



Metropolitan Transportation Authority

State of New York

November 10, 2022

Janno Lieber
Chair and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway, 20th Floor
New York, NY 10004

Re: 30-Day Response to New York Office of the State Comptroller Audit Report #2021-F-27 on *Employee Qualifications, Hiring, and Promotions* (Follow-Up to Report #2017-S-48)

Dear Chair Lieber:

This information is provided on behalf of the New York City Transit Authority (Transit), its subsidiary the Manhattan and Bronx Surface Transportation operating Authority (MaBSTOA), MTA Bus Company (MTA Bus) and Staten Island Railway (SIR)(referred to hereafter together as “the Agency”) in response to Audit Report 2021-F-27 issued by the New York State Office of the State Comptroller (OSC) on September 26, 2022. This report was issued as a follow up to their audit report 2017-S-48, *Employee Qualifications, Hiring, and Promotions*.

The stated purpose of OSC’s prior 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. The audit covered the period January 2, 2014 through September 5, 2017.

The OSC issued a summary of their observations of the status of their audit recommendations and found that the Agency implemented a number of its recommendations. As discussed below, the Agency continues to disagree with some of OSC’s observations indicating non-implementation or partial implementation of their recommendations, including any implication that Transit is not in compliance with New York State Civil Service Law and DCAS regulations and testing requirements.

Below are the Agency’s responses to the OSC’s follow up observations on the status of their 14 recommendations.

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Construction & Development
MTA Bus Company

Recommendation 1

“Maintain records of all required documentation to support that applicants or employees met all the necessary qualifications to be hired or promoted.

Status - Partially Implemented

Agency Action - While the agency does not maintain a standard checklist on how the files should be maintained or what should be included in the files, our review of a sample of applicants or employees showed improvement. The agency has a document referred to as Article 19-A Information Package, which details the tests and licenses required for Bus drivers. MTA officials advised that medical documents such as the 19-A for Bus Operators are maintained in accordance with applicable laws and regulations in a file that is separate and apart from the HR onboarding documents maintained by Human Resources and/or the employees' department. A separate file is maintained and stored in the MTA's Office of Occupational Health Services. The agency also could not provide any guide for the other titles. Nonetheless, based on our observation, we do not see evidence that documents are maintained consistently for all employees or that all the required documents are included in the employee files.”

Response to Follow-Up Observation Regarding Recommendation 1

MTA People Department is currently developing a standard up-to-date guidance list to be used in maintaining applicant and employee files relating to hiring and promotions. MTA People Department will provide OSC with access to this document once it is finalized.

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.

Status - Partially Implemented

Agency Action - There is no evidence that the titles have been reviewed for consistency. Further, no action has been taken with regard to MTA Bus, and no evidence was provided of what was done to address an error in the JVN requirement identified in our prior audit. Per an MTA official, this problem will be addressed going forward. Based on the review of our sample, only one employee did not meet the education and skill for the position based on the posting.”

Response to Follow-Up Observation Regarding Recommendation 2

MTA People Department's practice is to review the education and experience requirements for titles that are the same across all four agencies and to harmonize or otherwise adjust those requirements to meet the business needs of the agencies. This practice will continue. Consistent with this practice, the MTA reviewed the JVN identified in the prior audit and adjusted the education and experience requirements for that title.

Recommendation 3

“Ensure employees hired or promoted meet all the requirements in the job specifications and that Transit's JVNs follow all OGAS requirements.

Status - Implemented

Agency Action - We selected a sample of 32 employees (five were appointed based on a certified list, 15 were appointed from JVNs, and 12 were promoted through the "Step Up" process, which allows an employee already in a title to be promoted in the natural progression of their title through a JVN). We obtained copies of the JVNs and copies of the certified lists where applicable. JVNs subject to DCAS requirement adhered to the specifications for the titles reviewed. In addition, for employees who were working in a title without a list (Assistant Transit Management Analyst, Associate. Transit Management Analyst, Assistant Electrical Engineer), the records show that once a qualifying exam was approved and certified by DCAS, they were appointed from the qualifying list.”

Recommendation 4

“Develop policies and procedures for Transit to use when creating job specifications/ qualifications/examinations on behalf of MaBSTOA.

Status - Not Implemented

Agency Action - MTA did not develop any policies or procedures for use in creating job specifications. Officials stated that they use the job specification format provided by the Department of Citywide Services to create and revise job specifications for Transit. They also stated that job specifications for Civil Service jobs are governed by DCAS. As a result, the specifications are written by DCAS and include the job analysis, duties and responsibilities, and qualifications for promotions. Going forward, for non-Civil Service positions, the People Department will develop standardized job description templates that will be used across the authority. MTA Headquarters will issue a standard process by which this will be governed. Officials shared with us that they are in the process of creating a training manual for staff. It is still in the early development stage.”

Response to Follow-Up Observation Regarding Recommendation 4

As discussed during the follow up audit and as noted above, the MTA is developing standardized job description templates that will be used as appropriate across all agencies.

Recommendation 5

“Revisit Transit oversight of SIR's hiring and promotion process. Status -

Partially Implemented

Agency Action - The agency provided evidence that there was a discussion in March 2019 regarding the SIR hiring and promotion process. The recommendation was to maintain "status quo." However, we did not receive documents to show the recommendation was approved.”

Response to Follow-Up Observation Regarding Recommendation 5

MTA People Department considers this recommendation fully implemented. The Agency provided documentation confirming that the following Agency executives were present for a March 20, 2019 meeting at which SIR's hiring and promotion process were discussed: Vice President & Chief Operating Officer, SIR; Senior Director, Operations Support, SIR; Vice President, Operations Support, Subways; Vice President, HR, Acting Assistant Vice President HR; Acting Chief Client Service, HR and Senior Director, HR. The documentation also confirmed all parties' agreement to maintain the status quo, with an explanation of the decision.

Recommendation 6

“Ensure that employees doing Transit work at the support departments are hired by Transit using the Civil Service examination process.

Status - Partially Implemented

Agency Action - MTA officials provided recent legislation that allows the assignment transfer, sharing, or consolidating of powers, functions, or activities across agencies. This new law allows Transit wide latitude in transferring staff between agencies. The law allows Transit to "identify common functions and assign, transfer, share or consolidate, in whole or in part, such functions between the authority and its subsidiaries." MTA agencies shall "have the right to share employees within and between such entities and to assign such employees to perform any operation or function subject only to a determination that they are substantially similar to any operation or function currently performed. Substantially similar operation or function shall be determined exclusively by the authority." However, this law does not apply to all titles or all functions. Transit has not created specific policies for those functions that this law does not apply to and would still require Civil Service examinations.”

Response to Follow-Up Observation Regarding Recommendation 6

The MTA does all hiring and promotions in conformity with civil service law, Public Authorities Law and the applicable collective bargaining agreements. After the issuance of Audit Report 2017-S-48, New York Public Authorities Law (“PAL”) § 1279-1 (Right to share employees) was enacted “to provide systematic authority for the sharing of employees within and between” the MTA, its subsidiaries, affiliates, and subsidiaries of affiliates (“MTA Entities”), with an effective date of April 12, 2019. The legislation “found and declared” that granting “powers to effectuate and ensure such entities continued financial viability, which is at issue given sizeable operating deficits and significant capital needs” was “necessary and proper.” PAL § 1279-1(1). “Notwithstanding any provision of law to the contrary” the statute grants the MTA Entities the right to “share employees within and between such entities and to assign such employees to perform any operation or function subject only to a determination that they are substantially similar to any operation or function currently performed.” (PAL § 1279-1(2)). The sole limitation on this statutory right to share employees is the requirement that exercise of the right cannot “impede, infringe or diminish the rights and benefits that accrue to employees and employers through collective bargaining agreements, or impact or change an employee’s membership in a bargaining unit.” PAL § 1279-1(3).

The MTA Entities have followed, and will continue to follow, the requirements of PAL § 1279-1 whenever those entities share employees or assign them to perform any operation or function, including the requirement that the collectively bargained rights and benefits of those employees are not impeded, infringed, or diminished. With regard to the specific recommendation here, Transit follows all requirements of the Civil Service Law when hiring employees on Transit payroll, including following the examination process where required.

Recommendation 7

“Assign employees to projects/initiatives within the agency that hired the employee.”

Status - No Longer Applicable

Agency Action - The agency stated that this is no longer necessary because recent legislation gives MTA the right to share employees and to assign such employees to perform any operation or function that is similar in nature. We noted postings that were created for multiple agencies so employees from any agency can apply. Transit officials stated that they are legally allowed to do so and therefore there is nothing wrong with this practice.”

Response to Follow-Up Observation Regarding Recommendation 7

In response to this follow-up observation, Transit clarifies that it advised OSC during the audit that employee assignments are made in accordance with PAL §1279 and the Civil Service Law.

Recommendation 8

“Ensure required documentation is prepared and maintained for each interagency transfer.

Status - Not Implemented

Agency Action - Agency officials stated that with the legislation's implementation there is no need for transfer documents. However, as stated in Recommendation 6, the new legislation does not apply to all titles, and there is a need to document the titles that remain under Civil Service Law.”

Response to Follow-Up Observation Regarding Recommendation 8

Please see Response to Recommendation 6, above, for clarifying information regarding the 2019 amendment to the PAL granting the MTA Entities the right to share employees. With regard to the specific recommendation here, the MTA People Department maintains documentation in the records of any employee matrixed to another MTA Entity showing that action.

Recommendation 9

“Comply with TAM/PAR processing and nepotism policies, procedures, and directives.

Status: Partially Implemented

Agency Action – The agency required different types of documentation to be maintained for Talent Acquisition Management (TAM) and Personnel Action Request (PAR) processing. As part of the documentation to support anti-nepotism, the agency is required to maintain Dual Employment, Family Member Disclosure, and Interviewer Relation forms and, where applicable, Familial Relationship Recusal forms. Only three of the files we reviewed had the Interviewer Relationship form included in the package. The agency includes an Interview Summary report, which lists the names of the interview panel, but the report is not signed by the panel members. There is no evidence that the forms are reviewed and/or approved to determine whether any relationships exist or whether any recusals are necessary in the event of identified relationships with interviewee and the candidate.”

Response to Follow-Up Observation Regarding Recommendation 9

As stated above, the MTA People Department is currently developing a standard up-to-date guidance list to be used in maintaining applicant and employee files relating to hiring and promotions. MTA People Department will provide OSC with access to this document once it is finalized.

Recommendation 10

“Implement proper documentation policies to ensure all required forms are collected and retained in employee files.

Status – Partially Implemented

Agency Action – Transit does not use a checklist to ensure all required documents are included in the package. Documents are maintained in different parts of the agency’s system, and staff may have access to the information. In the absence of written instruction such as a checklist, we received inconsistent information about which documents make up a candidate’s package. Transit officials provided a copy of an outdated list. They claimed the list was updated but could not provide a copy of the new list. Other staff had different versions of email communications regarding what documents should be maintained. There was no evidence of monitoring to ensure staff are complying. Transit officials explained they are developing a training manual that will incorporate the steps on hiring and samples of the documentation to be maintained.”

Response to Follow-Up Observation Regarding Recommendation 10

As stated above, the MTA People Department is currently developing a standard up-to-date guidance list to be used in maintaining applicant and employee files relating to hiring and promotions. MTA People Department will provide OSC with access to this document once it is finalized.

Recommendation 11

“Comply with Civil Service regulations, which require the use of DCAS-certified lists when hiring/promotion employees at Transit.

Status - Partially Implemented

Agency Action - Twelve of the 32 employees sampled were promoted through the Step- Up process. Officials stated that generally a JVN will not be created if there is a list. However, if the staff is in an appointed title, a JVN will be created for promotions. The posting usually states that it is only for staff in the title. Therefore, staff from any agency in that title can apply. People Department officials stated that the Step-Up process is used for jobs with multiple levels. An individual is appointed from a certified list at level 1. Once probation is completed, a level change does not come from a Civil Service list. Job postings are created to fill assignment-level changes. All employees who meet the requirements in the title can apply for the level-change position, which creates competition. One individual is selected from the candidates via the selection process. There is no other mechanism.”

Response to Follow-Up Observation Regarding Recommendation 11

Transit continues to disagree that there has been any non-compliance with civil service regulations and use of DCAS-certified lists when hiring/promoting employees at Transit. As explained during the follow up audit, and as the supporting documentation provided showed, title steps within the TA are discretionary promotions and do not require appointment from a civil service list.

Recommendation 12

“Communicate with OGAS regarding examination needs for citywide titles and request that such examinations be held.

Status - Implemented

Agency Action - Based on schedules posted on the DCAS website, there were postings for the Mechanical Engineer title, for Civil Engineer interns but none for just Civil Engineer titles, and for Assistant Electrical Engineer but not for just Electrical Engineer. We did note communications with DCAS regarding the need for exams. We also accessed a copy of the agency's current exam-schedule posted on its website.”

Recommendation 13

“Hold Transit-specific examinations (e.g., TMA and TCSS) at regular intervals.

Status - Implemented

Agency Action - We found postings for all four positions -Assistant, Associate, and Principal Transit Management Analyst (TMA) titles and Transit Customer Service Specialist (TCSS) - on MTA's website.”

Recommendation 14

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

Status - Implemented

Agency Action - The biographical information was posted on MTA website under the Compliance section. The salary information was posted on Open Data.”

We thank the OSC and auditors for their courtesies and cooperation during this review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisette Camilo". The signature is written in a cursive, flowing style with a large initial 'L' and a distinct 'C' at the end.

Lisette Camilo
Chief Administrative Officer

cc: