual Policy Bulletin).

2011-12 PERFORMANCE ADVANCES

Payment 2011-12 performance advances for eligible statutorily paid (graded) employees and non-statutorily paid employees in positions which have previously been equated to a salary grade, as authorized by Budget Policy and Reporting Manual (BPRM) Item D-280, is scheduled to occur on December 15, 2011 (for employees on the Institutional payroll calendar) or December 21, 2011 (for employees on the Administration payroll calendar).

- Employees must be on the payroll when performance advances are paid, but such payment will be retroactive to April 1, 2011. Additionally, employees must have been eligible for a 2011-12 performance advance on April 1, 2011 (i.e., served in an eligible position for 13 consecutive payroll periods in SFY 2010-11 and have a salary in an eligible salary range).
- In limited circumstances, payments for eligible employees will be subject to a salary cap such that no employee's performance advance may cause the employee to earn a salary in excess of 95% of the Governor's salary (\$170,050). For other circumstances, advances will only be withheld from individuals on an exception basis, under the circumstances described below under Agency Withholding Recommendations (**such requests are due to DOB by November 21, 2011**).

Eligibility Requirements for Performance Advances/Longevities:

Statutory (Graded) and Non-Statutory "Equated to Grade" Positions

Performance advances for statutorily paid and non-statutorily paid employees will automatically be provided to M/C employees having a salary which is in an approved salary range (i.e., graded or equated to a salary grade). Such performance advances will be paid in increments of one-sixth of the applicable salary range; however, an advance may not cause a salary to exceed the job rate of the position. Division of the Budget approval is not required (no plan submission is necessary) to process 2011-12 performance advance payments for M/C employees in these positions.

M-8 & All Other M/C NS Performance Advance Plans

Performance advances may also be provided to M-8 and M/C non-statutorily paid employees in positions having a salary which is in an approved non-equated (discretionary) salary range. Flat-salaried employees (when no salary range exists), employees in "not-to-exceed" positions, or employees with a salary outside the boundaries of an approved salary range are not eligible to receive a performance advance.

To facilitate the payment of performance advances to M-8 and M/C non-statutorily paid employees, agencies are required to submit NS performance advance plans for DOB approval in the electronic format as specified in Attachment A. *Copies of such performance advance plans approved by DOB/Labor Relations are required by the Office of the State Comptroller (OSC) to provide the necessary authorization for such payments.*

NS performance advance plans should reflect the M-8 and M/C NS salaries and salary ranges which are in effect as of April 1, 2011 for employees on the payroll at that time, and who are currently on the payroll.

The plans should not be used to make any substantive changes or adjustments to salaries or ranges (i.e., Budget Director Approval type actions).

[Attachment A](#) (Excel) provides the proper format for the M-8 and M/C NS performance advance plan submissions. **NS employees in equated-to-grade positions should not be included on the M-8 and M/C NS performance advance plans.** However, the plans should reflect a comprehensive listing of all annual salaried M-8 and M/C NS non-equated employees as of 11/1/11 (i.e., filled, vacant, exempt, non-competitive, competitive, flat-salaried) regardless of performance advance eligibility, and must list for each position:

- Item Number
- Employee Name (Last, First)
- Title

- Salary in effect 4/1/11 (exclusive of both the 3% general salary increase and 4% general salary increase which were withheld)
- Hiring Rate, Job Rate and Salary Range in effect 4/1/11 (exclusive of both the 3% general salary increase and 4% general salary increase which were withheld)
- 13 Pay Periods of Performance Advance eligible service as of April 1, 2011 - Yes/No
- Advance Eligible - Yes/No
- Proposed Advance, if applicable (one-sixth of range, not to exceed job rate)
- Proposed New Salary in effect (after application of Advance)
- Comments

Agencies should submit M-8 and M/C NS performance advance plans as soon as possible, but **no later than December 16, 2011**, to provide eligible employees timely performance advances.

The Office of the State Comptroller will issue a payroll bulletin detailing further procedures for processing performance advance payments for M/C employees who are not in graded or grade-equated positions. It is expected that agencies will process all necessary transactions associated with DOB approved NS performance advance plans.

2011-12 LONGEVITY PAYMENTS

Employees must be on the payroll when longevities are paid (December 15, 2011 or December 21, 2011). Such longevity payments shall be made in the amount of \$1,250 to eligible Salary Grade 17 and below employees with at least 5, but less than 10, years of continuous service at or above the job rate and in the amount of \$2,500 to eligible Salary Grade 17 and below employees with ten or more years of continuous service at the job rate. Such payments will be in addition to and will not be considered part of basic annual salary and shall be made by separate check.

2011-12 MERIT AWARDS

The 2011-12 cash merit awards and longevity payments for M/C employees will be paid pursuant to the guidelines provided by BPRM Item D-280, except that non-cash merit awards will not be permitted. DOB approval is not required to process cash merit awards, or longevity payments. Total cash merit award payments remain limited by agency spending allotments. Merit awards may be provided to select M/C employees who served as an M/C employee during any portion of the 2010-11 SFY, or who is serving during any portion of the 2011-12 SFY, so long as they are currently on the payroll.

Cash Merit Awards: At agency discretion and subject to overall agency spending allotments, select M/C employees are eligible to receive one-time lump sum cash merit awards of up to 3.5 percent of his/her annual salary during a given State fiscal year.

Agencies should contact their budget examiners for their respective cash merit award spending allotments for 2011-12.

Non-Cash Merit Awards: Such awards are not available during SFY 2011-12.

AGENCY WITHHOLDING RECOMMENDATIONS

Section 13 of Part B of Chapter 491 of the Laws of 2011 authorizes the Director of Budget to withhold the 2011-12 performance advances and longevity payments in certain circumstances, including: 1) to reflect the job performance of an employee; 2) to maintain appropriate salary relationships (this includes the need to withhold performance advances for any M/C employee whose advance would bring them over 95% of the Governor's salary); 3) to reduce State expenditures to acceptable levels; or 4) when, in the opinion of the Director of the Budget, such increase is not warranted or is not appropriate.

Accordingly, Agency Heads may recommend individual withholdings of such payments to any employee based upon the above criteria, particularly the employee job performance criterion. Such recommendations must be fully justified in writing (cover-letter) and submitted to your budget examiner with the attached withholding form ([Attachment B](#)).

Deadlines

Agencies must submit written withholding recommendations of the 2011-12 performance advances or longevity payments for all M/C employees by **Monday, November 21**. Strict compliance with this deadline is needed to meet processing deadlines in OSC.

If approved, agency recommendations to withhold **performance advances** from M-8 and M/C NS non-equated employees should also be reflected in the performance advance plan submission. Questions regarding this bulletin should be directed to your Budget Examiner.

[Attachment A](#)

[Attachment B](#)

M-8 and M/C NS 2011-12 PERFORMANCE ADVANCE PLAN
DUE TO DOB DECEMBER 16, 2011

AGENCY NAME: _____
 AGENCY CODE: _____
 DATE SUBMITTED: _____

ITEM NUMBER	EMPLOYEE NAME (LAST, FIRST)	POSITION TITLE	SALARY IN EFFECT 4/1/2011	SALARY RANGE IN EFFECT 4/1/2011			SERVED AT LEAST 13 PAY PERIODS IN SFY 2010-11 (Y/N)	ADVANCE ELIGIBLE (Y/N)	PROPOSED ADVANCE (1/6th of SALARY RANGE)	PROPOSED NEW SALARY WITH ADVANCE	COMMENTS
				HIRING RATE	JOB RATE	SALARY RANGE					
00001	Employee A, eligible for advance	Special Assistant to Commissioner	\$103,800	\$103,800	\$134,080	\$30,280	Y	Y	\$5,047	\$108,847	Employee's current salary is within the salary range established for the position, and the increases resulting from the advances would not result in the employee having a salary greater than the job rate established for the position.
00002	Employee B, employee not eligible for advance b/c salary is outside of the approved salary range.	Project Assistant	\$51,500	\$53,929	\$67,365	\$13,436	Y	N	0	\$51,500	Employee's current salary is outside (below) the salary range established for the position. Accordingly, the employee is considered to have a flat salary without a range, and is therefore not eligible to receive a performance advance.
00003	Employee C, employee not eligible b/c employee has a Flat Salary	Project Associate	\$51,500	\$51,500	\$51,500	\$0	Y	N	0	\$51,500	The employee has a flat salary (no salary range). Positions without salary ranges are not eligible to receive performance advances.
00004	Employee D, employee is eligible, but incorrect advance is calculated	Project Associate	\$56,650	\$53,929	\$67,365	\$13,436	Y	YES, but not at the requested amount	\$10,000 (ERROR)	\$66,650 (ERROR)	The requested advance of \$10,000 would exceed the standard advance amount of 1/6th of the employee's salary range. Discretionary salary increases may not be effectuated via this plan; such salary increases must be approved via BDA.
00005	Employee E, Budget Director has approved a withhold of the 2011-12 performance advance.	Project Director	\$108,150	\$100,800	\$128,000	\$27,200	Y	NO; Performance Advance has been Withheld ⁽²⁾	0	\$108,150	A withholding of the advance has been approved by the Budget Director because the employee received an unsatisfactory performance rating. Therefore, no advance is proposed.
00006	Employee F, employee not eligible b/c employee is in a "Not to Exceed" position	Special Assistant	\$74,000		NTE	\$75,000	Y	N, a Not to Exceed does not constitute a salary range	0	\$74,000	The employee has a 'Not to Exceed' salary (no salary range). Positions without salary ranges are not eligible to receive performance advances.

These entries must be corrected prior to approval of the plan.

NOTES:

- 1) This plan must include ALL (filled and vacant as of 11/1/11) M-8 and M/C NS Non-Equated Salary Range positions with flat salaries or salary ranges - in all jurisdictional classes, regardless of performance advance eligibility.
- 2) DOB approved withholdings of performance advances should be demonstrated in the mathematical presentation and explained in the Comments column.
- 3) Salaries and Ranges should not include the previously withheld general salary increases (3% & 4%) from 2009-10 and 2010-11.

Robert L. Megna
Director

BY _____
Chief Budget Examiner

DATE _____

**Recommended Withholding of the
2011-12 Performance Advances and/or Longevity Payments¹
Due to DOB November 21, 2011**

AGENCY NAME: _____
 AGENCY CODE: _____
 DATE SUBMITTED: _____

Employee Name	Item Number	Position Title	POSITION TYPE	Salary Prior to Any Increase	SALARY RANGE IN EFFECT 4/1/2011		Withhold 4/1/2011 Performance Advance (Y/N)	Amount to be Withheld	Withhold 4/1/2011 Longevity Payment (Y/N)	Amount to be Withheld	TOTAL AMOUNT WITHHELD	Comments
					HIRING RATE	JOB RATE						
Example	00001	Secretary 1	Grade 13	\$47,991	\$38,208	\$47,991	Not Eligible	\$0	Yes	\$1,250	\$1,250	Unsatisfactory Performance Rating
Example	00002	Assistant Commissioner	M-8	\$115,000	\$104,082	\$120,000	Yes	\$2,653	Not Eligible	\$0	\$2,653	Unsatisfactory Performance Rating
Example	00003	Project Director	NS, Non-Equated Salary Range	\$50,000	\$40,000	\$60,000	Yes	\$2,000	Not Eligible	\$0	\$2,000	Partial Withhold ² ; Unsatisfactory Performance Rating

NOTES

1. This form should include all M/C employees (graded, equated to grade, non-equated, flat salaried) for whom withholds are recommended.
 2. Partial withholds are permitted (e.g., withhold only fraction of performance advance).

**Robert L. Megna
Director**

BY _____

DATE _____