



Maryland

DEPARTMENT OF BUDGET
AND MANAGEMENT

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lieutenant Governor

DAVID R. BRINKLEY
Secretary

MARC L. NICOLE
Deputy Secretary

January 10, 2020

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller State Building
Annapolis MD 21401-1911

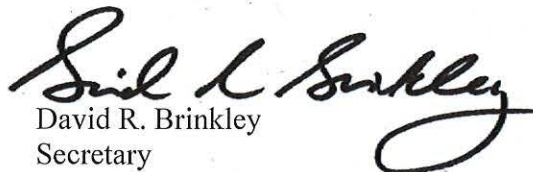
The Honorable Maggie McIntosh
Chair, House Appropriations Committee
Room 121, House Office Building
Annapolis MD 21401-1911

Dear Chair Guzzone and Chair McIntosh:

Pursuant to Chapter 690 of 2018 (State Personnel – Employees in the Same Classification – Report), the Department of Budget and Management (DBM), in consultation with the Maryland Department of Transportation (MDOT), submits the attached response on the practice of hiring a newly appointed employee at a higher pay rate than an incumbent employee who is in the same unit and classification.

If you have any questions, please contact me or Cynthia A. Kollner, Executive Director, Office of Personnel Services and Benefits, at 410-767-4716. Questions related to MDOT may be directed to Judy Slater at 410-865-1185.

Sincerely,


David R. Brinkley
Secretary

cc: Marc Nicole, Deputy Secretary, DBM
Barbara J. Wilkins, Director of Government Relations, DBM
Cynthia A. Kollner, Executive Director, Office of Personnel Services and Benefits, DBM
R. Earl Lewis, Jr., Deputy Secretary of Policy, Planning, and Enterprise Services, MDOT
Judy M. Slater, Director, Office of Human Resources, MDOT
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State Personnel
Employees in the Same Classification – Report
Chapter 690 of the Acts of 2018

PAY EQUITY

January 1, 2020

OVERVIEW

Chapter 690 of 2018 (State Personnel – Employees in the Same Classification – Report) asked the Department of Budget and Management (DBM), in consultation with the Maryland Department of Transportation (MDOT), to submit a report to the budget committees of the General Assembly by January 1, 2020, regarding the practice of hiring new employees at higher salaries than incumbent employees in the same unit and classification. The legislation specifically asks for DBM and MDOT to:

(1) outline a plan to:

- (a) phase out the practice of hiring a newly appointed employee at a higher pay rate than an incumbent who is in the same unit and in the same classification, unless higher pay is based on experience, qualification, or employee transfer; and
- (b) adjust the pay rate of each incumbent employee in a unit who is in the same classification as, and has a pay rate lower than, a newly appointed employee to be equal to the pay rate of the newly appointed employee, unless the higher pay rate of the new employee is based solely on a higher level of qualification, experience, or an employee transfer; and

(2) identify:

- (a) the units and number of incumbent employees affected by the plan;
- (b) timeline for implementing the plan; and
- (c) estimated cost associated with the plan.

DBM and MDOT submit this report in response to the legislation.

BARGAINING REQUIREMENT

Before the implementation of this plan, the State must negotiate the changes with the exclusive bargaining representatives (unions) for State employees. These changes will impact employees represented by seven different unions, including the Maryland Professional Employees Council, the American Federation of Teachers- Healthcare, the State Law Enforcement Officers Labor Alliance, the Maryland Transportation Authority Fraternal Order of Police, the Baltimore Washington International Professional Firefighters Association and the American Federation of State, County and Municipal Employees.

These negotiations will be undertaken in the economic reopener for FY 22 and will occur in the September to December of 2020 timeframe.

BACKGROUND

Pay rates in the State Personnel Management System (SPMS) are set by a series of pay grades and steps within each grade, fixed rates, or minimum and maximum amounts. When setting or amending a pay rate, the Secretary of Budget and Management considers the prevailing pay rates for comparable services in private and public employment, experience, living costs, benefits, and the financial condition and policies of the State¹. Negotiated increases with the State's exclusive bargaining representatives also affect pay rates. Pay rates are subject to limitations included in the State budget².

MDOT has an independent personnel system, the Transportation Service Human Resources System (TSHRS), which uses the standard salary schedule adopted by the Secretary of Budget and Management in establishing a pay plan. The Secretary of Transportation must prepare and recommend a standard pay plan for all classes of positions in the human resources management system that conforms to most provisions that govern the Standard Salary Plan of the State.

CURRENT PROCESS FOR SALARY ADJUSTMENTS

SPMS

The Division of Recruitment and Examination (RED) within DBM's Office of Personnel Services and Benefits (OPSB) has primary responsibility for the review and approval of initial appointments (new hires) in SPMS. RED reviews and approves requested salary rule exceptions related to initial appointments above mid-point in the salary plan (below mid-point approvals have been delegated to SPMS agency hiring authorities). As these requests are submitted to address current labor market factors and compete with other employers for the best qualified resources, RED researches and reviews justification of hiring difficulty and exceptional qualification against market trends and other State agency hires.

RED is responsible for maintaining and enforcing the Salary Guidelines established under the authority of the State Personnel and Pensions Article § 4-106 and 8-103, and Code of Maryland Regulations 17.04.02.09. Salary Guidelines are available to State agency personnel and human resources officers on a closed website. RED staff conducts outreach and training to appointing authorities on the guidelines.

Salary Guideline 6 offers guidance for adjusting the salaries of existing employees based on the salary of a new hire, as summarized in **Exhibit 1**. There are two guidelines that authorize State agencies to increase the salaries of current employees in the same class to the salary of a new hire:

- **Guideline 6B:** For new hires with starting salaries up to and including the midpoint of the salary grade, agencies **may** increase steps of current employees in the same class to the step of a new hire.

¹ State Personnel and Pensions Article §8-104(b)

² State Personnel and Pensions Article §8-104(c)

- **Guideline 6C:** For new hires with starting salaries above midpoint of the salary grade (as approved by DBM), agencies **may** increase steps of current employees in the same class to the step of the new hire based on recruiting difficulties only.

There are also two guidelines which do not authorize State agencies to increase the salaries of current employees to that of a new hire:

- **Guideline 6C:** If a new hire’s salary is based on exceptional qualifications.
- **Guideline 6D:** New hires under Special Appointment Status or in Management Service.

Exhibit 1
Salary Guideline 6 for Standard Pay Plan
Starting Salary for Initial Appointments Adjustments

Skilled Service & Professional Service

6B	(1) Appointing Authorities may appoint up to and including midpoint of the salary grade.
	(2) Agencies may increase steps of current employees in the same class to the step of a new hire.
6C	(1) DBM approval required for appointments above midpoint of the salary grade based on general recruiting difficulties.
	(2) Agencies may increase steps of current employees in the same class to the step of a new hire based on recruiting difficulties only.
6D	(1) DBM approval required for appointments above midpoint of the salary grade based on exceptional qualifications.
	(2) Steps of current employees may not be increased to the step of new hires based on exceptional qualifications.

Special Appointment & Management Service

6E	(1) Appointing Authorities may appoint up to and including third quartile of the salary grade.
	(2) DBM approval required for appointments above third quartile of the salary grade.
	(3) Agencies may not increase step of current employees to that of a new hire.

DBM: Department of Budget and Management
Source: Department of Budget and Management Salary Guidelines

Salary Guideline 6 is only applicable with the onboarding of a new hire. The guideline is not used to request a salary exception for existing employees, unless a current employee is promoted, reemployed, or reinstated to a class with a prevailing advance step used for new hires.

Upon the hiring of a new employee above the base salary of a position, an appointing authority is required to fill out form *MS-26 Application of Salary Guideline 6 – Above Base Salary Upon Initial Appointment* and submit the form to RED.

If a new employee's initial salary is above midpoint of the salary grade or (in the case of special appointment or management service positions) above the third quartile, then DBM approval is required. The MS-26 form is available to State agencies' appointing authorities in the Workday personnel system. The MS-26 form asks for the following information from the appointing authority:

- Has DBM been asked to recruit for this class? If "yes", when?
- Number and length of vacancies in this classification.
- List of any factors limiting recruitment choices.
- Number of advertisements, type, and duration for the position.
- Qualified applicants, number responding, and number interviewed.
- Lowest salary/step that other qualified applicants have indicated is acceptable.
- Has the eligible list/roster been cleared at the requested step?

In addition, the MS-26 form prompts the appointing authority to review the salaries of existing employees in that class and allows for possible adjustments based on the salary of the new hire. Specifically, the form asks:

"6B/6C Only: Number of employees in this classification below the requested step who may be affected by this action. Will your agency apply 6B(2) or 6C(3)?"

If applicable, appointing authorities must provide information on the current employees that would require salary adjustments, including the total cost to the agency.

MDOT

MDOT handles salary adjustment requests internally. The MDOT Secretary's Office (TSO) Office of Human Resources (OHR) Director's Office reviews and approves requests for initial appointment entrance rates of pay at advanced steps that are above the third quartile of the salary grade. The MDOT TSO OHR Director delegated authority to the Transportation Business Unit (TBU) Human Resources Manager to review and approve initial appointment entrance rates of pay above midpoint up to the third quartile of the salary grade. Regardless of which office is reviewing the request, entrance rates of pay above midpoint must be based on business necessity (such as recruitment difficulties). The review includes considerations such as the reasoning behind the request, market trend research, and analysis of similar positions and hires throughout the department.

For requests that require review and approval by MDOT TSO OHR, the TBU HR Office is required to complete and submit form *DTS-62-Entrance Rate of Pay (Hiring Above Midpoint)*. The form is similar in content to DBM's MS-26 form.

TSHRS Policy 9B - Compensation, allows for adjustment of salaries of existing employees based on the salary of a new hire. TSHRS Policy 9B, section 7.2.3, states:

“When an advanced step is used for initial appointments in a classification, the Administration may increase the step of a single position, a group of positions, or all positions in that same classification within the Administration or geographic region to the level of the advanced step for initial appointments.”

PLAN TO ADJUST INCUMBENT EMPLOYEES

Under the plan outlined under Chapter 690 of 2018, when an appointing authority of SPMS or MDOT appoints an employee to a position, the pay rate of employees in that unit with the same classification but lower pay rates than the newly appointed employee **must** be adjusted to equal the pay rate of the newly appointed employee, unless the pay disparity is due to the new employee's exceptional qualifications or experience, or as a result of an employee transfer. In order to implement this requirement for employees in SPMS, Salary Guidelines 6B and 6C would need to be revised to replace “may” with “must”. The new guidelines will read:

- **Guideline 6B:** Appointing authorities may appoint up to and including midpoint of the salary grade, and agencies **must** increase steps of current employees in the same class to the step of a new hire.
- **Guideline 6C:** DBM approval is required for appointments above midpoint of the salary grade based on general recruiting difficulties, and agencies **must** increase steps of current employees in the same class to the step of a new hire based on recruiting difficulties only.

Implementation of this change would require updating the Salary Guidelines and form MS-26. Additionally, outreach and training to State agency appointing authorities, and personnel and human resources officers would be necessary to ensure compliance with the change.

Similarly, MDOT would need to change the TSHRS Compensation Policy 9B to require appointing authorities to increase incumbent employee salaries to the level of the newest hire to comply with Chapter 690.

IMPACT AND COST ESTIMATES

The actual cost of implementing these changes will depend on how many new hires' salaries are higher than incumbent employees in the same unit and classification, and whether the higher salary is based on exceptional qualifications, experience, or an employee transfer. If appointing authorities appoint new employees to the lowest pay rate of a class going forward, there would be no associated costs to these changes, but recruitment difficulties may arise.

To demonstrate the potential financial impact of these changes, DBM and MDOT reviewed employee salaries as of October 16, 2019 (SPMS) and October 18, 2019 (MDOT). The following methodology was used:

- **Classification:** Employees' salaries were only compared to other employees in the same job classification.
- **Full-time Equivalent:** Comparisons were restricted to employees with work hours that represent a full-time equivalent of 1.00 to eliminate salary comparisons of part-time employees.
- **Unit Level:** As specified by Chapter 690 of 2018, only employees within the same unit – or supervisory organization – were compared. Comparing salaries at the unit level, rather than agency-wide, reduces bias of salary differences due to geographic differences.
- **New Hire:** An employee was considered a new hire if (1) the employee's start date was the most recent of employees in the same job classification and unit; (2) the employee did not transfer from another State position; and (3) the start date of the employee is between 2016-2019. New hires were limited to the three most recent calendar years to reduce any bias of hiring decisions made prior to the current Administration, and to align with improvement of the job market, which may have resulted in hiring authorities offering higher salaries to new hires due to recruitment difficulties.
- **Adjustment Determination:** If an existing employee within the same class and unit made the same or higher salary than the newest hire, then no adjustment was identified. If an existing employee made less than the new hire, then the difference between the new hire's salary and the existing employee's salary was assumed to be the necessary adjustment, including the impact a salary increase would have on fringe benefits.

SPMS

Using the methodology discussed, DBM identified a potential cost of \$12,382,146 to adjust the salaries of 1,894 current employees in 798 units in SPMS to match the salary of the newest hire in the same unit and class, based on the salary data available October 16, 2019, as shown in **Exhibit 2**. The adjustments identified would likely be less, assuming some new hires received higher salaries due to exceptional qualifications or experience.

State agencies identified with the largest potential costs to adjust incumbent employees were the Department of Human Services (DHS) (\$2.6 million for 451 employees), the Maryland Department of Health (MDH) (\$2.0 million for 262 employees), and the Department of Public Safety and Correctional Services (DPSCS) (\$1.3 million for 441 employees).

Exhibit 2
New Hire Salary Greater Than Current Employee Salary
State Personnel Management System
October 16, 2019

<u>Department/Service Area</u>	<u># of Units Impacted</u>	<u>Employees Identified</u>	<u>Amount to Adjust Salaries³</u>
Human Services	174	451	\$2,559,042
Health	130	262	2,033,007
Public Safety and Correctional Services	110	441	1,347,858
Education	47	91	1,182,727
Juvenile Services	59	138	1,148,695
School for the Deaf	18	57	646,294
Public Defender	27	59	473,762
Attorney General	30	58	414,878
Comptroller	21	26	356,018
Budget and Management	16	31	269,799
Labor	19	30	247,260
State Police	15	29	200,813
General Services	23	49	188,805
Agencies with 5-10 Positions Identified for Adjustment	77	114	887,162
Agencies with Less Than 5 Positions Identified For Adjustment	32	58	426,026
Total	798	1,894	\$12,382,146

Source: Department of Budget and Management

As shown on **Exhibit 3**, the job classifications that would require the most funding for salary adjustments include the DHS Family Investment Specialist series (\$1.8 million for 344 employees), the Department of Juvenile Services (DJS) Resident Advisor series (\$1.0 million for 103 employees), and the DPSCS Correctional Officer series (\$962,000 for 380 employees).

³ The amount to adjust salaries of current employees to the salary of the newest hire in the same classification and unit does not take into account new employees hired at higher salaries due to exceptional qualifications or experience. Review from appointing authorities to make this determination would be required. The amount to adjust includes the impact of salary adjustments on fringe benefits.

Exhibit 3
Top Job Classifications Identified for Salary Adjustments
State Personnel Management System
October 16, 2019

<u>Agency</u>	<u>Job Classification</u>	<u># of Employees to Adjust</u>	<u>Est. Cost⁴</u>
Human Services	Family Investment Specialist Series	344	\$1,848,000
Juvenile Services	Resident Advisor Series	103	\$1,014,204
Public Safety and Correctional Services	Correctional Officer Series	380	\$961,573

Source: Department of Budget and Management

MDOT

Using the same methodology, MDOT identified a potential cost of \$2,558,148 to adjust 349 employees within 117 units to the salary of the newest hire in the same class and unit, as shown on **Exhibit 4**.

Exhibit 4
New Hire Salary Greater Than Current Employee Salary
Maryland Department of Transportation
October 18, 2019

<u>Unit</u>	<u># of Units Impacted</u>	<u>Employees Identified</u>	<u>Amount to Adjust Salaries⁵</u>
Motor Vehicle Administration	25	125	\$688,747
State Highway Administration	36	84	662,039
Transportation Authority	14	59	589,599
Transit Administration	20	38	274,940
Secretary's Office	11	26	229,824
Port Administration	6	8	62,024

⁴ The amount to adjust salaries of current employees to the salary of the newest hire in the same classification and unit does not take into account new employees hired at higher salaries due to exceptional qualifications or experience. Review from appointing authorities to make this determination would be required. The amount to adjust includes the impact of salary adjustments on fringe benefits.

⁵ The amount to adjust salaries of current employees to the salary of the newest hire in the same classification and unit does not take into account new employees hired at higher salaries due to exceptional qualifications or experience. Review from appointing authorities to make this determination would be required. The amount to adjust includes the impact of salary adjustments on fringe benefits.

Aviation Administration	5	9	50,973
MDOT Total	117	349	\$2,558,148

MDOT: Maryland Department of Transportation
Source: Maryland Department of Transportation

NEXT STEPS

Before DBM can initiate any of these changes, negotiations with the exclusive bargaining representatives must occur. These negotiations will be undertaken in the economic reopener for FY 2022 and will occur in the September to December of 2020 timeframe.

SPMS

As discussed previously, Salary Guidelines 6B and 6C would need to replace “may” with “must” in order to mandate salary adjustments of existing employees under situations where a new hire is being hired at a higher salary only due to recruitment difficulties (barring any exceptional qualifications, experience, or employee transfer considerations). Once the change in guidelines has been made, RED will need to notify and train State agencies’ appointing authorities on the new process. DBM also recommends requiring appointing authorities to submit proof to RED that an agency’s budget is sufficient to cover the salary adjustments of incumbent employees prior to approval, given the potential for cost overruns under this new mandate. DBM anticipates implementation of these changes by the start of FY 2022.

Given that salary adjustments of current employees would require appointing authorities from almost 800 units to conduct a review of approximately 1,900 employees to determine if new hires’ salaries were based on recruitment difficulties rather than exceptional qualifications, experience, or employee transfer, DBM believes implementation of the salary adjustment mandate going forward would be most prudent. The onboarding of the first new hire in any unit or job classification will prompt the mandatory review of existing employee salaries.

MDOT

To implement the changes described above, TSHRS Policy 9B – Compensation, section 7.2.3 would have to be reworded to mandate salary adjustments of existing employees where adjustment is appropriate based on a new hire being brought in at an advanced step where no exceptions apply. The DTS-62 form would also need to be updated, or MDOT would potentially have to develop an additional form for this type of personnel action. Relevant stakeholders will need to be notified and trained on the new policy provision.

MDOT agrees with DBM’s recommendation to require evidence that a TBU’s budget is sufficient to cover the salary adjustments of incumbent employees prior to approval.