



**Committee:** Directly to Council  
**Committee Review:** N/A  
**Staff:** Christine Wellons, Senior Legislative Attorney  
**Purpose:** Final action – vote expected

AGENDA ITEM #4  
January 17, 2023  
**Action**

## SUBJECT

Executive Regulation No. 18-22, Amendments to the Montgomery County Personnel Regulations - Performance-Based Pay

## EXPECTED ATTENDEES

Executive Branch Representative(s)  
Bruce Martin, Executive Director, Merit System Protection Board

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Introduction and Action on a Resolution to approve Executive Regulation 18-22

## DESCRIPTION/ISSUE

- This regulation is reviewed by the Council pursuant to Method (1). A regulation proposed under this method is not adopted until the Council approves it.
- The regulation would amend the personnel regulations to provide enhanced performance-based pay for the Executive Director of the Montgomery County Employee Retirement Plans (MCERP).

## SUMMARY OF KEY DISCUSSION POINTS

- Under the proposed regulation, the MCERP Executive Director would be eligible to receive a lump-sum award that exceeds 4 percent of base salary, but does not exceed 25 percent of base salary, for exceptional performance. Other Management Leadership Service (MLS) employees are eligible for performance-based increases of between 4-6% of base salary for exceptional performance.
- The reason to enhance performance-based pay for the MCERP Executive Director, as explained by the County Executive, is to make the salary for the position competitive. According to a market study, the current top pay for the position (\$191,726) is well below the average annual cash compensation for an Executive Director in our area (\$229,449).
- The anticipated annual fiscal impact of the regulation is approximately \$40,000.
- The Merit System Protection Board has opined that, while they do not object to the proposed regulation, it is an “imperfect solution to the asserted recruitment problem for this position. Increasing the potential lump sum pay for performance compensation to a specific position in the Management Leadership Service may set a precedent for future ad hoc changes and will undermine efforts to ensure pay equity among County positions.”

## This report contains:

Executive’s transmission memo  
ER 18-22 (clean)  
ER 18-22 (showing changes)

## Pages

©1  
©3  
©7

Fiscal Impact Statement  
Proposed Resolution Approving ER 18-22  
Letter from the Merit System Protection Board

©11  
©13  
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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

MEMORANDUM

December 6, 2022

TO: Evan Glass, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Executive Regulation No. 18-22, Amendments to the Montgomery County  
Personnel Regulations - Performance-Based Pay

I am transmitting to you Executive Regulation No. 18-22, which amends Section 10 of the Montgomery County Personnel Regulations to provide enhanced performance-based pay for the Executive Director of the Montgomery County Employee Retirement Plans (MCERP).

The MCERP Executive Director position is part of the County's Management Leadership Service (MLS), at the MI level pay band, the highest-level merit position, with a current maximum salary of \$191,726.

Upon retirement of the previous Executive Director, and due to the unique and critical nature of this position, we hired an executive search firm to assist with identifying qualified candidates. The search firm identified over 20 well-qualified candidates who were interested in the job but declined to apply due to the salary level. As a result, we tasked the search firm to conduct a study to assess the market salary offered for this type of position. Through this study, we determined that the County's compensation package for the MCERP Executive Director position is not market competitive.

The compensation level for the MCERP position has been independently assessed by comparing it to other public plans within this geographic area. The average assets under management by these five plans is \$6 billion, compared to MCERP at \$8 billion. The average annual cash compensation for an Executive Director in our area is \$229,449. However, this figure is well above MCERP's current salary range with a maximum salary of \$191,726 for the M1 Pay Band.

We are proposing this amendment in order to recruit highly qualified investment executives that meet MCERP's need to have a director with the investment knowledge and administrative experience to continue MCERP's history of strong financial and operational performance.

Additionally, we have developed a set of benchmark expectations to determine incentive awards and policies to administer the plan and to ensure the new executive director is fully meeting performance standards to receive this enhanced performance-based pay.

This proposed regulation is being promulgated by the Office of Human Resources (OHR), under Method 1 of Section 2A-15 of the Montgomery County Code. Executive Regulation No. 18-22 was advertised in the Montgomery County Register during the period August 1, 2022, through August 31, 2022, but no comments were received.

If you have any questions or would like additional information, please contact Traci Anderson, Director, Office of Human Resources at [Traci.Anderson@montgomerycountymd.gov](mailto:Traci.Anderson@montgomerycountymd.gov).

Enclosures

cc: Kate Stewart, Chair, Government Operations and Fiscal Policy Committee  
Richard S. Madaleno, Chief Administrative Officer  
Fariba Kassiri, Deputy Chief Administrative Officer  
Traci Anderson, Director, Office of Human Resources



# **MONTGOMERY COUNTY EXECUTIVE REGULATION**

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Performance Based Pay

Number: 18-22

Originating Department:  
Office of Human Resources

Effective Date:

Montgomery County Regulation on:

## **PERFORMANCE BASED PAY**

Issued by: County Executive

Regulation No. 18-22

COMCOR 33.07.01

Supersedes: Executive Regulation 28-09

Authority: Montgomery County Code, Section 33-7(b)

Council Method (1) Under Code Section 2A-15

Comment Deadline: August 31, 2022

Register Volume 39, Issue 8

Effective Date: \_\_\_\_\_

Sunset Date: None

**SUMMARY:** This regulation amends Section 10 of the Montgomery County Personnel Regulations to provide for performance-based pay for the Executive Director of the Employee Retirement Plans.

**ADDRESS:** Director, Office of Human Resources  
Executive Office Building  
101 Monroe Street, 7th Floor  
Rockville, MD 20850

**STAFF** Additional information and copies of the regulation are available from:

**CONTACT:** Samuel Frushour, Special Assistant to the Director, 240-777-5012.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Performance Based Pay

Number: 18-22

Originating Department:  
Office of Human Resources

Effective Date:

## COMCOR 33.07.01.10 Employee Compensation

\* \* \*

### 10-10. Performance-based pay.

- (a) Performance-based pay for MLS or PLS employees. An MLS or PLS employee is not eligible to receive service increments[,] but may receive performance-based pay as described in this subsection.
  - (1) Eligibility for general wage adjustment.
    - (A) Career employee. An MLS or PLS employee with merit system status who receives a performance rating of Below Expectations, Successful Performance, Highly Successful Performance, or Exceptional Performance for the prior review period receives the general wage adjustment awarded to other unrepresented County employees during the current fiscal year. An employee with a rating of Does Not Meet Expectations for the prior review period does not receive the general wage adjustment for the current fiscal year.
    - (B) Probationary employee. A probationary MLS or PLS employee is eligible for the general wage adjustment provided to permanent employees.
  - (2) Eligibility for performance-based pay.
    - (A) Career employee. An MLS or PLS employee with merit system status is eligible to receive performance-based pay. In order to receive a compensation adjustment, an employee must have a performance evaluation on record for the previous fiscal year.
    - (B) Probationary employee. A probationary employee with less than 6 months of service is not eligible for performance-based pay.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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Effective Date:

(C) Eligibility based on performance rating.

- (i) An employee with a performance rating of *Successful Performance*, *Highly Successful Performance*, or *Exceptional Performance* is eligible to receive performance-based pay as indicated in the table below. However, the salary of an employee who receives an addition to base salary award must not exceed the maximum of the assigned pay band.

**Eligibility for Performance-Based Pay for MLS and PLS Employees\***

| Overall performance rating:          | If employee's salary is below 90 percent of pay band                                                                                                                            | If employee's salary is at or above 90 percent of pay band                                                                                                                      | If employee's salary is at top of pay band                                          |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>Exceptional Performance</b>       | Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 6 percent of base salary.   | Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 4 percent of base salary.   | Employee is eligible for a lump-sum award not to exceed 4 percent of base salary.** |
| <b>Highly Successful Performance</b> | Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 4 percent of base salary.   | Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 3.5 percent of base salary. | Employee is eligible for a lump-sum award not to exceed 3.5 percent of base salary. |
| <b>Successful Performance</b>        | Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 3.5 percent of base salary. | Employee is eligible for a lump-sum award not to exceed 2 percent of base salary.                                                                                               | Employee is eligible for a lump-sum award not to exceed 2 percent of base salary.   |



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Subject: Performance Based Pay

Number: 18-22

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Effective Date:

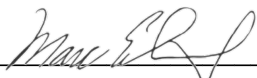
|                                           |                                                     |                                                     |                                                     |
|-------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|
| <b>Below<br/>Expectations</b>             | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. |
| <b>Does Not<br/>Meet<br/>Expectations</b> | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. |

\* An MLS or PLS employee receives the general wage adjustment granted to other non-bargaining unit employees unless the employee's overall performance rating was *Does Not Meet Expectations*.  
\*\* With approval by the CAO, the Executive Director of Montgomery County Employee Retirement Plans is eligible to receive a lump-sum award that exceeds 4 percent of base salary but does not exceed 25 percent of base salary for exceptional performance.

- (ii) An MLS or PLS employee does not automatically receive a performance-based pay award of any particular type or amount.

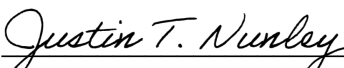
\* \* \*

Approved:

  
\_\_\_\_\_  
Marc Elrich, County Executive

12/6/2022  
\_\_\_\_\_  
Date

Approved as to form and legality:

  
\_\_\_\_\_  
Justin T. Nunley  
Office of the County Attorney

7/27/2022  
\_\_\_\_\_  
Date





# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Performance Based Pay

Number: 18-22

Originating Department:  
Office of Human Resources

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Register Volume 39, Issue 8

Effective Date: \_\_\_\_\_

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**SUMMARY:** This regulation amends Section 10 of the Montgomery County Personnel Regulations to provide for performance-based pay for the Executive Director of the Employee Retirement Plans.

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Subject: Performance Based Pay

Number: 18-22

Originating Department:  
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Effective Date:

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Subject: Performance Based Pay

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Effective Date:

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Effective Date:

|                                   |                                                     |                                                     |                                                     |
|-----------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|
| <b>Below Expectations</b>         | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. |
| <b>Does Not Meet Expectations</b> | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. | Employee is not eligible for performance-based pay. |

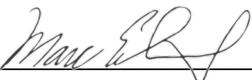
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\* \* \*

Approved:

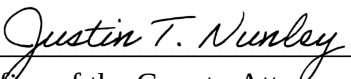


Marc Elrich, County Executive

12/6/2022

Date

Approved as to form and legality:



Office of the County Attorney

7/27/2022

Date

**Fiscal Impact Statement**  
**Executive Regulation 18-22, Personnel – Performance-Based Pay**

**1. Executive Regulation Summary.**

The proposed regulation amends MCPR Section 10 to increase the maximum lump-sum performance-based pay for the Executive Director of the Montgomery County Employee Retirement Plans (MCERP) from 4 percent of base salary to 25 percent of base salary for exceptional performance.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Assuming an estimated base salary of \$191,726 for the MCERP Executive Director (the maximum amount allowed under the position's classification), a lump-sum performance-based award at the proposed maximum amount would be \$47,932. This would represent an increase of \$40,263 from the current maximum allowable award of \$7,669. The fiscal impact of this, factoring in FICA, would be approximately \$40,846. The compensation for this position is paid from the various retirement funds. The proposed regulation will not impact revenues.

Based on information provided by the search firm hired by the County to fill the Executive Director position, the compensation package offered by Montgomery County is insufficient when compared to the compensation provided to similar positions in the area. The current maximum salary for this position is \$191,726. The average Executive Director annual salary for five public pension plans in our area is approximately \$236,000, with one local system paying its Executive Director \$295,000 annually. Additionally, the current compensation lags well behind both the Virginia and Maryland State plan administrators, and significantly behind similarly sized asset managers in the private sector.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

In the event the Executive Director of MCERP achieved exceptional performance in each year, this regulation could have a fiscal impact of up to \$40,846 each year for a cumulative impact of \$245,076.

**4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

The proposed regulation is not expected to directly impact retiree pension or group insurance costs.

**5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

The proposed regulation does not authorize future spending.

**6. An estimate of the staff time needed to implement the regulation.**

It is estimated that staff time to implement this regulation will be minimal.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

It is estimated that these changes will not increase staff responsibilities.

**8. An estimate of costs when an additional appropriation is needed.**

See response to Question 2.

**9. A description of any variable that could affect revenue and cost estimates.**

To the extent that the salary provided to the individual chosen to fill this currently vacant position is less than the maximum amount allowed under the position's classification, the cost estimate would change accordingly. Similarly, the proposed regulation sets the maximum amount that may be provided as a lump-sum award, to the extent that the actual amount provided is less than the 25 percent maximum, the cost estimate would change accordingly.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**11. If a regulation is likely to have no fiscal impact, why that is the case.**

Not applicable.

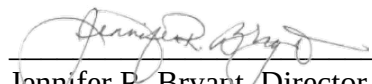
**12. Other fiscal impacts or comments.**

None.

**13. The following contributed to and concurred with this analysis:**

Darryl Gorman, Office of Human Resources

Corey Orlosky, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer R. Bryant, Director  
Office of Management and Budget

9/28/22

\_\_\_\_\_  
Date

Resolution No.: \_\_\_\_\_  
Introduced: December 13, 2022  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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Lead Sponsor: Council President on behalf of the County Executive

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**SUBJECT:** Approval of Executive Regulation 18-22, Amendments to the Montgomery County Personnel Regulations - Performance-Based Pay

**Background**

1. On December 6, 2022, the County Council received Executive Regulation 18-22, Amendments to the Montgomery County Personnel Regulations - Performance-Based Pay. The purpose of the regulation is to provide enhanced performance-based pay for the Executive Director of the Montgomery County Employee Retirement Plans (MCERP).
2. The Council must review the regulation under Method (1) of Section 2A-15 of the County Code.
3. Under Method (1), the Council must approve the regulation before it takes effect.
4. Executive Regulation 18-22 was advertised in the August 2022 issue of the Montgomery County Register. The Executive received no comments regarding the regulation.

**Action**

*The County Council for Montgomery County, Maryland approves the following resolution:*

Executive Regulation 18-22, Amendments to the Montgomery County Personnel Regulations - Performance-Based Pay, is approved. The approved Regulation is attached to this Resolution.

This is a correct copy of Council action.

---

Judy Rupp  
Clerk of the Council



**MERIT SYSTEM PROTECTION BOARD**

**M E M O R A N D U M**

January 6, 2023

**TO:** Fariba Kassiri  
Deputy Chief Administrative Officer  
  
Traci L. Anderson, Director  
Office of Human Resources

**FROM:** Harriet E. Davidson, Chair  
Merit System Protection Board

**SUBJECT:** Executive Regulation 18-22 - MCPR Amendments - Performance-Based Pay

This is in response to the Office of Human Resources (OHR) December 12, 2022, request for Merit System Protection Board (MSPB or Board) review of the above-referenced proposed amendment to the Montgomery County Personnel Regulations (MCPR) § 10-10. The proposed regulation would provide that the Executive Director of the Montgomery County Employee Retirement Plans (MCERP) would be eligible to receive a lump-sum performance-based award for exceptional performance that exceeds 4 percent of base salary but does not exceed 25 percent of base salary.

The justification for the proposal is that a study conducted by Hudepohl & Associates, Inc., an executive search firm, indicated that the current salary for the MCERP Executive Director position is not competitive with the pay levels for similar positions in surrounding jurisdictions, which has impeded recruitment efforts. Over two dozen potential candidates have apparently expressed a lack of interest in the MCERP Executive Director position because of the current pay level.

In response to the Board's questions, Deputy CAO Fariba Kassiri provided information by email on December 20, 2022, and on January 4, 2023. In addition to a fact sheet and a copy of the market compensation study she provided answers to specific questions. The Deputy CAO indicated that the search firm had identified and contacted three external candidates for the position. She explained that the potential candidates currently have salaries in excess of what the current County compensation policies provide as the maximum for the MCERP Executive Director. It is the County's intent to make an offer to the leading candidate in late January should the Council approve the regulation providing for a potential bonus enhancement. It is unclear if the leading candidate is still available or would accept the proposed salary package.

In our view this proposed regulation is an imperfect solution to the asserted recruitment problem for this position. Increasing the potential lump sum pay for performance compensation to a specific position in the Management Leadership Service may set a



precedent for future ad hoc changes and will undermine efforts to ensure pay equity among County positions. It is also possible that other MLS employees will choose to challenge their compensation by referencing this anomaly, which may subject the County to potential liability.

That said, the Board supports the County's recruitment efforts to obtain the best candidates for all positions. To that end, the Board will not object to this amendment as long as the classification and compensation of this position is promptly studied by OHR, and the findings presented to the Board. Based on the study's findings and the County's efforts to find a better approach to compensation issues, the regulation should then be promptly revised or repealed. A reexamination of this unusual approach to compensation should certainly take place as part of the schedule of regulation review required under MCPR § 2-14, and may be appropriate for inclusion in the Board's comprehensive audit of the County's classification and compensation system, which should be underway this year.

Finally, the Board would like to express its displeasure that the proposed regulation was not submitted to us for review prior to being published in the Montgomery County Register and submitted to the County Council for adoption. MSPB staff noticed it on the Council agenda and inquired about the oversight. We appreciate that the County Executive agreed to ask the Council to defer action on the proposed regulation until its January 17 meeting so that the Board could have time to review and comment, and that Ms. Kassiri was forthcoming in response to the Board's questions.

The Board asks that OHR explicitly provide in its standard operating procedures that proposed changes to the personnel regulations be sent to the MSPB with sufficient time for review and comment prior to publication in the Register. That way if the MSPB recommends changes and OHR agrees to the changes the proposed regulation would only have to be published once. Moreover, that approach would be consistent with prior practice and avoid the problem of proposed regulations going to the County Council without the MSPB having had a reasonable opportunity to review and comment. Proposed personnel regulations submitted to the County Council should always include the MSPB comments memorandum.

Thank you again for your cooperation. If you or your staff have any questions, please feel free to contact the Board's Executive Director.

cc: Board Members  
Marlene Michaelson, Executive Director, County Council  
Bruce P. Martin, Executive Director, MSPB