

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
STATE PERSONNEL MANAGEMENT MANUAL  
Policy Bulletin #12-01**

**1845 Transfer of Function**

**August 17, 2012**

**THIS POLICY BULLETIN REPLACES POLICY BULLETIN #91-01,  
ORIGINALLY ISSUED ON MARCH 20, 1991 AND REISSUED ON APRIL 14, 2000  
IN THIS SECTION. THE PREVIOUS POLICY BULLETINS SHOULD BE REMOVED.**

**Transfers of Function: Transfer of Employees Pursuant to Civil Service Law  
Section 70 (2)**

This bulletin provides guidelines, policies and procedures for the transfer of employees pursuant to Civil Service Law section 70(2) upon a transfer of function between departments or agencies of the State. Section 70(2) provides for the transfer of necessary employees who are substantially engaged in the performance of the function to be transferred. The text of section 70(2), in pertinent part, is included at the end of this bulletin. There are unique aspects to any transfer of function and for this reason; any potential transfer of function should be discussed with your Staffing Services Representative as soon as it becomes apparent that such an action is being considered.

**Determining that a Transfer of Function is Occurring**

The transfer of employees pursuant to section 70(2) is triggered by the transfer of a function directed by law, rule, executive order or other action. Therefore, a determination must first be made that there is a legal basis for effectuating the transfer of function and whether there is language which directs whether and how employees will be moved with the function. If no other mechanism is specified in the law or other action directing the transfer, or if the law or action specifically so provides, employees will be transferred in accordance with the provisions of section 70(2).

**The Transfer Process**

**1. Determining who is Substantially Engaged in the Performance of the  
Function to be Transferred**

The agency losing the function, in consultation with the agency gaining the function, determines the employees and the titles in which they serve that are substantially engaged in the performance of the function to be transferred. In making these determinations, the agencies' management may consider the following, along with other factors unique to the particular transfer of function:

- Employees in a specific and discrete organizational entity or a specific and discrete program entity such as a facility, institution, a division or a bureau may be considered to be substantially engaged when the entire function performed by that organizational or program entity is being transferred.

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- Employees serving in specialized titles which are specific to the function being transferred may be considered to be substantially engaged in the function.
- Employees serving in interdepartmental titles, such as clerical and secretarial titles, who are performing activities specific to the function being transferred may be considered to be substantially engaged in the function being transferred.

The determination as to whether an employee is substantially engaged in the function to be transferred is within the discretion of the losing and gaining agencies. The Department of Civil Service can provide necessary advice and assistance.

## **2. Determining Which Employees will be Offered Transfer**

After the agencies have identified those employees who are substantially engaged, the gaining agency, in consultation with the losing agency, determines from among those identified employees and their titles, the number of employees in each of the titles who are necessary for continued performance of the function. section 70(2) provides that those necessary employees will be offered a transfer to the gaining agency.

Where not all of the employees identified as substantially engaged will be transferred, those permanent competitive class employees identified as substantially engaged must be ranked within title by seniority, and transfer must be offered to those employees having greater seniority. Seniority for purposes of section 70(2) is to be determined in the same manner as seniority for purposes of layoff.

For example: If 10 employees within a title are identified as substantially engaged in the function to be transferred, but the gaining agency has determined only five employees are necessary to be transferred; the five most senior competitive class employees shall be offered transfer. Offers are made in seniority order until five employees accept transfer. The result of this process may be offers of transfer to the least senior employees. Because five positions will be transferred to the gaining agency, refusal on the part of least senior employees to accept the transfer can have a significant effect on the employees' employment rights (see page 5 - **Rights of Employees who Refuse Transfer or Fail to Respond to the Offer**).

Employees who are serving probation in the title shall be offered transfer only after employees in the same title who have completed their probation. After probationers, other non-tenured employees, such as provisionals, may be selected in any order.

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Employees serving in non-competitive, labor or exempt class positions may be included in the transfer, but they need not be ranked by seniority. It is within the discretion of the gaining agency, in consultation with the losing agency, to determine which employees will be offered transfer.

### **3. Important Deadlines for the Transfer of Function**

The following represents the minimum amount of time necessary to comply with the requirements of section 70(2). All minimum time periods must be calculated from the effective date of the transfer of function. Once that date is established, the following time frames, which work backward from the effective date of the transfer of function, must, at a minimum, be followed. Based upon the unique circumstances of the transfer, including the number of employees to be transferred, the likelihood of protest, and the number of agencies involved, it may be necessary to build in additional time to allow for the posting and notice requirements of section 70(2) to be effectively carried out. More detail is provided below on what is required at each of these steps.

- A. Effective Date of Transfer (EDT) - employees and positions moved to gaining agency.
- B. Close of business day before the EDT- last day for employees to protest inclusion or exclusion from substantially engaged list. All protests must be determined within 10 days of receipt.
- C. As soon as practical, but at least 20 calendar days prior to the EDT, posting of the names and titles of those employees identified as substantially engaged and a copy of Civil Service Law, section 70(2).

Note: In instances where the transfer of function will result in the abolition of positions, agencies should plan accordingly to provide for sufficient layoff notice. (Please refer to Workforce Reduction Limitation applicable to Fiscal Years 2011-12 and 2012-13 for certain negotiated agreements.)

#### **The Posting and Notification Requirements**

After consultation with the gaining agency, the losing agency must conspicuously post the list of employees who have been identified as being substantially engaged in the performance of the function being transferred for a minimum of 20 calendar days prior to the effective date of the transfer of function.

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This listing must include the following:

- Employee name
- Title
- Jurisdictional Class
- Appointment Status
- Seniority Date
- Probationary Status
- Indication as to which employees will be offered transfer (if such determinations have been made)

When a transfer of function must be accomplished quickly, employees who are substantially engaged and who will be offered transfer should be individually notified of the offer simultaneously with the posting. Regardless of when the offer is made, each employee must be individually notified by e-mail, memorandum, letter, or in person where date and time of receipt can be documented. It is recommended that the notification include a method for the employee to indicate their acceptance or refusal of the offer and a description of the consequences of acceptance, refusal, or failure to respond to the offer. Employees should be advised to sign the offer, make a copy for their records and return the original within ten calendar days of receipt of the offer. An employee who fails to respond within 10 days of receipt of such offer or who refuses the offer of transfer shall be deemed to have waived entitlement to such transfer and will lose all rights to their position if it is transferred to the gaining agency.

### **Protesting Inclusion or Exclusion from the Transfer**

Employees of the losing agency may protest their inclusion in or exclusion from the list of substantially engaged employees to be offered transfer at any time prior to the close of business the day before the effective date of the transfer. The protest must be made in writing to the heads of both agencies and must state the specific reason(s) for the protest. Employees who do not protest shall be considered to have consented to being included in or excluded from the list.

After consultation with the losing agency, the head of the gaining agency must notify any protesting employee of the disposition of the protest within 10 days of receipt of the protest. This is a final determination and is not subject to further administrative review or appeal.

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**Rights of Employees who Refuse Transfer or Fail to Respond to the Offer**

Transfers pursuant to Civil Service Law section 70(2) are involuntary transfers of employees following the transfer of their position to the gaining agency. Employees who fail to respond are considered the same as those employees who refuse the offer of transfer. An employee may refuse or fail to respond to the offer of transfer, but his/her position may still be transferred to the gaining agency. Employees who refuse transfer or who fail to respond to the offer of transfer, and whose position is being moved and not abolished, have no displacement rights pursuant to Civil Service Law sections 80 or 80-a. Where there are no opportunities for reassignment or appointment to other titles in the losing agency, an employee who refuses the transfer or who fails to respond to the offer of transfer will lose all rights to their position, will be removed from the payroll and will not be entitled to reemployment rights. However, if the transfer would result in a change in employees' geographic work location from one county to another, the names of tenured employees will be placed on appropriate reemployment lists effective the date of transfer.

**Rights of Employees Identified as Substantially Engaged who are not Offered Transfer**

Employees who are substantially engaged and are not offered transfer and whose positions will remain in the losing agency; if their positions are subsequently or simultaneously abolished, employees who meet the requirements of section 80 or 80(a) shall have their rights determined in accordance with those sections. Since the abolitions will occur in the losing agency, the layoff rights of the employees must be in the losing agency.

**Note:** certain negotiated agreements regarding the Workforce Reduction Limitation applicable to Fiscal Years 2011-12 and 2012-13 provide for additional notification beyond the customary 20 day notice. Please consult the appropriate negotiated agreements to provide for sufficient layoff notice.

**Rights of Employees Who Are Transferred**

Employees who are transferred shall maintain their seniority dates for the purposes of layoff in their new agency; retain their same title, salary grade, appointment status, and probationary status. A new probationary period may not be imposed as a result of the transfer of function.

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**Leaves and Hold Items for Employees Transferred**

Where the hold item of a permanent probationary employee is not transferred, their former agency must maintain their leave until the employee completes probation in the gaining agency. If he or she reverts to his/her hold item voluntarily or as a result of probationary termination, he or she shall return to the former agency.

Where the hold item of a permanent probationary employee is transferred, the employee's leave will be maintained by the gaining agency until the employee completes probation in the gaining agency. In the event a permanent probationary employee is not being transferred, but his or her hold item is being transferred, the losing agency should make every effort to reassign the probationer's hold item to an item not being transferred. If the losing agency is unable to reassign the probationer's hold item, the hold will be maintained by the gaining agency for the period of probation.

Where a contingent permanent probationary employee is being transferred, but his or her permanent hold item is not being transferred, his or her leave must be maintained by the former agency until the employee completes probation. Upon successful completion of the probationary period, the gaining agency must provide a permanent hold item in accordance with Rule 4.11.

Where a contingent permanent probationary employee is being transferred, as well as his or her hold item, the gaining agency must maintain a leave for the duration of the contingent appointment. Where a contingent permanent non-probationary employee is being transferred, the former agency is no longer obligated to maintain the leave on his or her former position. The gaining agency must provide a hold item to the employee's former title and maintain the leave for the duration of the contingent appointment.

Where a temporary or provisional employee accepts the transfer; the former agency is no longer obligated to maintain a leave for that employee. The gaining agency should make every effort to provide a hold item in the employee's former title and maintain the leave for the duration of the temporary or provisional appointment. The former agency may grant a discretionary leave in accordance with Rule 5.2.

If the losing agency has granted a discretionary leave to an employee transferred as part of the transfer of function, the losing agency is not required to maintain the discretionary leave. The losing agency may, in its discretion, maintain the leave.

The following chart is provided as a guide to the narrative above. The effect of leaves of absence on employees' rights during a transfer of function can be complicated, especially when multiple leaves are involved. Agency personnel staff should discuss specific cases with their Staffing Service Representative.

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<b>Appointment Status</b>	<b>On Probation?</b>	<b>Incumbered Item being Transferred?</b>	<b>Hold Item being Transferred?</b>	<b>Agency Responsible for Leave</b>
Permanent	Yes	Yes	No	Losing Agency
Permanent	Yes	Yes	Yes	Gaining Agency
Permanent	Yes	No	Yes	Gaining Agency
Contingent Permanent	Yes	Yes	No	Losing Agency for the remainder of probation; then Gaining Agency
Contingent Permanent	Yes	Yes	Yes	Gaining Agency
Contingent Permanent	No	Yes	No	Gaining Agency
Contingent Permanent	No	Yes	Yes	Gaining Agency
Temporary/ Provisional	No	Yes	Yes	Gaining Agency
Temporary/ Provisional	No	Yes	No	Gaining Agency*

\*The gaining agency should make every effort to provide a hold item in the employee's former title and maintain the leave for the duration of the temporary and provisional appointment. The former agency may grant a discretionary leave in accordance with Rule 5.2.

**Status on Eligible Lists**

For interdepartmental promotion eligible lists, permanent non-probationary employees' names will be added to the gaining agency's department portion of the list in score order and removed from their former agency's department portion of the list. No action is required on the part of the employee to initiate this list change. An employee's status on the interdepartmental eligible list will remain unchanged.

Where the transferred employee is a permanent probationer with a mandatory leave from their former agency, the employee's name will remain on their former agency's department portion of the interdepartmental list until completion of the probationary period. Upon completion of the probationary period, the employee's name will be

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removed from the former agency's departmental portion of the interdepartmental list and, upon the employee's request, his/her name will be added to the gaining agency's department portion of the interdepartmental list.

For agency-specific title department promotion lists, the employee's name will be removed from the former agency's department promotion list effective the date of transfer unless that employee has a leave from a position in his/her former agency. If so, the employee's name will remain on the former agency's list for the duration of such leave.

The transfer of function has no impact on eligibility from open-competitive eligible lists.

### **Processing the Transfer of Function in NYSTEP**

Since each section 70(2) is unique due to scope, size, timeframe, or complexities, it is important that a preliminary meeting be held to discuss the processing of the transfer of function. This meeting should be held as early in the process as possible and is generally initiated by the gaining agency. Representatives from the following agencies should attend this meeting:

- Gaining agency
- Losing agency
- Division of Budget
- Office of State Comptroller
- Department of Civil Service (including representatives from the Division of Staffing Services, Employment Records Section, Division of Classification and Compensation, and the Division of Information Resource Management—including representatives from the NYSTEP, REPORTING, NYSBEAS and ARS systems)

### **Submitting the Transfer of Function in NYSTEP**

The losing agency initiates the Transfer of Function in NYSTEP via the TPM Mass Change Process (following this path in NYSTEP: **NY Title and Position Mgmt, TPM Mass Change, Use, Initiate Transfer of Function**). Upon initiating the Transfer of Function, the losing agency's roster will appear on their work list the next business day. Using the roster, the losing agency marks those items to be transferred to the Receiving Agency (gaining agency) and, when completed, approves the roster. The roster then appears on the receiving agency's work list. The receiving agency enters the effective date of the Transfer of Function and "works the roster" making any necessary changes to item number, location and funding information. When all information is correct, they approve the roster. The roster then appears on DOB's work list for review and



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approval. Upon approval of DOB, the NYSTEP database is updated the next business day. The items and employees are now in the receiving agency and no NYSTEP transactions are required.

Detailed instructions on submitting the Transfer of Function in NYSTEP can be found in the NYSTEP/TPM User's Manual, Chapter 11-Mass Change-Transfer of Function [http://www.cs.ny.gov/businesssuite/docs/manuals/nystepman/ch11\\_agy\\_mass\\_change.pdf](http://www.cs.ny.gov/businesssuite/docs/manuals/nystepman/ch11_agy_mass_change.pdf)

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Following are samples of the posting notice and an individual offer of transfer both of which can be customized to an agency's particular circumstances in a transfer of function. Consistent with your agency's hiring practices, a follow-up appointment letter should be provided to transferred employees.

**SAMPLE – POSTING NOTICE  
NOTICE OF TRANSFER PURSUANT TO  
NEW YORK STATE CIVIL SERVICE LAW SECTION 70(2)**

Effective (date), the (describe function) of the (losing agency name) will be transferred to the (gaining agency name). In accordance with section 70(2) of the Civil Service Law, necessary employees of (losing agency name) who are substantially engaged in the function to be transferred will be offered a transfer to (gaining agency name). A copy of section 70(2) of the Civil Service Law is attached to this notice. Also attached is a list of names and titles of those employees who have been identified as substantially engaged in the function(s). Those employees who are being offered transfer will be individually notified and will have 10 days from receipt of the offer to accept or refuse the offer.

Employees who are transferred shall maintain their current titles, salary grades, civil service status and seniority dates. The transfer requires no further examination, qualification or additional probationary period. Employees on probation at the time of transfer will complete their probationary period at (gaining agency name). Prior to the close of business (the date prior to the effective date of transfer), any individual employee may protest his/her inclusion or exclusion from this transfer. Such protests must be addressed, in writing, to (name and address of the head of the losing agency), and must include reasons for the protest. A copy of the letter of protest must also be sent to (name and address of the head of the gaining agency). Failure to protest this transfer shall constitute consent to being included in this transfer. An employee who protests his/her inclusion or exclusion from this transfer will be advised of the determination of their protest within 10 days of its receipt. This determination is a final administrative determination which may not be appealed.

**Depending on the circumstances of the particular transfer of function, agencies should select from the following options:**

**Option 1:**

**To be used when there are no opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency**

Employees who refuse transfer or who fail to respond to the offer of transfer will be determined to have waived entitlement to such transfer and will lose all rights to the transferred position, will be removed from the payroll, and will not be entitled to

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reemployment rights. Such employees, if tenured, will be placed on the appropriate reemployment lists effective the date of the transfer of function, if the transfer would result in a change in the employee's geographic work location from one county to another.

**Option 2:**

**To be used when there are opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency**

Employees who refuse transfer or who fail to respond to the offer of transfer will be determined to have waived entitlement to such transfer and will lose all rights to the transferred position. Such employees will remain in (name of losing agency) employed in their current title or appointed to another title.

If you have any questions concerning this transfer or posting, including your status or rights, please contact (name of Personnel Office contact, Personnel Department, name of losing agency).

Attachments

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**SAMPLE – INDIVIDUAL OFFER OF TRANSFER PURSUANT TO  
NEW YORK STATE CIVIL SERVICE LAW SECTION 70(2)**

Date

Employee Name  
Address

Dear Employee:

You are hereby being offered a transfer pursuant to Civil Service Law section 70(2) effective (date) to (gaining agency name). The (describe function) of the (losing agency name) and those employees substantially engaged in the performance of this function are being transferred to (gaining agency name). If you accept this transfer, you will maintain your current title, salary grade, civil service status and classified seniority date within (gaining agency name). The transfer requires no further examination, qualification or additional probationary period. If you are on probation at the time of transfer, you will be required to complete your probationary period at (gaining agency name).

**Depending on the circumstances of the particular transfer of function, agencies should select from the following options and include in this individual offer of transfer:**

**Option 1:**

**To be used when there are no opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency:**

If you refuse this transfer, or fail to respond to this offer of transfer, you will have waived entitlement to such transfer and will lose all rights to your position, you will be removed from the payroll, and you will not be entitled to reemployment rights. Your name will only be placed on an appropriate reemployment list effective the date of transfer if you are tenured, and the transfer would have resulted in a change of your geographic work location from one county to another. **Can omit this last sentence if there is no change in work location.**

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**Option 2:**

**To be used when opportunities exist for employees to be reassigned in their title or appointed to other titles within the losing agency:**

If you refuse this transfer, or fail to respond to this offer of transfer to, and an opportunity has been identified for you to be reassigned in your title or appointed to another title, you will remain employed in the (losing agency name). However, you waive all opportunities to transfer as part of this transfer of function.

If you have any questions concerning this transfer, please contact (Personnel Office contact, Personnel Department, name of losing agency).

Sincerely,

Attachment

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**Acceptance/Declination Form**

Please check the statement that applies and return this letter to (gaining agency contact name and address).

This letter confirms my **acceptance** to transfer under section 70(2) of the Civil Service Law. I understand that I will be transferred in my current title.

**Option 1:**

This letter confirms my **refusal** to transfer under section 70(2) of the Civil Service Law. I understand that in refusing his transfer, I am waiving entitlement to such transfer and will lose all rights to my position, that I will be removed from the payroll and will not be entitled to reemployment rights.

**Option 2:**

This letter confirms my **refusal** to transfer under section 70(2) of the Civil Service Law. I understand that in refusing this transfer, I am waiving entitlement to such transfer.

**NOTE:** If you intend to protest your inclusion on the list of employees substantially engaged in the function to be transferred, you should accept this offer pending a

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determination on the protest. Failure to do so may result in waiving your rights to this transfer.

**Agencies may wish to include additional information specific to the transfer of function occurring.**

**YOU MUST RESPOND TO THIS OFFER OF TRANSFER WITHIN 10 DAYS OF RECEIPT OF THIS OFFER.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Name-Please Print

\_\_\_\_\_  
Home Address

Social Security Number: xxx-xx-\_\_\_\_\_ [last four digits only]

Home Phone Number:

Current Work Number:

Work Location:

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**Transfer of Function Pursuant to Civil Service Law Section 70(2)**

Civil Service Law section 70(2) provides, in pertinent part, as follows:

Transfer of personnel upon transfer of functions. Upon the transfer of a function (a) from one department or agency of the state to another department or agency of the state,... provision shall be made for the transfer of necessary officers and employees who are substantially engaged in the performance of the function to be transferred. As soon as practicable after the adoption of a law, rule, order or other action directing such a transfer of function, but not less than twenty days prior to the effective date of such transfer, the head of the department or agency from which such function is to be transferred shall certify to the head of the department or agency to which such function is to be transferred a list of the names and titles of those employees substantially engaged in the performance of the function to be transferred, and shall cause copies of such certified list to be publicly and conspicuously posted in the offices of the department or agency from which such function is to be transferred, along with copies of this subdivision. Any employee of the department or agency from which such function is to be transferred may, prior to the effective date of such transfer, protest his or her inclusion in or exclusion from such list by giving notice of such protest in writing addressed to the heads of the respective departments or agencies from which and to which transfer is to be made, which notice shall state the reasons for the protest. The head of the department or agency to which such function is to be transferred shall review the protest and after consultation with the head of the department or agency from which such function is to be transferred notify the protestor within ten days from the receipt of such protest of the determination with respect to such protest. Such determination shall be a final administrative determination. Failure to make such protest shall be deemed to constitute consent to inclusion in or exclusion from, as the case may be, the certified list of employees engaged in the function to be transferred. Officers and employees so transferred shall be transferred without further examination or qualification, and shall retain their respective civil service classifications and status. For the purpose of determining the officers and employees holding permanent appointments in competitive class positions to be transferred, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and non-disabled veterans. Any employee who fails to respond to or accept a written offer of transfer from the department or agency to which such function is to be transferred within ten days after receipt of such offer shall be deemed to have waived entitlement to such transfer. All officers and employees so transferred shall, thereafter, be subject to the rules of the civil service commission having jurisdiction over the agency to which transfer is made. Officers and employees holding permanent appointments in competitive class positions who are not so transferred shall have their names entered upon an appropriate preferred list for reinstatement to the same or similar positions in

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the service of the governmental jurisdiction from which transfer is made and in the office or agency to which such function is transferred..."