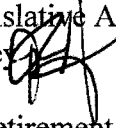


MEMORANDUM

June 13, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney
Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 23-14, Retirement Plans – Definitions - Administration

Government Operations and Fiscal Policy Committee recommendation (3-0): enact Expedited Bill 23-14 as introduced.

Expedited Bill 23-14, Retirement Plans – Definitions – Administration - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on May 6. A public hearing was held on June 10 and a Government Operations and Fiscal Policy Committee worksession was held on June 12.

Background

The County submitted the Employees' Retirement System (ERS) to the Internal Revenue Service (IRS) in order to receive a determination letter that the ERS remains tax qualified. The Bill would delete outdated references to Internal Revenue Code §415 and define "direct rollover" and "eligible retirement plan" as requested by the IRS. In addition, the Bill would make other amendments to clarify administrative practices in areas where the Montgomery County Code does not provide guidance. Bill 23-14 would amend the retirement plans to:

- (1) provide that sick leave is used for vesting purposes in the Employees' Retirement Plan;
- (2) provide that months of service are included for vesting purposes in the Guaranteed Retirement Income Plan and the Retirement Savings Plan;
- (3) permit the Chief Administrative Officer to authorize a designee to receive a beneficiary form;
- (4) clarify that a participant continues to participate in the same retirement plan after changing employment from the County directly to a participating agency or from a participating agency directly to the County;
- (5) clarify that a part-time employee hired before 1994 who has not participated in either the Retirement Savings Plan or the Guaranteed Retirement Income Plan may elect to participate in either plan;

- (6) clarify that a DRSP/DROP account balance must not be distributed until the final decision on a disability application;
- (7) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits;
- (8) delete the requirement that the Disability Panel meet to review applications; and
- (9) define a “direct rollover” and an “eligible retirement plan.”

Public Hearing

Linda Herman, Executive Director of the Montgomery County Retirement Plans, supported the Bill on behalf of the Executive. See ©28. There were no other speakers at the June 10 hearing.

GO Committee Worksession

The Government Operations and Fiscal Policy Committee reviewed the Bill at a worksession on June 12. Linda Herman represented the Executive Branch. The Committee reviewed the Bill and discussed its purpose. The Committee (3-0) recommended approval of the Bill as introduced.

Issues

1. Which amendments were required by the Internal Revenue Service?

The Internal Revenue Service (IRS) must approve a retirement plan for the plan to be tax qualified under the Internal Revenue Code (IRC). An employee’s contributions to a retirement plan can be made with pre-tax dollars if the plan is tax qualified. Recently, the County submitted the Employee’s Retirement System (ERS) to the IRS for approval. The IRS determination letter approved the ERS subject to several minor amendments. See ©21-27. The IRS requested the County to amend the ERS to delete outdated references to the limits on pensions under IRC §415 and to add a definition for “direct rollover” and “eligible retirement plan.” Bill 23-14 would make these changes. See lines 140-166 on ©7-8 and lines 75-107 on ©4-5. This amendment would not change the benefits or administration of the ERS. **Committee recommendation (3-0):** approve the amendments required by the IRS.

2. Which amendments clarify administrative practices?

In addition to the mandatory amendments required by the IRS discussed above, the Executive requested 7 other amendments to clarify the administrative practices currently used to administer the plans. These changes are:

- (a) *Provide that sick leave is used for vesting purposes in the ERS.* Section 33-41 currently permits an employee to receive credit toward retirement for accumulated sick leave. Bill 23-14 would clarify that accumulated sick leave can be used to reach the 5-year vesting requirement that must be met to be eligible for a benefit. See lines 50-51 on ©3.
- (b) *Provide that months of service are included for vesting in the Guaranteed Retirement Income Plan (GRIP) and the Retirement Savings Plan (RSP).* An

employee must have at least 3 years of credited service to become vested in the County's contributions under the GRIP or the RSP. Bill 23-14 would clarify that months of service totaling less than a year can also be used to become vested. See lines 245-260 on ©11.

- (c) *Permit the Chief Administrative Officer (CAO) to authorize a designee to receive a beneficiary form.* Current law requires an employee to file a beneficiary form with the Office of Human Resources. Bill 23-14 would permit the CAO to authorize a designee to receive the form other than the Office of Human Resources, such as a third party provider. See lines 178-193 on ©8-9 and lines 271-286 on ©12.
- (d) *Clarify that a participant continues to participate in the same retirement plan after changing employment from the County directly to a participating agency or from a participating agency directly to the County.* Section 33-36 permits any agency or political subdivision to participate in the County retirement plans, upon request, at the participating agency's own expense. Current law requires a new non-public safety County employee or a new employee of a participating agency to choose either the GRIP or the RSP. Once made, the choice cannot be changed. Bill 23-14 would clarify an employee who changes employment from the County to a participating agency or from a participating agency to the County must remain in the same retirement plan without being granted an opportunity to make a new election of either the GRIP or the RSP. See lines 15-18 on ©2, lines 218-222 on ©10, and lines 237-240 on ©10.
- (e) *Clarify that a part-time employee hired before 1994 who has not participated in either the RSP or the GRIP may elect to participate in either plan.* Current law permits a part-time employee hired after 1994 to elect to participate in either plan at any time. Bill 23-14 would clarify that a part-time employee hired before 1994 who chose not to participate in either plan retains the right to make a one-time irrevocable election to participate in either plan at any time. See lines 7-13 on ©2.
- (f) *Clarify that a DRSP or DROP account balance must not be distributed until the final decision on a disability retirement application is made.* Under current law, a member in the DRSP or DROP plan who applies for, and receives, a service-connected disability retirement pension, must choose to receive either the disability retirement pension or the DRSP or DROP account balance. Bill 23-14 would clarify that the County must not distribute an account balance to a member who leaves employment while an application for a service-connected disability retirement pension is still pending so that the member can retain the option of accepting the pension or the account balance if the application is approved. See lines 28-40 on ©3.
- (g) *Delete the requirement that the Disability Panel meet to review applications.* The disability review panel consists of 4 medical doctors who are paid on a monthly basis for work performed. They make recommendations to the CAO based upon their review of the medical records, which may include an independent medical

examination. Bill 23-14 would remove the requirement that the 4 doctors meet to review the medical evidence. See lines 115, 123, 129, and 130 on ©6.

Committee recommendation (3-0): approve each of these amendments.

This packet contains:	<u>Circle #</u>
Bill 23-14	1
Legislative Request Report	13
Executive's Memo	15
Fiscal and Economic Impact statement	17
IRS Determination Letter	21
Testimony of Linda Herman	28

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Expedited Bill No. 23-14
Concerning: Retirement Plans --
Definitions -- Administration --
Amendments
Revised: April 16, 2014 Draft No. 5
Introduced: May 6, 2014
Expires: November 6, 2015
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) provide that sick leave is used for vesting purposes in the Employees' Retirement Plan;
- (2) provide that months of service are included for vesting purposes in the Guaranteed Retirement Income Plan and the Retirement Savings Plan;
- (3) permit the Chief Administrative Officer to authorize a designee to receive a beneficiary form;
- (4) clarify that a participant continues to participate in the same retirement plan after changing employment from the County directly to a participating agency or from a participating agency directly to the County;
- (5) clarify that a part-time employee hired before 1994 who has not participated in either the Retirement Savings Plan or the Guaranteed Retirement Income Plan may elect to participate in either plan;
- (6) clarify that a DRSP/DROP account balance must not be distributed until the final decision on a disability application;
- (7) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits;
- (8) delete the requirement that the Disability Panel meet to review applications;
- (9) define a "direct rollover" and an "eligible retirement plan"; and
- (10) generally amend the law regarding the Employees' Retirement System and the Retirement Savings Plan.

By amending

Montgomery County Code

Chapter 33, Personnel and Human Resources

Sections 33-37, 33-38A, 33-41, 33-42, 33-43, 33-44, 33-46, 33-115, 33-119, and 33-120

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

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

Sec. 1. Sections 33-37, 33-38A, 33-41, 33-42, 33-43, 33-44, 33-46, 33-115, 33-119 and 33-120 are amended as follows:

33-37. Membership requirements and membership groups.

* * *

(k) *Election to join the guaranteed retirement income plan.*

* * *

(4) An eligible part time [or temporary] employee [hired on or after October 1, 1994] who does not participate in the retirement savings plan may make a one-time irrevocable election to participate in the guaranteed retirement income plan after the employee completes at least 150 days of employment. Participation must begin on the first full pay period beginning 30 days after the employee makes the election.

* * *

(7) An individual who changes employment from the County government to a participating agency or from a participating agency to the County government must continue to participate in his or her retirement plan and is not eligible to make an election.

* * *

33-38A. Deferred Retirement Option Plans.

* * *

(a) *DROP Plan for Group F members.*

* * *

(7) *Disability retirement.* An employee may apply for disability retirement prior to the termination of the employee's participation in the program.

* * *

(C) If a DRSP participant ends participation in the program before a final decision is made on the disability retirement application, the DRSP account must not be distributed until a final decision is made.

* * *

(b) *DROP Plan for Group G members.*

* * *

(7) *Disability retirement.*

* * *

(E) If a DROP participant ends participation in the program before a final decision is made on the disability retirement application, the DROP account must not be distributed until a final decision is made.

* * *

33-41. Credited service.

* * *

(f) *Use of sick leave for credited service.* An employee must receive credit toward retirement for any accumulated sick leave, up to a maximum of 4,224 hours. Each 176 hours of accumulated sick leave is equal to 1 month of credited service. Accumulated sick leave totaling less than 11 days must not be credited for retirement purposes. Accumulated sick leave totaling 11 to 22 days must be credited as 1 month of service for retirement purposes. A member must have sick leave credited for vesting purposes under Section 33-45. An employee who transfers to the Retirement Savings Plan must receive credit toward retirement under the optional plan or integrated plan under Section 33-37(i) for the employee's accumulated sick leave.

* * *

(q) For the guaranteed retirement income plan, subsections (a)-(o) do not apply and credited service must be determined only under this subsection.

(1) Credited service includes the total County service the participant rendered under the guaranteed retirement income plan, the retirement savings plan, the optional retirement plan, the integrated plan, and the elected officials' plan. Each participant must receive one year of credited service for each year of County service and one month of credited service for each month of County service [while participating in one of the County's retirement plans.] during which the participant contributed to a County retirement plan. Each year of County service ends on the anniversary of the participant's date of participation.

* * *

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

* * *

(g) *Maximum annual contribution to elected officials' plan.*

* * *

(2) For purposes of this subsection (g), the annual addition must be comprised of:

(A) County elected officials' contributions; [and]

(B) required elected officials' participant contributions; [The lesser of:

(i) One-half of the total of required and voluntary elected officials' participant contributions allocated

to the elected officials' participant's required and
voluntary elected officials' participant
contributions accounts; or

- (ii) All of the required and voluntary elected officials'
participant contributions allocated to the required
and voluntary elected officials' participant
contributions accounts in excess of six (6) percent
of the elected officials' participant's
compensation.]

(C) voluntary elected officials' participant contributions; and

(D) forfeitures used to reduce the County elected officials'
contributions in accordance with Section 33-40(d)(2)(D).

* * *

- [(4) County elected officials' contributions that would be allocated
to county elected officials' contributions accounts of elected
officials' participants but for the limitations of this subsection
(g), must be carried over to subsequent years and allocated in
order of time to the county elected officials' contributions
accounts which would have received such contributions but for
the limitations set forth in this subsection (g). Amounts carried
over must be allocated by the chief administrative officer to a
suspense account that must be invested in a fixed income fund.
Any earnings of the suspense account must be allocated ratably
among the county elected officials' contributions accounts of all
the elected officials' participants except as otherwise provided
in this subsection (g).]

[(5)] (4) * * *

109 [(6)] (5) * * *

110 * * *

111 **33-43. Disability retirement.**

112 * * *

113 (d) *Disability retirement procedures.*

114 * * *

115 (4) Before the Panel [meets to review] discusses an application for
 116 a member other than a member of the Firefighter/Rescuer
 117 Bargaining Unit, the Panel must advise each party of the
 118 deadline date for submitting information to the Panel. The
 119 Panel must allow a reasonable amount of time for the parties to
 120 submit additional information, and may extend the deadline at
 121 the request of either party for good cause shown.

122 * * *

123 (6) The Panel must [meet in person, by telephone conference, or by
 124 video conference, and] review and consider all evidence
 125 submitted to it no later than 60 days after the application is
 126 filed. A Panel must include either 2 or 3 members. At least 2
 127 members must vote in favor of a decision to take any action
 128 under this Section.

129 (7) Within 30 calendar days after the Panel's [last meeting] final
 130 discussion at which the application was considered, the Panel
 131 must issue a written recommendation to the Chief
 132 Administrative Officer regarding whether the applicant meets
 133 the criteria for disability retirement benefits for non-service-
 134 connected disability in accordance with subsections (e)(2), (3)

and (4) or service-connected disability in accordance with subsection (f).

* * *

33-44. Pension payment options and cost-of-living adjustments.

* * *

(q) *Direct rollover distributions.* A member or beneficiary may elect, in any manner prescribed by the Chief Administrative Officer at any time, to have any portion of eligible rollover distribution [(as defined in the Internal Revenue Code)] paid directly to an eligible retirement plan [(as defined in the Internal Revenue Code)] specified by the member in a direct rollover. [For purposes of this subsection, a direct rollover is a payment from the retirement system to the eligible retirement plan specified by the member.] A member may not elect a direct rollover if the eligible rollover distribution is less than \$200.00. As used in this subsection:

(1) direct rollover means a payment from the retirement system to the eligible retirement plan specified by the member; and

(2) eligible retirement plan means:

(A) an individual retirement account described in Internal Revenue Code Section 408(a);

(B) an individual retirement annuity described in Internal Revenue Code Section 408(b) (other than an endowment contract);

(C) a qualified trust;

(D) an annuity plan described in Internal Revenue Code Section 403(a);

(E) an eligible deferred compensation plan described in

Internal Revenue Code Section 457(b) which is maintained
by an eligible employer described in Internal Revenue
Code Section 457(e)(1)(A); or

(F) an annuity contract described in Internal Revenue Code
Section 403(b).

* * *

33-46. Death benefits and designation of beneficiaries.

* * *

(h) *Guaranteed retirement income plan.* Subsections (a)-(g) do not apply to the guaranteed retirement income plan. If a participant dies before receiving the participant's guaranteed retirement income plan account, the guaranteed retirement income plan account balance must be distributed to the participant's designated beneficiary in a lump sum as soon as practicable after the participant's death, but not later than the December 31st of the year containing the fifth anniversary of the participant's death.

(1) A participant may name a primary beneficiary or beneficiaries and contingent beneficiary or beneficiaries on a designation of beneficiaries form filed with the Office of [human] Human Resources, or designee of the Chief Administrative Officer. If a participant names 2 or more persons as beneficiaries, the persons are considered co-beneficiaries and share the benefit equally unless the participant specifies otherwise on the designation of beneficiaries form. A participant may change any named beneficiary by completing a new designation of beneficiaries form. The consent of the beneficiary or beneficiaries is not required to name or change a beneficiary. The designation is

effective when the participant signs the form even if the participant is not living when the Office, or designee of the Chief Administrative Officer, receives the request, but without prejudice for any payments made before the Office, or designee of the Chief Administrative Officer, received the request.

* * *

33-115. Participant requirements and participant groups.

(a) *Participant Requirements.*

* * *

(6) An employee who is not an active member of a County retirement plan but is eligible for membership in the integrated retirement plan may become a member of the Retirement Savings Plan or the guaranteed retirement income plan. The employee must remain a member of the Retirement Savings Plan or the guaranteed retirement income plan until the employee becomes ineligible for membership [in Group I or II].

(7) Election to participate in the guaranteed retirement income plan.

(A) A full time employee hired or rehired on or after July 1, 2009 and a part time and temporary employee who becomes full time after July 1, 2009 may participate in the guaranteed retirement income plan. An eligible employee must make a one-time irrevocable election during the first 150 days of employment. If an eligible employee elects to participate, participation must begin on the first pay period after an employee has completed 180 days of full time employment. A full time employee who does not elect to participate in the guaranteed retirement income plan must

participate in the retirement savings plan beginning on the first pay period after the employee has completed 180 days of full time employment. A participant who changes employment from the County directly to a participating agency or from a participating agency directly to the County must continue to participate in his or her retirement plan and is not eligible to make an election.

(B) A part time [or temporary] employee [hired on or after October 1, 1994] who is not a participant in the retirement savings plan may make a one-time irrevocable election to participate in the guaranteed retirement income plan any time after the employee has completed 150 days of employment.

(b) *Participants groups and eligibility.*

(1) Group I. Except as provided in the last sentence of Section 33-37(e)(2), any full-time or career part-time employee meeting the criteria in paragraphs (A) or (B) must participate in the retirement savings plan if the employee begins, or returns to, County service on or after October 1, 1994. An employee hired on or after July 1, 2009 must be employed on a full time or part time basis with the County for 180 days before participating in the retirement savings plan. An individual who changes employment from the County government directly to a participating agency or from a participating agency directly to the County government must continue to participate in the same retirement plan. Participation must begin on the first payroll after an employee has completed 180 days of employment if the employee:

* * *

33-119. Credited service.

(a) A participant's credited service is the total years and months of County service the participant rendered under the Retirement Savings Plan, the optional retirement plan, the integrated plan, and the guaranteed retirement income plan. A participant must receive credited service for any period when the participant was a part-time employee contributing to an employer-supported savings program provided by a participating agency. An employee hired before July 1, 2009 must receive 1 year of credited service for each year of County service. Each year of County service ends on the anniversary of the date the participant [starting] started working for the County. A participant must also receive one month of credited service for each month during which the participant worked at least one hour for the County. An employee hired on or after July 1, 2009 must receive one year of credited service for each year of participation in a County retirement plan and one month of credited service for each month during which the employee participated in a County retirement plan. A person who transferred to the Retirement Savings Plan under Section 115(a)(3) or (4) must receive credit for County service for creditable State service earned as a State employee of the County Department of Social Services. A person who does not transfer to the Retirement Savings Plan under Section 115(a)(3) or (4) must not receive credit for County service for this State service.

* * *

33-120. Distribution of Benefit.

* * *

(c) *Death benefits.*

* * *

(3) A participant may name a primary beneficiary or beneficiaries and contingent beneficiary or beneficiaries on a designation of beneficiaries form filed with the Office of Human Resources, or designee of the Chief Administrative Officer. If a participant names 2 or more persons as beneficiaries, the persons are considered co-beneficiaries and share the benefit equally unless the participant specifies otherwise on the designation of beneficiaries form. A participant may change any named beneficiary by completing a new designation of beneficiaries form. The consent of the beneficiary or beneficiaries is not required to name or change a beneficiary. The designation is effective when the participant signs the form even if the participant is not alive when the Office, or designee of the Chief Administrative Officer, receives the request, but without prejudice for any payments made before the Officer, or designee of the Chief Administrative Officer, received the request.

* * *

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 on which it becomes law.

Approved:

Craig L. Rice, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 23-14

Retirement Plans – Definitions – Administration - Amendments

- DESCRIPTION:** The Bill would amend the retirement plans to:
- (1) provide that sick leave is used for vesting purposes in the Employees' Retirement Plan;
 - (2) provide that months of service are included for vesting purposes in the Guaranteed Retirement Income Plan and the Retirement Savings Plan;
 - (3) permit the Chief Administrative Officer to authorize a designee to receive a beneficiary form;
 - (4) clarify that a participant continues to participate in the same retirement plan after changing employment from the County directly to a participating agency or from a participating agency directly to the County;
 - (5) clarify that a part-time employee hired before 1994 who has not participated in either the Retirement Savings Plan or the Guaranteed Retirement Income Plan may elect to participate in either plan;
 - (6) clarify that a DRSP/DROP account balance must not be distributed until the final decision on a disability application;
 - (7) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits;
 - (8) delete the requirement that the Disability Panel meet to review applications; and
 - (9) define a "direct rollover" and an "eligible retirement plan."

PROBLEM:

The County submitted the Employees' Retirement System (ERS) to the IRS in order to receive a determination letter that the ERS remains tax qualified. The Bill would delete outdated references to Internal Revenue Code §415 and define "direct rollover" and "eligible retirement plan" as requested by the IRS. In addition, the Bill would make other amendments to clarify administrative practices in areas where the Montgomery County Code does not provide guidance.

**GOALS AND
OBJECTIVES:**

To amend the ERS as requested by the IRS in connection with receiving a favorable IRS determination letter and to clarify administrative practices.

COORDINATION: Montgomery County Employee Retirement Plans, Office of Human Resources, County Attorney

FISCAL IMPACT: Office of Management and Budget

**ECONOMIC
IMPACT:** Department of Finance

EVALUATION: N/A

**EXPERIENCE
ELSEWHERE:** N/A

**SOURCE OF
INFORMATION:** Linda Herman, Montgomery County Employee Retirement Plans
Amy Moskowitz, Office of the County Attorney

**APPLICATION
WITHIN
MUNICIPALITIES:** N/A

PENALTIES: N/A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 7, 2014

TO: Craig L. Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Legislation to Amend Chapter 33, Personnel and Human Resources

I am attaching for the Council's consideration a bill that would amend the County's retirement law to comply with the request received from the Internal Revenue Service (IRS) to make technical amendments to the Employees' Retirement System (ERS) so that the ERS remains tax qualified and the County receives a favorable determination letter from the IRS. In addition, to clarify current administrative practices, we are also including other amendments.

The IRS has requested the following changes: (a) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; and (b) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporated by reference.

In addition, in order to clarify administrative practices in areas where the Montgomery County Code does not provide specific guidance, we are requesting amendments, including: crediting sick leave for vesting purposes in the ERS; crediting months of service for vesting purposes in the Retirement Savings Plan (RSP) and Guaranteed Retirement Income Plan (GRIP); allowing participants to submit beneficiary forms to a designee of the Chief Administrative Officer; providing that a participant continues participation in either the RSP or GRIP if a participant transfers employment between the County and a participating agency; permitting a part time employee hired before 1994 who has not participated in either the RSP or the GRIP to elect to participate in either plan; clarifying that a DRSP/DROP account balance will not be distributed if a disability application is pending; and deleting the requirement that the Disability Panel meet to review applications.

Thank you for your consideration of this matter.

Craig L. Rice, President
April 7, 2014
Page 2

IL:lh

Attachments: Determination letter from the IRS
Draft legislation

cc: Linda Herman, Executive Director, MCERP
Jennifer A. Hughes, Director, OMB
Joseph Adler, Director, OHR
Joseph F. Beach, Director, Finance

Fiscal Impact Statement
Council Bill XX-14, Employees' Retirement System and Retirement Savings Plan
Amendments

1. Legislative Summary (Enter narrative that explains the purpose of the legislation).
Expedited Bill ##-14 makes changes to the Code required by the Internal Revenue Service as a condition of receiving a favorable determination letter for the Employees' Retirement System. In addition, the Bill clarifies current operational procedures and processes involving the County's retirement plans.
2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.
This bill has no impact to County revenues or expenditures.
3. Revenue and expenditure estimates covering at least the next 6 fiscal years.
This bill has no impact to County revenues or expenditures.
4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
An actuarial analysis is not required since the bill has no material impact on the Employees' Retirement System, but rather only changes administrative procedures.
5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
N/A
6. An estimate of the staff time needed to implement the bill.
N/A – Bill is clarifying current procedures and processes.
7. An explanation of how the addition of new staff responsibilities would affect other duties.
N/A
8. An estimate of costs when an additional appropriation is needed.
N/A
9. A description of any variable that could affect revenue and cost estimates.
N/A
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
N/A
11. If a bill is likely to have no fiscal impact, why that is the case.
The Bill is making changes to the Code required by the IRS and also clarifies current administrative procedures and processes.

12. Other fiscal impacts or comments.

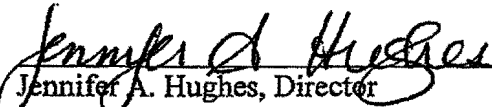
N/A

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

Linda Herman, MCERP

Amy Moskowitz, OCA

Corey Orlosky, OMB


Jennifer A. Hughes, Director
Office of Management and Budget

3/25/
Date

**Economic Impact Statement
Bill #-14, Employees' Retirement System and
Retirement Savings Plan Amendments**

Background:

This legislation would:

- Provide that sick leave is used for vesting purposes in the Employees' Retirement Plan;
- Provide that months of service are included for vesting purposes in the Guaranteed Retirement Income Plan (GRIP) and the Retirement Savings Plan (RSP);
- Permit participants to submit beneficiary forms to a designee of the Chief Administrative Officer (CAO);
- Clarify that a participant continues participation in either the RSP or GRIP if a participant transfers employment between the County and a participating agency and vice versa;
- Clarify that a part-time employee hired before 1994 who has not participated in either the RSP or GRIP may elect to participate in either plan;
- Clarify that a Disability Retirement Savings Plan (DRSP)/Deferred Retirement Option Plan (DROP) account balance will not be distributed until the final determination of a disability application;
- Delete the requirement that the Disability Panel meet to review applications;
- Make revisions required by the Internal Revenue Service as a condition of receiving a favorable determination letter; and
- Generally amend the law regarding the Employees' Retirement System and Retirement Savings Plan.

The purpose of Bill #-14 is to amend the Employees' Retirement System (ERS) as requested by the Internal Revenue Service (IRS) in connection with receiving a favorable IRS determination letter and to clarify administrative practices.

1. The sources of information, assumptions, and methodologies used.

Montgomery County Employee Retirement Plan (MCERP)

Based on information provided by (MCERP) in connection with the determination letter, the IRS requested technical changes to the ERS by amending or deleting specific provisions of the Internal Revenue Code. Those changes include:

- Delete outdated references to Internal Revenue Code Section 415, and
- Provide the definition of an "eligible retirement plan".

**Economic Impact Statement
Bill #-14, Employees' Retirement System and
Retirement Savings Plan Amendments**

To clarify administrative practices in order to provide guidance, Bill #-14 offers the amendments as presented in the Background section.

2. A description of any variable that could affect the economic impact estimates.

Bill #-14 would limit the distribution of a participant's DRSP/DROP account balance until a decision is made related to their pending disability application. Currently, if the participant receives a distribution from their DRSP/DROP account prior to the disability award being granted, the participant would be required to repay the amount of the distribution resulting in tax implications for the Plan and the participant. Because the number of people impacted by this change is minimal, Bill #-14 would have no economic impact.

Second, because the proposed legislation amends the Employees' Retirement System (ERS) as requested by the Internal Revenue Service (IRS) and clarifies administrative practices, those amendments would have no economic impact on employment, spending, saving or other economic variables.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Not applicable. See #2 above. Bill #-14 would have no economic impact.

4. If a Bill is likely to have no economic impact, why is that the case?

See #2 above. The proposed legislation clarifies administrative practices as requested by the Internal Revenue Service. No economic impact results from these changes.

5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Linda Herman, MCERP.



Joseph F. Beach, Director
Department of Finance

3/19/14
Date

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

RECEIVED

Date: SEP 05 2013

Employer Identification Number SEP 9 2013

52-6000980

DLN:

17007036078029

Person to Contact:

JENNIFER M THIMMADASIAH

ID# 31316

Contact Telephone Number:

(513) 263-4613

Plan Name:

MONTGOMERY COUNTY EMPLOYEES

RETIREMENT SYSTEM

Plan Number: 001

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received. This letter expires on January 31, 2014. This letter considered the 2009 Cumulative List of Plan Qualification Requirements.

This determination letter is applicable for the amendment(s) executed on 8/6/08 & 7/7/08.

Letter 2002 (DO/CG)

MONTGOMERY COUNTY MARYLAND

This determination letter is also applicable for the amendment(s) dated on 6/28/08 & 5/21/08.

This determination letter is also applicable for the amendment(s) dated on 4/10/08 & 12/17/07.

This determination is subject to your adoption of the proposed amendments submitted in your letter dated 4/25/13 & 2/27/13. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the Internal Revenue Code.

This determination letter is applicable to the plan and related documents submitted in conjunction with your application filed during the remedial amendment cycle ending 1/31/09.

The information on the enclosed addendum is an integral part of this determination. Please be sure to read and keep it with this letter.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,



Andrew E. Zuckerman
Director, EP Rulings & Agreements

Enclosures:
Publication 794
Addendum

MONTGOMERY COUNTY MARYLAND

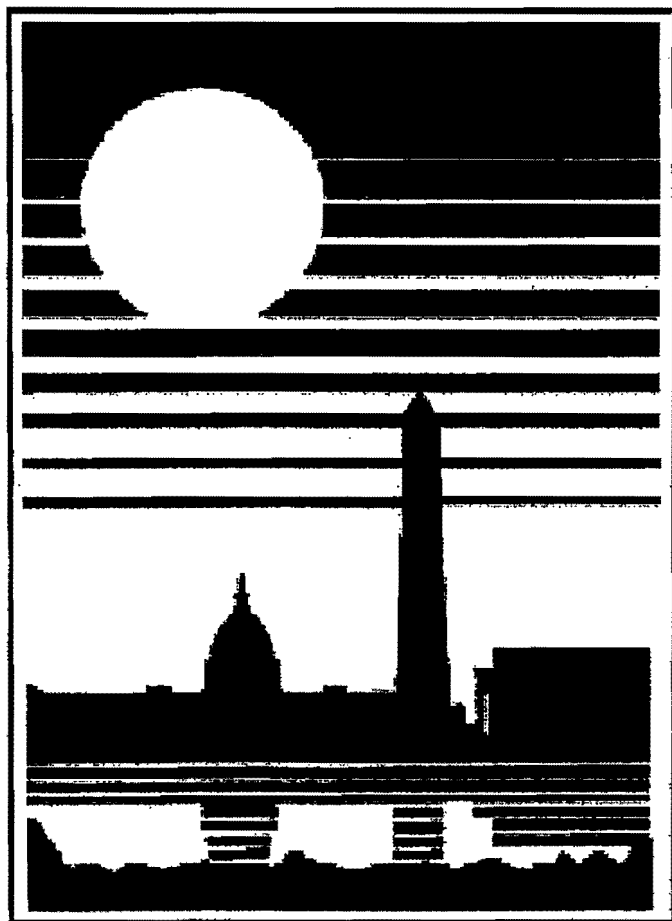
This letter is also applicable for the amendment(s) executed 4/27/07, 7/6/06, 12/15/04, 8/9/04, 7/8/04, 12/1/03, 7/10/03 and 3/24/03.



Department
of the
Treasury
Internal
Revenue
Service

Publication 794
(Rev. October 2010)
Catalog Number 20630M

Favorable Determination Letter



Introduction

This publication explains the significance of your favorable determination letter, points out some features that may affect the qualified status of your employee retirement plan and nullify your determination letter without specific notice from us, and provides general information on the reporting requirements for your plan.

Significance of a Favorable Determination Letter

An employee retirement plan qualified under Internal Revenue Code (IRC) section 401(a) (qualified plan) is entitled to favorable tax treatment. For example, contributions made in accordance with the plan document are generally currently deductible. However, participants will not include these contributions in income until the time they receive a distribution from the plan, at which time special income averaging rates for lump sum distributions may serve to reduce the tax liability. In some cases, taxation may be further deferred by rollover to another qualified plan or individual retirement arrangement. (See Publication 575, Pension and Annuity Income, for further details.) Finally, plan earnings may accumulate tax free. Employee retirement plans that fail to satisfy the requirements under IRC section 401(a) are not entitled to favorable tax treatment. Therefore, many employers desire advance assurance that the terms of their plans satisfy the qualification requirements.

The Internal Revenue Service provides such advance assurance through the determination letter program. A favorable determination letter indicates that, in the opinion of the IRS, the terms of the plan conform to the requirements of IRC section 401(a). A favorable determination letter expresses the IRS's opinion regarding the form of the plan document. However, to be a qualified plan under IRC section 401(a) entitled to favorable tax treatment, a plan must satisfy, in both form and operation, the requirements of IRC section 401(a), including nondiscrimination and coverage requirements. A favorable determination letter may also provide assurance, on the basis of information and demonstrations provided in your application, that the plan satisfies certain of these nondiscrimination and coverage requirements in form or operation. See the following topic, Limitations and Scope of a Favorable Determination Letter, for more details.

Limitations and Scope of a Favorable Determination Letter

A favorable determination letter is limited in scope. A determination letter generally applies to qualification requirements regarding the form of the plan. A determination letter may also apply to certain operational (non-form) requirements.

Generally, a favorable determination letter does not consider, and may not be relied on with regard to:

- certain requirements under IRC section 401(a)(4), including the requirement that the plan be nondiscriminatory in the amounts of contributions or benefits for highly compensated and nonhighly compensated employees;
- the coverage requirements under IRC sections 410(b) and 401(a)(26); and
- the definition of compensation under IRC section 414(s).

In addition, a favorable determination letter may not be relied on for any qualification changes that become effective, any guidance published, or any statutes enacted, after the issuance of the applicable Cumulative List of Changes in Plan Qualification Requirements (Cumulative List) unless the item has been identified in that Cumulative List for the cycle under which the application was submitted. See section 4 of Revenue Procedure (Rev. Proc.) 2007-44, 2007-28 I.R.B. 54.

However, if you requested one or more of the optional nondiscrimination and coverage determinations offered on the determination letter application forms (Form 5300, Form 5307, Schedule Q), your favorable determination letter considers, and may be relied on, with regard to the specific determination(s) you requested, provided you satisfy the following requirement: you must retain copies of the application forms, any required demonstrations, and all correspondence with the IRS Revenue Service related to the application for a favorable determination letter. **A favorable determination letter cannot be relied on with regard to any optional determination request unless all of the required information is retained.**

In addition, the following apply generally to all determination letters:

- If you maintain two or more retirement plans, some of which were either not submitted to the IRS for determination or not disclosed on each application, certain limitations and requirements will not have been considered on an aggregate basis. Therefore, you may not rely on the determination letter regarding the plans when considered as a total package.

- A determination letter for a defined benefit plan may be relied on regarding the requirements of IRC section 401(a)(26) if the application requested a determination regarding section 410(b).

- A determination letter does not consider the special requirements relating to: (a) affiliated service groups, (b) leased employees, or (c) plan assets or liabilities involved in a merger, consolidation, spin-off or transfer of assets with another plan unless the letter includes a statement that the requirements of IRC section 414(m) (affiliated service groups), or 414(n) (leased employees) has been considered.

- No determination letter may be relied on with respect to the effective availability of benefits, rights, or features under the plan. (See section 1.401(a)(4)-4(c) of the Income Tax Regulations.) Reliance on whether benefits, rights, or features are currently available to a non-discriminatory group of employees is provided to the extent requested in the application.

- A determination letter does not consider whether actuarial assumptions are reasonable for funding or deduction purposes or whether a specific contribution is deductible.

- A determination letter does not consider, and may not be relied on with respect to, certain other matters described in section 5 of Rev. Proc. 2009-6, 2009-1 I.R.B. 189 (i.e., whether a plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; the use of the substantiation guidelines contained in Rev. Proc. 93-42, 1993-31 I.R.B. 32; and certain qualified separate lines of

business requirements of IRC section 414(r)).

- The determination letter applies only to the employer and its participants on whose behalf the determination letter was issued.

- A determination letter does not express an opinion whether disability benefits or medical care benefits are acceptable as accident or health plan benefits deductible under IRC section 105 or 106.

- A determination letter does not express an opinion on whether the plan is a governmental plan defined in IRC section 414(d).

- A determination letter does not express an opinion on whether contributions made to a plan treated as a governmental plan defined in IRC section 414(d) constitute employer contributions under IRC section 414(h)(2), nor on whether a governmental excess benefit arrangement satisfies the requirements of IRC section 415(m).

You should become familiar with the terms of the determination letter. Please call the contact person listed on the determination letter if you do not understand any terms in your determination letter.

Retention of Information. Whether a plan meets the qualification requirements is determined from the information in the written plan document, the application form and the supporting information submitted by the employer. **Therefore, you must retain copies of any demonstrations or other information submitted with your application. Such demonstrations determine the extent of reliance provided by your determination letter. Failure to retain such information may limit the scope of reliance on issues for which demonstrations were provided.**

Other conditions for reliance. We have not verified the information submitted with your application. The determination letter will not provide reliance if:

- (1) there has been a misstatement or omission of material facts, (for example, the application indicated that the plan was a governmental plan and it was not a governmental plan);
- (2) the facts subsequently developed are materially different than the facts on

which the determination was made; or

(3) there is a change in applicable law.

Law changes affecting the plan. A determination issued to an adopting employer of an individually designed plan will be based on the most recent Cumulative List published prior to the one year period starting February 1st and ending January 31st in which the determination letter application was filed. The Cumulative List is a list published annually by the IRS that identifies on a year-by-year basis all changes in the qualification requirements resulting from statute changes, regulations, or other guidance published in the Internal Revenue Bulletin that are required to be taken into account in the written plan document. See sections 4, 13, and 14 of Rev. Proc. 2007-44 for further details. Generally, a determination letter issued to an adopting employer of a pre-approved plan (i.e., Master & Prototype (M&P) plan or volume submitter (VS) plan) will be based on the Cumulative List used by the IRS in reviewing the pre-approved plan. However, see section 19 of Rev. Proc. 2007-44 for exceptions to this rule. For terminating plans, a determination letter is based on the law in effect at the time of the plan's proposed date termination. See Section 8 of Rev. Proc. 2007-44.

Amendments to the plan. A favorable determination letter issued to an individually designed plan will provide reliance up to and including the expiration date identified on the determination letter. This reliance is conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. A favorable determination letter issued to an adopting employer of a preapproved plan will provide reliance up to and including the last day of the six-year cycle following the six-year remedial amendment cycle in which the determination letter application was filed. The reliance is conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. Also see Rev. Proc. 2005-16, 2005-10 I.R.B. 674 sections 5.01 and 15.05 and Announcement 2005-37, 2005-21 I.R.B. 1096.

Plan Must Qualify in Operation

Generally, a plan qualifies in operation if it continues to satisfy the coverage and nondiscrimination requirements and is maintained according to the terms on which the favorable determination letter was issued.

Changes in facts and other basis on which the determination letter was issued may mean that the determination letter may no longer be relied upon.

Some examples of the effect of a plan's operation on a favorable determination are:

Not meeting nondiscrimination in amount requirement. If the determination letter application requested a determination that the plan satisfies the nondiscrimination in amount requirement of section 1.401(a)(4)-1(b)(2) of the regulations on the basis of a design-based safe harbor, the plan will generally continue to satisfy this requirement in operation if the plan is maintained according to its terms. If the determination letter application requested a determination that the plan satisfies the nondiscrimination in amount requirement on the basis of a nondesign-based safe harbor or a general test, and the plan subsequently fails to meet this requirement in operation, the favorable determination letter may no longer be relied upon with respect to this requirement.

Not meeting minimum coverage requirements. If the determination letter application includes a request for a determination regarding the ratio percentage test of IRC section 410(b) and the plan subsequently fails to satisfy the ratio percentage test in operation, the letter may no longer be relied upon with respect to the coverage requirements. Likewise, if the determination letter application requests a determination regarding the average benefit test, the letter may no longer be relied on with respect to the coverage requirements once the plan fails to satisfy the average benefit test in operation.

Changes in testing methods. If the determination letter is based in part on a demonstration that a coverage or nondiscrimination requirement is satisfied, and, in the operation of the

plan, the method used to test that this requirement continues to be satisfied is changed (or is required to be changed because the facts have changed) from the method employed in the demonstration, the letter may no longer be relied upon with respect to this requirement.

Contributions or benefits in excess of the limitations under IRC section 415. A retirement plan may not provide retirement benefits or, in the case of a defined contribution plan, contributions and other additions, that exceed the limitations specified in IRC section 415. Your plan contains provisions designed to provide benefits within these limitations. Please become familiar with these limitations, for your plan will be disqualified if these limitations are exceeded.

Top-heavy minimums. If this plan primarily benefits employees who are key employees, it may be a top-heavy plan and must provide certain minimum benefits and vesting for non-key employees. If your plan provides the accelerated benefits and vesting only for years during which the plan is top-heavy, failure to identify such years and to provide the accelerated vesting and benefits will disqualify the plan.

Actual deferral percentage or contribution percentage tests. If this plan provides for cash or deferred arrangements, employer matching contributions, or employee contributions, the determination letter does not consider whether special discrimination tests described in IRC section 401(k)(3) or 401(m)(2) have been satisfied in operation. However, the letter considers whether the terms of the plan satisfy the section 401(k)(3) or 401(m)(2) requirements specified in IRC section 401(k)(3) or 401(m)(2).

Reporting Requirements

Most plan administrators or employers who maintain an employee benefit plan must file an annual return/report. The following is a general discussion of the forms to be used for this purpose. See the instructions to each form for specific information:

Form 5500-EZ Annual Return of One-Participant (Owners and their Spouses) Pension Benefit Plans - generally for a "one-participant" plan, which is a plan that covers only:

- (1) an individual, or an individual and his or her spouse who wholly own a business, whether incorporated or not; or
- (2) partner(s) in a partnership or the partner(s) and the partner's spouse.

If Form 5500-EZ cannot be used, the one-participant plan should use Form 5500, Annual Return/Report of Employee Benefit Plan.

See Instructions to Form 5500-EZ for specific rules.

Note: A "one-participant" plan that has no more than \$250,000 in assets at the end of the plan year is not required to file a return. However, Form 5500-EZ must be filed for any subsequent year in which plan assets exceed \$250,000. If two or more one-participant plans have more than \$250,000 in assets, a separate Form 5500-EZ must be filed for each plan.

Instead of filing the paper Form 5500-EZ, plan administrators or employers may choose to file electronically using Form 5500-SF. Detailed information for electronic filing is available in the 2009 Instructions for Form 5500-EZ or at www.efast.dol.gov.

A "Final" Form 5500-EZ must be filed if the plan is terminated.

Form 5500, Annual Return/Report of Employee Benefit Plan - for a pension benefit plan that is not eligible to file Form 5500-EZ.

Note. Keogh (H.R. 10) plans having over \$250,000 in assets are required to file an annual return even if the only participants are owner-employees. The term "owner-employee" includes a partner who owns more than 10% interest in either the capital or profits of the partnership. This applies to both defined contribution and defined benefit plans.

Form 5330 for prohibited transactions. Transactions between a plan and someone having a relationship to the plan (disqualified person) are prohibited, unless specifically exempted from this requirement. A few examples are loans, sales and exchanges of property, leasing of property, furnishing goods or services, and use of plan assets by the disqualified person. Disqualified persons who engage in a prohibited transaction for which there is no exception must file Form 5330 by the last day of the seventh month after the end of the tax year of the disqualified person.

Form 5330 for tax on nondeductible employer contributions to qualified plans - If contributions are made to this plan in excess of the amount deductible, a tax may be imposed upon the excess contribution. Form 5330 must be filed by the last day of the seventh month after the end of the employer's tax year.

Form 5330 for tax on excess contributions to cash or deferred arrangements or excess employee contributions or employer matching contributions - If a plan includes a cash or deferred arrangement (IRC section 401(k)) or provides for employee contributions or employer matching contributions (IRC section 401(m)), then excess contributions that would cause the plan to fail the actual deferral percentage or the actual contribution percentage test are subject to a tax unless the excess is eliminated within 2½ months after the end of the plan year. Form 5330 must be filed by the due date of the employer's tax return for the plan year in which the tax was incurred.

Form 5330 for tax on reversions of plan assets - Under IRC section 4980, a tax is payable on the amount of almost any employer reversion of plan assets. Form 5330 must be filed by the last day of the month following the month in which the reversion occurred.

Form 5310-A for certain transactions - Under IRC section 6058(b), an actuarial statement is required at least 30 days before a merger, consolidation, or transfer (including spin-off) of assets to another plan. This statement is required for all plans. However, penalties for non-filing will not apply to defined contribution plans for which:

- (1) The sum of the account balances in each plan equals the fair market value of all plan assets,
- (2) The assets of each plan are combined to form the assets of the plan as merged,
- (3) Immediately after a merger, the account balance of each participant is equal to the sum of the account balances of the participant immediately before the merger, and
- (4) The plans must not have an unamortized waiver or unallocated suspense account.

Penalties will also not apply if the assets transferred are less than three percent of the assets of the plan involved in the transfer (spinoff), and the transaction is not one of a series of two or more transfers (spinoff transactions) that are, in substance, one transaction.

The purpose of the above discussions is to illustrate some of the principal filing requirements that apply to pension plans. This is not an exclusive listing of all returns and schedules that must be filed.

3

**TESTIMONY on BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
ON EXPEDITED BILL 23-14, COUNTY'S RETIREMENT LAW**

June 10, 2014

Good afternoon Council President Rice and Members of the County Council. For the record, I am Linda Herman, Executive Director of the Montgomery County Employee Retirement Plans. I am here today on behalf of the County Executive to testify in support of Bill 23-14, Chapter 33 – Retirement & Investments.

The proposed Bill will amend the County's law related to the Employees' Retirement System to comply with IRS requested technical amendments as a condition of receiving a determination letter from the IRS reflecting that the System remains tax qualified. The IRS requested the following changes: delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; and provide the definition of an "eligible retirement plan" for rollover purposes rather than it being incorporated by reference.

In addition, in order to clarify administrative practices, in areas where the Montgomery County Code does not provide specific guidance, such as the crediting of sick leave for vesting purposes, we are also requesting amendments to the Code.

We look forward to working with the Council in its deliberations on this legislation.