

## BUDGET POLICY AND REPORTING MANUAL

<i>Date</i> 1/31/08	<i>Subject</i> <b>Performance Advances and Merit Awards for Managerial or Confidential (M/C) Employees</b>	<i>Item</i> D-280
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### 1. **Statement of Policy**

It is the policy of the State of New York to accurately evaluate managerial or confidential (M/C) employees. Performance evaluation is intended to serve as a positive motivator for managerial or confidential employees to improve overall effectiveness and productivity through candid appraisal and feedback. Additionally, it is important that the State adequately recognize, through compensation, M/C employees who are specifically excluded from representation for purposes of collective negotiation. Such compensation may include performance advances, merit awards and longevity payments, or their equivalent.

This item reflects a redesign in the performance evaluation and compensation program for M/C employees which was originally announced in a February 4, 1998 memorandum from the Director of the Governor's Office of Employee Relations to all State Department and Agency Heads.

### 2. **General Coverage**

These guidelines shall apply to *all* annual-salaried M/C employees including, but not limited to:

- a. Officers and employees whose positions are designated managerial or confidential pursuant to Article 14 of the Civil Service Law;
- b. Civilian State employees of the Division of Military and Naval Affairs in the Executive Department whose positions are not in, or are excluded from representation rights in, any recognized or certified negotiating unit;
- c. Officers and employees excluded from representation rights under Article 14 of the Civil Service Law pursuant to rules and regulations of the Public Employment Relations Board;
- d. Officers and employees whose salaries are prescribed by section 19 of the Correction Law;
- e. Officers and employees in the exempt jurisdictional class;
- f. Officers and employees in positions covered by Military Law which would otherwise be comparable to positions in the exempt class;
- g. Non-competitive non-Statutory officers and employees; and
- h. Officers and employees in positions allocated to grade M-8.

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### 3. Definitions

For the purpose of these guidelines, certain terms are defined as follows:

- a. *Hiring Rate.* The minimum salary stated in the M/C salary schedule for each of the salary grades applicable to employees covered by this Item or the minimum salary in a salary range otherwise established by the Director of the Budget;
- b. *Job Rate.* The maximum salary stated in the M/C salary schedule for each of the salary grades applicable to employees covered by this Item or the maximum salary in a salary range otherwise established by the Director of the Budget;
- c. *Salary Range.* The dollar difference between the hiring rate and the job rate for a position;
- d. *Performance Advance.* An increase in the basic annual salary for an employee who is between the hiring rate and the job rate of the salary grade or salary range for a position;
- e. *Cash Merit Award.* A lump sum payment, not added to the basic annual salary, made to any M/C employee;
- f. *Non-Cash Merit Award.* A non-monetary item or privilege provided to an M/C employee;
- g. *Longevity Payment.* An increase in the basic annual salary of an M/C employee at salary grade M/C-17 or below, or its equivalent, who has been at or above the job rate for five or more years;
- h. *Equated Grade.* Non-statutorily paid M/C positions may be assigned the exact same salary range as that associated with an M/C grade. Such salary range assignment, as shown on the Certificate of Approval (Personal Service Certificate or Schedule of Positions) for the position, a Budget Director's Approval (BDA) form signed by the Director of the Budget or a designee, or the appropriate classification transaction is characterized as an equated grade.

### 4. Performance Evaluation

- a. The M/C performance evaluation rating period will remain from April 1 through March 31 of each State fiscal year. Performance evaluations are

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due on April 1 of each State fiscal year. Education Directors, as defined in Section 136 of the Civil Service Law, being paid over 10 months shall be evaluated in a manner consistent with the above.

- b. Agency performance evaluation/appraisal procedures must include discussion between each employee and his/her supervisor.
- c. Annual-salaried M/C employees covered by this program and on the payroll for a minimum of 13 or more full pay periods during the annual evaluation period must receive a written evaluation annually. Education Directors, as defined in Section 136 of the Civil Service Law, being paid over 10 months shall receive a written evaluation in a manner consistent with the above.
  - i. Service in a lower grade in a position which has been reallocated is creditable toward the service requirement in the grade to which the position has been reallocated for any performance evaluation or payment.
  - ii. Service in a higher grade by employees who have been appointed or demoted to a lower salary grade is creditable toward the service requirement for a performance evaluation in the lower salary grade.
- d. Employees with fewer than 13 full pay periods of creditable service during the annual evaluation period *need not* be formally evaluated.
- e. Part-time employees who are paid on an annual basis shall be evaluated in a manner consistent with the above guidelines for full-time annual salaried employees.
- f. Employees on leave with or without pay at the time the evaluation is due, who have 13 or more full pay periods of creditable service during the annual evaluation period, shall be evaluated.
- g. Agencies must provide necessary training to supervisors in order to ensure success of their M/C performance evaluation program designs.

### 5. Performance Advances

- a. *Eligibility.* All annual-salaried employees covered by this item whose basic annual salaries are below the job rate for their positions, where a range for such positions exists, are eligible to receive performance advances. NS employees whose positions are unallocated but are equated to salary grades, who have a defined salary range or who are in

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grade M8 positions with an established job rate, as determined by the Director of the Budget, shall be eligible for performance advances.

- b. *Performance Advance Funding.* Funding for the payment of M/C performance advances will be provided via agency enacted personal service appropriations. No specific funding allotment calculation methodology need be prescribed. There is no limit on the number or total dollar amount of legitimate performance advances that may be granted to eligible employees within each agency.
- c. *Individual Employee Payments.* Performance advances shall become effective on the first day of payroll period number one in the fiscal year following the completion of an evaluation period, except that advances for Education Directors paid over 10 months shall become effective September 1 in the fiscal year following the completion of an evaluation period. All eligible M/C employees having completed 13 or more full pay periods of creditable service in the preceding annual evaluation period (SFY) will receive a performance advance in an amount equal to 1/6 of their salary range. In any case, however, where a full performance advance payment would result in a basic annual salary above the job rate for an employee's position, only that portion of the advance which would bring the employee's salary up to the job rate shall be paid. Otherwise eligible employees who have not completed at least 13 full pay periods of creditable service in the preceding annual evaluation period (SFY) shall receive no performance advance for such evaluation period.
  - i. Advance eligible employees who are serving in non-M/C positions on April 1, who had 13 or more full pay periods of creditable service in the preceding annual evaluation period (SFY) prior to appointment to such non-M/C positions shall, upon reappointment to an M/C position, receive a salary adjustment to reflect an M/C performance advance.
  - ii. Advance eligible employees who are serving in lower graded M/C positions on April 1, who had 13 or more full pay periods of creditable M/C service in the preceding annual evaluation period (SFY) prior to appointment or demotion to such lower graded M/C positions shall, upon reappointment or promotion to a higher graded M/C position, receive a salary adjustment to reflect an M/C performance advance.
- d. *Promotion.* Advance eligible employees who are promoted to higher graded M/C positions during the first half of the preceding annual evaluation period (SFY), and who have therefore completed 13 or more

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full pay periods in such higher grade during the preceding evaluation period, shall receive a performance advance in the higher grade.

- e. *Reconstructed Promotion Salaries.* Effective April 1<sup>st</sup> of each year, previously advance eligible employees who were promoted or appointed to a higher salary grade in the second half of such preceding annual evaluation period (SFY) (pay periods 14 through 26), and who had therefore not completed 13 or more full pay periods of service in the higher grade during such preceding annual evaluation period (SFY), shall be entitled to receive **the greater of:**

-- their original salary upon promotion

- OR -

-- their reconstructed promotion salary

The theory behind reconstructing a promotion salary is to carry an employee's lower graded (pre-promotion) salary through to the end of the State fiscal year (preceding evaluation period) in which the promotion occurred in an effort to capture any and all salary adjustments which would otherwise have affected such salary (i.e., general salary increases and performance advances). After capturing all adjustments which would have occurred, the promotion is again calculated based upon such resulting increased lower graded salary.

**Reconstructed Promotion Salary =**

Original Salary from lower graded (pre-promotion) position

Plus (+)      General Salary Increase(s) if applicable

Plus (+)      Appropriate Performance Advance Increment from lower graded (pre-promotion) position, only if previously advance eligible in such position

Plus (+)      Promotion Increase Increment to higher graded (new) position

*Promotion Increase Increment = The Greater of:*

-- *Promoted Grade Hiring Rate*

-OR-

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- 1.5% for the Promotion  
Plus (+)
- 1.5% for each Salary Grade Increase resulting from  
the promotion (each "M" grade counts as 3.0%)

Example: An advance eligible grade 18 received a 4.5% promotion [1.5% for promotion + (1.5% for 1<sup>st</sup> grade + 1.5% for 2<sup>nd</sup> grade)] to a grade 20 on the 23<sup>rd</sup> pay period of a State fiscal year. No general salary increases were granted that year. At year end a reconstruction of the employee's salary would occur as follows: the grade 18 salary of X would be increased by an appropriate grade 18 performance advance of Y, then a new promotion calculation of 4.5% would be applied to such resulting salary (X+Y). Effective April 1<sup>st</sup>, the employee would then receive the higher of the original salary upon promotion to the grade 20 position or the reconstructed salary (i.e., X+Y+4.5%).

- f. *Demotion.* Advance eligible employees who are demoted or appointed to lower-graded M/C positions, and who have 13 or more full pay periods of creditable M/C service during the preceding annual evaluation period (SFY), shall receive a performance advance in the lower grade.
- g. *Withholding of Performance Advances.* Upon recommendation of an Agency Head, the Budget Director may withhold performance advances from individual employees for performance reasons, or, when in her/his opinion the salary increase is not warranted or is not appropriate and the salary of the employee is set at the discretion of the appointing authority. The process for withholding an advance will be defined via Budget Bulletins and/or Office of the State Comptroller Payroll Bulletins issued each year.
- h. *Appeals Process.* An agency level appeals process is to be made available to any employee whose performance advance is withheld for performance reasons.

### 6. Cash Merit Awards

- a. *Eligibility.* All annual-salaried M/C employees covered by this Item, regardless of grade level, salary or position within a salary range, shall be eligible to receive cash merit awards. This includes non-statutorily paid employees in positions equated to salary grades, in positions with salary ranges (not necessarily equated to a grade) or in positions having a set salary with no applicable salary range approved by the Director of the Budget.

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- b. *Cash Merit Award Funding.* Funding for the payment of M/C cash merit awards will be provided via agency enacted personal service appropriations. Prior to the beginning of each State fiscal year, the Budget Division will inform State agencies of the funding allotments provided them for the payment of all M/C cash merit awards. Budget Division examination units will monitor expenditures and disbursements associated with cash merit awards.

Note: Available funding allotments coupled with individual payment limitations described below will serve to limit the number of employees who will be able to receive awards. Agency management discretion relating to individual cash merit award amounts will ultimately determine the number of employees able to share in the funding allotment.

- c. *Individual Employee Payments.* Eligible employees may receive cash merit awards, at the discretion of agency management, at any time during a State fiscal year. Such awards shall not be added to an employee's basic annual salary. An individual employee may receive more than one cash merit award during a given State fiscal year. In no event may the cumulative value of annual cash merit award payments exceed 5.0% of the employee's basic annual salary at the close of such fiscal year (calculated prior to the payment of any post April 1<sup>st</sup> performance advances or longevity payments payable in the next State fiscal year).
- d. Apportioning of available agency cash merit award funding allotments to all M/C employees in an agency is prohibited.

### 7. Non-Cash Merit Awards

The provision of non-cash merit awards is entirely at the discretion of an individual agency's management, subject to restrictions described below. These guidelines, relating to non-cash merit awards, should be understood to be permissive in nature and do not direct agencies to provide such non-cash merit awards to employees.

- a. *Eligibility.* All annual-salaried M/C employees covered by this Item, regardless of grade level, salary or position within a salary range shall be eligible to receive non-cash merit awards. This includes non-statutorily paid employees in positions equated to salary grades, in positions with salary ranges (not necessarily equated to a grade) or in positions having a set salary with no applicable salary range approved by the Director of the Budget.

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- b. *Non-Cash Merit Award Funding.* No specific funding allotments will be provided to agencies via appropriation. It is expected that agencies will accommodate any spending associated with the provision of non-cash merit awards with available enacted non-personal service appropriations. However, prior to the beginning of each State fiscal year, the Budget Division will inform State agencies of maximum non-cash merit award spending limitations assigned to them for such SFY.

Note: Maximum non-cash merit award spending limitations coupled with individual provision limitations described below will serve to constrain the number of employees who may be able to receive awards. Agency management discretion relating to individual non-cash merit awards will ultimately determine the number of employees able to receive such awards.

- c. *Individual Employee Awards.* Eligible employees may receive non-cash merit awards, at the discretion of agency management, at any time during a State fiscal year. Such non-cash merit awards, by definition, can not result in an increase to the employees' basic annual salary. An individual employee may receive more than one non-cash merit award during a given State fiscal year. In no event may the cumulative monetary value of such non-cash merit awards made to an individual employee in one State fiscal year exceed \$75.
- d. *Reporting.* At the conclusion of each State Fiscal Year, State agencies shall submit a report to the Governor's Office of Employee Relations, with a copy to the Division of the Budget's Labor Relations Section in the Budget Services Unit, summarizing those non-cash merit awards which were provided during that SFY. Such reports shall detail, by employee, non-cash merit awards provided and a brief justification (in situations where an agency may choose to provide non-cash awards to a group of M/C employees, a single justification describing the rationale behind the provision of such awards will suffice).

### 8. Longevity Payments

- a. *Eligibility.* Employees covered by this Item in positions comparable to M/C 17 and below who have completed during the fiscal year, five or more years of service at or above the job rate, shall be eligible for longevity payments. This includes non-statutorily paid employees in positions equated to salary grades or in positions with salary ranges (not necessarily equated to a grade) approved by the Director of the Budget. Such longevity payment eligible employees are also eligible to receive cash and/or non-cash merit awards described above. Eligibility for the five

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and ten year longevity payments will be based on the employee's status and service credit on the employee's anniversary date during an evaluation period.

- b. *Longevity Payment Funding.* Funding for longevity payments will be provided via agency enacted Personal Service appropriations. No specific funding allotment calculation methodology need be prescribed. There is no limit on the number or total dollar amount of legitimate longevity payments that may be granted to eligible employees within each agency.
- c. *Individual Employee Payments.* Prior to April 1, 2010, eligible employees shall receive 5-year or 10-year longevity payments in the form of an increase to their basic annual salary effective on April 1 of the year in which the required service is attained.

Longevity payments for employees who have attained 5 or more years, or 10 or more years of continuous service at or above the job rate will be made as follows:

- i. Employees with 5 or more, but less than 10, years of continuous service:
  - a) 2007-08: Eligible employees will receive \$125 in addition to the \$750 awarded in April, for a total longevity payment of \$875.
  - b) 2008-09: Newly eligible employees will receive \$1,000. Previously eligible employees will receive an increment of \$125.
  - c) 2009-10: Newly eligible employees will receive \$1,125. Previously eligible employees will receive an increment of \$125.
- ii. Employees with 10 or more years of continuous service:
  - a) 2007-08: Eligible employees will receive \$250 in addition to the \$1,500 awarded in April, for a total longevity payment of \$1,750.
  - b) 2008-09: Newly eligible employees will receive \$2,000. Previously eligible employees will receive an increment of \$250.
  - c) 2009-10: Newly eligible employees will receive \$2,250. Previously eligible employees will receive an increment of \$250.

Effective April 1, 2010, however, such longevity payments shall be made in the amount of \$1,250 to eligible 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 employees with ten or more years of continuous service at the job rate. Such payments will be in addition to and will not be

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considered part of basic annual salary and shall be made by separate check.

- d. *Withholding of Longevity Payments.* Agency management may withhold the initial provision of five or ten year longevity payments from individual employees for performance reasons. However, in no event may an employee's salary be reduced in an effort to back out a longevity payment which had been provided to such employee in the past. The process for withholding a longevity payment will be defined via Payroll Bulletin issued by the Office of the State Comptroller each year.
- e. *Appeals Process.* An agency level appeals process is to be made available to any employee whose longevity payment is withheld for performance reasons.

### 9. Miscellaneous

- a. *Part-time Employees.* Part time employees paid on an annual basis shall be eligible for performance advances, cash merit awards, non-cash merit awards and longevity payments on a pro rata basis depending on the percentage of time worked in each payroll period. Such payments shall occur in a manner consistent with the above guidelines for full-time annual-salaried employees.
- b. *Performance Advance Payments for Trainees.* Notwithstanding any other provision of these guidelines, employees serving in non-graded trainee positions shall be subject to performance evaluation processes and eligible for performance advances in accordance with the terms of plans developed by the Director of Classification and Compensation and approved by the Director of the Budget.
- c. *Performance Advance Payments for Certain Superintendents of Correctional Facilities.* Notwithstanding any other provision of these guidelines, officers or employees whose salaries are prescribed by section 19 of the Correction Law shall be subject to performance evaluation processes and be eligible for performance advances in accordance with the terms of plans developed by the Commissioner of Correctional Services and approved by the Director of the Budget.
- d. *Employees on Leave or Separated.*
  - i. An employee on leave with or without pay on April 1, who has 13 or more full pay periods of creditable service in the preceding annual evaluation period (SFY), shall receive a salary increase resulting

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from a performance advance or longevity payment upon the employee's return to the payroll.

- ii. Employees who are separated from State service on April 1, and are subsequently reinstated, who had 13 or more full pay periods of creditable service in the preceding annual evaluation period prior to separation, will have their salary adjusted to reflect a salary increase resulting from a performance advance or longevity payment upon the employee's return to the payroll.
  - iii. Employees who have completed 13 or more full pay periods of creditable service in the preceding annual evaluation period and who were on the payroll before, during and after April 1, who then separate from service before having received a performance advance or longevity payment to which they were entitled, shall receive the value of such increase retroactive to April 1 and until the point of separation.
- e. *Office of the State Comptroller Payroll Bulletins.* No actions should be taken to pay performance advances, cash merit awards or longevity payments until a Payroll Bulletin is issued by the Office of the State Comptroller each year.

### 10. **Waivers**

The specific provisions and limitations contained in these guidelines may be waived by the Director of the Budget whenever it is determined that strict adherence to the provisions of this Item would be detrimental to the sound and orderly administration of State government.