

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Budget and Management
(DLS Control No. 15-068)**

Overview and Legal and Fiscal Impact

The regulation fulfills the statutory requirement for the Secretary of Budget and Management to adopt regulations that provide for automatic increases, from minimum to maximum steps in a pay grade, of the pay rates set by the Standard Pay Plan for an employee whose overall performance is rated satisfactory or above on the employee's annual performance appraisal form.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Budget and Management:

Personnel Services and Benefits: Position Classifications and Compensation:
COMAR 17.04.02.09

Legal Analysis

Background

Unless otherwise specified, State employees are in the State Personnel Management System and subject to either the Standard Pay Plan or the Executive Pay Plan. Pay rates in the Standard Pay Plan may be set by a series of pay grades and steps within each grade, fixed rates, or minimum and maximum amounts. However, pay rates in both the Standard Pay Plan and the Executive Pay Plan are effective in a fiscal year only to the extent that sufficient funds are available in the State budget.

Since at least the mid 1950s, the law has contained a requirement for the secretary to adopt regulations that provide for increases, from minimum to maximum, of the pay rates set by the Standard Pay Plan. Prior to 1996, the law required that the regulations provide for *automatic* step increases; however, in 1996 the reference to automatic step increases was struck from the law because the General Assembly adopted pay-for-performance instead. However, although pay-for-performance was adopted by the General Assembly in 1996, the Department of Budget and Management continued with grades and steps pay rates in the Standard Pay Plan.

Despite the statutory requirement that regulations adopted by the secretary provide for increases of the pay rates set by the Standard Pay Plan, regulations to that effect were not

adopted. However, salary guidelines established by the secretary provide that employees who receive positive performance evaluations are entitled to step increases in their salary grade. These guidelines are not set forth in law or regulation and may be altered at the secretary's discretion.

To codify the existing guideline practice of providing step increases to employees who are rated satisfactory or above and to reinstitute the requirement that step increases be provided automatically, Chapter 199 (Senate Bill 793) of 2015 was enacted. Chapter 199 requires that regulations adopted by the secretary related to the Standard Pay Plan must provide for *automatic* increases, from minimum to maximum steps in a pay grade, of the pay rates set by the Standard Pay Plan for an employee whose overall performance is rated satisfactory or above on the employee's annual performance appraisal.

Summary of Regulation

The regulation fulfills the statutory requirement set out in Chapter 199 for the secretary to adopt regulations that provide for automatic increases, from minimum to maximum steps in a pay grade, of the pay rates set by the Standard Pay Plan for an employee whose overall performance is rated satisfactory or above on the employee's annual performance appraisal.

The regulation states that if an employee was rated satisfactory or above on the employee's annual performance appraisal, the employee is granted an increment or a merit increase on either January 1 or July 1, depending on when the employee was hired during the calendar year. The regulation states that the granting of increments or merit increases may be delayed by an act of the legislature or an executive order and is subject to the availability of funding in the State budget.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites Titles 4, 6, and 8 of the State Personnel and Pensions Article as legal authority for the regulation. Title 4 addresses the powers and duties of the secretary regarding personnel management. Specifically, § 4-106(a) authorizes the secretary to adopt regulations, guidelines, or policies to carry out the provisions of the State Personnel and Pensions Article that are subject to the authority of the secretary. In Title 6, the State Personnel Management System is established and placed under the authority of the secretary. Title 8 addresses the compensation of employees subject to the salary authority of the secretary and, specifically, § 8-103(a) requires the secretary to adopt regulations to carry out the provisions of Subtitle 1. One of the provisions of Subtitle 1, § 8-106(b), contains the requirement for the regulations to provide for increases, from minimum to maximum, of the pay rates set by the Standard Pay Plan and was amended by Chapter 199 to require *automatic* increases for an employee whose overall performance is rated satisfactory or above on the employee's annual performance appraisal form.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation implements provisions of Chapter 199 of 2015 (Senate Bill 793), which establishes that regulations must provide for automatic increases of the pay rates set by the Standard Pay Plan for an employee whose overall performance is rated satisfactory or above on the employee's annual performance appraisal form. The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget because the employee increments are subject to the availability of funding in the State budget. If funded in the operating budget, State expenditures would increase by \$58.9 million (all funds) in fiscal 2016 for employees in the State Personnel Management System and Maryland Department of Transportation.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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