A RESEARCH BRIEF ON

FURLOUGHS AND BUYOUTS

OFFICE OF LEGISLATIVE OVERSIGHT
MEMORANDUM REPORT NUMBER 2009-9

April 14, 2009

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In these difficult economic times, many state and local governments are reluctantly turning to employee layoffs in order to reduce operating expenses and balance their budgets. Furloughs and buyouts represent two alternative strategies being used by employers to reduce compensation costs, and downsize or restructure the workforce:

- A furlough is the placement of an employee in a temporary non-duty, non-pay status to achieve budget savings.

- A buyout is any type of financial incentive provided by an employer to encourage employees to voluntary leave their jobs either through retirement or resignation.

Montgomery County has historically worked very hard to minimize the use of layoffs. To further the Council's understanding of how furloughs and buyouts work in practice, the Council requested the Office of Legislative Oversight to prepare a research brief about these two strategies, including the reported experiences of other jurisdictions.

FURLOUGHS – REPORTED ADVANTAGES AND DOWNSIDES

The use of furloughs has expanded during the past year as a relatively common employer response to the current economic downturn. The most commonly cited advantages and downsides to using furloughs as a budget savings strategy are listed in the table below.

Commonly Cited Advantages
• A furlough provides immediate and predictable savings. • A furlough may serve to minimize or even avoid the use of layoffs. • A furlough is a temporary adjustment that does not require changes to the current size or structure of the workforce. • Employees tend to prefer furloughs vs. other forms of compensation reductions that pay employees less for the same amount of work. • A furlough can be structured to provide some additional savings in operating costs by closing facilities on certain days.
Commonly Cited Downsides
• Furloughs do not deliver long-term savings from a structural change in the workforce. • Furloughs can result in grievances and/or lawsuits from employee organizations. • Furloughs can result in increased overtime expenses to maintain services or to "make up" the work missed during a furlough. • Furloughs typically result in some amount of less work being performed.

COMMON DESIGN QUESTIONS

Furloughs are not all structured identically. However, while each furlough plan has its unique characteristics, there are common design questions to address if/when a furlough plan for County Government employees is before the Council for consideration. The key questions are:

1. How much budget savings does the furlough need to achieve?
2. Is the furlough going to be voluntary or mandatory?
3. How many furlough hours or days are there going to be? Should the number of furlough hours or days be the same for all employees?
4. Should furlough days be designated or subject to employee choice (i.e., rolling)? Should there by any incentives or options as to when furloughs are taken?
5. Should certain employees be exempt from the furlough, e.g. certain job types or classes, employees earning less than a certain amount?
6. How should the compensation adjustment be taken out of employees' paychecks?
7. How should the calculation of employee benefits be treated as a result of a furlough?

In deciding how to answer these questions, the Council must weigh three potentially-competing factors: budget savings; adverse impacts on employees (both in terms of wages and morale); and changes in productivity and levels of service delivery.

LESSONS LEARNED

Based on information compiled about furlough plans being implemented by other public sector employers, OLO identified the following recurring themes or "lessons learned":

Furloughs provide immediate budget savings without reducing the size of the workforce. Jurisdictions that are implementing furloughs report they are achieving their targeted reduction in compensation costs, either immediately or in the near future. By design, a furlough does not require an employer to reduce the size or change the structure of the workforce.

Employers can design a furlough in ways that mitigate some of the negative effects on employees, especially the financial loss for those earning lower salaries. Typical strategies used to mitigate the adverse impacts of furloughs on employees include protecting employee benefits and spreading out the salary loss over multiple pay periods. Other strategies include exempting employees who earn less than a certain amount and/or requiring higher-paid employees to take more furlough days than lower-paid employees.

Not much is documented about the impact of furloughs on productivity. The use of rolling furloughs and exempting certain employees are design approaches intended to minimize service disruptions. Some jurisdictions strive to maintain service levels to the public by providing incentives for employees to take their furlough days on pre-existing holidays.

While employees prefer voluntary vs. mandatory furloughs, voluntary furloughs may not achieve the desired level of cost savings. The obvious downside to voluntary furloughs is that there is unlikely to be 100% participation and the resulting cost savings is smaller.

Some furloughs have resulted in legal challenges from employees unions. Three of the eight jurisdictions reviewed experienced legal challenges to their furlough plans with varied results.

OBJECTIVES OF BUYOUT PROGRAMS

A buyout program provides an employer with the opportunity to reduce compensation costs and restructure the workforce. To the extent a buyout allows an employer to minimize layoffs, buyouts also mitigate the morale problems surrounding layoffs. Buyouts have the added advantage of reducing an employer's exposure to unemployment compensation liability that can result from layoffs.

Buyouts generally result in immediate compensation cost reductions. The greatest compensation cost savings occur when an employer abolishes positions vacated by a buyout. When positions are refilled, an employer can often achieve some lesser "turnover" savings attributed to lapse and lower salaries of the new hires.

Buyouts can serve as effective tools for restructuring the workforce. Buyouts create position vacancies that allow an employer to reshape the workforce to reflect current staffing needs and resource availability. Buyouts create vacancies which afford an employer the opportunity to downsize through the elimination of positions. Alternatively, an employer may choose to refill positions with employees that have different skills.

TYPES OF BUYOUTS

The type of retirement plan offered employees affects the buyout incentives that an employer can offer. The table below shows examples of incentives that could be offered to members of any retirement plan compared to those only applicable to members in defined benefit plans.

Buyout Incentives for all Retirement Plans	Additional Incentives Limited to Defined Benefit Retirement Plans
Cash payments	Adjustments to credited years of service
Contribution to portable retirement accounts	Lowered age and years of service requirements
Enhanced post-employment health benefits	Reduction in early retirement penalty

POTENTIAL DOWNSIDE OF BUYOUTS – COSTS CAN EXCEED SAVINGS

While buyouts can offer immediate reductions in compensation costs, the research evidences that buyouts too often incur costs that offset or exceed program savings, particularly when implemented independent of a downsizing or restructuring plan. Federal and state evaluations show that much of the fiscal benefit of a buyout is lost when an employer:

- Refills vacated positions; and/or
- Pays overtime or hires contractors to perform the work of buyout-vacated positions.

Buyouts that create long-term employer liabilities (e.g., by increased pension and/or retiree health benefits) can also result in total program costs that exceed program savings.

Federal and state evaluations of buyout programs recommend implementing buyouts only in concert with a downsizing plan; targeting the buyout toward departments, programs, or job classes that are subject to reductions-in-force; and minimizing the refilling of vacated positions.

2008 COUNTY GOVERNMENT BUYOUT

In May 2008, as recommended by the Executive, the Council approved a buyout program for non-public safety Employees' Retirement System (ERS) members, who were at normal retirement or within two years of normal retirement. The incentive consisted of a $25,000 payment and a reduction in the early retirement penalty. Buyout recipients had to retire by June 30, 2008.

Of the 838 eligible employees, 150 (or 18%) accepted the buyout. Three-fourths of the employees who accepted the 2008 buyout were eligible for normal retirement. Of the 150 positions vacated by the buyout, the County refilled 96 positions (64%) and abolished 54 positions (36%).

From FY09 – FY19, OLO's fiscal analysis shows that the 2008 County Government buyout will:

- Save $20.2 million (of which $8.5 million was saved in FY09)
- Cost $33.0 million
- Result in a net cost of $12.8 million

Almost half of the total savings of $20.2 million occurs in FY09 due to position abolishments and turnover savings. However, because the buyout program obligates the County to cover $33 million in new costs over the next decade, **the net result is a cost increase of $12.8 million**.

Beginning in FY10, and continuing for the next ten years, the County must pay back the ERS Trust Fund the $3.75 million it cost for the $25,000 per employee incentive payments. The buyout also resulted in retirees drawing pensions and health coverage for longer periods, which also increased the County's future liability.

Net Savings and Cost Increases Resulting from the 2008 County Government Buyout
($ in millions)

Fiscal Year	(A) Savings	(B) Cost Increases	(A) – (B) Net Savings or (Cost Increases)
FY09	$9.9	$1.4	$8.5
FY10-19	$10.3	$31.6	($21.3)
Total FY09-FY19	**$20.2**	**$33.0**	**($12.8)**

2009 PROPOSED COUNTY GOVERNMENT BUYOUT

As recommended by the Executive, the 2009 County Government buyout is being offered to Employees' Retirement System members who are eligible for normal retirement or within two years of normal retirement. The proposed 2009 incentive is $40,000 plus elimination of the early retirement penalty. The terms of the proposed 2009 buyout were bargained with MCGEO.

As the Council considers the proposed 2009 County Government buyout, OLO recommends the Council ask the Executive to address the following questions:

1. What are the estimated annual costs and savings of the 2009 buyout from FY10-FY20?
2. What percent of buyout-vacated positions will the Executive abolish permanently?
3. Is there a scenario whereby eligibility for the 2009 buyout could be targeted toward job classes that are subject to reductions in force?
4. What are the Executive's plans for coordinating the proposed 2009 buyout with the discontinued service retirement program?

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A. Authority

Council Resolution 16-849, *Amendment to the FY09 Work Program of the Office of Legislative Oversight*, adopted on February 24, 2009.

B. The Assignment

In these difficult economic times, many state and local governments are reluctantly turning to employee layoffs in order to reduce operating expenses and balance their budgets. Furloughs and buyouts represent two alternative strategies being used by employers to reduce compensation costs, and downsize or restructure the workforce:

- A furlough is the placement of an employee in a temporary non-duty, non-pay status to achieve budget savings.

- A voluntary departure incentive is any type of financial incentive provided by an employer to encourage employees to voluntary leave their jobs either through retirement or resignation.

Note: For purposes of compiling this research brief, OLO adopted the terminology used by the Government Accountability Office and refers to voluntary departure incentives as "buyouts."

Montgomery County has historically worked very hard to minimize the use of layoffs. To further the Council's understanding of how furloughs and buyouts work in practice, the Council requested the Office of Legislative Oversight to prepare a research brief about these two strategies, including the reported experiences of other places using furloughs and/or buyouts.

C. Organization of Memorandum Report

Chapter II, Furloughs, is organized into four sections as follows:

- **Section A** provides a general overview of the commonly cited advantages of furloughs as well as commonly cited downsides of furloughs.
- **Section B** provides examples of the structure and experiences of other jurisdictions in implementing furloughs.
- **Section C** reviews the current Personnel Regulations governing the County Government's use of furloughs and recaps the history of furlough use in the County.
- **Section D** summarizes the furlough "lessons learned" from the reported experiences of other public sector employers; and recommends questions for the Council to address when considering how to structure a furlough for County Government employees.

Chapter III, Buyouts, is organized into six sections as follows:

- **Section A** provides a general overview of the characteristics, objectives, and potential downsides of buyout programs.
- **Section B** describes alternative types of buyouts offered by employers to encourage employees to voluntarily leave through retirement or resignation.
- **Section C** summarizes the evaluation findings of studies conducted on the implementation of public sector buyout programs.
- **Section D** summarizes the history of buyouts in Montgomery County and bi-County agencies; and presents OLO's fiscal analysis of the 2008 County Government buyout.
- **Section E** describes the County Executive's proposed 2009 County Government buyout.
- **Section F** presents a summary of the lessons learned from this study of public sector buyout programs, and recommends questions for the Council to ask about the proposed 2009 County Government buyout.

The Appendix is organized as follows:

- **Appendix A** lists the resources used by OLO to compile this research brief.
- **Appendix B** contains a memorandum from the Council's Legislative Attorney that addresses questions on the Council's authority to require furloughs or buyouts in the operating budget.
- **Appendix C** contains OLO's methodology for calculating the savings and costs attributable to the 2008 County Government buyout.
- **Appendix D** contains the legislation that implemented the 2008 County Government buyout program.
- **Appendix E** contains the proposed legislation to implement the 2009 County Government buyout program.

D. Methodology

Office of Legislative Oversight staff members Sarah Downie, Craig Howard, Richard Romer, and Aron Trombka conducted the research and analysis presented in this research brief. OLO gathered information about furloughs and buyouts through document reviews and web-based research of news accounts and specific jurisdictions. In some cases, OLO also spoke with staff from the government jurisdictions described in the report.

A large number of public, private, and non-profit sector organizations are utilizing furloughs and/or buyouts as a response to the current fiscal crisis. OLO selected examples of public sector employers based on the availability of information and the illustrative value of the example. The examples cited in the report do not constitute the universe of public sector employers that have either implemented or are considering implementing these strategies.

To compile the information about the use of buyouts in County agencies, OLO consulted with agency staff and reviewed budget and related actuarial documents. OLO also received advice from the County Government's retirement plan actuary. Appendix C contains the details of OLO's methodology for calculating the savings and costs attributable to the 2008 County Government buyout.

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In addition, OLO thanks Merson Bartlett from Aon Consulting, Inc. and Douglas Rowe from Mercer, Inc. for taking the time to consult with us about our fiscal analysis of the 2008 County Government buyout.

CHAPTER II: FURLOUGHS

This chapter presents OLO's research on furloughs. It is organized as follows:

- **Section A** provides a general overview of the commonly cited advantages of furloughs as well as commonly cited downsides of furloughs.
- **Section B** provides examples of the structure and experiences of other jurisdictions in implementing furloughs.
- **Section C** reviews the current Personnel Regulations governing the County Government's use of furloughs and recaps the history of furlough use in the County.
- **Section D** summarizes the furlough "lessons learned" from the reported experiences of other public sector employers; and recommends questions for the Council to address when considering how to structure a furlough for County Government employees.

A. OVERVIEW OF FURLOUGHS

This section defines what a furlough is and provides a general overview of the commonly cited advantages and downsides of furloughs.

1. What is a Furlough?

A furlough is the placement of an employee in a temporary non-duty, non-pay status to achieve budget savings. The Montgomery County Personnel Regulations define a **furlough day** as "a day when an employee is normally scheduled to work but does not work for the County or receive pay from the County for the day because of a furlough." An employee cannot use paid leave for the time period that s/he is on furlough.

The use of furloughs is not a new strategy for reducing compensation costs, especially in certain job sectors. The use of furloughs has expanded recently as a relatively common response to the current economic downturn. As stated in a *Wall Street Journal* article in February 2009:

> Furloughs have long been a way of life for workers in up-and-down industries such as construction and auto assembly…Now furloughs are happening in state governments and universities, publishing, technology companies, and even the arts and entertainment industries.[1]

Not all furloughs are identical in structure. The different approaches to implementing furloughs are discussed in Chapter II, Section B, beginning on page 7.

[1] Mattiolo, Dana and Sara Murray, "Employers Hit Salaried Staff With Furloughs," *Wall Street Journal*, February 24, 2009.

2. Commonly Cited Advantages of Furloughs

The most commonly cited advantages to using furloughs as a budget savings strategy are summarized below.

A furlough provides immediate and predictable savings. The savings from a furlough occur as soon as employees begin taking the furlough days. Further, furloughs generally provide a highly predictable amount of savings in compensation costs. After an employer decides the basic structure of the furlough (e.g., which employees, number and scheduling of furlough days, treatment of benefits), the employer can calculate the specific budget savings that will be achieved. Also, if an employer seeks to close a specific budget gap, the employer can calculate how many furlough days or hours will be needed to provide a savings target.

A furlough can minimize or even avoid the use of layoffs. Because furloughs allow organizations to reduce personnel costs, the use of furloughs can minimize the need for layoffs, and sometimes lead to an employer being able to avoid layoffs altogether. In the current economic climate, avoiding layoffs is commonly cited as the primary justification for turning to furloughs as a budget savings strategy. Furloughs spread the burden of budget savings across a larger group of employees as opposed to layoffs, which hit a smaller number of individuals. In several news accounts, employees cite furloughs as preferable to seeing their colleagues laid off.

A furlough is a temporary adjustment that does not require structural change. Furloughs provide one-time budget savings without requiring an employer to make structural changes that permanently alter the employment structure. If an employer anticipates having the funds to support a given workforce in the near future, furloughs can be a strategy for the employer to maintain the current workforce. Since training and hiring employees can be costly, a furlough can be preferable to losing employees and then having to refill positions in the near future.

Employees tend to prefer furloughs vs. other forms of compensation reduction. With furloughs, employees get paid less for performing less work. Understandably, this arrangement is generally seen as preferable to a wage reduction that pays less for the same amount of work. Further, the salary loss from furloughs is temporary and once the furlough period is over, employees typically revert back to their previous level of pay.

A furlough can be structured to provide some additional savings in general operating costs. If a furlough is implemented by closing facilities on certain days, then a furlough can also lead to some savings in general operating costs, such as savings in basic building maintenance or utilities. However, the literature and news accounts on furlough implementation indicate that the operational cost savings is minimal compared to the personnel cost savings achieved by a furlough.

3. Commonly Cited Downsides of Furloughs

There are also some potential downsides of furloughs that employers should consider before deciding to use them as a budget savings tool.

Furloughs do not deliver long-term, structural savings. While the short-term, non-structural nature of furloughs is one of the advantages noted above, this characteristic also is cited as a disadvantage. If funding the size and cost of an organization's current workforce is unsustainable going forward, then furloughs provide only a temporary fix and do not address the underlying disconnect between revenues and expenditures. In other words, a furlough neither reduces the number of employees on the current payroll nor the recurring compensation costs faced by an employer.

Furloughs can result in grievances and/or lawsuits from employee organizations. The record shows that in some jurisdictions, furloughs have led to grievances and/or lawsuits filed by employee organizations. This appears to occur especially in situations where the applicable labor agreements do not specify the authority or process for implementing furloughs, and/or the employer has not reached prior agreement on furloughs with the bargaining unit. Lawsuits or grievances from unions can lead to time and expenditures spent defending a furlough in court, delays in the implementation of the furlough, or the return of the money saved from a furlough to employees after the fact.

Furloughs can result in increased overtime expenses. The experience of other jurisdictions suggests that a furlough can lead to higher use of overtime than would otherwise occur. Overtime can result from furloughs in several different ways. First, furloughs can lead to a higher level of scheduled overtime due to a need to maintain minimum levels of service delivery. Second, furloughs can lead to additional amounts of unscheduled overtime if employees "make up" the work missed during a furlough through paid overtime hours at some later point.

Furloughs typically result in less work being performed. When implementing a furlough, an organization needs to recognize the consequences for employees working fewer hours. This contrasts, for example, with a wage reduction where employees are paid less but perform the same amount of work. Exactly how and to what degree a furlough affects productivity depends on the type of work being performed. But in almost all cases, the more furlough time an employer imposes, the greater the productivity loss that employer must be willing to accept.

B. USE OF FURLOUGHS – EXPERIENCES AND STRUCTURES

This section discusses the use of furloughs in other jurisdictions. It is organized as follows:

- **Part 1** reviews the structural variables involved in implementing furloughs; and
- **Part 2** describes the furlough structures and experiences of other jurisdictions that have implemented furloughs.

1. Different Ways to Structure a Furlough

While many organizations have implemented furloughs, the details of how furloughs are structured vary considerably. OLO identified six common questions that an employer must answer when determining how to structure a furlough.

a. Is the furlough going to be voluntary or mandatory?

A voluntary furlough program, sometimes referred to as "voluntary time-off," allows employees to choose whether to take a specified number of furlough days. Under a voluntary model, the general assumption is that those who want and can afford to take furlough days will participate while other employees are not required to do so. Conversely, a mandatory furlough program requires all designated employees to take a fixed number of furlough days.

b. How many furlough hours or days are there going to be?

With any mandatory furlough, employers must decide the number of furlough days or hours that employees must take. For example, the various public sector furlough plans currently being implemented across the country range from a low of one day (8 hours) to a high of 24 days (192 hours). In some cases, organizations establish a sliding scale for the required amount of furlough time; a sliding scale most often requires lower-paid employees to take fewer furlough days than higher-paid employees.

c. Should the furloughs be fixed or rolling?

In terms of scheduling furloughs, one option is for employers to identify fixed furlough days, which are days on which all designated employees are furloughed. Under a fixed furlough day model, organizations typically close offices or facilities similar to a holiday closure.

Alternatively, employers can establish a "rolling furlough," which allows for a set number of furlough days to be taken over a specified time period. In the case of rolling furloughs, employers can manage furlough time requests (similar to how the employer would manage other types of leave requests) to minimize work disruptions and avoid the use of overtime. Additionally, organizations can allow employees to take furlough time in amounts smaller than one day, e.g., hourly or multi-hour increments.

d. Should certain employees be exempted from the furlough?

Employers must decide whether any employees should be exempt from the furlough plan. Some employers choose to exempt employees who earn below a certain wage or salary threshold. Alternatively, some employee groups are exempted from a furlough either because they provide a service that must be provided regardless of a furlough, (e.g., public safety, transit, or public health employees), and/or that a furlough would simply cause increases in overtime costs and not result in any net savings.

e. How should the compensation adjustment be taken out of employees' paychecks?

An employer must decide the period of time over which the reduction in salary due to one or more furlough days is taken from employees' paychecks. In particular, employees' salary loss can either be taken out of paychecks within the same pay period as the furlough day occurred, or spread over multiple pay periods.

f. How should the calculation of benefits be treated as a result of a furlough?

Under normal circumstances, a reduction in an employee's salary and/or hours worked can affect the calculation of benefits, including:

- 401K or other retirement plan;
- Contribution towards health insurance;
- Accrual of vacation and sick leave; and
- Seniority.

Under a furlough plan, employees work less and receive less pay. As a result, employers must determine whether a furlough would impact any employee benefits and then decide whether or not these benefits will be held harmless by basing them on each employee's normal schedule and pay.

2. Furlough Structures and Experiences in Public Sector Organizations

In the face of the current recession, many private and public sector organizations have discussed or decided to implement employee furloughs as a tool to achieve budget savings. This part reviews the furlough plans and experiences of eight public sector organizations:

- Clark County, Nevada
- Fairfax County, Virginia
- King County, Washington
- Prince George's County, Maryland
- State of California
- State of Maryland
- University System of Maryland
- Yolo County, California

OLO selected examples of public sector employers based on the availability of information and the illustrative value of the example.

In addition to the furlough plans detailed in this report, OLO came across many other public and private sector organizations during our research that have reportedly considered, proposed, or implemented furloughs. The table below lists many of these organizations.

Selected Organizations that Have Recently Considered, Proposed, or Implemented Furloughs

State Governments		
• California • Georgia • Illinois • Kentucky	• Maryland • Nebraska • New Jersey • New York	• Ohio • Oregon • South Carolina • Vermont
County Governments		
• Bergen, NJ • Charleston, SC • Clark, NV • El Dorado, CA • Fairfax, VA	• Hamilton, OH • Kern, CA • King, WA • New Castle, NJ • Placer, CA	• Prince George's, MD • San Bernardino, CA • Suffolk, NY • Waukesha, WI • Yolo, CA
City Government		
• Atlanta, GA • Boston, MA • Columbus, OH • Denver, CO	• Los Angeles, CA • Lynchburg, VA • Portsmouth, VA • Redlands, CA	• Sacramento, CA • San Bernardino, CA • San Francisco, CA • Seattle, WA
Universities		
• Arizona State University • Clemson University	• Iowa State University • University of New Mexico	• University System of Maryland
Private Sector Companies		
• Advance Publications • Ashland, Inc. • Dell, Inc. • Financial Times Group	• Gannett Co. • Gulfstream Aerospace • Hewlett-Packard Co. • Media General	• Nokia Corp. • Pella Corp. • Sherwin-Williams Co. • Winnebago, Inc.

a. Clark County, Nevada

Status: Currently implementing a voluntary furlough program that ends on September 4, 2009.

Clark County Furlough Plan	
Voluntary or Mandatory	Voluntary
Amount of Furlough Time	Up to 20 days
Fixed or Rolling Furlough Days	Rolling furlough days taken within a specified time period
Employee Exemptions	Firefighters not eligible to participate in voluntary furlough
Scheduling Salary Loss	Salary loss taken in same pay period as each furlough day taken
Employee Benefits	No impact on performance evaluations, merit increases, COLA's, longevity/seniority dates, leave accrual, or holiday eligibility

BACKGROUND

Clark County, Nevada, with a population of two million people, consists of five incorporated cities, including Las Vegas. Clark County is governed by a seven-member County Commission with an appointed County Manager. Clark County has a fiscal year 2008-09 budget of $6.3 billion, and employs more than 12,000 people in 38 departments.

On December 16, 2008, the Board of County Commissioners approved a resolution authorizing Clark County employees to take voluntary furlough days. The County referred to the plan as a pilot project to determine the level of employee interest, the level of savings that could be achieved, and whether a similar program would be viable in the future.

The initial five-week voluntary furlough period within Clark County resulted in $280,000 in savings; 491 employees (about 4% of all employees) across 32 departments participated by taking over 8,000 furlough hours (an average of two days per participating employee).

Clark County officials considered the pilot project a success. On February 3, 2009, the Board of County Commissioners approved a resolution extending voluntary furloughs for Clark County employees through September 2009.

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. Clark County's first furlough plan allowed employees to volunteer to take from one to five furlough days (up to 40 hours) over a five week period in December and until January. Clark County's second furlough plan allows employees to take from one to 15 furlough days (up to 120 hours) over a 30 week period, from February 2, 2009 until September 4, 2009. In total, Clark County's furlough plan allowed up to 20 days of furlough time.

Fixed or rolling furlough days. Clark County's furlough plan allows employees to choose when to take furlough days, subject to approval from the employee's department head. According to the resolution authorizing the furloughs, department heads may accept or reject a furlough request after "considering the employee's position, seniority, skills, and the needs of the department."

Employees are allowed to take furlough time in increments of four hours or more. However, any employees that are in FLSA-exempt positions must take furlough time in one-day increments. Clark County's furlough resolution directly states that the "use of voluntary furloughs should not result in the need for overtime or compensatory time from the employee or other employees."

Exempt employees. Clark County firefighters are the only employee group designated by the Board of County Commissioners as ineligible to participate in the voluntary furlough. The Las Vegas Metropolitan Police Department also chose not to participate. Employees of all other County departments can participate, including separately elected officers such as the County Treasurer.

Scheduling salary loss. Clark County takes the salary reduction resulting from voluntary furloughs within the same pay period any furlough days or hours are taken. If sufficient funds are not available to cover the employee's portion of insurance contributions due to furlough days, the County takes deductions in the next pay period.

Impact on employee benefits. Clark County's furlough plan states that a voluntary furlough will have no affect on the following employee benefits:

- Performance evaluations, merit increases, or cost-of-living adjustments;
- Longevity, anniversary, or seniority dates;
- Vacation and sick leave accruals during the furlough period; or
- Holiday eligibility.

IMPLEMENTATION FEEDBACK

Clark County Department of Human Resources staff report that the voluntary furlough program has worked well because employees have found the voluntary furlough program easy to use in terms of filling out paperwork, receiving supervisor approvals, etc. Staff stressed the importance of keeping unions informed throughout the furlough implementation process.

In testimony before the Board of County Commissioners last December, the President of the Service Employees International Union Nevada, the union representing the majority of County employees, testified that voluntary furlough days are allowed in the union's collective bargaining agreement with the County. He further stated that the union neither endorsed nor opposed the plan and the decision to participate would be left to each union member's discretion.

b. Fairfax County, Virginia

Status: One-day County Government furlough taken on January 2, 2009.

Fairfax County Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	1 day (8 hours)
Fixed or Rolling Furlough Days	A fixed furlough day on January 2, 2009
Employee Exemptions	Essential services in public safety and other 24/7 operations
Scheduling Salary Loss	Salary loss taken in same pay period as furlough day taken
Employee Benefits	No impact on leave accrual, but did affect accrual of service credits for retirement and salary for employees about to retire

BACKGROUND

In October 2008, the Fairfax County Executive recommended several actions to address a projected FY09 revenue shortfall. One of these recommendations was to implement at least one furlough day for Fairfax County employees for an expected savings of between $1.75 and $2.0 million. On October 20, 2008, the Fairfax County Board of Supervisors approved one furlough day to be taken on January 2, 2009.

Fairfax County implemented the one-day furlough as planned and achieved a reduction in compensation costs of $1.8 million. According to Fairfax County staff, this total did not include any additional cost savings that may have occurred from closing facilities.

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. Fairfax County required that employees take one furlough day (eight hours), which was equivalent to a salary loss of 0.4%.

Fixed or rolling furlough days. Fairfax County designated January 2, 2009 as a fixed furlough day for all affected employees. As a result, the County closed several facilities and reduced services in the same manner as it does for a scheduled holiday.

Exempt employees. The Fairfax County furlough did not apply to employees in "essential service" positions, defined to include public safety and other 24/7 operations. Specific exempt employees groups included police, firefighters, sheriff, staff in mental health group homes, waste processing staff, and landfill staff.

Scheduling salary loss. Employees were required to take the salary loss within the same pay period as the furlough day, and were not offered the opportunity to spread out the salary loss.

Impact on employee benefits. The Fairfax County furlough did not adversely impact employees' leave accrual. However, it did affect the accrual of service credits for retirement and the salary for employees about to retire.

IMPLEMENTATION FEEDBACK

Staff from Fairfax County's Department of Human Resources shared their view that the furlough day went more smoothly than anticipated. However, based on feedback received from employees, Fairfax County Human Resources staff report that if faced with implementing another furlough, they would consider the following modifications:

- Giving employees greater choice concerning when to take their furlough time; and
- Spreading out the reduction taken out of employees' paychecks to allow them to plan for the impact on their personal finances.

The Fairfax County Employees Advisory Council conducted a survey of County employees in March 2008 to elicit their opinions regarding furloughs and other budget savings options. Over 3,200 employees responded to the survey. In response to a question about scheduling furlough days, 70% of respondents stated that they would prefer furlough days that could be scheduled by the employee.

The survey also asked employees if they would be willing to take voluntary furlough days; 26% of respondents indicated they would participate in a voluntary furlough, 42% of respondents said they would not, and 32% were undecided.

c. King County, Washington

Status: Currently implementing ten furlough days in FY09.

King County Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	10 days for most employees; between 4 and 6 days for Superior Court and Prosecuting Attorney's Office employees
Fixed or Rolling Furlough Days	Fixed furlough days that close most government offices; rolling furlough days for Superior Court and Prosecuting Attorney's Office employees
Employee Exemptions	"Essential" safety and transit staff exempt from the furlough, certain employees may substitute vacation time based on hourly wage or planned retirement
Scheduling Salary Loss	Salary loss taken in same pay period as each furlough day
Employee Benefits	Leave accrual and health care benefits will not be impacted

BACKGROUND

King County, Washington (population 1.8 million) includes the city of Seattle. In 2009, King County was faced with the challenge of resolving a budget deficit of $93.4 million. (In King County, the fiscal year is the same as the calendar year.)

In October 2008, the King County Executive proposed a plan for ten fixed furlough days in 2009 for an anticipated budget savings of $10 million. (The number of furlough days for some employees was later reduced as described on the next page.) Before proposing the furlough plan, the King County Executive negotiated a Memorandum of Agreement with the King County Labor Union Coalition to implement furloughs while preserving a cost of living adjustment of 4.88%, as well as merit and step pay increases.

On December 15, 2008, the King County Council adopted ordinances to approve the furlough plan and revise the County Code to allow implementation of furloughs during an emergency fiscal crisis.

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. The King County furlough plan requires ten furlough days for employees of the Executive Branch, Legislative Branch, District Court, and Sheriff's Office; four furlough days for Superior Court employees; and six furlough days for Prosecuting Attorney's Office employees.

The furlough plan initially included ten furlough days for staff in the Office of the Prosecuting Attorney and the Superior Court. However, state law requires both the courts to remain open "except on non-judicial days" and the Chief Justice of the Washington State Supreme Court concluded that furlough days cannot be considered non-judicial days. As a result, King County altered the furlough participation required of these employees in order to keep the courts open.

The Memorandum of Agreement between the County and the Labor Union Coalition also requires King County to provide represented employee paid leave (called "furlough replacement time") equivalent to the amount of furlough days taken. Employees will receive half the "furlough replacement time" in 2010 and half in 2011.

Fixed or rolling furlough days. King County's furlough plan requires fixed furlough days, except for Superior Court and Prosecuting Attorney's Office employees as described below. All the fixed furlough days are all contiguous to 2009 holidays and/or weekends; most major County facilities will be closed on those days to achieve additional operating cost savings.

Superior Court employees are allowed to take rolling furlough days, but must choose one furlough day per month within four pre-selected months. Prosecuting Attorney's Office employees are required to take three furlough days on the fixed days already established and three rolling furlough days chosen by the employee.

Exempt employees. King County's furlough plan exempts essential safety and transit staff from the furlough requirements. The Office of Management and Budget created a list of positions identified as "furlough ineligible." The furlough plan also allows substitution of paid vacation for mandatory furlough days for two subsets of employees.

Employees earning $16.92 or less per hour are allowed to use their vacation leave for the mandated furlough day. Other employees may, with management approval, voluntarily donate vacation leave to employees earning less than $16.92 per hour to be used on furlough days. Also, persons planning to retire in 2009 or 2010 can use paid vacation time instead of furlough days since pension payments are calculated on earnings in the last two years of employment.

Impact on employee benefits. King County's furlough will not impact employees' sick leave and vacation accruals, nor medical, dental, vision or any other insured benefits. Since King County's retirement benefits are calculated based on years of service and final earnings, the 2009 furlough days could affect the retirement benefits of employees that retire in 2009 or 2010 (unless employees use the option to substitute paid vacation time as noted above).

IMPLEMENTATION FEEDBACK

King County's furlough plan required a status report to the County Council on January 30th and another one on June 30th. The January 30th update was based on the experience of the first furlough day. The County Executive reported that the furlough "generally worked well with some minor complications related to servicing Superior Court and the impact of the snow storms and flooding that occurred in December and early January." Due to the unexpected weather complications, some employees were required to work on the January 2nd furlough day.

d. Prince George's County

Status: Currently implementing a furlough in FY09. Additional furlough days have been proposed for FY10.

Prince George's County Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	80 hours (prorated for part-time or non-100% County-funded positions)
Fixed or Rolling Furlough Days	Rolling furloughs days, although department heads can determine fixed days; incentive offered for using holidays as furlough days
Employee Exemptions	Non-General Fund or Internal Service Fund positions exempt
Scheduling Salary Loss	Salary loss taken in same pay period as furlough day taken or spread out over 20 pay periods at employees' option
Employee Benefits	No impact on health insurance coverage, annual and sick leave, and retirement eligibility

BACKGROUND

Prince George's County has an FY09 operating budget of $3.2 billion and approximately 7,100 full-time employees. To address a projected budget shortfall of $57 million in FY09, the County developed a cost reduction plan that included reductions in employee compensation. According to a letter from the County Executive to employees, the Executive chose to implement furloughs to reduce compensation costs after being unable to reach an agreement with employee unions to eliminate FY09 cost-of-living increases.

On September 16, 2008, the Prince George's County Council adopted a resolution to approve a formal Furlough Plan submitted by the County Executive. The Prince George's County Code (§ 16-229) authorizes the furlough of employees under certain circumstances, including if the County Executive determines that a revenue shortfall requires a reduction in compensation levels. The resolution adopted by the Council in September 2008 (approving the furlough plan for FY09) stated that the County Executive had projected a revenue shortfall that would require a reduction in compensation expenditures. The County Executive has also proposed additional furloughs days in FY10.

Pending lawsuit. Following Council approval of the plan, several labor unions representing Prince George's County employees filed a lawsuit against the County Government seeking to overturn the furlough plan. The unions include the American Federation of State, County, and Municipal Employees; the Fraternal Order of Police; the International Association of Fire Fighters; and unions representing correctional officers, civilian police employees, and sheriff's deputies.

According to press accounts of the lawsuit, the union's lawsuit argues that the furloughs violate collective bargaining agreements and that the County has not demonstrated that they are necessary, given the level of contingency funds that the County has in reserve. As of this writing, the lawsuit is pending resolution.

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. Prince George's County's furlough plan requires 80 hours of furlough time taken between September 16, 2008 and June 20, 2009. Part-time employees or employees whose positions are only partially-funded by the County's General Fund have to take a prorated portion of the 80 furlough hours.

Fixed or rolling furlough days. The furlough plan allows rolling furlough days, but also states that department/agency heads can manage how employees schedule their furlough hours. This includes the authority for department/agency heads to establish fixed furlough dates. The furlough plan requires that each department/agency head prepare an operating plan to maintain core services. Furlough time can be taken in hourly increments; however employees cannot take more than 40 furlough hours in one pay period.

The plan also provides an incentive to employees to take the furlough hours on designated holidays. An employee who chooses to take the furlough hours on holidays can receive an equivalent amount of annual leave credit up to 24 hours, which can be used beginning in the 2010 leave year.

Exempt employees. All employees funded by the County's General Fund and Internal Service Funds, including public safety employees, must take furloughs. Positions that are exempt from participation based funding source include 100% non-general fund match grant positions, 100% enterprise funded positions, and 100% non-grant State funded positions.

Scheduling salary loss. After approval of the furlough plan, employees were given a one-time choice of having the payroll deductions spread out over the 20 pay periods left in the fiscal year, or having the pay loss taken during the same pay period as the furlough days are taken.

Impact on employee benefits. Prince George's furlough plans state that the furloughs will have no impact on employee health insurance coverage and annual and sick leave. Employee retirement eligibility will also not be affected; however, "creditable service by which pensions are based may decrease slightly because of the way these benefits are calculated."

IMPLEMENTATION FEEDBACK

Staff in the Prince George's County Department of Human Resources indicated that they tried to make it as easy as possible for employees to schedule their furlough time and the resulting salary loss. However, this made it more complicated for human resources staff to manage the payroll changes resulting from the furlough.

e. State of California

Status: Currently implementing a furlough plan through June 2010.

State of California Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	Began as two days per month for all employees, later reduced to one day per month just for SEIU members; the furlough lasts through June 2010.
Fixed or Rolling Furlough Days	Began as fixed furlough days, but later changed to rolling furloughs days
Employee Exemptions	California Highway Patrol officers are exempt from furloughs
Scheduling Salary Loss	Salary loss taken monthly at rate equivalent to number of furlough days required each month
Employee Benefits	No impact on retirement benefits, Social Security, service credits, health benefits, merit salary adjustments, or payouts for unused leave

BACKGROUND

On December 1, 2008, the Governor of California declared that a fiscal emergency existed in the State of California. Based on that fiscal emergency declaration, the Governor issued Executive Order S-16-08 on December 19th to implement furloughs for State employees.

The Executive Order mandated the furlough of approximately 200,000 State employees for two days per month through June 2010, for an expected savings of $1.3 billion. The Order also directs the State Department of Personnel Administration to initiate layoffs and other position reduction and program efficiency measures.

Legal challenges and reduction in number of furlough days. A coalition of State employee unions filed a legal challenge of the Governor's furlough plan, based on the argument that furloughs represented a reduction in pay that had to be bargained. On January 29, 2009, a State Supreme Court judge upheld the governor's authority to order a furlough based on the fiscal emergency. The Court decision stated that neither State law nor the labor agreements preclude the governor from taking such action.

After the January ruling, the Service Employees International Union (SEIU) filed an unfair labor practice charge with the State Public Employee Relations Board regarding the furloughs. In March, SEIU and the State reached an agreement to reduce the furlough time for SEIU members (representing approximately 95,000 employees) to eight hours per month.

A second set of legal challenges concerned the Governor's authority to furlough the approximately 15,000 employees who worked for other independently elected constitutional officers, e.g., the State Controller and the Attorney General. On March 12, 2009, a Superior Court Judge ruled that the Governor was authorized to furlough these employees.

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. The California furlough plan started out requiring most employees to take two furlough days a month for a 17-month period from February 2009 through June 2010. For SEIU members, the amount of furlough time was later reduced to only one day per month during this same time period.

Fixed or rolling furlough days. The furloughs were initially scheduled as fixed furloughs days to be taken every other Friday. Three furlough days were implemented under this model on February 6^{th}, February 20^{th}, and March 6^{th}.

After the March 6^{th} fixed furlough day, the furlough plan was changed to allow all affected employees to take rolling furlough days, subject to supervisor approval. Additionally, the revised plan allows employees to save up furlough hours and take them at any time (subject to supervisor approval) within two years of the end of the furlough program.

Department budgets are reduced for the two furlough days and will not be augmented by overtime pay due to the furlough. Furlough hours do not count as hours worked for overtime purposes.

Exempt employees. California State Highway Patrol officers are exempt because their bargaining agreement with the State specifically prohibits the use of furloughs. As noted above, California courts have ruled that employees of independently elected constitutional officers (e.g., the State Controller, Attorney General) are not exempt from the furloughs. The Executive Order specified that all state employees were subject to furloughs regardless of funding source, unless exempted by the Department of Personnel Administration.

Scheduling salary loss. California takes the salary loss from employees' paychecks each month equivalent to the number of required furlough days each month for an employee, regardless of when the furlough days are actually taken.

Impact on employee benefits. The furlough will not affect retirement benefits, Social Security, service credits, health benefits, merit salary adjustments, or payouts for unused leave.

f. State of Maryland

Status: Currently implementing FY09 furloughs.

State of Maryland Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	Two or three days (depending on salary)
Fixed or Rolling Furlough Days	Rolling furlough days
Employee Exemptions	Employees earning less than $40,000 and certain public safety or 24/7 service positions
Scheduling Salary Loss	Salary loss taken in same pay period as furlough
Employee Benefits	No impact on leave accrual rates, retirement benefits, service credits, or health benefits

BACKGROUND

On December 16, 2008, the Governor of Maryland signed an Executive Order to create both a furlough plan and temporary salary reduction plan for State employees in FY09. The Executive Order also closed most State government operations on two designated days: December 26, 2008 and January 2, 2009. Combined, these strategies are expected to save $34 million in FY09.

The temporary reduction in salary for employees is equivalent to two days' salary, spread out over ten pay periods in FY09. The furlough days in FY09 are in addition to the salary reduction, and are only required for employees earning $40,000 or more.

The Executive Order states, "A carefully managed furlough plan for State employees is preferable to layoffs during these difficult economic times; any cost containment plan ought to be progressive and place more of the financial burden on higher paid employees." The Executive Order covers Executive Branch employees and does not apply to:

- Legislative branch employees;
- Judicial branch employees;
- Public Officers[1]; and
- Employees of the University System of Maryland, St. Mary's College of Maryland, Morgan State University, and Baltimore City Community College.

[1] Article III, § 35 of the Maryland constitution does not allow "the salary or compensation of any public officer to be increased or diminished during his term of office except those whose full term of office is fixed by law in excess of 4 years."

On December 18, 2008, the Chief Judge of the Court of Appeals, administrative head of the Judicial Branch, issued an administrative order for Judicial Branch participation in the State's furlough plan.

While the Executive Order does not apply to the University System of Maryland, it includes language stating that "each university or college's appropriation shall be reduced to reflect the amount of savings which would be achieved by implementing a furlough plan at each university in accordance with its rules and regulations and subject to approval of its governing board." (The University System of Maryland subsequently adopted its own furlough plan, which is described beginning on page 22.)

FURLOUGH PLAN DESCRIPTION

Amount of furlough time. The furlough plan requires two or three furlough days, based upon an employee's salary. Employees earning between $40,000 and $59,999 must take two furlough days (16 hours), while employees earning $60,000 or more must take three days (24 hours).

Fixed or rolling furlough days. The State's furlough plan allows for rolling furlough days. Employees must schedule furlough hours, with supervisory approval, between January 14, 2009 and June 30, 2009. Employees may take furlough time in increments of four hours and cannot take more than eight furlough hours per work week. Additionally, employees are not allowed to work extra hours or overtime in any week they take furlough hours.

Exempt employees. The State furlough plan exempts employees earning less than $40,000. In addition, the Executive Order exempts certain public safety positions and 24/7 service positions from furloughs, specifically:

- Direct care employees in health, juvenile services, and correctional facilities;
- Police officers at the rank of first sergeant or below (except those in administrative or clerical positions);
- Employees designated by the Secretary of Budget and Management who work on a shift schedule providing services as part of a 24-hour operation; and
- Employees who secure and maintain State facilities on a 24-hour basis.

Impact on employee benefits. The furloughs will not impact employees' leave accrual rates, retirement benefits, service credits, or health benefits. The Executive Order states, "For all purposes other than salary or wages, an employee on furlough time shall be deemed to be on paid leave."

g. University System of Maryland

Status: Currently implementing FY09 furloughs.

University System of Maryland Furlough Plan	
Voluntary or Mandatory	Mandatory
Amount of Furlough Time	1-5 days (depending on salary)
Fixed or Rolling Furlough Days	Rolling furlough days
Employee Exemptions	Employees earning less than $30,000 per year, hourly employees, graduate assistants, employees paid by the course, and employees on H-1B visas
Scheduling Salary Loss	In the pay period after the employee takes the furlough time
Employee Benefits	No impact on retirement, health, or leave benefits

BACKGROUND

The University System of Maryland (USM) consists of 11 universities, two research institutions, and two regional centers; USM employs approximately 7,600 full-time and 4,600 part-time faculty members. The University System's FY09 budget is approximately $3.8 billion. A 17-member Board of Regents appointed by the Governor oversees the University System.

In December 2008, the Board of Regents approved a resolution authorizing the implementation of furloughs. The resolution states that "the USM has been informed that it must reduce its Fiscal Year 2009 budget by $15,925,000 as part of the current State furlough plan" and furloughs are "preferable to alternatives that would result in the loss of jobs of current USM employees."

The resolution requires each USM institution to develop a furlough plan that must:

- Reflect the best interests of the institution;
- Be developed in consultation with appropriate employee organizations and consistent with shared governance principles;
- Achieve savings in the amount that meets the institution's budget reduction allocation under the USM furlough plan; and
- Address the financial impact of furloughs on employees by taking employee compensation levels into account in establishing the numbers of furlough days required.

FURLOUGH PLAN DESCRIPTION

The resolution approved by the USM Board of Regents provides certain rules for the implementation of the furlough plan, but also provides room for furlough plans to vary by institution. This section provides more details on the furlough plan for one institution within the USM system, the University of Maryland.

Amount of furlough time. University of Maryland employees must take one to five furlough days in FY09, depending on each employee's gross salary (see table below). Furlough days can be taken in full or half-day increments.

Salary Range	Required Furloughs
Between $30,000 and $49,999	1 day
Between $50,000 and $64,999	2 days
Between $65,000 and $79,999	3 days
Between $80,000 and $89,999	4 days
$90,000 or more	5 days

Scheduling furlough days. The University of Maryland allows rolling furlough days that each employee schedules in consultation with their supervisor. Employees had to request and receive approval for their designated number of furlough days by March 1. Any employees who had not done so were assigned furlough days at the rate of at least one day per pay period, beginning March 15, 2009.

The resolution of the Board of Regents that mandated the furlough states that, "No overtime or compensatory time may be granted to compensate for the loss of services of furloughed employees."

Exempt employees. The University of Maryland exempts employees earning less than $30,000 per year, hourly employees, graduate assistants, employees paid by the course, and employees on H-1B visas.

Scheduling salary loss. At the University of Maryland, once employees record furlough time on their time record, a deduction in pay will occur in the following pay period.

Impact on employee benefits. Taking furlough time will not reduce employees' benefits, including retirement, health, or leave benefits.

h. Yolo County, California

Status: Currently implementing FY09 furlough plan.

Yolo County Furlough Plan	
Voluntary or Mandatory	Combination of voluntary and mandatory
Amount of Furlough Time	Up to 80 voluntary hours; 32 mandatory hours
Fixed or Rolling Furlough Days	Rolling
Employee Exemptions	None
Scheduling Salary Loss	Spread out over all paychecks during the furlough time period
Employee Benefits	No impact on accrual of retirement service, leave, or on health benefits.

BACKGROUND

Yolo County, California (located directly west of Sacramento) has a population of 200,000, an annual operating budget of $315 million, and 1,710 employees. Yolo County is governed by an elected Board of Supervisors and an appointed County Administrator.

FY05 furloughs. In 2004, Yolo County implemented a mandatory furlough of 60 hours for all employees. The furlough plan closed all nonessential County operations for two weeks during the winter holidays. The furlough initially saved the County $2.2 million during the FY05 budget cycle. However, the County subsequently lost legal challenges filed by two County unions concerning how the County implemented the furlough, and was forced to reimburse members of those unions for the salary lost during the furlough days.

FY09 furloughs. In May 2008, the County adopted a voluntary furlough program for all departments during FY09. The "Extra Time Off" program allowed employees to voluntarily take time off without pay without any loss of benefits. The County reports an overall savings of $1.1 million from this voluntary furlough plan. In November 2008, the Board of Supervisors implemented a variety of other measures to reduce compensation costs, including more voluntary furloughs, resulting in approximately $300,000 in savings.

In December 2008, the Board of Supervisors approved a mandatory furlough plan for all employees (except those that had taken a specified amount of voluntary furlough time). The Yolo County Code (§ 2-6-33.3) authorizes the County to enact a mandatory furlough and establishes parameters for how the County can design a furlough plan. The County expects to save approximately $794,000 under this plan.

FY09 FURLOUGH PLAN DESCRIPTION

Voluntary or mandatory. Just before FY09 began, a voluntary furlough plan was implemented. For the final six months of the fiscal year, the County implemented mandatory furlough time.

Amount of furlough time. The voluntary furlough plan allowed employees to take up to 80 hours of furlough time. Employees could take furlough time in increments of at least four hours, between July 1, 2008 and June 20, 2009. Employees who wanted to participate in the voluntary furlough program had to complete a pledge form with the number of furlough hours they wanted to take during the fiscal year and submit it by June 15, 2008. Supervisors and/or Department heads had the discretion to approve or reject the furlough request based on staffing needs, workload demands, and continuity of customer service.

Under the mandatory furlough plan, employees who did not participate in the voluntary furlough plan must take 32 hours of furlough time taken between January 2009 and June 20, 2009. Employees who took fewer than 32 hours of voluntary furlough time must also make up the difference with mandatory furlough time. For example, an employee that took 24 hours of voluntary furlough time must also take eight hours of mandatory furlough time.

Fixed vs. rolling furlough days. Both the voluntary and mandatory portions of Yolo County's furlough plan allow for rolling furlough days. Employees are allowed to choose when to take the furlough time subject to approval by the Department head.

Scheduling salary loss. For the voluntary furloughs, payroll deductions were spread evenly across the entire fiscal year based on the number of furlough hours taken. For the mandatory furloughs, the salary loss is being spread evenly over all pay periods from January to June 2009.

Impact on employee benefits. As required by the County Code, the furloughs do not directly affect employees' health benefits, leave accrual, retirement benefits, seniority, or eligibility for merit step increases.

IMPLEMENTATION FEEDBACK

According to Yolo County staff, lessons learned from the FY05 furlough played an important role in the development of the current furlough plan. In the previous furlough, County staff felt that poor communication with employees contributed to the filing of grievances by two employee unions, who argued that the County impermissibly implemented furloughs. As a result of those grievances, the County lost two arbitration decisions and had to reimburse employees for the salary loss from the furlough.

In FY09, the County started with a voluntary furlough program. Staff considered this approach to be very successful because it helped to gain employee support by allowing employees to voluntarily participate and it reduced the amount of mandatory furlough time needed. According to County staff, the unions were pleased with the effort County officials put in to avoid mandatory furloughs and understood it was a logical step to avoid layoffs.

C. FURLOUGHS IN MONTGOMERY COUNTY

This section summarizes the County Government's personnel and human resources framework related to furloughs, the most recent implementation of furloughs, and the mention of furloughs as part of the proposed FY10 Operating Budget. Appendix B contains a memorandum from the Council's Legislative Attorney that addresses questions about the Council's legal authority with respect to furloughs.

- **Part 1** describes the County Government's personnel regulations that govern furloughs;
- **Part 2** summarizes the furlough provisions contained in the collective bargaining agreements between the County Government and its employee bargaining units;
- **Part 3** reviews the 1992 furloughs implemented in County Government; and
- **Part 4** reports the mention of furloughs in the County Executive's Recommended FY10 Operating Budget.

1. Current Personnel Regulations

Montgomery County Personnel Regulations, Section 30, *Reduction-In-Force and Furlough,* establishes definitions related to furloughs, the County's policy on furlough, procedures for conducting a furlough, and the authority to appeal a furlough. The Personnel Regulations define a **furlough day** as "a day when an employee is normally scheduled to work but does not work for the County or receive pay from the County for the day because of a furlough."

To implement a furlough, the Chief Administrative Officer (CAO) must develop a furlough plan that identifies the employees who will be furloughed, the number of fixed and/or alternate furlough days, and the furlough period, i.e., the timeframe within which the fixed and/or alternate furlough days must occur.

Fixed furlough days are defined as specific days when the offices or work site of employees will be closed to both the employees and the public. Alternate furlough days are defined as days assigned to an employee in lieu of a fixed furlough day. The Regulations require the furlough plan to allow employees to choose between spreading the salary loss from furloughs over multiple pay periods and taking the salary loss in the same pay period as the furlough day(s).

The Personnel Regulations also establish the following policy guidelines related to furloughs:

- Employees are not allowed to work on their fixed or alternate furlough days, except in an emergency as determined by the CAO, and are not allowed to make up the hours lost from a furlough day by working additional hours at another time.
- The County must ensure that furlough days do not adversely impact an employee's accrual of annual and sick leave; life insurance; retirement benefits; and seniority.
- An employee's base salary must not be reduced by the salary loss resulting from a furlough day for the purpose of calculating service increments, awards, salary upon promotion or demotion, or other salary amounts based on base salary.

2. Mention of Furloughs in Current Collective Bargaining Agreements

The County Government has collective bargaining agreements with the Fraternal Order of Police Montgomery County, Lodge 35 (FOP); the International Association of Fire Fighters, Local 1664 (IAFF); and the Municipal & County Government Employees Organization, United Food and Commercial Workers, Local 1994 (MCGEO).

FOP. The current agreement with FOP, Lodge 35 contains a section dealing with implementation of furloughs for its members – Article 50, Section C of the Agreement. The agreement includes the following provisions regarding furloughs:

- Lost furlough pay must not be made up by the same or other employees in overtime hours or compensatory hours;
- The salary reduction from furloughs must be spread evenly over the pay periods remaining in the fiscal year during which the furlough day(s) occur(s);
- The County must grant eight hours of compensatory time to each bargaining unit member for each eight hour furlough day required;
- Any salary reduction resulting from a furlough shall not reduce the amount of the pension payable upon retirement of any unit member or on other payments or benefits (such as service increments, awards, salary upon promotion or demotion, etc.);
- The salary reduction shall be restored and all compensatory leave balances shall be appropriately adjusted if an appropriate third party determines that the County did not relieve the members of the bargaining unit from duty due to lack of funds or work; and
- All furlough provisions shall be administered equitably within the unit.

IAFF. The current agreement with IAFF, Local 1664 references furloughs in two sections. Section 48.6, Effects of Certain Actions, subsection B, states that "Any furlough of a Job Sharing employee shall be prorated according to the employee's position equivalency." Section 49.1, Limitation on Accrual of Compensatory Time, states that "Unused compensatory time granted to implement a furlough shall be added to the member's compensatory leave balance at the end of the furlough period and treated as above."

MCGEO. The current agreement with MCGEO, Local 1994 contains no mention of furloughs.

3. The 1992 County Government Furlough

The most recent use of furloughs in the County Government occurred during FY92. According to the legislative record, in October 1991, then County Executive Potter presented to the Council an action plan to address FY92 revenue shortfalls and reductions in State funds. The action plan included proposed budget cuts, mid-year revenue increases, and seven days of employee furloughs.[1]

[1] Approved Minutes for the County Council of Montgomery County, October 24, 1991.

In November 1991, the Council adopted a Budget Reconciliation Resolution to amend the FY92 budgets, revenues, and appropriations for County Government and County-funded agencies. The Council's Resolution included savings from employee furloughs, but decreased the number of furlough days from seven to a maximum of four per employee.[2]

Furlough implementation and subsequent reimbursement. To implement furloughs in FY92, the Council approved Executive Regulation No. 81-91, Furlough, on February 4, 1992. This Regulation amended the existing Personnel Regulations to define furloughs and establish a policy for the furloughing of County employees.

The legislative record indicates that the total number of furlough days actually taken in FY92 varied by bargaining unit. FOP, Lodge 35 and IAFF, Local 1664 members had two furlough days; MCGEO, Local 400 members had two and a half furlough days; and non-bargaining unit County Government employees (including Judicial, State's Attorney, and Sheriff's offices) had three furlough days.[3]

Subsequently in accordance with a series of Memorandums of Understanding executed between the County Executive and the employee organizations, the Council appropriated funds in the FY93 budget to reimburse employees for the furlough days taken in FY92. This action meant that employees were paid back in FY93 for days when they did not work in FY92.

4. County Executive's Recommended FY10 Operating Budget

The County Executive's Recommended FY10 Operating Budget (March 2009) does not include any recommended furloughs for County Government employees. However, the Executive's budget message to the Council President states that he is "withholding judgment on whether furloughs may be necessary" during FY10.[4] According to data from the Office of Management and Budget, the County Government would save approximately $2.2 million in personnel costs per furlough day in FY10 from tax-supported funds.

Proposed furlough in the State's Attorney's Office. The County Executive's FY10 Recommended Operating Budget for the Office of the State's Attorney includes decreased personnel costs in the amount of $229,450 to be achieved through the implementation of five furlough days of all employees in FY10.

The State's Attorney proposed the use of furlough days in order to reduce FY10 personnel costs while avoiding layoffs. As of this writing, the Office of the State's Attorney is still working out the implementation details for the furlough. However, staff report that the plan is for the furloughs to be conducted on a rolling basis (scheduled similarly to how employees request and schedule annual leave) in an effort to mitigate any impact on service delivery.

[2] Montgomery County Council Resolution No. 12-468, Adopted November 21, 1991.
[3] Montgomery County Council Resolution No. 12-664, Adopted May 15, 1992
[4] Isiah Leggett, County Executive. Memorandum to Phil Andrews, Council President. March 16, 2009.

D. LESSONS LEARNED AND APPLIED

This final section presents a summary of lessons learned and applied in two parts:

- **Part 1** lists the basic questions that OLO recommends the Council address when considering how to structure a furlough; and
- **Part 2** summarizes the themes or "lessons learned" from studying how other public sector employers are implementing furloughs.

1. Recommended Questions to Address

Each of the jurisdictions that OLO studied adopted somewhat different structures for their respective furlough plans. However, there are some common design issues that any furlough plan must address. If/when a furlough plan for County Government employees is before the Council for consideration, the questions listed below should be addressed.

1. How much budget savings does the furlough need to achieve?
2. Is the furlough going to be voluntary or mandatory?
3. How many furlough hours or days are there going to be? Should the number of furlough hours or days be the same for all employees?
4. Should the furlough days be fixed (i.e., designated days) or rolling (i.e., days subject to employee choice)? Should there by incentives or options as to when furloughs are taken?
5. Should certain employees be exempt from the furlough, e.g. certain job types or classes, employees earning less than a certain amount?
6. How should the compensation adjustment be taken out of employees' paychecks?
7. How should the calculation of employee benefits be treated as a result of a furlough?

In deciding how to answer these questions, the Council must weigh three potentially-competing factors: budgetary cost savings; adverse impacts on employees (both in terms of wages and morale); and changes in productivity and levels of service delivery.

With respect to structuring a furlough for County Government employees, the current Montgomery County Personnel Regulations provide that:

- Furlough days can be either fixed (with government offices closed) or rolling;
- Employees must be given the choice to spread the salary loss over multiple pay periods;
- The County must ensure that furloughs days do not adversely impact employee benefits such as retirement, leave accrual, and life insurance.

The experiences of other public sector employers (summarized below) illustrate how different furlough structures balance budget reduction targets vs. adverse affects on employees vs. reducing or disrupting service delivery.

2. Lessons Learned

Based on information compiled about furlough plans being implemented by other public sector employers, OLO identified the following recurring themes or "lessons learned":

a. Furloughs provide immediate budget savings in compensation costs without reducing the size of the workforce.

Although most of the furlough plans that OLO reviewed are still in the process of being implemented, there is evidence that furloughs effectively accomplish an immediate goal of reducing compensation costs. Further, because the furlough savings comes from paying employees less for fewer hours of work, budget savings are achieved without reducing the size of the workforce. Almost without exception, jurisdictions turn to furloughs as a strategy to avoid, or at least minimize, the use of layoffs.

Clark County, Fairfax County, King County, and Yolo County all report that their furlough programs have achieved budget savings during the current fiscal year. Other places (Prince George's County, State of California, State of Maryland, and the University System of Maryland) project savings from the implementation of furloughs in the near term.

b. Employers can structure a furlough in ways that mitigate some of the negative effects on employees, especially the financial loss for those earning lower salaries.

Strategies used in the furlough plans OLO reviewed to mitigate the adverse impacts of furloughs on employees are listed and described below.

Protecting employee benefits. All of the furlough plans studied hold harmless some or all of the following employee benefits: retirement benefits, leave accrual, health insurance, seniority, service credits, and merit salary adjustments. The Montgomery County Personnel Regulations require that a furlough not adversely affect employee benefits.

Spreading out the salary loss. Many furlough plans either require or permit employees to choose whether to have the salary loss from furloughs taken out of their paychecks over multiple pay periods. The Montgomery County Personnel Regulations require this option be offered.

Exemptions based on salary. While some furlough plans exempt employees based on their type of job (e.g., public safety), others exempt employees that earn lower salaries. For example, the State of Maryland's furlough plan exempts employees earning less than $40,000 per year.

Number of furlough days vary by salary. Both the State of Maryland and University System of Maryland adopted furlough plans that require higher-earning employees to take more furlough days compared to lower-earning employees.

Substitution of vacation time. King County's furlough plan allows two groups of employees to substitute paid vacation for mandatory furlough days: employees who earn less than $16.92 per hour, and employees who plan to retire in 2009 or 2010.

c. While not much is documented about the impact of furloughs on productivity, rolling furloughs and exempting certain employees are strategies intended to preserve service levels.

Some jurisdictions make the decision to reduce service delivery by designating fixed furloughs days and closing most government offices on those days, similar to how the government operates on holidays. The furlough plans adopted by King County and Fairfax County both use this approach.

Alternatively, other jurisdictions are using a rolling furlough, which allows employees to choose and schedule their furlough days, subject to supervisory approval. The advantages of a rolling furlough include greater flexibility and convenience for employees; and (at least in theory), a rolling furlough allows an organization to maintain the same service levels.

Also, some jurisdictions exempt certain employees from furloughs in order to maintain certain services. Employee groups that jurisdictions exempt in order to preserve service delivery include police, fire, emergency human service, correctional, and transit staff.

Other unique structures impacting scheduling and/or productivity are summarized below:

- The Prince George's County furlough plan provides an incentive for employees to take furlough hours on designated holidays, when most government offices are already closed. Specifically, an employee who chooses to take furlough hours on holidays receives an equivalent amount of annual leave credits up to 24 hours, which can be used beginning in the 2010 leave year.

- The State of California's furlough period runs through FY10 with salary reductions taken monthly from each employee through the end of the furlough period. However, the State is allowing employees to take their rolling furlough days anytime through the end of FY12. This structure achieves savings in FY09 and FY10, while spreading any productivity losses over a longer period of time.

Some furlough structures have a potential impact on future productivity by providing additional paid time off to employees. King County plans to give employees paid leave beginning in 2010 equivalent to the furlough time taken in 2009. Similarly, Montgomery County's collective bargaining agreement with the Fraternal Order of Police, Lodge 35 requires the County to grant eight hours of compensatory time to each bargaining unit member for each eight hour furlough day required.

d. While employees prefer voluntary versus mandatory furloughs, voluntary furloughs may not achieve the desired level of cost savings.

From the perspective of employees, a voluntary furlough program is a more favorable strategy for achieving cost savings compared to a mandatory program because it allows individuals to decide whether they want to trade money for additional time off. The obvious downside to voluntary furloughs is that there is unlikely to be 100% participation and the resulting cost savings is smaller.

Clark County's voluntary furlough program, initiated as a pilot project, achieved participation from about 4% of employees over a five-week period; as a result the program was extended for an additional seven months. Yolo County used a combined approach, first adopting voluntary furloughs and then adding mandatory furloughs when the voluntary program did not achieve the entire savings target.

e. Some furloughs have resulted in legal challenges from employees unions.

Three of the jurisdictions reviewed experienced legal challenges to their furlough plans. The results of the legal challenges are varied. In California, the courts rejected the union's lawsuit and stated that because of the fiscal crisis, the Governor had the authority to unilaterally furlough employees without first bargaining the furloughs. In Yolo County, two employee unions filed grievances after a 2004 furlough and an arbitrator ultimately ruled that the County had to reimburse employees for the furlough time taken. In Prince George's County, a lawsuit filed by employee unions is still pending resolution.

In an effort to avoid legal challenges to furloughs, some jurisdictions have successfully negotiated agreements with employee unions before furlough implementation. In King County, for example, the Executive negotiated a Memorandum of Understanding with a coalition of employee unions before proposing a furlough plan. Staff from multiple jurisdictions report that communication with unions on the front-end and throughout the furlough process is important when implementing any furlough plan.

CHAPTER III. BUYOUTS

This chapter presents the Office of Legislative Oversight's (OLO) research on voluntary departure incentive programs. For purposes of this research brief, OLO adopted the terminology used by the Government Accountability Office and refers to voluntary departure incentives as "buyouts."

- **Section A** provides a general overview of the characteristics, objectives, and potential downsides of buyout programs.
- **Section B** describes alternative types of buyouts offered by employers to encourage employees to voluntarily leave through retirement or resignation.
- **Section C** summarizes the evaluation findings of studies conducted on the implementation of public sector buyout programs.
- **Section D** summarizes the history of buyouts in Montgomery County and bi-County agencies; and presents OLO's fiscal analysis of the 2008 County Government buyout.
- **Section E** describes the County Executive's proposed 2009 County Government buyout.
- **Section F** presents a summary of the lessons learned from this study of public sector buyout programs, and recommends questions for the Council to ask about the proposed 2009 County Government buyout.

A. OVERVIEW OF BUYOUTS

This section defines what a buyout is and provides a general overview of the characteristics, objectives, and potential downsides of buyout programs.

1. What is a Buyout?

Buyouts are any type of financial incentive offered by employers to encourage employees to voluntarily leave their job either through retirement or resignation. Incentives are typically cash payments, adjustment of pension or other post-employment benefits, or other financial assistance.

Both private and public sector employers have used buyouts. The types of buyouts offered by an employer vary by the type of employee retirement plan and employee retirement eligibility. A detailed discussion of the various types of buyouts appears in Section B (begins on page 36).

Type of retirement plan. The type of retirement plan offered to employees affects the types of buyouts that an employer may offer. Most public sector employers provide either a defined contribution or defined benefit retirement plan:

- In a **defined contribution** retirement plan, an employer commits to contributing a certain amount of money annually into an employee's retirement account.
- In a **defined benefit** retirement plan, an employer commits to paying an employee a specific pension benefit beginning at retirement and extending until the death of the retired employee (or the employee's surviving spouse).

For employees in either type of retirement plan, a buyout can include direct cash payments, contributions to heath care or retirement savings accounts, other non-pension post-employment benefits (such as extended health coverage), and/or other non-pension related financial incentives (such as tuition assistance). For employees in a defined benefit retirement plan, a buyout can be in the form of enhancing an employee's pension calculation (such as reduction or elimination of an early retirement penalty, or increase in the years of credited service).

Employers often target buyouts toward employees who are at or near retirement age. In such cases, eligibility for the buyout is restricted to employees who have reached certain retirement milestones, e.g., designated age and/or years of service. However, because buyouts are not necessarily limited to employees who are near retirement age, OLO's research included a review of all types of buyout arrangements offered by public sector employers.

2. Buyout Objectives

The most commonly cited objective of public sector buyout programs is to obtain savings by reducing compensation costs through attrition, and as a result, minimize or even avoid layoffs. Another frequently mentioned objective of buyout programs is to facilitate reorganization and restructuring of the workforce. These commonly cited objectives are discussed below.

Savings from position abolishments. A buyout results in the greatest compensation cost savings when an employer abolishes vacated positions. Position abolishments reduce an employer's ongoing payroll obligations, while simultaneously creating an opportunity to reorganize the workforce to better meet current needs and resource levels.

Savings from position turnover. An employer can also realize some reduction in compensation costs even if vacated positions are refilled. In the short-term, an employer's compensation costs are often reduced while a position is temporarily vacant, often referred to as "lapse." A buyout also offers employers the opportunity to refill vacated positions with employees at lower salary levels; this especially occurs when an employer targets its buyout program toward retirement-eligible workers, who often earn higher salaries than workers with fewer years of service. When combined, the savings due to lapse and lower salaries of new hires is termed "turnover savings."

Workforce realignment. Refilling vacated positions provides an opportunity for an employer to hire employees with skills more closely aligned with current organizational needs.

Mitigating adverse effects of layoffs. Buyout programs can often help alleviate some of the negative consequences of layoffs. Specifically, the voluntary nature of buyouts helps to mitigate the morale problems surrounding layoffs.[1] In addition, in contrast to layoffs, buyouts do not expose an employer to unemployment compensation liability.

[1] W.J. Morin and L. Yorks, *Dismissal*, Drake Beam Morin, Inc. 1990, as cited in G. Singh and C. A. Petzrelka, *Downsizing in the United States and France: A Comparative Study*, San Diego State University, 2004.

3. The Potential Downsides of Buyouts

While buyouts can offer an immediate reduction in compensation costs, these programs also have the potential to create long-term liabilities that offset or exceed short-term savings. The primary factors that influence the long-term costs of a buyout are identified below.

Amount and funding of cash payment incentives. Employers need to decide how to finance the direct cash payments offered to employees as an incentive. If an employer taps into current revenues to make these payments, then the net savings in the first year of the program will be diminished. If the employer borrows from another source (such as from a retirement trust fund), then cost calculations must take into account the repayment schedule.

Increases to long-term liabilities. Buyout programs that enhance a defined pension or other post-retirement benefit (such as health insurance) expose an employer to additional actuarial liabilities. For example, under a defined benefit retirement plan, an employee who retires early under a buyout that offered additional years of credited service draws a higher pension benefit for more years than s/he would have received otherwise. In this case, an employer's retirement plan bears the extra cost of the increased pension benefit.

Paying an incentive to employees who already planned to leave. A common criticism of buyout programs is that an employer ends up paying incentives to some employees who already planned to leave in the near future. In such cases, an employer's compensation costs would have been reduced anyway when the positions were vacated, so the buyout arguably created an added cost with little (or no) fiscal benefit to the employer.

Frequency of buyouts. An organization that offers buyouts too frequently creates an expectation among employees of future incentives, thereby discouraging "normal" retirement or resignation.

Filling vacated positions. As mentioned above, abolishing vacated positions provides the greatest cost savings from a buyout. Filling a vacated position negates much of a buyout's fiscal benefit. Replacement employees' salaries and benefits offset much of the cost savings derived from the departure of the previous employee. In addition, refilling positions requires the use of resources to recruit, hire, and train new employees.

Loss of employee productivity. Some employers that implemented buyout programs report productivity declines associated with the loss of a cohort of experienced employees. In some cases, this loss of experience was associated with added overtime costs; in others, employers paid to hire back the departed employees on a temporary contract basis.

B. TYPES OF BUYOUT PROGRAMS

This section describes alternative types of buyouts offered by employers to encourage employees to voluntarily leave through retirement or resignation. In general, buyouts take the form of:

- A cash payment;
- A reduction in the early retirement penalty;
- An enhanced calculation of a pension or other post-retirement benefit; or
- Some combination of the above.

Both public and private sector employers offer buyouts. According to a 2006 study, the most common form of private sector buyout is a cash payment, followed by enhancements to retiree health benefits.[1] The most common form of public sector buyout is a retirement incentive offered to employees who have reached designated age or years of service milestones.

Retirement plans and buyout incentives. The type of retirement system impacts the type of buyout that an employer may offer. As discussed earlier, an employer may offer direct cash payments, payments into a retirement account, or other non-pension post-employment benefits (such as extended health coverage) to employees, regardless of the type of retirement plan. For employees in defined benefit retirement plans, an employer has an option of offering incentives that enhance the calculation of the pension, e.g., reducing an early retirement penalty, adding years of service credits.

This section categorizes buyout programs by the type of retirement plan as follows:

- **Part 1** describes buyouts applicable to any type of retirement plan; and
- **Part 2** describes buyouts applicable only to defined benefit retirement plans.

OLO selected examples exclusively from the public sector, as these cases appear the most relevant to Montgomery County's experience. For ease of reference during Council discussions, the examples are identified sequentially throughout the section.

Section C (begins on page 43) discusses the implementation of public sector buyout programs, as well as evaluations of their fiscal and organizational impact.

[1] Armour, Stephanie. "Many workers sitting pretty after buyouts." *USA Today*. August 16, 2006.

1. Buyouts Applicable to Any Type of Retirement Plan

This part describes the types of buyouts that employers can offer to employees, regardless of the structure of their retirement plan. The incentives available for employers to use include:

- Cash payments;
- Enhancements to post-employment benefits; and
- Combination incentive packages.

a. Cash Payments

An employer can establish a cash payment buyout either as a fixed amount or by formula linked to salary or years of service.

Fixed cash payment. A fixed cash buyout is a uniform payment offered to all employees who meet eligibility requirements. An employer may offer to pay the fixed cash buyout either as a lump-sum or in installments over time. In addition, an employer may offer the cash payment either directly to the employee or as a contribution to the employee's portable retirement or health care savings accounts. The table below describes three examples of fixed cash payment buyouts.

Example 1	**Cash Payments in Installments** In 2008, the **City of Columbus, Ohio** offered employees a buyout of one year's pay spread out over five years. Eligibility was restricted to employees with 20 or more years of service, who agreed to retire by December 2008.
Example 2	**Cash and Health Care Account Contribution** In 2003, the **Olmsted County (Minnesota)** Board of Commissioners adopted a Voluntary Retirement and Resignation Incentive Program. For employees eligible to retire, the County offered a $20,000 cash contribution to a tax-free health care savings plan if the employee retired. For all other employees who voluntarily resigned, the County offered $10,000 cash and a $10,000 contribution to a tax-free health care savings plan.
Example 3	**Portable Retirement Account Contribution** In 2006, the **Birmingham (Michigan) Board of Education** adopted a Voluntary Resignation Incentive Plan. Teachers and administrators near the top of their respective salary schedules were eligible for the incentive, which consisted of $50,000 in contributions to a portable retirement savings account. The buyout implementation plan required that a minimum number of employees accept the incentive for the buyout to take effect.

Formula-based cash payment. As an alternative to a fixed cash payment amount, some employers use a formula to calculate the cash value of buyout incentives. Formula-based cash payments use factors such as years of service or salary level to determine an employee's buyout amount. The table below shows three examples of formula-based cash payments.

	Percent of Salary
Example 4	In 2003, the **State of Texas** enacted a temporary change in State law that offered a retirement incentive for members of the Employees Retirement System (ERS) of Texas. The retirement incentive was a lump-sum payment equal to 25% of a member's total regular salary received in the 12 months before retirement. To be eligible for the incentive, an ERS member had to retire in the month in which the individual first became eligible to retire. The retirement incentive program lasted from August 31, 2003 until January 1, 2006.
	Two-Tier Percent of Salary
Example 5	In 2008, the **City of Dayton, Ohio** implemented a Voluntary Separation Plan. The plan offered non-public safety city workers an incentive payment based on their salary. The Plan paid participating employees 25% of the first $50,000 of their base pay, and an additional 5% of the portion of their pay exceeding $50,000. Eligible employees had to retire within a two month window.
	Years of Service
Example 6	In 2008, the **City of Fayetteville, Georgia** implemented a voluntary Early Retirement Incentive Program (ERIP). The ERIP included a one-time payment of $1,000 for each year of service. Eligibility was restricted to employees who were at least age 55, with ten continuous years of service. After the incentive period, the city evaluated each vacated position to determine if the position would be subject to a hiring freeze or refilled at a lower salary.

b. Enhanced Post-Employment Benefits

This type of buyout offers an employee a non-pension, post-employment benefit as an incentive to retire or resign. The table below provides an example of paid post-employment health benefits.

	Post-Employment Health Benefits
Example 7	In 2005, the **Nebraska State College System** Board of Trustees offered a voluntary early retirement incentive in the form of paid post-retirement health benefits. The Board offered to pay the full amount of annual medical and/or dental health insurance premiums for employees who voluntarily retired; the benefit continued until the former employee reached Medicare-eligible age. To receive the benefit, employees had to be age 60 or older with ten years of service. The program lasted from 2005 to 2007. In the first year of the program, employees had to retire within a two-month window; for each subsequent year, employees had to retire 180 days after their application date.

c. Combination Incentive Packages

Some employers offer buyout packages that combine one or more types of incentives. The table below shows two examples of combination buyouts applicable to any retirement plan.

	Cash Payment and Health Coverage
Example 8	In February 2009, the **Hernando County (Florida)** Board of County Commissioners approved an Early Leave Incentive Procedure. The incentive consists of a week's pay for every year of service (up to a maximum of 18 weeks of pay), plus 18 months of health insurance coverage. In addition, employees are eligible for 33 weeks of unemployment benefits. To be eligible for the buyout, employees must have at least six years of service and earn more than $50,000 a year. Eligible employees must retire within a two-month window.
	Cash, Health Coverage, and Tuition Assistance
Example 9	In 2008, the **State of Tennessee** offered an employee Voluntary Buyout Program (VBP). The VBP included three incentives. (1) A formula driven cash payment calculated as follows: four months of an individual's base salary; plus $500 for every year of State service; plus an advanced payment of the next scheduled longevity-based salary adjustment. (2) A subsidy to the individual's medical care coverage for six months, or if the employee was age 65 or older, a one-time $2,400 cash payment to assist in the transition to Medicare. (3) Tuition assistance of up to $10,800 over two years.

2. Buyouts Applicable to Defined Benefit Retirement Plans

This part describes additional buyout incentives that can only be offered to members of defined benefits retirement plans. These include:

- Adjustment to credited years of service;
- Lowered age and years of service requirements; and
- Combination incentive packages.

a. Adjustment to Credited Years of Service

A defined benefit retirement plan calculates a retiree's pension based, in part, on the number of years of credited service. Some employers have offered buyouts that award additional credited years of service for the purpose of enhancing this pension calculation. Similar to the different ways of approaching a cash payment, an employer can offer enhancements to an employee's years of credited service either as a fixed increase or on a formula basis.

Fixed increase in years of credited service. An employer may offer buyouts that award all eligible employees a fixed number of additional years of credited service. The table below shows two examples of this buyout incentive.

	Uniform for all Eligible Employees
Example 10	In 2008, the Board of Commissioners of **Cuyahoga County, Ohio** approved an early retirement incentive program. The incentive program allows County employees to add three years of credited service towards their retirement date. Eligible employees had to retire within a one year window.
	Variation by Position Type
Example 11	In 2008, the **City of Cape Coral, Florida** authorized two different retirement incentives; one for the City's general employee union members, and one for police and fire union members. The incentive program allowed general City employees to add three years of credited service towards their retirement date, and four years of credited service for members of the police and fire unions. Eligible employees had to retire within a four month window.

Formula-based increase in years of credited service. An employer may offer a buyout that awards eligible employees additional years of credited service based on a formula. Most commonly, the credit formula is based on past years of service with the employer. The table below shows two examples of formula-based increases in years of credited service.

	One Month per Year of Service
Example 12	In 2002, the **City of New York** authorized a two-part early retirement incentive program for non-uniformed municipal employees. City employees had an option to accept either Part A or Part B of the buyout offer. Part A allowed employees who were at least age 50 with ten years of service to receive one month of credited service towards retirement for each year of service, up to 36 months of additional service. However, Part A retirees were subject to early retirement reduction penalties. Part B allowed city employees who were at least age 55 with 25 years of service to retire early without a pension reduction penalty. Eligible employees had to retire within a three-month window.
	One Year Credit Per Five Years of Service
Example 13	In 2003, **Indiana University** offered years of service credits to retiring employees covered by the Indiana Public Employee's Retirement Fund. Indiana University's early retirement incentive provided one extra year of service credit for every five years of work with the University. In effect, the incentive provided a 20% increase in an individual's pension benefits. Eligibility was limited to employees who were at least 55 years old with 15 or more years of service. Eligible employees had to retire within a three-month window.

b. Lowered Age and Years of Service Requirements

Many defined benefit plans allow normal retirement when an employee reaches a certain age with a certain number of years of service. Some employers have temporarily modified the normal retirement requirement to encourage employees in a defined benefit plan to retire early. The table below shows an example of a lowered age and years of service retirement incentive.

	Lowered Age and Years of Service
Example 14	In 2001, the **Commonwealth of Massachusetts** passed an early retirement incentive program for employees in the State retirement system. The incentive program allowed employees to add five years of service or age, or any combination of the two, towards normal retirement. To be eligible, employees had to have at least 20 years of service, or be at least age 55 with ten years of service. Employees had to retire within a one month window. The law limited the cost of rehiring new employees to 20% of the salary savings of the incentive program.

c. Combination Incentive Packages

As stated above, some employers offer buyout packages that combine one or more types of incentives. For employers with employees in a defined benefit plan, a combination incentive package may include pension adjustments as well as other non-pension related benefits. The table below shows three examples of combination buyouts.

	Lowered Retirement Age and Enhanced Pension Calculation
Example 15	In 2002, the **State of Michigan** passed an early retirement incentive program, called the "Early Out Plan," for members of the State Employees Retirement System. The incentive adjusted the age and service requirements for employees eligible for normal retirement. Participation was restricted to employees who had a combined age and length of service of 80 years. Employees had to retire within a seven-month window. The Early Out Plan also increased members' pensions by increasing final average compensation component of the calculation by 1.75 percent.
	Pension Increase or Extended Health Insurance
Example 16	In 1993, the **State of Minnesota** Legislature offered an early retirement incentive to State, city, county, and school district employees who belonged to one of two State retirement plans. The legislation enabled State government employees age 55 years or older to choose between a continuation in health insurance coverage until the age of 65, or an increase in an individual's retirement pension by 15% to 19%, depending on an employee's years of service. The State Legislature allowed local governments to offer either incentive or both incentives. The law further granted both incentives to public school teachers.
	Years of Service Credits, Health Benefits, and Cash Payment
Example 17	In June 2008, the **State of New Jersey** enacted a three-part early retirement incentive program for State employees and teachers in defined benefit retirement plans. Employees of some State departments (such as the Department of Human Services and the Department of Corrections) were excluded from the program. The first incentive granted three years of credited service towards retirement to employees age 58 or older with 25 years of service. The second portion of the incentive provided paid post-retirement medical benefits to employees age 60 or older with 20 years of service. The third incentive paid $12,000 to employees age 60 or older with ten years of service. The law allowed departments to require employees who accept the incentive to work one more year before retirement.

C. EVALUATIONS OF PUBLIC SECTOR BUYOUT PROGRAMS

This section summarizes the findings of evaluations conducted on the implementation of public sector buyout programs:

- **Part 1** summarizes the evaluations of buyout programs at the state and local government levels; and
- **Part 2** summarizes evaluations of the Federal Government's Voluntary Separation Incentive Program.

1. Research on State and Local Buyouts

Evaluations of buyout programs offered by state and local governments conclude that these programs can offer immediate reductions in compensation costs and provide an opportunity to restructure the workforce. However, depending upon how they are designed and managed, buyout programs can also generate long-term liabilities that offset or exceed short-term savings.

The rest of this section summarizes the themes of the evaluation studies reviewed by OLO.

a. Refilling of Vacated Positions

The fiscal effect of refilling vacated positions emerges as a recurring theme in the evaluations of state and local government buyouts. Several studies demonstrate how the prompt filling of positions vacated by a buyout negates much of the potential cost savings. For example, a 1992 National Association of State Budget Officers survey of state government's experiences with buyouts found that limiting replacement hiring is the key to achieving buyout savings.[1]

In 1995, the Pennsylvania Public Employee Retirement Commission (PERC) conducted an analysis of the State's 1994 buyout program. PERC determined that to achieve any long-term savings, a buyout program must either:

- Not refill most positions vacated by the buyout; or
- Refill vacated positions with employees receiving substantially lower compensation.

In a subsequent study, PERC found that 93% of all positions vacated through the 1994 Pennsylvania buyout were refilled within three years. The Commission concluded that the high replacement rate of retiring employees was "significant in decreasing the potential for an aggregate net savings" from the State's 1994 buyout. A similar study by the Virginia Joint Legislative Audit and Review Commission also concluded that high replacement rates negated net savings from a 1991 state buyout.

A New York State Comptroller's Office study of local government and school district buyouts (during 1995 through 2000) found that some programs produced net savings while others did not. The Comptroller attributed variations in program outcomes to differences in workforce planning practices and the replacement rates of vacated positions.

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[1] Ferrari, David. "Designing and evaluating early retirement programs: the state of Wyoming experience." *Government Finance Review*. February 1999.

To preserve net cost savings, some jurisdictions established strict limits on the number of positions that can be refilled following a buyout. For example, New Jersey limited the total number of new hires for all Executive and Judicial Branch departments to 10% of the number of retirees taking the buyout. The New Jersey Legislature required the State Treasurer to report every six months for the first two years, and annually thereafter, on the impact of the buyout on the state workforce. These reports included the allocation of position reductions in each department from the buyout, and each department's plans to continue to provide services.

b. Impact of Buyouts on Individual Retirement Decisions

As stated earlier (see page 35), a jurisdiction that offers a buyout can end up paying an employee to vacate a position s/he was already planning to leave without the incentive. In such cases, the buyout arguably created an added cost with little (or no) fiscal benefit to the employer.

A study by the Minnesota Office of Legislative Auditor (OLA) found that the 1993 state buyout induced participants to retire six to 20 months earlier than they would have without the incentive. The OLA study concluded that approximately half of the employees who took the 1993 buyout would have retired during the same year without the incentive.

Similarly, the New York State Comptroller found that "many" of the employees who accepted the local government and school district buyouts in the late 1990s did not retire "much earlier than they would have without a retirement incentive." The Comptroller found that only 30% were younger than age 55, and the "vast majority" had been eligible to retire for at least one year.

c. Post-Buyout Transition

Some jurisdictions report serious transition issues associated with the departure of employees through buyouts. A study by the State of Virginia Joint Legislative Audit and Review Commission found that while the State's buyout program in 1991 provided an opportunity to hire younger, more technically-oriented individuals at a lower salary, it also resulted in the loss of talent and expertise in many agencies. This loss resulted in short-term administrative and operational difficulties, and required the rehiring of early retirees as temporary contract employees to ease in the transition.

In 1992-93, the United States Postal Service (USPS) implemented a buyout that was accepted by about 48,000 employees, including 23,000 managers. After the buyout, the USPS determined that it had too many managerial vacancies and had to immediately refill positions to maintain essential services. Other jurisdictions, such as the City of Cape Coral, Florida and the City of Tucson, Arizona reported service impacts from of the loss of many of their most experienced employees. The City of Columbus was forced to temporarily close one of its recreation centers because of staffing reductions resulting from its 2009 buyout.

d. Short-Term Savings vs. Long-Term Costs

In general, evaluations of state and local government buyout programs found that while buyouts often offer immediate reductions in compensation costs, these programs have a tendency to create long-term liabilities that offset or exceed short-term savings.

Examples of findings from a number of different evaluations are summarized below:

- The Pennsylvania Public Employee Retirement Commission found that the State's 1994 buyout yielded a net five-year salary savings of $109 million. However, over the entire 22-year amortization period, the actuary calculated that the buyout would result in an increase in post-retirement liabilities of about $800 million.

- The Minnesota Office of Legislative Auditor (OLA) found that a 1993 Minnesota buyout had an estimated net cost between $101 and $132 million. The State concluded that while early retirement incentives produce immediate salary savings and provide a "useful function in specific circumstances," the long-term cost of incentives outweighs the benefits. The OLA Auditor recommended that future buyouts be targeted to certain departments and financed with current funds.

- The Virginia Joint Legislative Audit and Review Commission found that while $37 million in immediate FY92 budget savings were attributed to a 1991 buyout, the State's actuary determined that it resulted in a long-term $238 million actuarial loss from state employee retirees. In addition, there was an actuarial loss of $119 million from the local school boards.

- The City/County of Honolulu, using fiscal impact estimates of the program from 1995 to 2002, found that buyouts saved about $11.9 million but increased costs by about $24.3 million, resulting in a net cost of about $12.4 million.

2. Evaluation Findings on the Federal Voluntary Separation Incentive Program

The Federal Government allows agencies that are downsizing or restructuring to provide a VSIP of up to $25,000 for employees who voluntarily leave federal employment. The Federal Government does not limit VSIPs to retirement-eligible employees. To collect a VSIP, a federal employee must:

- Serve in a non-term position;
- Have been employed by the Federal Government for at least three years;
- Occupy a position targeted for voluntary separation; and
- Receive approval from agency management.

Employees who accept a VSIP may depart the federal workforce by resignation or retirement. VSIPs do not affect the calculation of an employee's retirement benefits.

A federal agency must request and receive approval from the Federal Office of Personnel Management (OPM) to offer VSIPs to employees. In requesting authority to offer these incentives, an agency must demonstrate that it has surplus positions and/or employees with skill sets that are no longer needed. An agency must absorb the cost of incentive payments out of its annual operating budget. In addition, agencies must describe how use of separation incentives would help it attain restructuring or downsizing goals.

From 1996 through 2006, the Government Accountability Office (GAO) issued four reports evaluating the Federal Government's ongoing "voluntary separation incentive payment" (VSIP) program.

a. Federal Buyout Objectives

According to OPM, the purpose of the VSIP program is to: "minimize or avoid involuntary separations through the use of costly and disruptive reductions in force." The Federal Government allows agencies to limit incentive offers by organizational unit, geographic location, occupational series, grade level, and other factors as necessary to achieve restructuring and downsizing objectives.

A 2006 report by the GAO found that federal agencies selectively use incentives as a tool to bring about change in the size and character of the workforce:

> Agencies' decisions to use buyouts and early outs are based on specific workforce planning needs. In some cases, technological advances that necessitated a different skill mix primarily drove agency-reshaping efforts. In other cases, agencies' reshaping efforts were driven by a more diverse set of needs such as consolidation of functions or budgetary restrictions.

In a 1996 report, federal agency officials informed GAO that buyouts avoid or reduce some of the negative non-economic effects of reductions in force (RIFs). Some federal agencies reported that they experienced decreased productivity, lower employee morale, and a disruption to normal agency operations resulting from RIFs.

A separate 1996 GAO analysis of federal buyouts identified some negative results of buyouts. The GAO found that some employees who had planned to retire without an incentive delayed their departures in order to receive a buyout payment. In certain cases, buyout recipients returned to their agencies as contract employees. Nonetheless, GAO concluded that many of these negative results could have been mitigated with better strategic and workforce planning.

b. Cost Savings Resulting from Buyouts

In 1996, the GAO determined that the federal buyout program had realized net savings from workforce reductions for several agencies. GAO's analysis found that the reduced salaries and benefits of separated employees would exceed program costs over a five-year period. However, the GAO noted that the fiscal impact of buyouts can vary widely among agencies depending on:

- The number of positions eliminated;
- The demographics of the retirement eligible population; and
- Whether positions are refilled, eliminated, or the work was contracted out.

The GAO concluded that federal agency buyouts could result in cost savings as long as agencies eliminate or do not fill vacated positions, and do not subsequently contract out the work previously performed by the separated employee.

c. Effective Buyout Practices Identified by GAO

In 1997, the GAO conducted a review of past VSIP evaluations and other research and developed a list of practices "associated with effective buyout usage." The practices identified by GAO are intended to increase costs savings and to link buyouts with specific organizational goals. The effective buyout practices cited by GAO include:

- Identify the agency's future operational, restructuring, downsizing, or other goals and determine how buyouts will help meet those goals.
- Perform an economic analysis showing whether buyouts would generate more net savings than other separation strategies, such as RIFs or attrition.
- Consider how productivity and service levels will be maintained with fewer employees.
- Ensure that actions planned to maintain productivity and service levels do not cost more than the savings generated by reducing the workforce.
- Target buyouts to specific positions, programs, occupations, grade levels, etc. as necessary to achieve goals.
- Prohibit re-employment of buyout recipients unless they repay the buyout.
- Limit the duration of the buyout program to as short a time period as possible.

D. BUYOUT PROGRAMS IN MONTGOMERY COUNTY

Chapter 33 of the County Code governs personnel and human resource matters for the County Government. Chapter 33 includes provisions relating to salary and wages, retirement benefits, and collective bargaining requirements for the County Government.[1] Montgomery County Public Schools, Montgomery College, the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, and the Housing Opportunities Commission each operate under separate personnel systems not governed by the County Code.

Appendix B contains a memorandum from the Council's Legislative Attorney that addresses questions about the Council's legal authority with respect to buyouts in the County Government and other County-funded agencies.

This section summarizes the history of buyouts in Montgomery County and bi-County agencies, and presents a fiscal analysis of the County Government's 2008 buyout:

- **Part 1** summarizes four previous buyout programs offered by County and bi-County agencies in the past two decades.
- **Part 2** reviews the County Government's 2008 buyout program and presents a fiscal analysis of the program's savings and costs.

1. Previous Buyout Programs

In the past two decades, the County Government, Washington Suburban Sanitary Commission, Housing Opportunities Commission, and the Maryland-National Capital Park and Planning Commission implemented buyout programs. Each of these programs is briefly described below.

a. County Government: 1993-94 Buyout Program

At the request of the County Executive, in July 1993 and July 1994, the Council approved amendments to the County Code to establish a buyout program (called the "Retirement Incentive Program") for certain County Government employees. The County Government offered the buyout to employees who were:

- Members of the Employees' Retirement System (ERS)[2];
- Eligible for early or normal retirement by July 1, 1993; and
- Credited with at least ten years of service.

[1] Many sections of Chapter 33 set forth separate requirements for general County Government employees, police officers, and fire and rescue personnel.
[2] The ERS is the defined benefit retirement plan covering most County Government employees hired before October 1, 1994.

The buyout incentive consisted of a cash payment equal to one year's salary to eligible employees who agreed to retire by November 30, 1994.[3] The ERS Trust Fund was the source of funds for the buyout payments. The law, as enacted by the Council, limited the number of employees who could take the buyout by collective bargaining unit, as follows:

- 150 members of Montgomery County Government Employees Organization, Local 400;
- 78 members of the Fraternal Order of Police, Lodge 35;
- 75 non-represented employees; and
- 40 members of International Association of Firefighters, Local 1664.

The law established parameters on the County's rehiring of buyout participants, e.g., an employee's re-employment was limited to a maximum of six months immediately following the employee's retirement date.

According to the Office of Human Resources, approximately 500 employees met the buyout eligibility requirements.[4] A total of 343 employees, the maximum number permitted under the law, accepted the buyout.

The legislation outlining the buyout program required annual reports through 1998 from the County Executive on the implementation of the buyout. The law required the Executive to report to the Council on:[5]

- How the buyout program is achieving its stated policy goals;
- Actual costs and savings of the program;
- Program participants who were re-employed by the County after retirement;
- Effects of the buyout on the delivery of County services; and
- The program's relationship to the County's long-term strategic fiscal plan.

According to a September 1995 memorandum prepared by the Office of Management and Budget (OMB), of the 225 non-public safety positions vacated by the buyout, 132 positions (or 59%) were abolished in the FY95 budget.[6] By design, the County did not abolish any public safety positions vacated by the buyout.

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[3] An amendment to original legislation authorized extending the last date for retirement under the buyout for sworn police officers to June 30, 1995, as well as increasing the number of sworn police officers who could participate to 78.
[4] Montgomery County Office of Public Information. *Overtimes*. April 1993.
[5] Emergency Bill 13-93 required the County Executive to report to the Council quarterly between October 1993 and October 1994, and annually through October 1998.
[6] Robert K. Kendal. Memorandum to Stephen S. Farber. September 13, 1995.

b. Washington Suburban Sanitary Commission: 2000 Buyout Program

In 2000, the Washington Suburban Sanitary Commission (WSSC) offered a buyout as part of a larger agency effort to reorganize and reduce the size of the workforce. WSSC offered the incentive to all retirement-eligible employees in all job classes. About 500 employees, or one-fourth of the workforce at that time, were eligible for the buyout.

The buyout incentive WSSC offered employees was a choice of either: (1) a cash payment equal to one year's salary; or (2) two years of service added to the employee's pension calculation. The WSSC Retirement Fund was the funding source for the incentive program. In total, 336 employees (approximately 2/3 of eligible employees) accepted the retirement incentive.

According to budget documents, WSSC has successfully maintained a reduced workforce over the past eight years. The buyout offered in 2000 decreased the WSSC workforce from 1,950 authorized workyears to about 1,600 workyears, a reduction of approximately 17%. The approved FY09 WSSC operating budget includes 1,555 authorized workyears.

c. Housing Opportunities Commission: 2004 Buyout Program

The Housing Opportunities Commission (HOC) offered a buyout in 2004. The HOC retirement incentive consisted of cash payments based on years of service, as shown in the table below.

Housing Opportunities Commission's 2004 Buyout

Years of Service	Incentive Amount
5 – 15	$15,000
15 – 20	$20,000
20 or more	$25,000

Source: HOC

HOC participates in the County's retirement plans. Eligibility for the 2004 buyout was defined to include:

- Members of the Employees' Retirement System (ERS) who had at least five years of service and were eligible for early or normal retirement; and
- Members of the Retirement Savings Plan (RSP) who had at least five years of service and were at least 60 years old.

HOC funded the incentive payments from the agency s General Fund. A total of 64 HOC employees met the eligibility requirements for the buyout; and eight employees (13% of the eligible pool) accepted the incentive. HOC abolished four of the eight vacated positions.

d. Maryland-National Capital Park and Planning Commission: 2008 Buyout Program

In 2008, the Montgomery County side of the Maryland-National Capital Park and Planning Commission (M-NCPPC) offered a retirement incentive to Planning Department and Parks Department employees (excluding Park Police), who would be eligible for normal retirement by June 30, 2009. M-NCPPC offered an incentive equal to half of the employee's current annual salary up to a maximum of $50,000. The M-NCPPC Employee Benefits fund was the source for the incentive payments.

A total of 31 employees in the Planning Department and 80 employees in the Parks Department met the eligibility requirement for the incentive. The table below shows the number of employees who accepted the incentive, and the number of positions refilled in each department.

2008 M-NCPPC Buyout

Department	Eligible for Incentive	Accepted Incentive	Acceptance Rate	Positions Refilled (as of 2/09)
Planning Department	31	9	29%	1
Parks Department	80	17	21%	3
Total	**111**	**26**	**23%**	**4**

Source: M-NCPPC, February 2009

2. The County Government's 2008 Buyout: Description and Fiscal Analysis

The rest of this section describes the 2008 County Government buyout program and presents an analysis of the savings and costs resulting from the program. In sum, OLO's fiscal analysis found that from FY09 through FY19, the 2008 buyout will:

- Save $20 million (of which $8.5 million was saved in FY09);
- Cost $33 million; and
- Result in a net cost of $13 million.

a. Buyout Program Description

In May 2008, as recommended by the County Executive, the Council approved an amendment to the County Code and an amendment to the MCGEO contract to establish a buyout program for certain County Government employees. To be eligible for the incentive, an employee had to be a member of the Employees' Retirement System (ERS) and eligible for normal retirement or within two years of normal retirement.[7] Public safety employees in the Police Department, the Fire and Rescue Service, the Department and Correction and Rehabilitation, and the Sheriff's Office were not eligible for the 2008 buyout.

[7] Most non-public safety County Government employees are eligible for normal retirement at: (1) age 55 or above with at least 30 years of service; or (2) age 60 or above with at least five years of credited service.

In order to participate, an employee had to agree to retire by June 30, 2008. The incentive consisted of a $25,000 payment. In addition, employees within two years of normal retirement were offered a reduction in their early retirement penalty as follows: employees within one year of normal retirement received no early retirement penalty; employees between one and two years from normal retirement had their early retirement penalty reduced from five to two percent.

The ERS Trust Fund was the source of funds for the 2008 buyout. The cost of the incentive payments plus the cost increase from increased pensions were amortized over a ten year period.

The Office of Human Resources reports that 828 employees were eligible for the buyout. The County reserved the right to cap participation in the incentive program at 20% of employees in any one department. A total of 150 employees (18% of eligible employees) accepted the incentive and retired on June 30, 2008; nearly three-quarters of the employees who participated in the 2008 buyout were eligible for normal retirement.

In FY09, of the 150 positions vacated by the 2008 County Government buyout, the County:

- Abolished 54 (or 36%) of the positions; and
- Refilled 96 (or 64%) of the positions.

b. Retirement Incentive Program Savings and Costs

This section presents OLO's fiscal analysis of the 2008 County Government buyout. Appendix C contains the details of OLO's methodology for calculating the savings and costs attributable to the 2008 County Government buyout.

How the 2008 buyout produced savings. The 2008 buyout produced lower compensation costs in the following ways:

- Cost Elimination – Abolished Position Salaries: The County abolished 54 of the positions vacated by employees who accepted the buyout. For these positions, the County eliminated future salary costs and some non-salary compensation costs.[8] The County will avoid compensation costs associated with these abolished positions for the number of years that the retiree would have remained in his/her job absent the incentive.[9]

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[8] OLO's analysis assumed that position abolishments would relieve the County of Social Security related payments. The departure of an ERS employee relieves the County Government of retirement fund contributions for one year only. After the first year, the equivalent cost is reallocated among remaining ERS members. As the County pays 80% of health coverage costs for active most active employees and 70% for most retirees, OLO assumed that a retirement results in a 1/8 reduction in the County's health coverage contribution.

[9] OLO's assumption – any vacated position eliminated in FY09 would have been eliminated by the County upon retirement of the incumbent – parallels the methodology used by auditors in Massachusetts, Minnesota, and Pennsylvania in evaluating buyout programs in their respective states. As a result, the salary and benefit cost savings resulting from a position abolishment equals the avoided salary and benefit costs over the number of years the retiree would have worked absent the buyout.

- Cost Elimination – Normal Pension Contributions: The County avoids the cost of funding future earned increases in the employee's defined pension benefit when an employee in the ERS leaves County employment.[10]

- Cost Reduction – Lower Salaries of New Hires: The County realizes compensation cost savings when the salary and benefits of the individual hired to refill a buyout-vacated position is less than that of the employee who retired under the incentive.

- Cost Reduction – Lapse: With most refilled positions, the County experiences additional temporary compensation cost savings during the period of time between the departure of the retiree and the hire of the replacement employee. (This savings is often referred to as "lapse.")

How the 2008 buyout increased costs. The 2008 buyout also resulted in the following increased cost obligations for the County, primarily in future years:

- New Cost – Amortized Cost of Buyout Payment: The County must repay the ERS Trust Fund for the $3.75 million cost of paying the $25,000 incentive payments to the 150 employees who accepted the buyout. This payback will be amortized over a ten year period, beginning in FY10.

- Cost Increase – Amortized Pension Costs: Expediting retirements increases the number of years retirees will draw a pension from the County. As a result, the buyout increased the ERS Fund's future liabilities by increasing the number of years that retirees will draw pensions from the Fund. The County will amortize increased pension costs with payments to the ERS Trust Fund that begin in FY10 and continue for ten years.[11]

- Cost Increase – Retiree Health Insurance: Expediting retirements increases the number of years retirees participate in retiree health insurance coverage. As a result, the buyout increased the County's future liability for retiree health insurance.[12]

- Accelerated Cost – Annual Leave Payouts: County Government employees receive a payout for unused annual leave upon their departure. The buyout accelerates leave payouts for the employees who accepted the buyout, from future years to FY09.

[10] OLO applied a per employee cost factor calculated by the County Government's contract actuary to estimate normal pension contribution savings.
[11] OLO applied an annual per employee cost factor calculated by the County Government's contract actuary to determine amortized pension costs.
[12] To determine this cost, OLO applied a per employee salary multiplier (based on a ten year amortization schedule beginning in FY10) calculated by the County Government's other post-employment benefits actuary.

Net savings and costs. Based on the savings and costs described above, OLO estimated both the one-year and ten-year fiscal impact of the County Government's 2008 buyout, as shown in the table and depicted in the chart on page 55. Appendix C contains a detailed description of OLO's methodology for calculating the savings and costs attributable to the 2008 County Government buyout.

FY09: During FY09, as a result of the 2008 buyout, the County experienced compensation reductions resulting from position abolishments and turnover savings (lapse plus the lower salaries of individuals hired into vacated positions). OLO estimates the net FY09 savings from the 2008 retirement incentive was $8.5 million.

The only major first year cost resulting from the buyout was the accelerated payment of annual leave payouts for departing employees. In FY09, the County did not reimburse the ERS Trust Fund for any of the $3.75 million borrowed to pay the costs of the $25,000 per retiree incentive payments. Moreover, the County did not adjust its contributions to the ERS in FY09 to cover the increased retiree pension and health coverage liability resulting from the incentive program.

FY10 – FY19: The bulk of 2008 County Government buyout program costs will begin in FY10 and continue through FY19. OLO estimates that the cumulative FY10 – FY19 costs resulting from the incentive program is about $33.0 million.

Beginning in FY10 and continuing for each of the next ten years, the County Government must pay back the money borrowed from the ERS Trust Fund to cover the cost of cash retirement incentives paid at the end of FY08. In addition, during this same ten-year period, the County Government will pay increased contributions both to the ERS Trust Fund (to cover higher retiree pension costs resulting from the program) and to the Retiree Health Benefits Trust Fund (to cover the higher health coverage liability resulting from the program).

The annual costs of the buyout program remain mostly steady over the span of a decade. In contrast, annual savings do not extend beyond the number of years the retiree would have worked absent the buyout offer.[13]

FY20 – FY39: The County plans to amortize future retiree health insurance costs over 30 years. As a result of the 2008 buyout, the County Government will be subject to additional retiree health insurance liability from FY10 through FY39. County Government actuaries estimate this liability at an additional $7.7 million for the last 20 years of the amortization period.

[13] See Footnote 9.

<u>Ten-year cost of the 2008 buyout</u>: As summarized in the table below, the estimated total savings of the 2008 buyout is $20.2 million dollars, almost half of which occurs in FY09. However, because the program obligates the County to cover $33.0 million in new costs and liabilities over the next ten years, the net result to the County is a cost increase of $12.8 million.

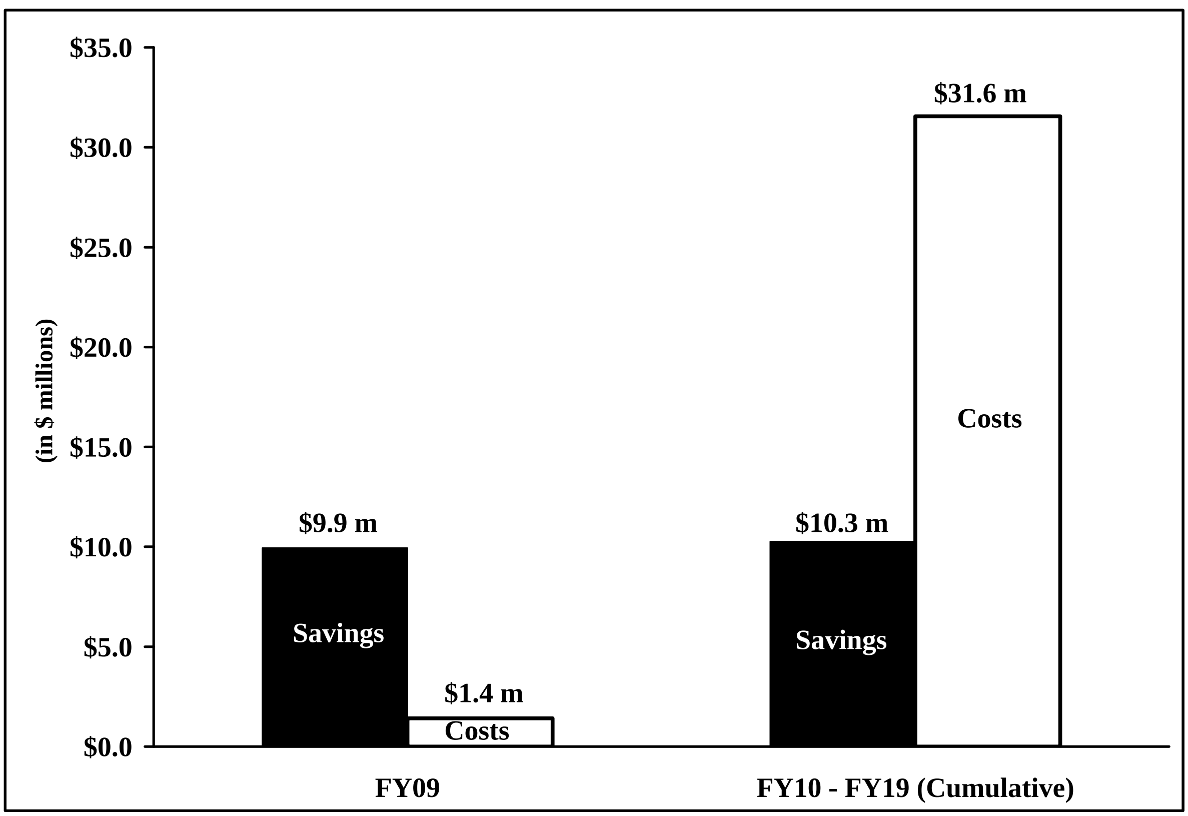
Savings and Cost Increases: FY09-FY19
Resulting from the 2008 County Government Buyout

Fiscal Year	(A) Savings	(B) Cost Increases	(A) – (B) Net Savings or (Cost Increases)
FY09	$9.9 million	$1.4 million	$8.5 million
FY10-19	$10.3 million	$31.6 million	($21.3 million)
FY09- FY19 Total*	**$20.2 million**	**$33.0 million**	**($12.8 million)**

* The 2008 buyout will also expose the County Government to an estimated additional $7.7 million in retiree health benefit liability from FY20 through FY39. This additional liability is not included in the above table, which only tracks savings and costs through FY19.

The exhibit below depicts the savings and costs produced by the 2008 County Government buyout in the first year (FY09) and cumulatively over the next ten years (FY10 through FY19).

Savings and Costs from the 2008 County Government Buyout
FY09 and Cumulative FY10-FY19



The most significant factor in determining the fiscal effect of a buyout is the decision by the employer of whether to refill vacated positions. As mentioned above, the County refilled 64% of the 150 positions vacated by the 2008 buyout. This action had a dramatic impact on the cost-effectiveness of the buyout program. If the County had abolished all the positions vacated by the buyout, the savings from the program would have increased to $35.6 million through FY19, while the cost of the buyout ($33 million) would not have changed. The result would have been a $2.6 million net cost savings from the buyout over the next decade.

Another important factor in determining the fiscal effect of a buyout is the calculation of future cost savings attributable to position abolishments. As mentioned above, a buyout relieves an employer of abolished position compensation costs for the number of years that the retiree would have remained in his/her job absent the incentive.

Given that eight out of ten County Government employees who were eligible for the 2008 buyout chose not to accept the incentive and three-quarters of buyout participants were already eligible for normal retirement, OLO's fiscal analysis assumed that: (1) employees at normal retirement would have remained with the County two additional years; and (2) employees who accepted early retirement would have remained another four years absent the buyout.

Using alternative assumptions would generate different savings calculations. For example, the alternative assumptions that the buyout induced: (1) employees at normal retirement to leave four years early; and (2) employees eligible for early retirement to leave six years early, produces total ten-year savings of $32.0 million ($1.0 million less than ten-year program costs).

E. PROPOSED 2009 COUNTY GOVERNMENT BUYOUT

This year, the County Executive is again recommending the County Government offer a Retirement Incentive Program (RIP). At the Executive's recommendation, in March 2009, the Council introduced an amendment to the County Code and an amendment to the MCGEO contract to establish the buyout program for 2009.

In sum, to be eligible for the 2009 buyout, an employee must be:

- A member of the Employees' Retirement System (ERS); and
- Eligible for normal retirement or within two years of normal retirement.

In order to participate, an employee must agree to retire by June 1, 2009. The incentive consists of a $40,000 cash payment. In addition, employees within two years of normal retirement are offered the additional incentive of no early retirement penalty.

The table below compares County Government's 2008 and proposed 2009 buyout programs.

Comparison between County Government 2008 Buyout and the Proposed 2009 Buyout

Characteristic	2008 Buyout	Proposed 2009 Buyout
Program Participation		
Program Eligibility	County Government ERS members at normal retirement, or within two years of normal retirement	County Government ERS members at normal retirement, or within two years of normal retirement
Exclusions	All public safety employees	Excludes police officers and firefighters
Maximum Participation	20% of any department	30% of any department
Retirement Incentive		
Incentive Payment Amount	$25,000	$40,000
Early Retirement Penalty Reduction	From 2% to 0%, for employees within one year of normal retirement	From 2% to 0%, for employees within one year of normal retirement
	From 5% to 2%, for employees within two years of normal retirement	From 5% to 0%, for employees within two years of normal retirement
Funding Source	ERS Trust Fund	ERS Trust Fund

The Executive estimates that approximately 685 County Government employees meet the eligibility requirements for the 2009 buyout. The Executive recommends capping participation in the 2009 buyout at 30% of employees in any one department. Similar to the 2008 buyout, the ERS Trust Fund is once again the proposed source of funds for the retirement incentive payments.

In transmitting draft legislation for the 2009 buyout, the Executive stated that:

> …this RIP is intended to coordinate with the anticipated Reduction in Force efforts by providing an incentive for senior employees to retire and preserve jobs for less senior staff whose positions may be slated for abolishment as a result of the RIF.[1]

As proposed by the Executive, however, eligibility for the 2009 buyout is purely a function of an employee's retirement status. In other words, it is not designed only for employees in job classes or departments identified for reductions in force in the Executive's recommended FY10 operating budget.

Use of discontinued service retirement. The memorandum of agreement between the County and MCGEO states the County "will continue to use Discontinued Service Retirement (DSR) as in the past." As specified in the County Code[2], DSRs apply to ERS members with at least ten years of County service.[3] A DSR eliminates the early retirement penalty for an employee whose employment has been terminated by an administrative action.

Note: As of the printing of this document, the Council has not yet received the Executive's fiscal impact statement for the 2009 buyout.

In the final section of this chapter on lessons learned and applied, OLO recommends a number of questions that the Council should pose about the 2009 buyout proposal (see page 61).

[1] County Executive Isiah Leggett. Memorandum to Council President Phil Andrews. March 16, 2009.
[2] MCC § 33-45(d)
[3] As only employees hired before 1994 are eligible for the ERS, nearly all current ERS members have at least ten years of credited service.

F. LESSONS LEARNED AND APPLIED

Buyouts are any type of financial incentive offered by employers to encourage employees to voluntarily leave their job either through retirement or resignation. Buyout offers can include direct cash payments, contributions to health care or retirement savings accounts, and/or other non-pension post-employment benefits. For employees in a defined benefit retirement plan, a buyout often involves enhancing the calculation of an employee's stream of pension payments.

This final section of OLO's research on buyouts is divided into two parts:

- **Part 1** summarizes the themes or "lessons learned" about buyout programs based on the reported experiences of County agencies, other state and local governments, and the Federal Government; and

- **Part 2** suggests specific questions for the Council to pose about the 2009 buyout proposal for County Government employees, as recommended by the County Executive.

1. Lessons Learned

Based on the review of public sector buyout programs, OLO identified the following recurring themes or "lessons learned."

a. A buyout program can result in savings, especially when it is implemented in concert with an organization's plans to downsize or reorganize.

A buyout program affords an employer the opportunity to reduce compensation costs, and downsize or reorganize the workforce. Buyouts create position vacancies that then allow an employer to reshape the workforce to reflect current staffing needs and funding. Once a position is vacated, an employer can either downsize (by abolishing the position), or choose to refill the position with employees who earn lower salaries and/or have different skill sets.

Employers often find buyouts an attractive alternative to layoffs. Buyouts tend to mitigate the morale problems associated with layoffs. In addition, buyouts reduce an employer's exposure to unemployment compensation liability that can come with layoffs.

Buyouts generally result in immediate reductions in compensation costs, especially when an employer abolishes vacated positions. An organization may realize smaller savings when it refills a buyout-vacated position; this "turnover" savings comes from a combination of lapse and the lower salaries of new hires.

In structuring a buyout, an employer must decide whether to incur the costs of the program at the time of implementation or over time. When paying the costs (such as for lump-sum payments) at the outset, an employer generally reaps greater net buyout cost savings in the years following program implementation. Alternatively, buyout costs may be deferred until future years, such as with pension payment increases. When buyout costs are deferred, an employer experiences the largest net savings in the first year.

2008 County Government Buyout. OLO estimates that the County Government realized net savings of about $8.5 million in FY09 as a result of the 2008 buyout. Because the County chose to finance most of the buyout out of the Employees' Retirement System Trust Fund and to amortize the repayments over a ten-year period, the costs of the buyout (including $3.75 million for repayment of the $25,000 awards) will not begin until FY10.

b. Depending upon how a buyout program is implemented and managed over time, the total cost of the program can exceed savings.

While buyouts can offer immediate reductions in compensation costs, the research evidences that buyouts often incur costs that offset program savings. Particularly when implemented independent of a downsizing or restructuring plan, a buyout can result in long-term costs that exceed savings.

Much of the fiscal benefit of a buyout is lost when, after the buyout, an employer continues to pay for the work previously performed by the departing employee. When an employer refills a vacated position, the compensation costs of the new hire consumes much of the potential savings. Alternatively, employers negate some or all of a buyout's savings when they pay for the same work, either through increased overtime or contracting.

The published evaluation research concludes that buyouts remain cost effective only as long as the employer implements the program in concert with a planned downsizing or reorganization that results in job abolishments. Consistent with this finding, federal and state evaluations of buyouts recommend targeting the program toward specific departments, programs, or job classes that are subject to reductions in force.

Buyouts that generate only one-time costs (such as lump sum cash payments) do not result in out-year costs that typically offset program savings. In contrast, buyouts that create long-term employer liabilities often result in total costs that are greater than program savings. Specifically, buyouts that extend the number of years that an employer must pay defined pension benefits and post-retirement health insurance coverage can prove extremely costly over time.

2008 County Government Buyout. Following the 2008 buyout, the County Government refilled 64% of the buyout-vacated positions. OLO's fiscal analysis finds that, over the next ten years, the 2008 buyout will have a net cost to the County of about $12.8 million. This is because the total compensation savings of $20.2 million are overtaken by the total increased costs of $33.0 million.

c. **The experience of other jurisdictions evidence guiding principles for implementing a buyout program that is cost-effective.**

The evaluation research and reported experience of other public sector employers suggest a number of "best practices" for increasing the likelihood of a cost-effective buyout program. In sum, before implementing a buyout, an employer should:

- Identify future staffing needs (based on operational requirements and resource availability);
- Consider how a change in workforce will affect productivity and service delivery;
- Determine how a buyout will help the organization restructure, downsize, or otherwise achieve its staffing needs;
- Perform an economic analysis to determine whether buyouts would be more cost effective than downsizing through natural attrition; and
- Determine whether actions planned to maintain productivity and service delivery do not cost more than the savings generated by the buyout.

Once a decision is made to offer a buyout, an employer should:

- Target buyouts to specific positions, programs, or departments that have been designated for reorganization or downsizing; and
- Minimize the refilling of vacated positions.

2. Applying Lessons Learned: Review of the Proposed 2009 Buyout

As recommended by the Executive, the 2009 buyout for County Government employees would offer payments of $40,000 to Employees' Retirement System (ERS) members who are either already eligible for or within two years of normal retirement. The proposal would eliminate the entire early retirement penalty for employees within two years of normal retirement. The terms of the proposed 2009 buyout are outlined in legislation proposed by the County Executive (Expedited Bill 10-09), currently pending Council action.

OLO recommends that the Council ask the Executive to address the following questions regarding the proposed 2009 County Government buyout:

a. **What are the estimated costs and savings of the 2009 buyout, on an annual basis, from FY10-FY20?** The Council should request the schedule of estimated annual costs and savings of the proposed 2009 buyout, beginning in FY10 and lasting through the next 10 years of increased payments to the ERS Trust Fund and the Retiree Health Benefits Trust Fund. The Council should ask the Executive to include a list of the assumptions that accompany the Executive's fiscal analysis.

b. **What percent of buyout-vacated positions will the Executive abolish?** Because refilling vacated positions negates much of a buyout's potential cost savings, the Council should find out more about the Executive's intent to abolish vs. refill positions vacated by the 2009 buyout.

c. **Is there a scenario whereby eligibility for the 2009 buyout could be targeted toward employees or job classes that are subject to reductions in force?** As recommended by the Executive, eligibility for the proposed 2009 buyout is purely a function of an employee's retirement status. In other words, eligibility for the buyout (similar to the 2008 buyout) is not limited to employees in job classes or departments identified for reductions in force. Because the research evidences that a cost-effective buyout must be accompanied by position abolishments, the Council should explore the feasibility of targeting the 2009 buyout to job classes or departments subject to a FY10 reduction-in-force.

d. **What are the Executive's plans for coordinating the proposed 2009 buyout with the use of discontinued service retirements (DSR)?** Both the buyout and the Discontinued Service Retirement option provide an early retirement incentive for eligible ERS members whose are subject to a reduction in force. The Council should ask the Executive his strategy for coordinating the use of the buyout program alongside the use of DSRs.

A RESEARCH BRIEF ON FURLOUGHS AND BUYOUTS

LIST OF APPENDICES

Appendix A:
Resources

Chapter II. Furloughs

Use of Furloughs – Experiences and Structures	
Jurisdiction	**Resources**
State of California	Office of the Governor of the State of California. *Executive Order S-16-08.* Ortiz, Jon. "SEIU ratifies California contract, reducing furlough days to one." *Sacramento Bee*, March 22, 2009. Ortiz, Jon. "Schwarzenegger wins furlough fight." *Sacramento Bee*, March 13, 2009. Associated Press. "Calif. governor sues to furlough more workers." February 10, 2009. McGreevy, Patrick and Evan Halper. "California is told to furlough employees." *Los Angeles Times*, January 30, 2009. California Department of Personnel Administration. "Answers to Employee Questions on the Furlough." Updated March 17, 2009.
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Fairfax County	Fairfax County Employees Advisory Council website, Accessed March 30, 2009. http://www.fceac.org/FY_2009_Furlough/FY_09_Furlough.htm Griffin, Anthony. Fairfax County Executive. "FY09 Third Quarter Review." Memorandum to the Board of Supervisors, March 9, 2009. Marshall, Betty. Fairfax County Department of Human Resources. Telephone conversation, March 23, 2009.
King County	Metropolitan King County Council Committee Meeting of the Whole Staff Report, Agenda Item #5, February 18, 2009. Washington State Constitution, Article 4, Section 6 and Revised Code of Washington § 3.30.040. *Memorandum of Agreement by and between King County and Members of the King County Coalition of Unions.* King County Code § 3.12F.010(U) (Proposed Ordinance 2008-0626; adopted December 15, 2008.) King County Ordinance 2008-0627, adopted December 15, 2008. King County Department of Executive Services, Human Resources Division. "2009 Emergency Budget Furlough Guidance Document." February 2, 2009.

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Prince George's County	Prince George's County Approved Operating Budget, Fiscal Year 2009. Prince George's County Executive. Letter to employees dated September 15, 2008. Prince George's County Council Resolution CR-81-2008, introduced and adopted on September 16, 2008. Valentine, Daniel, *The Gazette*. December 18, 2008. http://www.gazette.net/stories/12182008/prinnew183657_32481.shtml Prince George's County Administrative Procedure 284-B. Prince George's County. "FY 2009 Employee Furlough Questions and Answers." October 8, 2008. Bob Mellin, Prince George's County Department of Human Resources Management. Telephone conversation, March 20, 2009.
University System of Maryland	Board of Regents of the University System of Maryland. *Resolution Authorizing Furloughs of Employees*. December 12, 2008. University of Maryland, College Park. "Frequently Asked Questions: FY2009 Employee Furlough Plan." Updated January 9, 2009. http://www.uhr.umd.edu/furlough/CDM_email_to_campus_on_furlough_12192008.pdf
Yolo County	County of Yolo Recommended Budget 2008-2009. Yolo County website (accessed March 11, 2009). http://www.yolocounty.org/ Nunes, Mindi. Yolo County Office of Human Resources. E-mail communication, March 11, 2009.

Other Furlough Resources	
Section	**Resources**
Overview of Furloughs	Dewan, Shaila. "A Slowdown That may Slow Us Down." *New York Times*. March 1, 2009. Mattiolo, Dana and Sara Murray, "Employers Hit Salaried Staff With Furloughs," *Wall Street Journal*. February 24, 2009. Tuna, Cari and Dana Mattioli. "The Politics of Volunteering for a Furlough." *Wall Street Journal*. March 12, 2009.

Chapter III. Buyouts

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Jurisdiction	**Resources**
Birmingham Public Schools	Birmingham Public Schools. "Highlights from the April 4 Board of Education Meeting." April, 7, 2006. Birmingham Public Schools. "Minutes of the Regular Meeting of the Board of Education." April 4, 2006.
City of Cape Coral	City of Cape Coral. "On the Move." Summer 2008; Fall 2008.
City of Columbus	Vitale, Robert. "Columbus sending out 130 layoff notices." *Columbus Dispatch*. January 23, 2009.
Cuyahoga County	Cuyahoga County Board of Commissioners. "BOCC announces three-year Early Retirement Incentive Program (ERIP)." January 2009. http://bocc.cuyahogacounty.us
City of Dayton	Smith, Joanne Huist. "City of Dayton offers buyouts to more than 500 employees." *Dayton Daily* News. October 2, 2008.
City of Fayetteville	City of Fayetteville. "Regular Mayor and City Council Meeting Minutes." December 4, 2008. Nelms, Ben. "F'ville Council OK's fattened early retirement package." *The Citizen*. December 9, 2008.
Hernando County	Hernando County, Florida. "Hernando County News." February 27, 2009.
Indiana University	Indiana University. "University offers early retirement opportunity for PERF-covered employees." December 24, 2003. http://newsinfo.iu.edu/news/page/normal/1230.html University Human Resources. Indiana University. December 2003.
Commonwealth of Massachusetts	Snell, Ronald. "Pensions and Retirement Plan Enactments in 2002 State Legislatures." *National Conference of State Legislatures*. November 21, 2002.
State of Michigan	Senate Fiscal Agency "SERS Early Retirement: Floor Analysis." Michigan Legislature. 2002. Snell, Ronald. "Pensions and Retirement Plan Enactments in 2002 State Legislatures." *National Conference of State Legislatures*. November 21, 2002.
State of Minnesota	Office of the Legislative Auditor. *Early Retirement Incentives*. State of Minnesota. March 14, 1995.
Nebraska State College System	Nebraska State Colleges. "Early Retirement Incentive Program; State College Employees." Policy 5401. Nebraska State College System Board of Trustees. February 2005. http://www.nscs.edu/Policy%20Manual/Policy%20Manual%20Master/Policy%205401.pdf
State of New Jersey	New Jersey Department of the Treasury, Division of Pensions and Benefits. "Early Retirement Incentives (ERI) 2008 for State Employees." July 2008. State of New Jersey Legislature. Chapter 21, P.L. 2008. June 24, 2008.
New York City	New York City. "Mayor Michael R. Bloomberg Signs Early Retirement Incentive Legislation." July 10, 2002.
Olmsted County	Olmsted County. "Proceedings of the Olmsted County Board of Commissioners held on June 24, 2003, at 3:15 PM in the Council/ Board Room at the Government Center." June 24, 2003.
State of Tennessee	Snell, Ronald K. "Pensions and Retirement Plan Enactments in 2008 State Legislatures." *National Conference of State Legislatures*. July 31, 2008.
State of Texas	Texas Legislative Council, Research Division. "Summary of Enactments: 78^{th} Legislature." State of Texas Legislature. November 2003.

Evaluations of Public Sector Buyout Programs	
Jurisdiction	**Resources**
City of Cape Coral	Liberatore, Brian. "Some in Cape Coral regret buyouts." *Fort Myers News-Press*. February 22, 2009.
City of Columbus	Vitale, Robert. "One rec center closing sooner." *Columbus Dispatch*. January 1, 2009.
City and County of Honolulu	Office of Council Services, Honolulu City Council. "Fiscal Impact of the 1994 Early Retirement Incentive Program." City and County of Honolulu. January 1996.
State of Minnesota	Office of the Legislative Auditor. *Early Retirement Incentives*. State of Minnesota. March 14, 1995.
State of New Jersey	State of New Jersey Legislature. Chapter 21, P.L. 2008. June 24, 2008.
State of New York	Office of the State Comptroller. *A Report on the Early Retirement Incentive for Local Governments and School Districts*. State of New York. June 2002.
Commonwealth of Pennsylvania	Pennsylvania Public Employee Retirement Commission. *Feasibility of Early Retirement Incentives in the Public Sector*. March 1995. Pennsylvania Public Employee Retirement Commission. *Fiscal Impact of the Early Retirement Incentive for Public School Employees Provided by Act 186 of 1992 and Act 29 of 1994*. March 1996.
City of Tucson	Brosseau, Carli. "Retirement deals leave big holes in city departments." *Tucson Citizen*. Nov. 19, 2008.
United States Government	Causey, Mike. "Bigger Buyouts = Fewer Employees." March 30, 2009. http://www.federalnewsradio.com/?nid=20&sid=1634946 United States General Accounting Office. *Federal Downsizing: Better Workforce and Strategic Planning Could Have Made Buyouts More Effective*. August 1996. United States General Accounting Office. *Federal Downsizing: Effective Buyout Practices and Their Use in FY 1997*. June 1997. United States General Accounting Office. *Federal Downsizing: The Cost and Savings of Buyouts Versus Reductions-in-Force*. May 1996. United States Government Accountability Office. Report GAO-06-324, *Agencies Are Using Buyouts and Early Outs with Increasing Frequency to Help Reshape Their Workforces*, March 2006. United States Office of Personnel Management, *Voluntary Separation Incentive Payments* web page, http://www.opm.gov/employ/html/vsi.htm
State of Virginia	Joint Legislative Audit and Review Commission. *The 1991 Early Retirement Incentive Program*. Virginia General Assembly. May 3, 1995.

Other Buyout Resources	
Section	**Resources**
Overview of Buyouts	W.J. Morin and L. Yorks, *Dismissal*, Drake Beam Morin, Inc. 1990, as cited in G. Singh and C. A. Petzrelka, *Downsizing in the United States and France: A Comparative Study*, San Diego State University, 2004.
Types of Buyout Programs	Armour, Stephanie. "Many workers sitting pretty after buyouts." *USA Today*. August 16, 2006.
Evaluations of Public Sector Buyout Programs	Ferrari, David. "Designing and evaluating early retirement programs: the state of Wyoming experience." *Government Finance Review*. February 1999.

MEMORANDUM

April 3, 2009

TO: Karen Orlansky, Director, Office of Legislative Oversight

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: Council's Authority to Require Furloughs or Buyouts in the Budget

You have asked a series of questions concerning the Council's authority to require furloughs or buyouts in the FY10 operating budget. I will list each question and my response below.

Furloughs

1. *In general, what is the Council's legal authority to require furloughs for represented and/or unrepresented County Government employees? What Council action is required to implement a furlough for County Government employees?*

A furlough is defined in COMCOR §33.07.01.01 (1-27) as a "temporary, non-pay status and absence from normally scheduled duty required by the CAO due to lack of funds or work." During a fiscal year, the Executive has the authority to require furloughs as one method of reducing costs for that fiscal year in order to insure that expenditures do not exceed revenue. This authority is expressly reserved to the Executive as an employer right in each of the County's collective bargaining laws. For example, Code §33-80(b)(7) of the Police Collective Bargaining Law grants the Executive the following employer right:

> To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive

Therefore, the Executive has the authority to order furloughs of both represented and non-represented employees during a fiscal year.[1]

[1] The County Government Budget Resolution for FY09, in Condition 49, requires the Executive to submit any budget savings plan or similar action to the Council for review and approval. This condition would require the Executive to send a furlough plan implemented during FY09 to the Council for review and approval.

The authority to require furloughs in future fiscal years resides with the Council's authority to approve the operating budget. Charter §305 authorizes the Council to approve the operating budget. Charter §311 prohibits the expenditure of County funds in excess of the available unencumbered appropriations contained in the approved budget. The authority to appropriate funds includes the authority to add reasonable conditions on the expenditure of those funds that do not otherwise amend substantive laws and are effective for the fiscal year in question only. See, *Bayne v. Secretary of State,* 283 Md. 560, 574 (1978). Therefore, the Council may require furloughs as a condition of spending funds for County employee salaries notwithstanding the approved salary schedules. A budget condition requiring furloughs could apply to both represented[2] and non-represented employees.

2. *If the County Executive's Recommended FY10 Budget includes a furlough for County Government employees, to what extent can the Council modify the proposal?*

Charter §306 authorized the Council to "add to, delete from, increase or decrease any appropriation item in the operating or capital budget" submitted by the Executive. Therefore, the Council has full authority to reduce, eliminate, or expand furloughs included in the Executive's proposed FY10 Budget.

3. *If the County Executive's Recommended FY10 Budget does not include a furlough for County Government employees, can the Council adopt a budget for the upcoming fiscal year that builds in savings attributable to a furlough?*

Yes. See the explanation above.

4. *To what extent is any furlough proposal subject to collective bargaining and how does this influence the timing/scope of any Council action?*

Each of the collective bargaining laws contain a provision that authorizes the Executive to "relieve employees from duties because of lack of work or funds" as an employer right. See, for example, Code §33-80(b)(7) of the Police Collective Bargaining Law. These employer rights are reserved to the Executive, as the employer, without regard to the duty to bargain over wages and other terms and conditions of employment. Therefore, the decision to require furloughs is not a mandatory topic of bargaining and can apply to represented employees without an agreement with their union. However, the Police Collective Bargaining Law, in §33-80(a)(7), requires the employer to bargain over the "effect on employees of the employer's exercise of rights listed in subsection (b)." Although this does not require the Executive to bargain with the police union over the decision to order furloughs, the Executive would be required to negotiate with the union over the impact of the furloughs on its members. For example, the Executive may be required to bargain with the union over the administrative details governing how union members would be required to take the furloughs. The collective bargaining laws covering fire

[2] See the discussion in #5 concerning the duty to bargain over furloughs.

fighters and other County employees do not contain a similar "effects bargaining" mandate that would affect the decision to implement furloughs.

5. *In general, what is the Council's legal authority to require furloughs for employees (represented and/or unrepresented) in the other County-funded agencies (MCPS, Montgomery College, Montgomery County portion of M-NCPPC)? What Council action is required to implement a furlough for employees in these agencies?*

The Council approves the budgets for MCPS, Montgomery College, and the Montgomery County portion of the M-NCPPC. Therefore, the Council has the authority to add reasonable conditions to spending that do not conflict with other substantive laws. The Montgomery County Board of Education (the School Board) and the Board of Community College Trustees for Montgomery County (College Trustees) are created under State law codified in the Education Article of the Md. Code. The School Board is responsible for operating the Montgomery County Public Schools (MCPS) and the College Trustees are responsible for operating Montgomery College. The M-NCPPC is an agency of the State established by Md. Code, Art. 28.

The Council's authority to approve the School Board budget is derived from these State laws. In *McCarthy v. Board of Education of Anne Arundel County,* 280 Md. 634 (1977), the Court of Appeals held that the General Assembly has expressed its intent to occupy the field of public education and thereby preempted all local legislation in this area. The Council may place reasonable conditions on the expenditure of appropriated funds as long as the condition does not conflict with any provisions in the Education Article governing the operations of the MCPS. The decision to use furloughs as a mechanism to limit spending to comply with the approved operating budget is a management decision that is within the authority of the School Board under the Education Article. The Council may approve an operating budget that limits spending by the School Board, but the choice to meet the approved budget by using furloughs would most likely affect education policy and thereby is beyond the authority of the Council under State law.

The Council's authority to approve the budget for Montgomery College is similarly established and limited by the comprehensive State laws governing the operation of community colleges in the Education Article. See Md. Code Ed. Art. §§301-319. The Council would have similar limits on its authority to mandate furloughs as a condition of spending in the budgets of the College as it has for the School Board.

M-NCPPC is a bi-county agency created by State law with one operating budget approved by the Councils for both Prince George's and Montgomery Counties. However, each Council approves that portion of the operating budget allocated and financed by that County pursuant to Md. Code, Art. 28 §2-118(a)(4). Portions of the operating budget allocated to both Counties must be jointly approved by both Councils. Md. Code, Art. 28 §2-107 authorizes the Commission to appoint and fix the compensation of its employees on a "regional basis."

M-NCPPC has applied this statute by creating one salary schedule covering all of its employees in both Counties. General wage adjustments for Commission employees have been applied equally to employees in both Counties. Furloughs for only those employees paid through that portion of the operating budget financed by Montgomery County would arguably create a non-uniform compensation schedule. Therefore, the Council's ability to unilaterally impose furloughs under its general authority to place reasonable conditions on the expenditure of appropriated funds in that portion of the Commission's budget allocated to Montgomery County may be limited by the Code provision authorizing the Commission to fix compensation for its employees on a regional basis.

Retirement Incentives/Buyouts

1 *In general, what is the Council's legal authority to require the County Government to offer retirement incentives/buyouts for represented and/or unrepresented employees? What Council action is required to implement a retirement incentive/buyout for County Government employees?*

A retirement incentive plan (RIP) must be accomplished through an amendment to the County Code because the retirement plans are established in the Code. Therefore, the Council has the plenary legislative power to amend the laws governing the retirement plans to create a RIP. All 3 collective bargaining laws require the Employer to bargain with the union concerning "pension and other retirement benefits for active employees only." A RIP for represented employees would therefore be a mandatory topic of collective bargaining. The Executive must bargain with the employee unions before sending proposed legislation that creates a RIP to the Council. If the parties are unable to agree on a RIP, the dispute would be submitted to arbitration. The decision of the arbitrator is binding on both the Executive and the union, but it is not binding on the Council. The Council would be required to follow the general procedures for reviewing those portions of a collective bargaining agreement that require an appropriation of funds or new legislation.

The authority of the Council to enact legislation creating a RIP for represented employees outside of the collective bargaining process is clear in our view, although the unions might disagree (and would certainly argue that doing so would violate the policy which underlies the collective bargaining laws). Each collective bargaining law provides that the Executive, as the employer, must bargain with the certified employee representative over certain mandatory topics of bargaining. Under each law the Council must approve -- and retains the authority to reject -- any term or condition of a collective bargaining agreement that requires an appropriation of funds or enactment, repeal, or modification of a County law or regulation. **In none of these laws did the Council delegate its legislative power to enact and amend County legislation.** The Executive has a duty under each collective bargaining law to bargain with a certified employee representative; the Council does not.

The Council's exercise of its legislative power to implement this collective bargaining agreement necessarily includes the power to repeal or amend the same legislation at any point in the future. This legislative power exists without regard to whether the law involves a mandatory topic of bargaining under the collective bargaining laws or was enacted to implement a collective bargaining agreement executed by the Executive and an employee representative; nothing in the Charter or the collective bargaining laws limits it in those cases. Although the current retirement laws were enacted by the Council pursuant to collective bargaining agreements with the employee unions, the Council retains the legal authority to create a RIP by amending those laws outside of the collective bargaining process for both represented as well as non-represented employees.

2. *To what extent does the law allow the Council to target eligibility for a retirement incentive or buyout program to specific departments, job classes, or other subsets of the workforce or bargaining units? Similarly, does the law allow the Council to limit the timing of position refill rates, or mandate a number of abolished positions?*

The Council can target a RIP for different County employees by bargaining unit, department, job class, or other subsets. The County has established different retirement plans for different types of employees based on many different classifications – date of hire, bargaining unit, department, and job class. The Council can enact a law creating a RIP with similar types of eligibility classifications.[3]

One proposed classification is to target eligibility for a RIP to those employees occupying positions in job classifications subject to abolition due to lack of funds. The proposed RIP 2009 negotiated by the Executive and MCGEO follows the RIP enacted by the Council last year by limiting eligibility to those employees who are ERS members and who are eligible for normal retirement or eligible for early retirement and within 2 years of normal retirement. The Executive's proposed operating budget would abolish occupied positions and result in a reduction in force. The legal guidelines for targeting a RIP to those employees who occupy positions in job classifications subject to abolition would be similar to the general legal obligations governing a reduction in force. As long as the positions targeted for abolishment do not raise a viable issue of discrimination on the basis of race, sex, national origin, religion, age, disability, or sexual orientation,[4] the Council can target the RIP to these positions.

3. *To what extent is any retirement incentive or buyout proposal subject to collective bargaining and how does this influence the timing/scope of any Council action?*

See the discussion for question 1 above.

[3] All County laws governing County employment are subject to Federal and State equal employment laws, such as the Age Discrimination in Employment Act and Title VII of the Civil Rights Act of 1964, as amended. For example, a RIP that has an adverse impact on a protected class may create Title VII liability for the County as an employer if it cannot be justified as a business necessity. However, we do not see any rational classifications for eligibility creating this type of issue.

[4] Although Federal employment discrimination laws do not include sexual orientation, Maryland laws do.

4. *In general, what is the Council's legal authority to require other County-funded agencies (MCPS, Montgomery College, Montgomery County portion of M-NCPPC) to offer retirement incentives/buyouts for employees (represented and/or unrepresented)? What Council action is required to implement a retirement incentive/buyout for these other-agency employees?*

The Council can approve budgets that may require each of these agencies to make difficult choices, such as layoffs, furloughs, or a RIP, or a combination of all 3. However, the Council cannot amend the separate retirement plans that the employees of these agencies participate in. Therefore, the Council cannot mandate a RIP for employees of these agencies.

I am, of course, available to discuss these issues with you at your convenience.

APPENDIX C:
OFFICE OF LEGISLATIVE OVERSIGHT'S METHODOLOGY FOR CALCULATING THE SAVINGS AND COSTS ATTRIBUTABLE TO THE 2008 COUNTY GOVERNMENT BUYOUT

Chapter III, Section D includes the Office of Legislative Oversight's (OLO) analysis of the savings and costs attributable to the 2008 County Government buyout. This appendix presents the methodology used to calculate these savings and costs, organized in three parts:

- **Part I** is a spreadsheet that shows year by year calculations of buyout savings and costs by category.
- **Part II** lists the data and data sources used in the calculation of savings and costs.
- **Part III** defines and presents the formula for each savings and cost category shown in the Part I spreadsheet. This part also explains in which years the savings or costs occurred and provides additional comments, as necessary, to explain the formula.

Notes about OLO's calculation of buyout savings and costs:

- Calculations use FY09 salary and budget data;
- All future year savings and costs appear in current dollars;
- Savings and costs for buyout participants who had reached normal retirement and for buyout participants who accepted early retirement are calculated separately and then summed together (see spreadsheet on the following page).

Part I: Estimated Annual Savings and Costs: 2008 County Government Retirement Incentive Program

(in $1,000s)

Buyout Savings

		FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	Total
	Abolished Positions												
1	Normal Retirees	$3,769	$3,151	$0	$0	$0	$0	$0	$0	$0	$0	$0	$6,920
2	Early Retirees	$1,296	$1,083	$1,083	$1,083	$0	$0	$0	$0	$0	$0	$0	$4,545
	Refilled Positions												
3	Normal Retirees	$1,552	$553	$0	$0	$0	$0	$0	$0	$0	$0	$0	$2,105
4	Early Retirees	$513	$160	$160	$160	$0	$0	$0	$0	$0	$0	$0	$993
	Normal Pension												
5	Normal Retirees	$692	$692	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,384
6	Early Retirees	$243	$243	$243	$243	$0	$0	$0	$0	$0	$0	$0	$972
	Lapse												
7	Normal Retirees	$1,398	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,398
8	Early Retirees	$484	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$484
	Deferred Leave Payout												
9	Normal Retirees	$0	$0	$1,047	$0	$0	$0	$0	$0	$0	$0	$0	$1,047
10	Early Retirees	$0	$0	$0	$0	$368	$0	$0	$0	$0	$0	$0	$368
11	**TOTALS**	**$9,946**	**$5,882**	**$2,533**	**$1,486**	**$368**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$20,215**

Buyout Costs/Liabilities

		FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	Total
	Retiree Pension												
12	Normal Retirees	$0	$1,830	$1,830	$1,830	$1,830	$1,830	$1,830	$1,830	$1,830	$1,830	$1,830	$18,303
13	Early Retirees	$0	$701	$701	$701	$701	$701	$701	$701	$701	$701	$701	$7,010
	Retiree Health												
14	Normal Retirees	$0	$286	$286	$286	$286	$286	$286	$286	$286	$286	$286	$2,865
15	Early Retirees	$0	$101	$101	$101	$101	$101	$101	$101	$101	$101	$101	$1,007
16	Reallocated Retirement	$0	$237	$237	$237	$237	$237	$237	$237	$237	$237	$237	$2,374
17	Leave Payout	$1,415	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,415
18	**TOTALS**	**$1,415**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$3,156**	**$32,972**

Part II: Data Used

The tables below list the data and data sources used in the calculation of 2008 buyout savings and costs in the Part I spreadsheet. The data is presented in four groups:

1. Buyout participants;
2. Buyout participants' average annual benefits;
3. Refilled positions; and
4. Buyout costs.

The source for each data point is listed in the tables (as indicated in the right-most column). Data sources include: the Office of Human Resources (OHR); the Office of Management and Budget (OMB); Mercer, Inc. (the County Government's contract pension actuary); and Aon Consulting, Inc. (the County Government's contract health insurance actuary).

These data are used in the formulas presented in Part III. The Part II formulas employ letters to represent each formula component as indicated in the left-most column of the tables below.

1. Buyout Participants

	Formula Component	Data Used	Source
A	Number of employees who participated	111 (normal retirees) 39 (early retirees)	OHR
B	Average annual salary of employees	$72,032 (normal retirees) $70,736 (early retirees)	OHR
C	Average leave payout (at retirement)	$9,430 (all retirees)	OMB

2. Buyout Participants' Average Annual Benefits

	Formula Component	Data Used	Source
D	Social security payment by County *(7.65% of average annual salary)*	$5,510 (normal retirees) $5,411 (early retirees)	Formula
E	Health insurance contribution made by County	$9,800 (all retirees)	OMB
F	Retirement fund contribution made by County (as percent of annual salary)	21.5% (abolished positions) 29.6% (refilled positions)	OMB
G	Future earned defined pension benefits	$6,233 (all retirees)	Mercer

3. Refilled Positions

	Formula Component	Data Used	Source
H	Number of refilled positions	86	OHR
I	Percent of positions refilled	64%	OHR
J	Average annual salary for refilled positions *(average of midpoints of grade)*	$53,771	Formula
K	Average annual benefit costs for refilled positions *(32% of average annual salary)*	$17,207	Formula
L	Average time to refill position	3 months	OMB

4. Buyout Costs

	Formula Component	Data Used	Source
M	Amortized pension costs	$16,489 (normal retirees) $17,973 (early retirees)	Mercer
N	Amortized retiree health coverage cost	$2,581 (all retirees)	Aon

Part III: Definition and Formula Savings and Costs Categories

The following tables define and present the formula for each savings and cost category shown in the Part I spreadsheet. The formula tables are organized into buyout savings, costs/liabilities, and net savings or cost increases categories.

The top row of each table shows the name of the savings or cost category and indicates the line in which the category appears in the Part I spreadsheet. The letters in the formulas correspond to the data source tables in Part II. The tables also explain in which years the savings or costs occurred. When necessary, additional comments are provided to clarify the formulas.

1. Buyout Savings

OLO's calculations include five savings categories:

- Abolished position salary and benefit savings;
- Refilled position salary and benefit savings;
- Normal pension contribution savings;
- Refilled position lapse savings; and
- Deferred Leave Payout.

Abolished Position Salary and Benefit Savings (Lines 1, 2)	
Definition	The savings realized by the County Government by not having to pay salary and benefits for positions abolished at the time of the buyout.
Formula	*For first year*: A*(1-I)(B+D+(E/8)+(A*F)) *For subsequent year(s):* A*(1-I)(B+D+(E/8))
Time Period	Two years for employees eligible for normal retirement; four years for employees eligible for early retirement.[1]
Additional Comments	• The County pays 80% of health coverage costs for active most active employees and 70% for most retirees. A retirement results in the County's contribution decreasing by 1/8. • The departure of an Employees Retirement System (ERS) member relieves the County Government of retirement fund contributions for one year only. After the first year, the equivalent cost is reallocated among remaining ERS members.

[1] OLO's assumption – any vacated position eliminated in FY09 would have been eliminated by the County upon retirement of the incumbent – parallels the methodology used by auditors in Massachusetts, Minnesota, and Pennsylvania in evaluating buyout programs in their respective states. As a result, the salary and benefit cost savings resulting from a position abolishment equals the avoided salary and benefit costs over the number of years the retiree would have worked absent the buyout.

Refilled Position Salary and Benefit Savings (Lines 3, 4)	
Definition	The savings realized by the County Government by refilling a position with an employee earning lower salary and benefits than the employee who accepted the buyout.
Formula	*For first year*: A*I*(B+D+(E/8)+(A*F)-J-K)*(12-L)/12 *For subsequent year(s):* A*I*(B+D+(E/8)-J-K)
Time Period	Two years for employees eligible for normal retirement; four years for employees eligible for early retirement.
Additional Comments	• During first year, refilled position salary and benefit savings begin after end of lapse period. • The County would have realized savings from refilling the position at a lower salary beginning when the buyout recipient would have retired absent the buyout.

Normal Pension Contribution Savings (Lines 5, 6)	
Definition	The savings realized by the County Government (as a result of an employee's retirement) by not having to fund future earned increases in the employee's pension.
Formula	A*G
Time Period	Two years for employees eligible for normal retirement; four years for employees eligible for early retirement.

Refilled Position Lapse Savings (Lines 7, 8)	
Definition	Temporary compensation costs savings during the period of time between the departure of an employee and the hire of a replacement employee.
Formula	A*I*(B+D+(E/8)*L/12
Time Period	First year only.

Deferred Leave Payout (Line 9, 10)	
Definition	Future year payout for employee's unused annual leave that is avoided by making the payout at the time of the buyout.
Formula	A*C
Time Period	Occurs in the year after the employee would have retired absent the buyout.

2. Buyout Costs/Liabilities

OLO's calculations include four cost/liability categories:

- Amortized Retiree Pension Costs and Liabilities;
- Amortized Retiree Health Costs and Liabilities;
- Reallocated First Year Retirement Contribution; and
- FY09 Leave Payout.

Amortized Retiree Pension Costs and Liabilities (Lines 12, 13)	
Definition	This cost component costs of two elements: (1) the cost to repay the ERS Trust Fund for the $3.75 million cost of paying the $25,000 incentive payments to the 150 employees who accepted the incentive; (2) the increased ERS Trust Fund liability resulting from the extending the number of years retirees will draw a pension.
Formula	A*M
Time Period	The County will amortize these costs over a ten-year period, FY10 through FY19.

Amortized Retiree Health Costs and Liabilities (Lines 14, 15)	
Definition	The increased liability to the Retiree Health Insurance Trust Fund resulting from the extending the number of years retirees will require coverage.
Formula	A*N
Time Period	The County will amortize these costs over a 30-year period.
Additional Comments	• The table shows the amortized liability beginning in FY10. While the County incurs future retiree health liability immediately after retirement, the County may not budget funds to cover this liability until future years. • The table shows the first ten years of retiree health liability resulting from the buyout. The County will incur similar costs for an additional 20 additional years (totaling $7.7 million) beyond the ten-year time frame shown in Part I.

Reallocated First Year Retirement Contribution (Line 16)	
Definition	The County does not make a contribution to the ERS Trust Fund for an ERS member the year s/he member retires. When the retirement contribution formula is recalculated the following year, the contribution of the retiree is reallocated among active ERS members. The item represents that reallocated cost.
Formula	*For abolished positions*: A*(1-I)*F/10 *For refilled positions*: A*I*F/10
Time Period	FY10 through FY19
Additional Comments	OLO calculated the retirement contributions included in Lines 1 through 4 of the table and allocated one-tenth of the total in each year from FY10 through FY19.

FY09 Leave Payout (Line 17)	
Definition	Payout made at time of buyout for employee's unused annual leave.
Formula	A*C
Time Period	FY09

3. Buyout Net Savings or Cost Increases

Line 11 of the Part I spreadsheet shows total savings attributable to the 2008 buyout. Line 18 shows total costs/liabilities attributable to the buyout. Net savings or costs are calculated by subtracting Line 18 from Line 11.

Expedited Bill No. 12-08
Concerning: Personnel – Retirement – Retirement Incentive Program
Revised: May 9, 2008 Draft No. 3
Introduced: April 8, 2008
Enacted: May 14, 2008
Executive: May 21, 2008
Effective: May 21, 2008
Sunset Date: None
Ch. 13, Laws of Mont. Co. 2008

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:
(1) provide a retirement incentive program for certain members of the employees' retirement system; and
(2) generally amend the law regarding the employees' retirement system.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-42

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-42 is amended as follows:

33-42. Amount of pension at normal retirement date or early retirement date.

* * *

(j) *Retirement Incentive Program.*

(1) *Eligibility.*

(A) A Group A or H member may participate in the Retirement Incentive Program if the member is eligible for normal retirement as of July 1, 2008 or if the member is eligible for early retirement and within two years of meeting the criteria for normal retirement as of July 1, 2008.

(B) [[Elected]] An elected or appointed [[officials are]] official is not eligible to participate.

(C) A member who wishes to participate must notify the Office of Human Resources in writing by May [[1]] 21, 2008. [[Members]] Any member chosen to participate must complete all required forms and retire as of July 1, 2008.

(D) [[Members]] Any member employed by a participating [[agencies are]] agency is not eligible to participate.

(E) A member who retires on a disability retirement under Section 33-43 or a discontinued service retirement under Section 33-45(d) is not eligible to participate.

(2) *Early Retirement Reduction.*

(A) A member who is eligible for early retirement and within one year of meeting the criteria for normal retirement [[will]] must not have any early retirement reduction applied to the member's pension benefit.

(B) A member who is eligible for early retirement and within two years of meeting the criteria for normal retirement [[will]] must have an early retirement reduction factor of [[two percent (2%)]] 2% applied to the member's pension benefit.

(3) *Additional Retirement Benefit.* In addition to a member's pension benefit calculated under this Section, the member [[will]] must receive an additional $25,000 retirement benefit. The member may elect to receive the additional $25,000 retirement benefit as follows:

(A) [[Upon]] When the [[member's retirement]] member retires, the additional $25,000 retirement benefit [[will]] must be paid:

(i) to the member in one lump sum;

(ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or

(iii) a combination of (i) and (ii);

(B) Beginning on the member's retirement date, 12 monthly installment payments [[will]] must be paid:

(i) to the member;

(ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or

(iii) a combination of (i) and (ii); or

(C) as an additional retirement benefit paid over the member's lifetime in the pension option elected by the member under Section 33-44.

(4) *Cost of Living.* Cost of living adjustments do not apply to this benefit. [[No]] A cost of living [[adjustments calculated]] adjustment under [[subsection]] Section 33-44(c) [[will]] must not include the $25,000 additional retirement benefit.

(5) *Approval.* The Chief Administrative Officer must approve a request to participate in the program from a member employed [[by]] in the Executive Branch. The Council Staff Director must approve a request to participate in the program from a member employed [[by]] in the Legislative Branch. If more than [[twenty percent (20%)]] 20% of members eligible to participate in the Executive Branch, [[both]] either Countywide [[and]] or by department, [[request]] apply to participate in the program, the Chief Administrative Officer may limit the number of [[members, both]] participants, either on a Countywide [[and]] or department basis. If more than 20% of members eligible to participate in the Legislative Branch apply to participate in the program, the Council Staff Director may limit the number of participants. The Chief Administrative Officer and the Council Staff Director [[will]] must base any [[limitations]] limits on the number of participants on years of service with the County. Years of service with the County [[does]] must not include service with a participating agency, purchased service, or sick leave.

(6) *Survivor Benefit.* If a member elects to receive the additional retirement benefit over a 12 month period and the member dies before receiving all 12 payments, the remaining payments [[will]] must not be paid.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This act takes effect on the date it becomes law.

Approved:

Michael J. Knapp 15 May 08

Michael J. Knapp, President, County Council — Date

Approved:

Isiah Leggett 21 May 08

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer 5/22/08

Linda M. Lauer, Clerk of the Council — Date

AGENDA ITEM 5
March 24, 2009
Introduction

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Introduction**: Expedited Bill 10-09, Personnel – Retirement Incentive Program 2009

Expedited Bill 10-09, Personnel – Retirement Incentive Program 2009, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on March 24. A public hearing is tentatively scheduled for April 14 at 1:30 p.m.

Bill 10-09 would establish a retirement incentive program (RIP) for certain members of the Employees' Retirement System. Group A, E or H members eligible for normal retirement as of June 1, 2009 or eligible for early retirement and within two years of meeting the criteria for normal retirement as of June 1, 2009 may apply for the RIP. The Chief Administrative Officer must approve applications from Executive Branch employees. The Council Staff Director must approve applications from Legislative Branch employees.

The retirement incentive would be no reduction for early retirement and an additional $40,000 payment. Group E members in the integrated retirement plan approved to participate in the RIP would also receive an enhanced benefit payment when reaching Social Security age in addition to the other benefits. Members must apply by April 1, complete all forms by May 1, and retire as of June 1, 2009.

This packet contains:	Circle #
Expedited Bill 10-09	1
Legislative Request Report	6
Memo from County Executive	7

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Expedited Bill No. 10-09
Concerning: Personnel – Retirement Incentive Program 2009
Revised: March 20, 2009
Draft No. 1
Introduced: March 24, 2009
Expires: September 24, 2010
Enacted: ____________
Executive: ____________
Effective: ____________
Sunset Date: None
Ch. _____, Laws of Mont. Co. ________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) provide a retirement incentive program for certain members of the Employees' Retirement System; and
(2) generally amend the law regarding the Employees' Retirement System.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-42

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-42 is amended as follows:

Sec. 33-42. Amount of pension at normal retirement date or early retirement date.

* * *

(k) *Retirement Incentive Program 2009*

(1) *Eligibility.*

(A) A Group A, E or H member employed in a full-time position may apply to participate in the Retirement Incentive Program 2009 if the member is eligible for:

(i) normal retirement as of June 1, 2009; or

(ii) early retirement and within two years of meeting the criteria for normal retirement as of June 1, 2009.

(B) A member is not eligible to participate if the member:

(i) receives a disability retirement under Section 33-43;

(ii) receives a discontinued service retirement under Section 33-45(d);

(iii) is an elected or appointed official; or

(iv) is employed by a participating agency.

(C) A member must apply to participate in the Retirement Incentive Program 2009 with the Office of Human Resources in writing by April 1, 2009. A member chosen to participate must complete all required forms by May 1, 2009 and retire as of June 1, 2009.

(D) A member who applies for a disability retirement under Section 33-43 must not receive a benefit under this

Subsection unless the application for disability retirement is denied and all appeals exhausted.

(2) *Early retirement reduction.* A participant's pension benefit must not be reduced for early retirement if the member is eligible for early retirement and within two years of meeting the criteria for normal retirement.

(3) *Additional Retirement Benefit.* In addition to a participant's pension benefit calculated under this Subsection, a member must be paid an additional $40,000 retirement benefit. The member must elect to receive the additional $40,000 retirement benefit as:

(A) a lump sum on August 1, 2009:

(i) to the member;

(ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or

(iii) a combination of (i) and (ii); or

(B) 12 equal monthly payments beginning on August 1, 2009:

(i) to the member;

(ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or

(iii) a combination of (i) and (ii); or

(C) an additional retirement benefit paid over the member's lifetime in the pension option elected by the member under Section 33-44 beginning on August 1, 2009.

(4) *Group E Benefit.* The benefit for a Group E member in the integrated retirement plan must be calculated by substituting 1.65% for 1.25% in Section 33-42(b)(2)(C)(ii).

(5) *Cost of Living.* Cost of living adjustments do not apply to this benefit. A cost of living adjustment under Section 33-44(c) must not include the $40,000 additional retirement benefit.

(6) *Approval.* The Chief Administrative Officer must approve a request to participate in the program from a member employed in the Executive Branch. The Council Staff Director must approve a request to participate from a member employed in the Legislative Branch. If more than 30% of members eligible to participate in the Executive Branch either Countywide or by department apply to participate in the program, the Chief Administrative Officer may limit the number of participants, either on a Countywide or department basis. If more than 30% of members eligible to participate in the Legislative Branch apply to participate in the program, the Council Staff Director may limit the number of participants. The Chief Administrative Officer and the Council Staff Director must base any limits on the number of participants on years of service with the County. Years of service with the County must not include service with a participating agency, purchased service, or sick leave.

(7) *Survivor Benefit.* If a participant elects to receive the additional retirement benefit under Subsection 33-42(k)(3)(B) and the member dies before receiving all 12 monthly payments, the remaining payments must not be paid.

Sec. 2. Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

____

Philip M. Andrews, President, County Council   Date

Approved:

____

Isiah Leggett, County Executive   Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council   Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 10-09, Personnel - Retirement Incentive Program 2009

DESCRIPTION: The requested expedited legislation provides a retirement incentive program for certain members of the Employees' Retirement System in Groups A, E, and H.

PROBLEM: As a result of the projected budget challenges for FY10 there is a need to reduce the size of the County workforce.

GOALS AND OBJECTIVES: The Bill would provide a financial incentive to employees to retire. This will enable the County to reduce its workforce while coordinating Reduction in Force (RIF) efforts so as to minimize the numbers of displaced employees due to the RIF.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Fiscal impact statement will be presented ASAP.

EVALUATION: N/A

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BD
cc
BSM

B-11

041058

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 16, 2009

TO: Council President Phil Andrews

FROM: Isiah Leggett, County Executive

SUBJECT: Expedited Bill - 2009 Retirement Incentive Plan

The purpose of this memorandum is to transmit draft legislation to introduce a retirement incentive plan for 2009.

The expedited bill amends the Employees' Retirement System (ERS) to provide a one-time retirement incentive program for full-time employees enrolled in ERS Groups A, E or H who are eligible for normal retirement or eligible for early retirement and within two years of normal retirement eligibility. This RIP is intended to coordinate with the anticipated Reduction in Force efforts by providing an incentive for senior employees to retire and preserve jobs for less senior staff whose positions may be slated for abolishment as a result of the RIF.

The proposed incentive would include a $40,000 incentive payment to eligible plan participants who retire June 1, 2009. The incentive will be paid either in a lump sum, or over time. Eligible employees who retire on an early retirement under the plan would have the early retirement penalties waived. In addition, a previously agreed upon plan feature scheduled to take effect on July 1 for Group E members will be made available one month earlier for those who elect to retire under the RIP. That feature would improve the multiplier for calculating the integrated benefit paid at social security age from 1.25% to 1.65%.

There is a pool of 685 employees who are eligible for the RIP and the expedited bill would cap incentive payments to 30 percent of eligible members, at the Chief Administrative Officer's discretion. Eligibility for the incentive in those departments where the cap is imposed will be based on seniority.

A fiscal impact statement will be provided to the Council as soon as possible.