Final Advisory Memorandum

Erroneous Receipt of Pension Benefits by a Participant in the County Retirement System

Report # OIG-19-001

July 19, 2018

Montgomery County Maryland

Office of the Inspector General

OFFICE OF THE INSPECTOR GENERAL

FINAL ADVISORY MEMORANDUM

July 19, 2018

TO: Timothy L. Firestine
Chief Administrative Officer

FROM: Edward L. Blansitt III
Inspector General

SUBJECT Erroneous Receipt of Pension Benefits by a Participant in the County Retirement System

I. Introduction and Summary of Findings

The Office of the Inspector General received a complaint that an individual employed by an agency that participates in the Montgomery County Employee's Retirement System (ERS) had erroneously collected significant pension payments while being employed full-time with the agency in violation of County laws and policies prior to the discovery of this error. The ERS is a Defined Benefit Retirement Plan under which employees earn pension benefits. It was also alleged that upon discovery of the mistake, the individual was not required to refund the payments but rather a claim was filed under the County's self-insurance program for the County to recover the monies or payments. The individual is an employee of a "participating agency" not generally subject to the operational control of the County government. However, as a "participating agency" under the County's retirement plan, it is treated for purposes of the ERS plan as part of the County, subject to applicable laws, rules, regulations and policies.

Through our inquiry, we verified that the individual was employed by the participating agency, which participated in the ERS, and that the participating agency was not aware that the employee had retired for purposes of the County's retirement plan. Under the ERS, employees are not permitted to receive both pension benefit payments and full-time salaries as employees of agencies participating in the ERS system.

With respect to not requiring the individual to refund the payments, we reviewed the evidence and found no problem with the filing of the claim, and in effect waiving the repayment or refund by the individual. It is permitted under applicable law and policy and was reviewed by the appropriate offices within the County.

While the actions of management concerning the waiver were permissible, the County's administration of the retirement system was lacking insofar as possessing adequate internal controls to guard against abuse or misuse of the system at the time the issue was discovered. Specifically, while a policy existed to some extent, and that policy allowed for the exercise of discretion, management failed to adhere to that policy, particularly with respect to maintaining documentation of certain actions. Further, that policy failed to clearly state the authority of the Chief Administrative Officer (CAO) concerning retirement issues that may arise.

Management should revisit the retirement rules and policies to develop and adopt adequate internal controls and policies in conformance with the applicable law as well as to enhance the effectiveness and efficiency of the system. However, since ERS employees who return to work full-time outside County government or its participating agencies may collect full pension without penalty, current law governing ERS discourages, or at minimum, complicates, retention of experienced individuals after their retirement and imposes a need for more costly internal controls.

Although the County must ensure its internal controls are sufficient to comply with current laws, we recommend the County modify the laws that govern the County defined benefit retirement plans to ensure that employees who retire from those plans cannot return to work under those plans but permit them opportunities to return to work full-time if selected by management, as County employees under defined contribution plans while receiving their defined benefit pension benefits.

This effectively does no harm to the County retirement plans, while allowing the County the option to reemploy retired annuitants and thus temporarily make use of the talents and experiences it has developed. However, this recommendation is not intended either to encourage or discourage reemployment of annuitants. On the contrary, the need to hire annuitants in many cases may have resulted from a failure of management to have adequately provided succession planning for the organization. In such cases facilitating the use of rehired annuitants might benefit the organization.

II. Relevant Statutes, Policies and Practices

The relevant law governing ERS is found in provisions of Chapter 33, Article III and Chapter 20, Article VII of the Montgomery County Code.

Specifically, those provisions provide in pertinent parts as follows:

Section 33-35 defines the terms of "County government", "County service" and "Member" used in reference to the retirement system. County government is defined to mean ". . . county government and, when applicable, any agency whose employees are participating in the retirement system." County service is defined to mean "Employment with the county government or any agency whose employees participate as members of this retirement system, and full-time or career part-time service with another agency by the incumbent of a position brought under the county's merit system without a break in service." Member is defined as "An employee or official of the County government or of a participating agency or political subdivision who is contributing to this retirement system."

Section 33-36 states that the primary purpose of the County's retirement system ". . . is to provide a pension and other benefits for full-time and career part-time paid employees of the county . . . Any agency or political subdivision desiring coverage for its employees may make a written request to the county personnel board for approval."

Section 33-37 provides that a full-time employee of the County or a participating agency "must become a member of a County retirement plan as a condition of employment, when the employee meets the applicable eligibility requirements . . ." Further this section provides that "Unless specifically exempt from membership by the chief administrative officer, each full-time employee of the county government or a participating agency must become a member or forfeit employment when the employee meets the eligibility requirements."

Section 33-52 provides that "A member must not receive pension payments while serving in an appointed or elected County office that receives any compensation paid by the County. A member appointed to a full-time County position must become a member of the retirement system . . ."

Section 33-53 provides that "Any member or beneficiary who has received payment from the retirement system of any monies to which not entitled under the provisions of this act shall be required to refund such monies to the system."

Section 33-47 provides that the CAO "shall be responsible for the administration of the retirement system" and except for the powers of the Board of Investment Trustees, which oversees investments "the chief administrative officer has the power and duty to take all actions and to make all decisions to administer the retirement system."

Section 33-56 provides that "The Chief Administrative Officer is responsible for deciding questions arising under" the applicable Code provisions. The section also provides that "Any member of the County's retirement system and any retiree or designated beneficiary eligible to receive benefits from the retirement system, may request, in writing, a decision on questions arising under this Article from the Chief Administrative Officer . . ."

Section 20-37 provides that "It is the policy of the county government to provide an adequate comprehensive insurance program to compensate for injury to persons . . . resulting from the negligence or other wrongful acts of the county's . . . employees and agents and to provide protection for . . . employees and agents acting within the scope of their duties."

Besides the Code provisions related to retirement/pension benefits, relevant guidance can be found in the Montgomery County Employee Retirement Plans Standard Operating Procedures, Correction Procedures-Administrative Errors. Those procedures address how administrative errors concerning pension or retirement payments are to be handled. Specifically, like the Code, the procedures allow for the CAO to decide questions that may arise with respect to the retirement system.

In addition to delineating specific steps that should be taken or followed concerning errors in pension payments, under the procedures, recovery of any overpaid amounts is limited to "the last three years from the date of discovery of the error." The delineated steps include such guidance as notification of the retiree in writing of the details of the error and correction required, along with notification of his or her right to request a waiver of any repayment due to financial hardship.

III. Factual Findings

A. Background Facts

Since the purpose of this report is to address programmatic or operational errors or deficiencies, unnecessary information that might be used to identify any individual discussed is not relevant and has therefore been intentionally excluded. The rehired annuitant is an employee of an agency that participates in the County's retirement system. The individual retired for purposes of the County retirement system and returned to work for the participating agency in the same position from which he retired. The participating agency was not aware that the employee had retired for purposes of the County's retirement system and thus had no records reflecting such. During the period that he continued to work for the agency and received a salary, he drew pension payments under the County retirement system. When he retired, the individual ceased participating in the retirement system as an active employee. This arrangement continued until County officials realized that he was receiving his pension simultaneously with drawing a salary, while County records indicated that he had retired. Following an internal investigation, management decided to not require that the individual refund or repay the monies received in error and instead filed a claim under the County's self-insurance program to retrieve the monies.

IV. Analysis

A. Simultaneous Receipt of Pension and Salary

Montgomery County Code sections 33-37 and 33-52 require full-time employees of the County or participating agencies to participate in the retirement system. These provisions make it clear that unless exempted, a full-time employee of a participating agency, who has retired for purposes of the County, is prohibited from simultaneously receiving pension and salary payments. Further, County Code Section 33-53 requires any participant who erroneously receives pension payments to refund such monies to the system. Accordingly, the individual in the instant case should not have received pension payments while he received a salary, as well as should have refunded any funds or monies erroneously received unless exempted.

B. Waiver of Repayment

Having determined that the individual erroneously received salary and pension payments simultaneously, it must be determined whether the action of the County in not seeking recovery of the erroneously received payments from the individual was permissible. That action of County management was premised on its finding that the error occurred not because of the individual's conduct but rather due to the erroneous conduct of the County. As previously noted, the CAO under the Code and County operating procedures has the authority to waive repayment or refunding under such circumstances.

The Code provision, Section 33-56, specifically states that the CAO is "responsible for deciding questions" that may arise under the Code's retirement provisions. That section also provides that retirees "may request in writing a decision . . . from the Chief Administrative Officer" concerning such questions. Similarly, the County's policy as stated in the County's Standard Operating Procedures, allows for retirees to request a waiver due to financial hardship from repayment of an overpaid amount, and provides that "The Chief Administrator Office shall make a determination of whether a financial hardship exists and whether the entire overpayment or a portion of the overpayment will be waived." In the course of conducting our review, we found County Attorney opinions providing guidance concerning the propriety of a participant or retiree receiving a salary and pension simultaneously, and the authority of the CAO to waive a retiree's or participant's participation in a retirement plan. However, no such opinion was found with respect to waivers of pension overpayments.

While we were unable to find any County Attorney opinion specifically addressing the CAO's waiver authority concerning the receipt of pension overpayments, it appears that the CAO has discretionary authority with respect to granting or not granting a waiver concerning repayment of erroneously received pension monies. This seems to be borne out by the Merit System Protection Board (MSPB), which has found that while the authority is not necessarily absolute, it is entitled to deference as long as any CAO interpretation is reasonable and not subject to any specific prerequisites or restrictions.

Applying prior law and/or procedures, in two matters involving waivers where overpayment was made due to County error, MSPB found that the CAO possessed discretionary authority on a "case-by-case basis" to grant or deny a waiver for overpayment, relying on federal law, permitting waivers where "the individual is without fault and recovery would be against equity and good conscience".[1] It is important to note that MSPB found that the County's operating procedures for correcting errors in effect at the time, appeared to be merely "internal procedural guidance for Benefit Specialists" since they did not appear to have been made available to "employees and retirees". In this vein, MSPB determined that the County needed to "establish

[1] See MSPB FY 2014 Annual Report, Case No. 14-05, pp.112-113; Case No. 14-06, pp.118-119.

guidelines to permit waivers in cases where the overpayment was generated by County error."[2] At the time of MSPB's decisions in those matters, the County had a policy restricting it to recovery of overpaid amounts for the last two years from the date of discovery of the error (period subsequently changed to three years).

Thus, pursuant to MSPB rulings, the CAO's discretion is allowed in cases of administrative oversight or error. That discretion is limited by the period for which monies could be recouped, imposed by County policy, if the County's policy is made available to employees and retirees. The current County policy as stated in the County's standard operating procedures restricts the County to recovering overpaid amounts for the last three years from the date of discovery of the error.

While the CAO's authority is limited with respect to the periods for which recovery may be sought by County policy; that authority appears to be unrestricted in other respects as long as the CAO's action is reasonable. This is borne out by MSPB decisions as well as the plain language of the Code. In the instant matter the restrictions do not appear to apply since no recovery is being sought from the individual in question, and the individual does not appear to be at fault for the overpayment. Rather, the overpayment appears to be the result of an oversight on the part of the County. This being the case, it would appear that the CAO had the authority to waive repayment under the circumstances of the instant matter.

No requirement was found under the Code, County Attorney opinion, or County policy that required an individual to request a waiver for the CAO to issue a waiver. However, the Code provision, Section 33-56, which grants the CAO interpretative authority, does state that a retiree or participant "may request" a decision from the CAO concerning a retirement question. It seems that one may and not that one must make a request to activate the clear authority of the CAO under the section. The County's operating procedures delineate steps that should be followed when overpayment errors are discovered, rights of employees/retirees to request waivers for financial hardship, and the ability of the County to seek recovery of overpaid amounts up to three years from the date of discovery. However, the procedures fail to address or discuss clearly the authority of the CAO in situations other than those of financial hardship or when overpayments are the result of County error.

C. Internal Controls

1. Overview

A review of the County's action should entail a review of the County's retirement process with emphasis on internal control procedures. In short, the emphasis must be on the controls in place to safeguard against abuse, inefficiency and ineffectiveness, primarily, and specifically, preventing erroneous pension payments in the administration of the retirement system.

[2] See MSPB FY 2014 Annual Report, Case No. 14-06, p. 114.

At the time that the retirement process in this instance was initiated, the County's Office of Human Resources (OHR) administered the ERS plan and processed the related retirement paperwork. It appears that retirement seminars held during that time were conducted by OHR for those individuals retiring or considering retirement; and the presentation materials provided at such seminars did not indicate that it was impermissible to receive retirement benefits or monies while employed by a participating agency. Those materials do now contain such information. Since July 1, 2012, oversight and administration of the plan has been consolidated under the Montgomery County Employee Retirement Plans (MCERP).

As to the County through OHR keeping track of participating agency employees who may have retired, it appears that no such mechanism was in place when the instant matter occurred. Also, the County neither received nor possessed a listing of active employees of the participating agency to compare against its listing of retirees before it realized that the individual in question was receiving his agency salary simultaneously with his receipt of pension payments.

The discovery that the individual in question was erroneously receiving pension payments came to light when a County MCERP employee inadvertently learned the individual was working at the agency. In short, the discovery that the individual was not retired but still working and ultimately receiving a pension and salary simultaneously came about by happenstance and not as a result of any internal control.

2. Lack of Documentation

Based on former and current employee accounts, a review of relevant available documentation, particularly that related to the application process, and the lack of other documentation, including what information was shared with the individual, it could not be determined conclusively if the individual inquired or did not inquire about continuing to work and receiving a pension simultaneously with a salary. Likewise, it could not be determined if the individual was told that he could or could not receive a pension and salary simultaneously while continuing to work full-time in this instance.

In addition, there appears to be a significant lack of documentation related to the County's resolution of the matter. There appears to neither have been a written approval by the CAO for a waiver of repayment by the individual nor a written request by the individual for a waiver.

Specifically, the information acquired indicates that the individual, prior to his retirement, sought general retirement information from an employee involved in the administration of the retirement program, and that the question of receiving a pension and salary simultaneously was never discussed due to the general nature of the inquiry and the fact that the individual was not retiring at that time. Similarly, a review of the relevant retirement application documents submitted when the individual retired seems to support a lack of awareness on the part of County employees that the individual was not actually retiring. Those documents, consisting of an application and correspondence detailing benefits, were submitted or issued when the individual retired, and was subsequently processed by an employee other than the one from whom general information had been sought. Neither the application, which is undated but states an effective retirement date, nor the correspondence, which states the amount of the monthly benefits that he would receive, indicate or reflect that the individual was returning to work in his same position.

As noted, through our review, we are unable to determine what the individual was told or inquired about with respect to receiving a salary and pension simultaneously. However, what is apparent is that County employees involved in the matter appear to have understood that a retiree from a participating agency in the County's retirement system could not receive pension payments and a salary simultaneously while continuing to work full-time in the same agency. Further, an application for retirement was submitted apparently when the individual was retiring and processed to the extent that a calculation was conducted to determine his monthly pension payments, and yet key administrative components, including both within the participating agency and the County government, appear not to have been aware of the individual's employment status. In short, there was no follow-up. Accordingly, the fact that the individual was able to retire unbeknownst to the participating agency, draw his pension and his salary, all while working full-time, is indicative of a deficiency with respect to internal controls, particularly concerning monitoring and appropriate notification of necessary governmental components.

3. Filing of Insurance Claim

The next issue that must be considered is the propriety of management's decision to file an insurance claim under the County's self-insurance plan to recoup the monies erroneously paid to the individual. Pursuant to the Code, particularly sections 33-47 and 33-56, the CAO appears to clearly have the authority to waive repayment in the instant matter. Those provisions, as indicated above, grant the CAO the power or authority to take "all actions and make all decisions" concerning the administration of the retirement system, except those powers reserved for the Board of Investment Trustees, which oversees the investments.[3]

With respect to the filing of the claim, section 20-37 of the Code provides for the establishment of procedures and regulations with approval by the CAO for the filing of such claims. Concerning the propriety of the County's filing of an insurance claim under the County's self-insurance program and the approval of same, we were unable to find any prohibition against such action. In fact, it appears that the procedures followed were in accord with the Code and thus the filing of the claim appears to have been permissible. Specifically, a request was made through the County's Risk Management Division to the County's Claims Settlement Committee, which approved the claim. Further, the filing of the claim was done following consultation with the County Attorney's office, based on the County concluding that the pension payments were made due to County error.

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[3] County Attorney Opinion November 14, 2011

V. Conclusion

A. Deficiencies

Based on the foregoing, the CAO had the requisite authority to waive repayment in the instant matter, and the Office of the County Attorney was consulted and provided appropriate advice. However, we cannot help but observe and note that several glaring and apparent deficiencies or lapses occurred with respect to the processing of the retirement in question, resulting in or at a minimum contributing to the significant overpayment of pension benefits. The deficiencies, in our estimation, are not the fault of or attributable to a single individual or employee. Rather, it appears that the deficiencies were more of a systemic nature, seriously and negatively impacting the effectiveness and efficiency of the County's retirement system.

Some of those deficiencies, as already noted above, that already have been addressed by management, include the lack of mechanisms for sharing of current employee rosters of the participating agency with appropriate County offices, and failure to provide adequate information concerning retirement regulations to staff through training or other vehicles. Also, there was a failure to have mechanisms and procedures to apprise appropriate personnel of participating agencies of applicable retirement requirements and information.

At the crux or core of the deficiencies is the fact that the standard operating procedures to address overpayments that were in effect when the overpayment came to light were not followed. This was particularly the case with respect to maintaining documentation of the error, which in this instance was never created. That documentation should have included written notification to the individual of the overpayment, how the overpayment occurred, the amount of the overpayment and the right to request a waiver of repayment due to hardship.

That failure by management to follow its own procedures was compounded by the lack of complete clarity with respect to a retiree's or participant's right to request a waiver, the authority of the CAO to approve the request, and whether the request by a retiree or participant was a prerequisite to the CAO exercising any authority in that regard. The procedures failed to clearly state or indicate that there could be another basis for a waiver request by a retiree or participant, that the CAO could approve a waiver request based on something other than financial hardship, or that a waiver request was a prerequisite to the CAO approving or granting such a waiver. All these are easily resolved by the plain language of the applicable Code provisions. Those provisions seem to clearly indicate that due to the broad authority of the CAO with respect to the administration of the retirement system, he can grant a waiver for virtually any reason on his own initiative and thus there need not be a request to trigger the exercise of his authority.

While in the instant matter, County staff or employees involved in the administration of the retirement program may not have followed the County's standard operating procedures with respect to correcting errors, as noted above, that failure would not negate the action of the CAO in the instant matter as authorized by the County Code. Nevertheless, it would be in the County's best interest in general and MCERP's best interest, to establish and implement sufficient internal controls. Those internal controls should include establishing written guidelines that clearly articulate that waivers may be granted in cases where overpayments are the result of County error and the discretionary authority of the CAO to grant waivers.

B. Best Practices

In addition to addressing the deficiencies, management ought to utilize the best practices of other public entities with respect to the administration of employee retirements. In this vein, we conducted research through such sources as the Association of Local Government Auditors seeking information to acquire a sense of the best practices used by public entities in the administration of retirement systems. While structures or organizations of retirement systems might differ, there are some practices that transcend those structural or organizational differences that bear on the systems' efficiency and effectiveness.

Three such recommended practices may be applicable in this instance. The first relates to the adoption or use of computer software or database systems and/or upgrades to establish a viable automated notification feature when individuals apply for retirement, as opposed to relying on manual processes for such, and/or enhance functionality, accuracy and internal controls. The second and third involve the implementation of viable and constructive vehicles of communication between components or units involved in retirement systems, and the adoption of comprehensive written procedures concerning retirement system administration.[4] All of these practices appear to be relevant in this instance since: the County's notification feature or system, particularly as it relates to "participating agencies" appears to rely on manual processes; the County does not have comprehensive written policies and procedures for administrative errors; and there is an apparent need for direct communication between the County and the participating agency to improve transparency and reduce chances of error.

C. System/Policy Changes

Finally, in assessing the adequacy of the internal controls and considering the overarching policy of the County with respect to the system, it is in the County's best interest to develop a system or at a minimum modify the current system to some extent. That policy, as stated in the County Code, is to "maintain a system of retirement pay and benefits for its employees which is adequately funded and insures employees sufficient income to enjoy during their retirement years."[5]

In line with that interest and the policy goal, the system should afford retired County employees, such as the individual in question, the opportunity to return to the workforce in any position for which he or she can perform the duties and is qualified, while continuing to receive pension

[4] City of Atlanta Auditor, Performance Audit: Retirement Administration, Defined Contribution Plan, July 2016, pp.27-28; City of San Jose Auditor, Audit of Retirement Services: Greater Transparency Needed in the Budgeting Process, Interactions Among Stakeholders, Investment Policies, and Plan Administration, October 2017, pp. 25-27; San Diego City Employees' Retirement System Internal Audit Report, Retirement Benefit Calculations & Setup, August 2015, pp 7-8, 22.

[5] See Montgomery County Code, Section 33-34.

benefits. A retiree/participant could be allowed to return to work full-time and participate in a defined contribution plan because the County's defined contribution plan is less expensive to the County. Such a system would not only benefit the County by allowing it to retain experienced and highly qualified personnel when necessary and appropriate but also serve as an incentive or inducement for the employee who wishes to so return from retirement without being penalized. The adoption of such changes would require legislative action for changes in the law.

VI. Recommendations

We recognize that improvements are continuously being made by management. Accordingly, based on the foregoing, we recommend, if not already done or being undertaken by management, that:

- The County establish and disseminate written policy guidelines clearly stating applicable review processes to address administrative retirement errors to employees and retirement participants;
- The policy guidelines delineate the rights and prerequisite requirements of retirees and plan participants with respect to administrative errors resulting in over/under benefit payments, caused by the County or otherwise;
- The policy guidelines clearly articulate the discretionary authority of the CAO, including the authority to grant or deny waivers resulting in over/under benefit payments, caused by County error or otherwise;
- All decisions by the CAO with respect to the granting or denial of waivers under the County's retirement system be in writing;
- Any request for a waiver under the retirement system by a retiree or participant be in writing;
- The County require that a dated form acknowledging the intended retirement date of the employee and bearing the signature of an authorized supervisor or retirement plan administrator from the retiring employee's agency be submitted as part of that employee's retirement package prior to the application being processed by MCERP.
- The County establish a recordkeeping system for retention and maintenance of retirement documentation including CAO decisions and retiree or participant requests; and
- The County take steps necessary to institute policy or system changes to allow retirees or participants to return to work full-time and draw retirement benefits so long as they do not further participate in the defined benefit plan from which they are drawing benefits.

VII. Comments on the CAO Response

The CAO's response is included in its entirety in Appendix A.

Nothing in the CAO's response caused us to alter our findings or recommendations.

As to Recommendation 5, concerning instituting policy or system changes to allow retirees or participants to return to work full-time and draw retirement benefits, we note that the CAO's response characterizes our recommendation as calling for double-dipping, which we believe is misleading. In his discussion in support of this characterization, the CAO relies on matters related to the pension funds of the federal government, other counties and the pension industry; and issues largely unrelated to the matters of the County pension plan identified and discussed in our report.

OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

July 31, 2018

TO: Edward L. Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer Timothy L. Firestine

SUBJECT: Response to Erroneous Receipt of Pension Benefits by a Participant in the County Retirement System, Report # OIG-18-00x

I am in receipt of Confidential Final Draft: Erroneous Receipt of Pension Benefits by a Participant in the County Retirement System, Report # OIG-18-00x. Following are the responses to the Draft's areas of note:

Recommendation 1: All recommendations related to MCERP policy guidelines

- The County establish and disseminate written policy guidelines clearly stating applicable review processes to address administrative retirement errors to employees and retirement participants;
- The policy guidelines delineate the rights and prerequisite requirements of retirees and plan participants with respect to administrative errors resulting in over/under benefit payments, caused by the County or otherwise;
- The policy guidelines clearly articulate the discretionary authority of the CAO, including the authority to grant or deny waivers resulting in over/under benefit payments, caused by County error or otherwise.

CAO Response: MCERP will update the current policy related to over/under benefit payments to reflect the authority of the CAO granted by the County Code as well as expanding the review processes as defined within the current policy.

Recommendation 2: MCERP to obtain written acknowledgements

- All decisions by the CAO with respect to the granting or denial of waivers under the County's retirement system be in writing;
- Any request for a waiver under the retirement system by a retiree or participant be in writing.

CAO Response: MCERP will obtain written acknowledgement of any decision by the CAO related to the granting or denial of requests for repayment of benefit amounts over/under paid. All requests for waivers by retirees or participants have always been in writing.

Recommendation 3: The County require that a dated form acknowledging the intended retirement date of the employee and bearing the signature of an authorized supervisor or retirement plan administrator from the retiring employee's agency be submitted as part of that employee's retirement package prior to the application being processed by MCERP.

CAO Response: MCERP established a process in 2016 requiring the CEO or Director of the participating agency to attest in writing that the employee is retiring and the date of retirement. The certification also requires them to provide salary and sick leave information.

Recommendation 4: The County establish a recordkeeping system for retention and maintenance of retirement documentation including CAO decisions and retiree or participant requests.

CAO Response: MCERP uses the ZImaging System (record retention system) to retain records of transactions, including requests for information related to benefits, applications for benefits, retirement calculations, etc., with employees and retirees.

Recommendation 5: The County take steps necessary to institute policy or system changes to allow retirees or participants to return to work full time and draw retirement benefits so long as they do not further participate in the defined benefit plan from which they are drawing benefits.

CAO Response: The concept of "rehiring" retirees and stopping their benefits has been highly debated by public pension funds, including the Federal government, for years. The conclusion reached by most plans is that paying a retiree their benefit requires the employer, in our case the County or participating agency, to pay the benefit from taxpayer dollars (the employee contributions to the plan only support the retirement benefit for the first two to three years). The cost to the employer is the normal cost plus any unfunded liability. If the retiree were to be rehired, the pension industry view is that paying the retiree's annuity from tax dollars and paying his salary from tax dollars results in "double-dipping" and can have the effect of eroding public trust in government. If the retiree had been retired from another jurisdiction, say Fairfax County, and was hired by Montgomery County, this does not result in "double-dipping" since two different jurisdictions are paying the costs, one contributions to the retirement plan to pay for the retiree's annuity, and another jurisdiction pays the employee's salary. In addition, the County has a policy for "transfer of knowledge" contracts wherein former employees with a special skill set can return to County employment to assist the County with recruitment gaps or the training of a new employee.

If you have questions, please contact Fariba Kassiri, Assistant Chief Administrative Officer, at (240) 777-2512 or Fariba.Kassiri@montgomerycountymd.gov.