City of Portland Bureau of Fire and Police Disability and Retirement
Agenda for Regular Meeting – Board of Trustees
City Council Chambers – City Hall
1221 SW Fourth Avenue, 2nd Floor, Portland, Oregon 97204
Tuesday, September 24, 2013 – 1:00 p.m.

ADMINISTRATION
The following consent item(s) are considered to be routine and will be acted upon by the Board in one motion, without discussion, unless a Board member, staff member or the public requests an item be held for discussion.

1 Approval of Minutes – July 23, 2013 Meeting

INTRODUCTION OF VISITORS

PUBLIC COMMENT PERIOD
A sign up sheet for members of the public wishing to make public comments will be available at the meeting. The public comment period will not exceed 30 minutes. Therefore, the Board may limit individual comments to three minutes per person. In addition, a sign up sheet will be available prior to the meeting to allow public members the opportunity to sign up for an agenda item which they wish to provide comment on. When discussion on a specific agenda item is to begin, the public member will be allowed three minutes to provide comments, unless additional time is allowed by the Board.

ACTION ITEMS

1 Discussion on Public Hearing on Proposed Administrative Rule Amendments Held on August 27, 2013

2 Resolution No. 479 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.4.13, 5.5.09, 5.7.04-5.7.07, 5.7.09, 5.7.11, 5.7.13, 5.8.02-5.8.08, 5.8.10, 5.8.12, 5.8.14, 5.9.02-5.9.05, 5.9.07-5.9.08, 5.9.10, 5.10.04, 5.10.06-5.10.08 and 5.10.10-5.10.13
   o Expected Outcome: Board adopts amendments as proposed by staff

3 Resolution No. 480 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.6.01-5.6.02, 5.7.15, 5.9.11, 5.10.09
   o Expected Outcome: Board adopts amendments as proposed by staff

4 Resolution No. 481 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.7.03, 5.7.10, 5.8.11 and 5.9.06
   o Expected Outcome: Board adopts amendments as proposed by staff

5 Resolution No. 482 – Administrative Rule Amendments
   o Issue: Amendments to Section 5.10.05
   o Expected Outcome: Board adopts amendments as proposed by staff

6 Resolution No. 483 – Increase Online Business Systems Contract
   o Issue: FDPR technology services contract is approaching the maximum amount and additional work is necessary
   o Expected Outcome: Board adopts the Resolution authorizing increase of the contract amount
INFORMATION ITEMS
The following information items do not require action by the Board and are solely for informational purposes unless a Board member, staff member or the public requests an item be held for discussion.

1  Moody’s City Ratings Report
2  FPDR Disability Retirement Benefits
3  FPDR Updates
4  Future Meeting Agenda Items:
   o  Administrative Rule Updates
   o  Legal Update
   o  Trustee Code of Ethics

Copies of materials supplied to the Board before the meeting, except confidential items and those referred to Executive Session, are available for review by the public on the FPDR website at www.portlandonline.com or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, Portland, Oregon 97201

NOTE: If you have a disability that requires any special materials services or assistance call (503) 823-6923 at least 48 hours before the meeting.

*denotes items will be in Executive Session pursuant to ORS 192.660(2)(f) and not open to the public
#denotes items will be in Executive Session pursuant to ORS 192.660(2)(h) and not open to the public

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Regular Meeting on July 25, 2013 of the Board of Trustees  PUBLIC SESSION  
Fire & Police Disability & Retirement Fund  
Minutes - Summary  

[THE FOLLOWING SUMMARIZED MINUTES WERE CONDUCTED IN PUBLIC SESSION. THE EXECUTIVE SESSION PORTIONS OF THE MINUTES ARE CONFIDENTIAL AND NOT INCLUDED]  

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 25th day of July, 2013 at 1:05 p.m.  

Board Members Present Included:  

Mayor Charlie Hales, Chair  
Mr. Justin Delaney, Citizen Trustee  
Mr. Jason Lehman, Fire Trustee  
Mr. Robert Foesh, Police Trustee  
Mr. David Dougherty, Citizen Trustee  

Also Present Were:  

Mr. Samuel Hutchison, FPDR Director  
Ms. Linda Jefferson, Outgoing FPDR Director  
Ms. Kimberly Mitchell, FPDR Claims Manager  
Ms. Nancy Hartline, FPDR Finance Manager  
Ms. Derily Betchold, Deputy City Attorney  
Mr. Kenneth A. McGair, Deputy City Attorney  
Mr. Scott Moede, Deputy City Attorney  
Ms. Gail Shibley, Chief of Staff, Mayor Hales  
Mr. Brett Williamson, Police Liaison  
Ms. Maxine Bernstein, Oregonian  

Mayor Hales called the meeting to order. Roll call of the Board members present was taken.  

There was no General Public Testimony.  

Ms. Jefferson addressed the Board, stated that it was her last Board meeting, and thanked the Board, predecessors on the Board, FPDR staff, City Council and everyone else who have been supportive of her, her vision and the work she has the FPDR Director since 2007. Mayor Hales stated that Ms. Jefferson personified public service and that the FPDR has been prudently and competently run under her leadership. Mr. Delaney stated that Ms. Jefferson has been a “ray of sunshine” and thanked her for her service. Mr. Hutchison also thanked Ms. Jefferson and stated that she is leaving him with a very well run department and that she has been very helpful in his transition as the new FPDR director.
Approval of the minutes from the June 25, 2013 Board meeting were then discussed. *Mr. Delaney made a motion which was seconded by Mr. Foesch and passed by a unanimous roll call vote of 5-0 to approve the June 25, 2013 minutes.*

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<th>Aye</th>
<th>Mr. Dougherty, Mayor Hales, Mr. Delaney, Mr. Foesch, Mr. Lehman</th>
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**Action Item No. 1 – Resolution No. 478 – Anderson et al. Settlement and Mutual Release Agreement:**

Ms. Hartline explained Resolution No. 478 and stated that the proposed settlement and mutual release agreement would resolve the pension overpayment recovery litigation. She added that the IRS has approved the terms of the settlement so the Plan’s tax qualified status is not in jeopardy. She went on to state that adopting the resolution would authorize the FPDR Director to execute the agreement on the Board’s behalf and authorize the implementation of the agreement. Ms. Hartline briefly went over the details of the agreement.

Mr. McGair explained that the attorneys have signed off on the settlement agreement. He added that the judge in the state court proceeding has signed off on everything, including the settlement agreement. He also stated that the notices that will be going to the purported class members have been drafted and agreed upon by the parties and is ready to be mailed pending the Board’s adoption of the resolution. Mr. McGair also thanked Ms. Hartline, Ms. Jefferson, members of the Board, Mr. Dauenhauer and Judge Ed Levy from the Ninth Circuit. He stated that this matter was an odd situation and he felt they did a good job crafting a response.

*Mr. Foesch made a motion which was seconded by Mr. Delaney and unanimously passed by a roll call vote to adopt Resolution No. 478 as written.*

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<th>Aye</th>
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Mayor Hales stated that it was a fair settlement of a complicated dispute and appreciated the work that the team put into it and also appreciates the cooperation of the “other side of the table” in getting to a fair and reasonable settlement for everyone involved. Mr. Delaney stated that he felt it was the best outcome that they could have hoped for and thanked the parties involved. He added that the attorney’s fees would have gone on for
years they probably would not have recovered more had they gone through a long appeals process.

**Information Item No. 1 – FPDR Updates:**

Mr. Hutchison stated that the only information item he was bringing to the Board was about the proposed administrative rule amendments. He stated that the proposed administrative rules will be brought to the Board at their September 24, 2013 Board meeting, but prior to that date he is planning to hold a public testimony hearing where interested parties can come in and provide staff with oral testimony on what their thoughts and feelings are on the proposed rule changes. He added that he hopes to schedule the public testimony hearing in the early part of September and have a public meeting notice posted in the next couple of weeks.

Next Board meeting is scheduled for September 24, 2013.

There being no further business, the meeting was adjourned at 1:15 p.m.

\[Signature\]
Samuel Hutchison
Director

/\k
September 16, 2013

Proposed Amendments to Bureau of Fire and Police Disability and Retirement Administrative Rules

The Bureau of Fire and Police Disability and Retirement (FPDR) held a public hearing on proposed amendments to its Administrative Rules on August 27, 2013. Amendments to the following sections of the FPDR Administrative Rules were proposed by FPDR staff:

- Section 5.4 – Retirement Benefits and Appeals Process
- Section 5.5 – Death Benefits
- Section 5.6 – Appeals Process
- Section 5.7 – Service-connected or Occupational Disability Benefits
- Section 5.8 – Nonservice-connected Disability Benefits
- Section 5.9 – Medical Benefits
- Section 5.10 – Return to Work and Vocational Rehabilitation Programs

As a result of the public hearing, Resolution Nos. 479, 480, 481 and 482 are being presented to the Board of Trustees at its September 24, 2013 Board meeting.

However, amendments to the following sections of the FPDR Administrative Rules are being deferred to a future Board meeting:

Section 5.7.01 “Definitions” – Specifically as it relates to definitions regarding “Required Duties”, “Worsening”, “Date of Disability” and “Documented Absence”.

Section 5.7.02 “Disability Benefits Generally” – Regarding the definition of “Required Duties”.

Section 5.7.12 “Offset to Service-Connected and Occupational Disability” – Specifically regarding subsections (B)(7) and (8) as it relates to outside employment.

Section 5.8.01 “Definitions” – Regarding the same issues as Section 5.7.01.

Section 5.8.13 “Offset to Service-Connected and Occupational Disability” – Regarding the same issues as 5.7.12(B)(7) and (8).

Section 5.9.01 “Definitions” – Regarding the same issues as Section 5.7.01.

Section 5.10.02 “Definitions” – Regarding the same issues as Section 5.7.01.

Section 5.10.03 “Transitional Duty Return to Work Program” – Relates to the use of the term “Required Duties”.

We are an Equal Opportunity Employer
Mr. Hutchison: Okay, why don’t we go ahead and get started here. It’s just a little bit after 1:00 and I think mostly everybody is here. So, everybody has signed in that wants to speak? The list is behind Kathy. The list will stay open until about 1:30 here so as people walk in they can sign into it. So, I wanted to thank you all for coming today. You know the purpose of today’s meeting is to go over and get some public input on the rules that we originally posted and announced back in June. There was a brief discussion about them in the July board meeting and it was agreed to defer the final consideration for the Board to September and I elected to go ahead and hold this hearing between the two board meetings so people can provide some input on it at this point. So how the hearing will work is we’ll go down the list, in order of the list, unless somebody agrees to switch or move that order, but we’re just going to take it from top to bottom. The panel up here, which, we have Jason, I think you know there. And then there’s Bob and then there’s Kim Mitchell and myself, Sam Hutchison. Let me uniformly say your names for the record, Bob Foesch and Jason Lehman. So, what we’re going to do is we’re going to listen to what your comments are, we’ll take notes of it, and then after we will talk as a panel and then make the recommendation to the Board in September. This is not meant to be an interactive session, so this is basically a hearing session today. In the future, things may change but this is how we’re going to go with it today. So when you speak, if you can identify yourself and then whether you’re a firefighter, attorney or rep… who you represent or you’re a concerned citizen, that would be fine. Just to get some background
A public hearing regarding proposed Administrative Rules of the Bureau of Fire and Police Disability and Retirement was held on the 27th day of August beginning at 1:00 p.m.

FPDR Panel Members Included:

Mr. Samuel Hutchison, Director
Mr. Jason Lehman, Fire Trustee
Mr. Robert Foesch, Police Trustee
Ms. Kimberly Mitchell, Disability Claims Manager

Also Present Were:

Mr. Nelson Hall, Attorney
Mr. Daryl Turner, President PPA
Mr. Alan Ferschweiler, President PFFA
Mr. Gabe Sansone, Fire Liaison
Mr. Brett Williamson, Police Liaison
Ms. Julie Falender, Attorney (??)
Mr. Anil Karia, Attorney (??)
Lt. Craig Morgan, PPCOA
Ms. Derily Bechthold, Deputy City Attorney
Mr. Kenneth A. McGair, Deputy City Attorney
Mr. Lorne Dauenhauer, Outside Legal Counsel

Mr. Hutchison: Okay, why don’t we go ahead and get started here. It’s just a little bit after 1:00 and I think mostly everybody is here. So, everybody has signed in that wants to speak? The list is behind Kathy. The list will stay open until about 1:30 here so as people walk in they can sign into it. So, I wanted to thank you all for coming today. You know, the purpose of today’s meeting is to go over and get some public input on the rules that we originally posted and announced back in June. There was a brief discussion about them in the July board meeting and it was agreed to defer the final consideration for the Board to September and I elected to go ahead and hold this hearing between the two board meetings so people can provide some input on it at this point. So how the hearing will work is we’ll go down the list, in order of the list, unless somebody agrees to switch or move that order, but we’re just going to take it from top to bottom. The panel up here, which, we have Jason, I think you know there. And then there’s Bob and then there’s Kim Mitchell and myself, Sam Hutchison. Let me uniformly say your names for the record, Bob Foesch and Jason Lehman. So, what we’re going to do is we’re going to listen to what your comments are, we’ll take notes of it, and then after we will talk as a panel and then make the recommendation to the Board in September. This is not meant to be an interactive session, so this is basically a hearing session today. In the future, things may change but this is how we’re going to go with it today. So when you speak, if you can identify yourself and then whether you’re a firefighter, attorney or rep...who you represent or you’re a concerned citizen, that would be fine. Just to get some background
on who you are. We’d like you to keep the comments focused here on the rule changes. There will be a...there’s general comment session in the board meeting, so if you have any other issues or questions for FPDR that would be the time to do that. I’m going to put about a five-minute time limit here. I’m not going to be real strict on it, but I will ask you at five to wrap up cause we’ve got enough people here that we’ll probably need most of that time with it. We are recording, as sort of...to give you the background, the meeting today and it is also being video recorded with that so that will be available if you have a public records request afterwards. Let’s see if I’ve got all my notes covered here at this point. So again, just to recap, the panel here will take notes, make the recommendations to the board. You will have another time at the board hearing to provide more testimony before as per usual with the board meeting. We are going to be taking written comments through September 13th and I think the announcement had it sent to me at the FPDR address and if you need the address after, let me know and I’ll provide you a business card to do that. So, that’s how we’re going to proceed here right now so you want to go ahead and...and Mr. Hall, I think you were number one on the list.

Mr. Hall: (unintelligible...not using microphone)...if I might, in terms of your ground rules...

Mr. Hutchison: Mhm.

Mr. Hall: I think you’re going to hear briefly, a minute or so, the two presidents sitting by my side.

Mr. Hutchison: Okay.

Mr. Hall: And then under legislative parlance is where one member is fine when the other member speaks...I heard you say the five minutes...(unintelligible...adjusting microphone)...but I think all those in the audience are donating their time to me to speak on their behalf and if I can ask for your indulgence, I see talking with you folks about each of these rules for maybe the next hour.

Mr. Hutchison: Okay...so you’re...anybody here want to say their own independent piece or are we willing to let Mr. Hall speak on your behalf for that one? Okay.

Mr. Hall: If that meets your...

Mr. Hutchison: I think that’s fine and again this is a...just to remind you. This isn’t necessarily going to be an interactive session. This is one where we’re here to listen to you and take your comments.

Mr. Hall: Which is why I think an hour should suffice.
Mr. Hutchison: Okay...and excuse me, one more thing, Kathy, keep me apprised if somebody else comes in and wants to speak and we'll double check if they're also with this.

Mr. Hall: At this point we just have the three? Okay. And, Mr. Chair, at this point I turn to the two gentlemen besides me and ask them to make opening comments.

Mr. Ferschweiler: For the record, Alan Ferschweiler. I'm President of the Portland Fire Fighters Association. I just wanted to hit on just one or two quick things and being here today is a great movement on where we've been in the past. So, I just want to thank you for allowing us to speak today. I think that if you look in the history of FPDR, especially prior to 2007, there was a good collaborative effort between all the stakeholders, which I feel like we're definitely one of those people in there. I think there might have been a little bit of time, especially since the last Charter change, where we were excluded during part of that and so, I just wanted to take a moment and say thank you for allowing us into this process. And, I wanted to point out one other thing...is that some of the changes that you've already made, specifically, I think, to 5.4.05 was one of the ones that I had a concern and that was actually pulled from there and that deals with Senate Bill 822 and the language for that. And so, just to even start this off, I think that one, we're heading in the right direction and I think even that consideration of moving that until Senate Bill 822 is ruled upon, is one of the things that shows that we're having a collaborative effort. So again, thanks for allowing us to be a part of this effort, and I'm happy to answer any questions that you would have.

Mr. Hutchison: I want you to briefly, for the audience, explain which is the one that we pulled, just so they know the background on it.

Mr. Ferschweiler: So there was the proposed change to 5.4.05 and that deals with the COLA language rollovers if...for the members and it's taken out of the PERS language in Senate Bill 822 and, specifically, my position is, from the Fire union, is that until that is ruled upon we need to have that COLA language in there until the legality of 822. So that's the rollover of the two percent from year to year if we have a lower COLA.

Mr. Hutchison: Thank you for clarifying that.

Mr. Ferschweiler: Thank you.

Mr. Turner: And I'd also like to thank you for allowing us to be here today and being here with us. I'm Daryl Turner, President of the Portland Police Association. And, to reiterate Alan's comments, obviously it's great that we're able to talk and I hope in the future that we're able to get together and have a collaboration on issues that we can work on together. We also are interested in sustainability of the Fund. We're also interested in the fact that we want the taxpayers...we want to make sure the taxpayers get their money's worth. We want to make sure that the Fund is around, clear when I'm in the old folk's police home telling all the stories about stuff I used to be able to do. But,
moreover than that, we want to make sure that the Fund is around for the new people, the OPSRP people also, to get what they need out of it because when I’m gone, when other people are gone, they’re going to be the people that are gonna sit in my position. They’re going to be the people that are going to collaborate with you so we want to start that effort. We want to be the forerunners of that effort so that they can come behind us and there’s already…the road is already paved to do those things. So, I really appreciate the opportunity to be here and I look forward in the future to collaborating with the Board, with the committee, and also with you and the Mayor. Thank you.

Mr. Hall: Let me begin with some general comments, kind of putting the rest of my testimony into context. I, too, appreciate the openness or the ability to participate in this, but I would like to push that notion another step or two and that is to say that today’s rule hearing, I hope that there’s an opportunity for probably one more meeting, if you will, where there is some interaction. And, I appreciate the purpose of today’s meeting, it’s not today, but I think between now and when the proposed rules are actually presented to the trustees for adoption, I would ask for a little more time. Now, why is that? We’re not trying to delay these things. We understand the Fund, these rules need to be tweaked from time to time, they need to be cleaned up from time to time. But, because there is not an emergency, there’s not a crisis that needs to be addressed, I would ask that we, from this point forward, in all rulemaking, go ahead and take the time necessary, such as taking all that we present today to you folks, letting you think on it, chew on it, and then we meet maybe one more time and it could be informally. It could be an off the record little work session with a handful of us. And, from that, you do what is rightfully your job, and that is to articulate the final amendments that you present to the trustees. I could, I just…I’m afraid folks, Mr. Hutchison, that I see a little more time needed. A little more work, given what I’m about to tell you. Also, I think a traditional disclaimer at this point.

The three Associations believe there are some aspects to these rules, the rule amendments, that implicate mandatory bargaining or bargaining questions. My disclaimer is this: Our participation in this rule hearing today does not waive or impair that position and what may or may not come down the road. I leave that to others. But, I just simply make that disclosure, that qualifier, if you will. We’re not impairing bargaining issues by participating today. Third, I see and I have a list of a handful of items that are not part of the proposed amendments that, again, I would foresee a good working relationship with you all over the next years to come, cause there are some items that I would put under the category, proactive. There are some things that the Associations in reviewing and working and living with these rules would take a proactive step on and say “let’s be the one to suggest the change”. And so, I don’t know if we have time to get into those today, but I do have some that I would call “proactive”. My comments, and again, I continue to refer to Mr. Hutchison, you’re the chair of this panel today, this effort today, but to all of you, I start, when I review proposed rules as a lawyer on behalf of these Associations, I start with some criteria and indeed it’s the criteria that the staff articulates in announcing the proposed amendments. And, that is, that a rule should be proposed if the current rules are ambiguous. We need a new rule or amendment if the rules are inconsistent. We need a rule or amendment if the current rules fail to meet standards and expectations for what? For benefit delivery. Or, last, if
there is no rule in place to begin with. So that’s the “why” and I ask us to keep in mind the why, the when, as we then go through each of these rules and I don’t think that we should shy away from holding the amendment or the proposal up to that criteria. Up to that light, if you will. And we ask ourselves with each of these, is this rule needed? Is it really going to address an ambiguity and so on? Now, in justifying the amendments, staff has indicated that they are proposed for clarity and consistency of application, not a departure or not a major departure. I have quotations around those though I’m not sure I can stop right now to find where I found those words, but it’s in the proposal saying these are just kind of housekeeping to some extent, clarity, consistency and not a major departure. I’m afraid as we go through some of these proposals, that indeed it is a major departure. It is not simply house cleaning and I don’t know, there are some of these rules you’ll hear me comment on that do not add clarity or consistency. Indeed, the end of the proposed amendment is equal, if not, greater ambiguity...equal or greater confusion, if you will, and not a lack of clarity. So again, I think we should remind ourselves as we go through these, does this amendment, does this proposal, meet the criteria. Another general comment. Not that I would put any particular member’s name to some of these amendments, but you don’t have to have lived in a cave for the last two or three or four years to look at some of these amendments and go “oh, wait a minute”, now I know why that amendment is being offered. It’s so and so’s case. Well, we won that one for the Associations and the Fund lost, so...is that what’s going on here. We’re seeing amendments that really arise out of litigation and, so again, I ask us to keep the criteria and the purpose of the amendments in mind. Last general comment and that is, as you’ve heard these two presidents say and the third president that’s not available today would have joined us, and that is, we do want to see the system work. It’s for everybody’s benefit that this system work and, indeed, it’s for every member’s benefit and I use the term...well, I’ll just say the Fund. I started to say the bureaucracy, but not in the pejorative, but in the sense of, you know, the system. We do need a predictable system and one that is clear and easy to apply. So here’s my concern, and some folks have, in this chamber, have heard me express this before. I think we need to ask ourselves with every rule and amendment or proposal, is it a barrier to providing benefits for the benefit of the members or is it from a righteous claim. You know, if we have...we’re not talking about the investigation and the initial decision. We’re talking about the processing of claims, and if you have a righteous claim, my question is always, “all right, does this rule, does this proposal, put an unnecessary barrier up in front of that otherwise righteous claim”? And one of the one’s you’re going to hear me address is the 30 days and it’s on my proactive list. Instead of expanding the time to file a prescription or wage reimbursement, we’re shrinking it. Instead of expanding the time to file an initial claim, which is 30 days by rule, and you have been dealing with other systems where...that’s...it’s unheard of, that’s the shortest. Now, I know, for example, there are some insurance systems where, for example, if it’s long-term disability or something like that, you know, you have to file or, you know, your automobile insurance claim you have to file it within 30 days. But, those are different systems and those are not systems that are designed for the benefit of delivering benefits to a member, for the benefit of the member. And so, if we...one goal is consistency among the rules, fine. Great. Admirable. But instead of making the timeline consistent by shrinking the current 60
days to send in a prescription for reimbursement...rather than shrink it to 30 days, why
not we...expanding the time to file a claim from 30 days to 90 days as it is in the state
workers’ comp system. And indeed in state workers’ compensation it’s 90 days unless
the employer had knowledge and then you have up to a full year to file the piece of paper,
the claim itself. And, in this particular system where you’re dealing with firefighters and
police officers, when there is an event at work, when there is an injury or an incident, it’s
recorded. There are incident logs. There are event logs. There are day logs. Those are
noted. There are commanders that know this. That’s to me, a perfect example of why
are we putting a barrier of 30 days to frustrate what is in a righteous claim. If the
employer, the Bureau, had knowledge of that injury, then why not give them 90 days or
180 days. Indeed, even Standard Insurance when they deny a claim gives you six months
to challenge that. So, why not then expand this and remove barriers to what are
otherwise righteous claims.

If I might now start taking these rules kind of one at a time and, by all means, I don’t
mind if somebody says “Hall, you’ve run out of time, shut up”, I’ll try to move,
Mr. Hutchison, as quickly as I can.

I’m going to start with 5.04.13. Other than the typo and as already been addressed
the...we don’t have any problems with the single amendment to 5.04.

5.5. Death Benefits. I don’t see, I don’t hear my...the Associations telling me to address
that. I don’t see, because quite frankly, you’re properly acknowledging a member’s
military service in deciding whether they have enough creditable years of service to earn
the non-duty, and this is non-duty, not duty disability. So, again, we thank you and we
pass on 5.5.

5.6...and this, I have some of this tabbed and so on, I think it's page 3 and 5 in this
section. Having to do with good cause...what I might comment is this, the good cause
being defined in that context is limited to the recusal of an administrative law judge
which is what we, the Associations, asked for and it’s properly a proposed amendment
here. But my point is, we need to limit the good cause. There just needs to be a word or
two added, I think, to clarify that that definition of “good cause” is used in this particular
context of challenging a judge and not in other context because “good cause” is defined
elsewhere in the rules. For example, if I don’t request a hearing within a certain period of
time but I have good cause to do so or for not having done so, so I just...that’s all. I just
want to make sure that it’s identified specifically for that one purpose. Otherwise, we’re
okay with the definition, the grounds for asking a judge to be recused. Either party, I
think that’s important, that either party can do that. However, philosophically, legally,
I’m sitting here going, “well wait a minute”, these are judges that you have on contract.
You already have a mechanism, through your contract with the Office of Administrative
Hearings, to go and get additional judges on these panels. So I’m not sure that you, the
Fund, need the right to challenge a judge. We can live with that...either party can do
that. Now...next, and it has to do with the process. We’re still into 5.6 and this has to do
with the process for challenging a judge. Understanding the reality of when that is going
to occur and under what circumstances. I’m here to tell you that no trial lawyer takes that lightly. You are not going to challenge a judge unless you really feel you need to. This is one of those, to use, you know, the kind of the deer hunting analogy, you know, you don’t shoot high, you don’t shoot low, right. I mean, okay, because you just don’t do that and ruin a relationship with the judge. Hence, the challenge to the judge should not require a petition to the presiding judge. In Multnomah County, maybe statewide, if I file an affidavit...we call it affidavit a judge. If I affidavit a judge, it’s on the face of my affidavit that I don’t believe as an officer of the court that I can obtain a fair and impartial hearing with that judge. The judge can defend him or herself. They do push back once in a great, great while. Maybe once in a...30 years. But otherwise, it’s I file my affidavit, thank you, that judge will not hear your case, another judge is assigned. What the problem is here is, if I petition the judge, the presiding judge, say...I’ve already spoken now, it’s out there. I’ve challenged one of the only two hearings officers and if that presiding judge says “sorry, Hall, you shot too high, you shot too low”, I now am going to a hearing with the judge that I just affidavit. It should not work that way. So, my strong urging is that that be rewritten. That the petition, the affidavit, be filed with the presiding judge but that it not be a hearing process and a second guessing process.

Mr. Hutchison: Can I...hold on here. The wording here on 5.6.02 is a direct copy of what was approved by the Board when we had this discussion. So this was a cut and paste from the resolution that the Board did. So, if this language needs to be changed, it needs to be approached back in to have the Board reconsider that resolution at the time. Just to let you know, this is a cut and paste.

Mr. Hall: And I certainly don’t challenge you on that, Mr. Hutchison, though my recollection of what the former was that this challenge would be there, but I don’t recall that the petition to the presiding judge and the presiding judge being able to make a yes or no decision on that.

Mr. Hutchison: It was, I think...I’m...I don’t have that totally recalled in my head so I’m going to have to wing it here so I apologize, I may be slightly wrong. But it was agreed to adopt the OAH wording for this particular thing. This is their wording. Derily, did you have some input on that?

Ms. Bechthold: Derily Bechthold, legal counsel for FPDR. During those discussions, the Board...it was proposed in a letter from the attorney, from the former attorney for the Police union, and he submitted with his recommendation, the Employment Board’s current process and the Board engaged in discussions about the process. So this...the Board adopted a process that was similar to the Employment Board’s and this is the process the Employment Board uses. So that’s why...it was based upon the Board’s decision to just kind of adopt...that’s also where the “good cause” definition comes from.

Mr. Hutchison: So, I can understand you have some concerns, but the rulemaking we’re copying what the resolution from the Board is...if we need to...
Mr. Foesch: If I recall correctly, we basically adopted the language without actually physically having it in front of us. I don’t remember us exactly having this verbiage that we said that was part of the motion. I think it was agreed upon to do whatever the ERB process was or something like that, if I remember right.

Mr. Hall: And so, Mr. Hutchison, it might be, to move forward today, I’d like to kind of put an asterisk, if you will, by this one and if indeed it requires going back and explaining to the trustees and getting a different resolution, so be it. But I would like to go on record saying why that’s just a dangerous, dangerous position to put any party in and indeed if this is the process I’m probably going to never use that...that ability. I’m not going to challenge a judge and take the risk of having it fail. Let me also, at this point, offer one proposal and this is off my proactive list, but I think this is appropriate and timely. If we’re going to have a provision, rightfully so, to challenge a judge, we want a provision that allows a member to challenge the IME. Now that, in some circles, is known as the Independent Medical Examiner. In other circles, it’s known as Insurance Medical Examiner or defense medical examiner. My point is very simple and there was a study done here in the roughly ten years...I’m going to ball park it, some ten years ago, which included a survey of the physicians, many of them anyway, participating in the IME process and they themselves have acknowledged it was not an independent process. The Fund uses physicians that private insurance and SAIF Corporation on the state workers’ comp side have been using for years and years. I, as an attorney on behalf of members, in cross examining doctors that I have cross examined dozens of times or numerous times anyway, there are some of these physicians I could write their reports for them in my sleep. When I know that my member is being sent to a given physician, I know the conclusion already. There’s, in many instances, not an independence. It is time. It is absolutely time for us to be able to challenge physicians that are assigned to...to interview and to examine the member. We need criteria and there are definitions that can be found and I did not bring them with me today, but there are definitions that can be found of an independent medical examiner. Some times the criterion requires that the physician actually be a treating physician, that they are treating injured workers or that they are treating the public and that they have not become semi-retired and just do these exams. So bottom line is, and I know this is not interactive today, but I would like very much for a process to be established where physicians can be challenged. There’s a process in the state workers’ comp, and by the way...I’m going to stop right here. We’ve heard a million times, FPDR is not workers’ comp, thank you. It’s not workers’ comp, but by the way, FPDR exists only because in Chapter 656, the state workers’ compensation laws, there is an exception that says cities of such and such assigned with there are...so this is, let’s face it, this is the workers’ compensation system for Fire and Police in this town. And I make no apologies, none, for wanting to cherry pick the best of that system and bring it into this, or for that matter, when I’m in Salem, I’ll cherry pick from this system and take it to Salem. I would like to see a system that has the best of both worlds. In the workers’ comp system, at least not all the exams, but there are certain exams where a list of physicians will be sent to the parties and they can each, almost like arbitration, they can scratch one of the names off the list and then the state chooses...all right. My point simply is and I’ll move on, we need that kind of a process. Thank you.
Now, looking at 5.7, and I’m going to spend most of my time on 5.7. Why, because the proposals that are reflected in 5.7 are for the most part, they’re repeated in 5.8 and 9 and 10. All right. One of the ones that just jumps out, the old sticks in my craw, “Required Duties”. And now, we want a definition of “Required Duties” that define that as “assigned” duties. Now, let’s start with that criteria that we, that the staff has set forth and that I opened my comments with. Do we need this? Does it meet those criteria in terms of a need? Why are we doing this? Whose idea is this? And, I don’t mean that in terms of personal. I don’t care whose idea it is, but it’s that rhetorical, why are we doing this, whose idea is this. It adds no clarity. In fact, I think it adds ambiguity. It does not assist the system in the delivery of benefits. It is contrary to Charter. The Charter very specifically refers to required duties...the inability of an office or a firefighter unable to perform their required duties. So now, somebody’s idea is let’s define that required duties as those that are assigned. It is, I submit to you, an obvious attempt to limit. What other purpose is there for doing this. If you think of Venn diagrams, think of these circles, required duties is the full circle, assigned duties, unless they’re synonymous, and we know they’re not, why the rule? Assigned duties are a smaller subset of that circle. Indeed, you may even find where that second smaller circle is outside. Assigned duties, am I going to take this officer off who cannot work and perform all of the required duties of an officer and now assign them to the Park Bureau? That’s assigned duties. Where do those two definitions leave each other or overlap. Bottom line is it adds no clarity. It serves no purpose as the criteria we’ve already referred to. What’s the justification? It is contrary to the job description and Ms. Bechthold and I have the fun of having contested cases together, and almost every case now, the Fund includes the job description for the firefighter or the officer as one of the exhibits. Well, this assigned duties is in contrast to the job description. All right. But, most importantly it’s contrary to the Charter. It’s indeed, and I’m going to defer to those who are the labor lawyers among us, as to whether this is a subject of mandatory bargaining or not. But, when in essence you are, for purposes of implementing this program, redefining what is the job description, I think it at least touches on some contract issues. This is one of those cases, Mr. Hutchison, where we look and I go “I think I could put a member’s name or two on this”, because there’s been disputes as to what his assignments on. And, indeed, our Oregon Supreme Court has accepted review in a case and the questions that the court has posed to the parties, and it arises out of this Fund, has to do with is there a difference between assigned and required duties. This is not the time to be amending this rule. I think it will draw conflict. It will draw issues. It’ll draw problems. And again, I come back to why? Why do we need this new definition? I would put that almost at the top of kind of a trouble list or the worry list here.

Page 5, Worsening, the definition of “Worsening”. I would just drop that all together. You have “Aggravation” defined. You have “Recurrence” already defined. Both of those definitions refer to a worsening. Defining worsening...by the way, I understand why you want to define it cause...the current definition is circular...worsening is a worsening of worsening. My proposal to you is, just get rid of that all together. Don’t try and redefine it. It adds no clarity. It adds ambiguity and you already have the
definition of aggravation and recurrence. I would drop it all together and one of the problems I have, and again this is where I see the tightening, the proposed rule actually tightening, is you can have worsenings based on objective evidence that are more akin to say, restricted range of motion due to the accepted condition. This potentially...not potential...I think it really does, call on the member to have to take and prove something more. They have to now prove that there's been this deterioration to use the word of the proposed rule. This deterioration in the condition. Well, I may not be able to demonstrate objectively that, in fact, you know, that fracture has grown another quarter or a millimeter or whatever. Yet, I can prove objectively with doctors examining me that my restricted range of motion is less, the pain level is...there's a worsening, there's an aggravation, there's a recurrence. I think that this definition of worsening actually adds burden to the member, that it's unnecessary and unproductive in terms of reaching the goals of the system.

Mr. Foesch: Mr. Hall, I just want to make sure you're saying your recommendation is to delete that entire paragraph.

Mr. Hall: Just drop it...it is, it is...just drop the definition. It does not add a thing to the system.

Number 3 on the list is, and this is page 4 of the amendments, “Date of Disability”. This is kind of one of those, like required duties, assigned duties. It's like, date of disability, and I have to tell you right here and now, I'm not sure if this is good or bad for the members and I think that tells us it doesn't add clarity. It doesn't add consistency and I'm thinking “all right, well, why”? Is this harmful or not harmful because, quite frankly, that's my job, is to make sure that these are not harmful to the members I represent, candidly. So, date of disability...we know from the Charter that the base wage on which disability is to be calculated is that base of the position held at the time of disability, including any contractual adjustments, premium pays, anything that, under the Charter, is added to that base pay. So I'm sitting there scratching my head going “all right, well” cause we've litigated this, we have. This has been an issue and it's like “huh, all right,” well we've established through decision that the date...at disability means the time that they were injured originally and then with the premiums and contractual...so, here's my rhetorical question back to staff is, why? What's the purpose of this? Why are we tweaking this by, you know, one word or two? If in the end, this captures base pay and all increases since my date of injury, why the amendment? We already know that. It's already been interpreted that way so I'm not sure that this adds anything other than some confusion or some uh...the...by the way, also on page 4 under this, there's a requirement about the Attending Physician...unable to perform...again, I'm looking at barriers to what are otherwise righteous claims and I'm asking why is this being added? Why are we requiring that only one physician can call the shots here? Why is it only the attending physician? Why, if any number of physicians that have offered opinions in any given case, say this person is unable to work, why isn't that sufficient? Why are we tying it just to the attending physician, which is how I interpret the proposal? We are using the...not we, the world is using nurse practitioners and physician's assistants, regularly. You don't
go into a doctor’s office and see the physician anymore. You see the nurse practitioner. You see the physician’s assistant. They are the ones writing the prescriptions for the, you know, the narcotics. They’re the ones that are actually performing the exam. So, why don’t we make this reflect the reality of the modern medical world that we live in and if it’s a nurse practitioner that says you are unable to work based upon her or his medical examination of you, why isn’t that sufficient? Why are we putting a barrier in front of an otherwise righteous claim?

Number four, “Documented Absence”. I see this as another artificial barrier. It’s like well, of course, you’re not going to get paid for a day that you...on disability that you worked for the Bureau. So I’m not sure why it is we have to now have this additional step placed in there, indeed, by the way, we have rightfully, you have in the proposal, rightfully taken out the requirement now that the duty and...the injury in line of duty report have a commander’s signature on it. Remember you used to have to shop the former out and find the commander and get the commander to sign off on this injury. You rightfully took that requirement away. Why are we then adding this requirement that somebody chase down the accountant or the payroll people and get some piece of paper that says, you know, to document that? It adds no clarity and who submits it...where in this process? How long does it take for the system, the bureaucracy to work to get that documentation back to the Fund? I’m going to make a point here, Mr. Hutchison, that applies also in some other areas but I think now is the time to make the point and I tie that into my comments about required and assigned duties. If a member, pursuant to the Charter, is unable to perform the required duties of a police or firefighter, they are then entitled to disability benefits, but we stop there. The amount of the disability benefits, we know, are offset by wages earned. If, in fact, I am able to perform duties for which I am assigned, and I am earning full salary, by Charter, not under the required duties piece, but under the processing piece, it’s already there, by Charter and rule. If I’m over at TRU answering telephones as an injured police officer, those wages are being reported and they’re going to offset, an indeed if it’s a total full salary, I’m not losing anything, I will not be paid a penny in disability. There’s no double dipping and we’re not seeking any kind of double dipping. So we don’t need to change the definition of assigned duties in order to capture those situations where the officer or firefighter is indeed assigned to something for which they are receiving a salary. And we can see...the assigned duties thing complicates it. If it’s required duties and I am actually released to light duty part time, and I’m now at command station and I’m pushing paper, but I’m only there half a day, under this proposal those are assigned duties. And under this proposal, I don’t get any disability. I’m not eligible for disability. No, I’m unable to perform my required duties so I am, but it’s offset by the fact I’m over at command pushing paper for half a day. My disability will be reduced from 75 percent down to whatever those partial wages reflect. The goal of that amendment, I think, is captured in the process that already exists.

Mr. Hutchison: Just a quick time check. It’s 1:45.
Mr. Hall: Actually moving ahead, 5.7.02. Again, page 5 of the proposals. I think this is where it kind of plays out. Again, I think it’s contrary to Charter. Under 5.7.02 (A) and (B)...

Mr. Hutchison: How? Explain it to me. Are we going back to the required duties as the issue that you have here? Or, the changes that we’ve made in here?

Mr. Hall: Under 5.7.02, again, I’m looking specifically at page 5. Yes.

Mr. Hutchison: Sub (A) or sub (B), I’m sorry.

Mr. Hall: Actually under (A) and (B) both you have the required duties.

Mr. Hutchison: Okay, so we’re back to the definition of required duties versus...

Mr. Hall: We’re still on it...yeah. No, you’re exactly right, Mr. Hutchison. Yes. Okay. But again, I don’t...I cannot stress enough how that hits on the very eligibility, you know, pursuant to this, I’m not eligible for any benefit if I’m able to do the assigned duties as opposed to the required. All right.

5.7.02(C) and this is on page 6. This is where we start running into the 30 days and I ask you to once and for all be done with 30 days. When it comes to the filing of the claim, the member should have...I submit to you, at least 90 days. At least 60 days, at least 90 days, right in that ball park, with the exception for knowledge by the bureau. If the bureau knew you were injured and it’s recorded and there’s no...you know, why do we have statutes and time limitations so things don’t become stale, so you know, two years from now, well I don’t remember that event the way you remember it. Okay, there’s a reason to have timely filings, I get that. But, let’s not put artificial barriers there. So 90 days plus up to a year if the bureau had knowledge, the employer had knowledge. Instead, the proposal is that we keep that at 90 days and we now, it is a departure, a significant departure, that the member is required to file a prescription reimbursement or a wage reimbursement within 30 days. That’s under (D).

Under (C), I’m jumping around a little bit here, but if you look back up at the next paragraph under (C), you now have to submit a Work Status Report no later than 30 days from what? From the last report that authorized disability. We should be trying to reduce headaches, not create headaches and this requires the member...there are so many doctors, they don’t want to treat injured workers. They don’t want to be within a country mile of these types of claims. Why? Because they are a pain in the neck. They are a headache. Right. And so now, this rule requires me to go back to my attending physician in essence every 30 days to get continued documentation. If that doctor says this member just had surgery and is going to be off for the next three months, I shouldn’t have to go back within 30 days of that disability report and bother the doctor and get another report. Should there be periodic assessments of your ongoing disability, absolutely, absolutely. But this is artificial to make it every 30 days. All right. I’ve already touched on the
reimbursement within 30 days. That’s just...I’m sorry, it’s just backwards from where it needs to be headed. And again, please keep in mind we’re talking about a claim that’s already been approved. We’re not talking about...well this is a righteous claim and so, you know, it’s...why am I putting a barrier on getting my prescription reimbursed or my wages restored.

Under (E), page 6, “current occurrence”. The person’s already on disability. They are already unable to work so this rule adds, I think, confusion. It certainly doesn’t go the way of clarifying or making something consistent. Instead, you’re changing again, it’s this date of disability business. The wage on which my benefits are being calculated and this is saying as of the current occurrence. You see where we are right...I lost...it’s under what would be (E)(1). At the time the member first became disabled on the current occurrence. I’m not sure why current occurrence is being added other than I think it reflects maybe some litigation in the past.

Mr. Hutchison: A point on this one. This is designed to say that if a person who is on claim somehow, let’s say was a Sergeant and gets demoted to an Officer, we will still pay it to a Sergeant based on a Sergeant’s salary. That’s what the intent of this one is. So if they get demoted while they are on claim, we maintain the same payment that they had when they first started the claim. That’s what this wording is for.

Mr. Hall: And I appreciate that clarification because it addresses one of the next that I’m going to come to because interestingly enough the Charter refers to, the rules refer to, if there’s a pay raise during my disability I enjoy that and historically the reverse has not been the case. If I get demoted while I’m on disability, you continue to pay me, as your example, a Sergeant rate and not an officer.

Mr. Hutchison: That’s what this is...just to let you know to clarify. This is what is intended to firm that up. Cause it...we wanted to say you’re on a claim now, your salary is based on what you were at the time that claim started regardless of what happens to your employment after that claim starts.

Mr. Hall: Again, I thank you for that clarification but we’re, we are going to come to an amendment, a proposal that says, by the way, if you’re demoted during your disability, you’re going to be paid at the lower rate. So I think, Sam, we’re going to come across an amendment here pretty soon that’s actually the opposite of what the intent was. And maybe I’m wrong, and hopefully you’ll correct me when I get there, but I think that there is a proposal where it would be adjusted down and that would be contrary to Charter and I think I’ll come to that here shortly. Okay.

5.7.03 page 7. Again, the applications. We’ve already...I’ve already beaten this up a bit in terms of the 30 days and the wage and reimbursement and, by the way, it’s 30 days from the date of injury. With all due respect, that doesn’t make sense because my date of injury...I may be turning in a prescription a year and a half after my date of injury so telling me I have to do it within 30 days of the date of injury is not workable. Also it
says,” including but not limited to” and know that’s a nice phrase that us lawyers like to use cause it encompasses, it’s one of those broad nets that you cast, but it does not meet the criteria for rules under this system. It does not add clarity. It’s not…in other words, it’s one of those, why are we doing this? What is included but not limited to intended to capture. There is a phrase in terms of good cause in 5.7.03 and I think it almost needs to be repeated a second time and I say that because of the last sentence in that proposed amendment. If you look at the sentence up above it says application must be submitted…30 days, unless the member establishes good cause. Beautiful. Leave it there. But then all of a sudden the next sentence is failure to file it within this time means you’re barred. I don’t think it would hurt to add four or five more words right there, you know, in essence repeat it…”unless you have established good cause”. Just repeat it. It’s again what, three words, or four or five words at most so…adding those words, I think, does clarify the good cause role. There’s also, I have a note to myself here about the use of the term “doctor report” and the term “report” is in here and I think it probably does not serve any benefit to refer to report because after all it could be a chart note. It could be a prescription, something like that, so I’m not quite sure what it meant by report and why that phrase, that one term is used. Under (H)…

Mr. Lehman: Can I ask you where that last one…where is report at? I didn’t see that one.

Mr. Hall: I have that under 5.7.03…let’s see…under (F) or proposed (F), used to be (G). “All applications for…shall contain a report of the Member’s Attending Physician” And you’re going to tell me “Hall, that’s already in there, that’s not an amendment. The word report is already in there”. So, maybe that goes to my proactive list in terms of let’s clarify, you know, does a chart note or something suffice. But also it goes to my concern about attending physician and I know again that’s probably existing language but in this modern world of nurse practitioners and so on, it should basically be that evidence, that medical which establishes the disability be it from one or the other. Okay.

Under (H), the cooperation. And again, I understand the need for cooperation. Lived in these kinds of insurance systems for almost 30 years and so I know when historically there have been problems. I understand historically why you want to have at least some hammer to say you’re going to cooperate in the investigation and so on, and the Charter already includes that. The administrative rules already include that. You have to cooperate with voc rehab and so on, but what this is doing…if I’m interpreting it, and again trying in the back of my brain going, “all right why is this being proposed, does it meet any of the criteria?” I look at this and say, “all right, cooperation in the gathering, any other gathering of information”. I have quotes in here. Any other gathering of information. This includes the medical exams. This is back to my concern about the physicians that are being used. I have had cases where for the back injury or so on, the member is sent for a psychiatric exam and they’re being asked to fill out a two or three hour MMPI the Minnesota Multiple Personality…things like that. And, wait a minute, time out, why are we doing this. My problem with this proposed rule, it gives the doctor, this third party, not you as the director, not the member, but we’re assigning, giving over
to a third party to call the shot. This member came in for the exam and wouldn’t cooperate, wouldn’t bend over and touch toes, wouldn’t, you know, take this exam or wouldn’t fill out this questionnaire that I wanted, so we’ve handed over to a third party this notion of cooperation and I don’t think that that’s appropriate. Cooperation yes, but not when it comes to the physical medical examinations and I think the phrase “any other gathering of information” must be defined. That’s like “including but not limited to”. That’s just one of those catchall phrases that does not add clarity, does not provide delivery of benefits.

5.7.05, page 10, page 11. I go, my note here is go back to page 3 and look at the definitions cause we’re now we’re back to the “in effect at disability”. I’ve already talked about, touched on. The base pay and, I think again, it’s inconsistent with 5.7.02(E) unless we amend that. So, I think when we look at, and again that’s pages 10 and 11, what I’ve already said applies to these provisions as well. I think it is under, Mr. Hutchison, backed to what we were addressing a few minutes ago, I think it is under, bear with me...I think this is where the provision about demoted during disability, but, again I appreciate your clarification and the intent of this so it may be that we just need some word smithing to make sure that intent is clear. Cause my notes...my talking point here is the, in effect, kind of freezes the base pay and, of course, that’s contrary to Charter but if that’s not the intent of the rule then I appreciate that.

5.7.06, this is on page 11, the...during the scheduled shift and the four hours. Philosophically, that member should be compensated. It should not just be a work shift if it’s a work shift that’s missed. When I say philosophically, we start with the premise that this member is, has been injured in the line of duty. We start with the premise that, but for this injury, no fault of her or his own, the member is now disabled or the member is at least now in need of medical treatment. Why should that member be required to use his or her off duty time to attend an examination? Now you’re hurting me twice, you know.

Mr. Hutchison: We’re not saying we’re requiring anybody to attend while they’re...it’s...we’re asking them to go when it’s scheduled. If it falls on work time, it does, if it doesn’t then, it doesn’t. So, we’re trying to be neutral as to what they’re schedule is.

Mr. Hall: And, again, I appreciate that point, but there is a provision that we’re going to address here in a minute or so where if I don’t like the appointment date, I have to bother you. I have to go to the director and say “can I get my appointment with this mandatory exam, can I get it rescheduled?”

Mr. Hutchison: And, just to be honest with you, go to the director means go to your claims analyst. That’s how we’ve deferred it and that’s how we do it. Director is an overall me, and I can delegate it so that you can go back to your claims analyst and just say what’s going on here, and if there’s a chance we can reschedule it and they feel it fits, that’s up to them to make the decision. And, it can get pushed up to me if that’s a necessary discussion.
Mr. Hall: And I guess part of my problem, and I say this with no disrespect to the staff, but part of the problem is, now I'm...I have to get their permission. If this isn't working, if this is not a time for me, why can't I as some systems allow, why can't I call that doctor's office up and say "can I reschedule this IME from tomorrow, Thursday, to next week" and that's between the member and the examining physician's office. It's their scheduling. Do I really need to get permission or blessing from your staff or you in order to change the appointment. If you smell a rat, if you think somebody is shining you on and this is the third they're trying to avoid this exam, you know, now you've got a problem, you've got an issue, we'll deal with it. But, just on a day-to-day basis, "hey, can I reschedule this to another time", I wouldn't waste your staff's time. That and again, I appreciate the intent, which is the flexibility but these do get, you know, assigned or scheduled during a member's off day and that should not come at their expense cause the injury did not, you know, was not theirs. All right.

5.7.10, page 13. The examinations. The IMEs. First of all, I won't repeat my urging that we have some kind of a challenge system there. I won't repeat what I just said in terms of the off work, the exam during off work time. Quite frankly, I don't know, I defer to my labor partners here, in terms of whether that's also a bargaining thing in terms of, you know, scheduled and when you can be assigned to do something or required to do something on your off duties. Under (E) is what I just addressed in terms of changing the doctor's appointment. Under (H) is what I touched on just a few minutes ago about the cooperation. And in this situation under (H) it is specifically, in terms of cooperating with the doctor, and that's not just by arriving on time, but it's cooperating with the examination and IME physician. It's one thing, I don't want to be interfering with the exam. He or she needs to examine my range of motion, fine. But, by including the words "and IME Physician" we've injected personalities into it. We've injected the biases into it. We've now injected the fact that, quite frankly, I have a short fuse as a member. That's just me and that's my personality and I have not clicked with this insurance doctor because he or she also has a short fuse. Next thing you know we've got a personality conflict in that examination room. We cannot allow you to hand over to a third party what is or is not cooperation. So I ask strongly that those three words, that phrase be deleted. At a minimum, the good cause sentence that you just took out. At least if the proposal is that you strike it..."unless the Member can show good cause for noncooperation"...at a minimum, that should be left in there. Allow me to demonstrate why I refused that part of the exam.

5.7.12, this is on page 15 and 16. Self-employment. We could put a name or two on this couldn't we? If I go into self-employment, you're going to assume I have a one-third wage earning capacity. Substantial Gainful Activity, SGA. You're assuming in self-employment that I have that and so you're going to then start deducting. If, in fact, self-employment is something that I can actually gain and put food on my family's table, why should my self-employment be treated any differently than other forms of employment relative to the offset.
Mr. Hutchison: Walk me through how self-employment is treated differently here? With this, how it’s done. Part 7, we have had at request of some members, “pay me this amount, I don’t want to share you my self employment”. So that’s why 7 was put in there and if that’s what you want to do, that’s your choice to do it. So, that’s not being treated different. If they provide their earnings, we have internal processes...it’s line, and I can’t remember what line it is out of the 1040 form, is that we use as the amount of their income from the self employment. So, I’m trying to figure out where in here you’re saying we are treating them differently than we would anybody else. So, if you see it, that’s fine, but our intent is not to treat it differently.

Mr. Hall: And so, Mr. Hutchison, is the intent of this simply the reporting or is it the actual wage earnings?

Mr. Hutchison: Part 8 is how do we get the information. Cause the only way that we can really truly validate on a self employed person is to get their 1040 form and there’s a particular line on their Schedule A that says this is what you’re telling the IRS, this is your net profit for the year. That falls under the amount of their earnings and we will apply that to our normal formula. So that’s what we’re saying here, is you’ve got to give us your tax report or in number 7, we have people that didn’t want to do it and said “no you just go ahead and run us at the minimum benefit that you can pay”. So that’s what the intent of this is. This is a very unique situation and there’s a lot of discussion on what, so how do you measure self-employment. So this is an attempt to explain, we need your tax documents for self-employment. You have to give them to us for us to calculate the right benefit. In lieu of that, we will attempt to work with you to estimate during the year and then true up once your tax documents are filed. That’s our practice. That was our intent with this is to support our practice.

Mr. Hall: Okay. And hence, if I timely provide you with my tax returns, that employment information, and my tax returns show no income, no net profit from my business, my self-employment, then you’re not going to reduce mine or assume a 1/3 earning capacity or 50 percent or anything like that. You’re going to...

Mr. Hutchison: I don’t think we’ve had anybody that’s submitted that, but we’ll have to look at that specific one. And just to let you know we had a gentleman who submitted it and we refunded him some money because our estimates were higher and he finally showed it to us when we got it so, that’s how we do it and I think you’ve given me the case and we’ll talk about our administration of that if they come in with a net loss or net zero, how do we handle that. Kim and I will make a note on that and touch that one.

Mr. Hall: And, again, I appreciate that. It’s kind of a, we need something to get the proof, you know, that’s one thing. I just was reading this to say you’re self-employment, we’re going to assume, you know, certain earnings.
Mr. Hutchison: And I think where we cross that is part...is that...so Kim and I will work at that, look at that in more detail, the policy. We know what our intent is. It’s not intended...this is to give us the tools so we can make the right benefit.

Mr. Hall: And, this may be a moment, Mr. Hutchison, where as a general statement from me, when we compare this Fund, which the Charter spells out twice, is for the benefit of the member, and compare it to other systems, such as state workers’ compensation. The state workers’ comp system is what many refer to as a “scheduled” disability program and, hence, when you’re medically stationary, your claim is closed, there’s a formula, etc. And, this Fund has historically been different. This is a “lost earnings capacity” type of system and, hence, the ability...and I really wish that this message was understood in our larger community, because we get miscommunication sometimes about well, this police officer or this firefighter, they’re off having been retrained or they’re off on a new job, why is it they’re still receiving disability benefits and you get the...all right....and the answer is cause that’s how the system is designed. It’s a loss of earnings capacity system and so I say that in the context of making sure that whether it’s self-employment or employment through somebody else, that we continue to respect that make whole, this is a make whole system. All right.

5.7.13, this is on page 17, the...that was a good example, that was in the rule. You know, sometimes our rules include a hypothetical that illustrate the rule. I kind of like historically having that example in there because one of the purposes as we know for a rule being published is that the members...the members know. And so, for what it’s worth, I’d include that example.

Mr. Hutchison: Now, which one are you talking about?

Mr. Hall: It’s under 5.7.15(A), page 17, spills to page 18. It’s the hypothetical’s. It’s the examples to illustrate the rule that has been in there. I would urge you to keep it in there. Yeah. It helps educate the members, the public as to...um...that finishes 5.7 and under 5.8, I have one word. Ditto.

Under 5.9, this is troublesome when it comes to surgery. Now I appreciate the fact that it’s qualified with the term “elective”. “Elective Surgery”. And by the way this would be under page 4 under 5.9.06...at least I...make sure my notes are correct, I think it’s...Forgive me if I don’t have the page number correct, but it is the provision 5.9.06 about elective surgery and here’s our problem. All three Associations have brought this to my attention. You just billed 50...potentially, you’ve just billed 51 days of delay into the system because what you’re saying is that you’ve got within 30 days of this and within 21 days of that, these decisions will be made. And so, what you’ve just effectively done is pushed my surgery out by 51 days. I don’t think that’s necessary. I think the way this currently operates in terms of examinations and decisions about elective surgery, it probably does not need to be clarified or tweaked. On the proactive list, this is also kind of one of those moments where it’s like “whoa,” as long as we’re working together and moving forward, why don’t we create a system that works hand in glove with the health
insurance side of the ledger. It works, but it’s not necessarily a very smooth relationship. Here’s my point. I’ve got a claim, it’s been approved, my doctor says let’s do this surgery. The Fund rightfully says “well, let’s stop and have this reviewed to make sure that it is indeed reasonable and necessary for your covered claim.” Legitimate. But we need a system so that if I don’t want to delay the surgery itself and wait for the approval for 51 days, because after all, I can have the surgery tomorrow, I can be back to work, hypothetically, in, you know, a month. Now I’ve delayed this, I’ve had to use my sick leave or other accrued bank while I’m waiting for the approval so maybe what we do is go hand in glove, you’re self-funded, health insurance side or FPDR side, one side of the ledger or the other, let it so the health insurance covers that surgery. I’m back to work, I’ve used some sick leave, but I am now back to work and then you can make your decision and it’s back to restoring. Don’t make me ask for that restoration, by the way, within 30 days I want 60 or 90 days to ask for the restoration, but that can be worked out after the fact. Health insurance can get reimbursed from the Fund for the cost of the surgery cause you’ve now deemed it appropriate and my health...my sick leave bank, my accrued bank can be restored. All right. But somehow, I’m trying to...not say it very well, I guess, but I’m trying to figure out a way we get our members back to work as soon as possible without having them blow all their accrued bank and go unpaid, you know, or I’ve been off work too long, I now lose my health insurance. So, okay.

Under 5.9, again, I’m not going to repeat what I’ve already said in terms of the “Required Duties”, the at disability, the “Date of Disability”, or as I’ve already addressed, this notion of “Worsening” and I won’t repeat what I’ve already said about the IMEs. That shows up on, I have down here in my notes, page 10 and 11 and page 12 and page 15 that I would uh...

Now, last under 5.9, mandatory age. And, this again is probably maybe on the more proactive list, but we have issues where the member has reached that magic disability retirement, this mandatory disability retirement age, and they go from being on the disability side of the ledger to now the pension side, the retirement side, of the ledger. Questions have come to me from members about “well, now I’m in my pension”, “now I’m eating my pension and I’m having to pay taxes on that”. Why can the member, as long as they are disabled, and again we’re talking righteous claims, we’re talking where there’s no doubt that the person’s been certified to be disabled, why require them to start drawing their pension? Why are we forcing them into this so-called mandatory retirement age?

Mr. Hutchison: Just an FYI. At the next Board meeting there will be an Informational...Mr. Keaney had...no it was Mr. Anderson had brought up an issue discussing taxability and so we’re going to have a memo on it so that may answer your questions with that...so it will be...it will explain some of that with you.

Mr. Hall: Thank you. What I might...and...since I’m offering kind of proactive comments here...is on...this is page 15. See aren’t you guys glad you sat down next to me. You didn’t know you were going to be stuck here for the next hour or two did you?
Mr. Ferschweiler: That’s okay.

Mr. Hutchison: Twelve minutes, just to let you know. I assumed you were gonna…without you knowing, I approved us going past 2:00 o’clock to 2:30.

Mr. Hall: Thank you. I appreciate the leniency. Social security age. What it has is social security age or 30 years and where I’m going with my comment, Mr. Hutchison, is…is…the social security age. If there is to be this change from disability to pension, let the members normal retirement, social security retirement age, be that mark, that line, and as for the younger ones among us, that’s 67 and then 68, 69…it keeps going up. So, it shouldn’t be 30 years. It should be whatever the retirement, the social security retirement age should be.

Under 5.10, I respectfully request or submit we need to rethink this proposal in terms of the 50 mile radius and I think maybe my presidents, our presidents could explain this better, but a lot of the police officers and firefighters serving this City, do not live in this City. They commute from as far south as Eugene or as far East as, you know, the Dalles, or something like that or the state of Washington to report to duty. They were injured here and so, I think, we need to stop and think what impact this has in terms of saying “all right, well it’s going to be within 50 miles of your home or within 50 miles of Portland”. Are we requiring somebody who is used to working and commuting in on a shift, especially the firefighters’ 24, 48 shifts, to now come in or travel 50 miles, you know five days a week. So, bottom line is, I’m not articulating it very well, Sam, but there’s a point here in terms of this 50 mile radius and needing to be careful that it does not end up putting a barrier up or requiring a member, you know, I’m sorry, to take the job at McDonald’s because it’s within the 50 mile radius. Okay.

Under 5.10.09, the verified job efforts every other week. Well, I think it’s every two weeks, I suppose, that somebody on unemployment has to go down and certify…is it every week?

Mr. Hutchison: You know I’m on unemployment for 14 months before I got this job, yes, it’s once a week to submit.

Mr. Hall: So, respecting that effort and all that it required of you, the question is, every other week in this system… I mean this is not a statewide system, this is a pretty small pool of members. I know a lot of them by first names, that sort of thing, so, do we really need the member to every other week to come in and verify their job efforts or do we trust those who have been sworn to have the integrity to know that yeah they need to just, they need to prove their work efforts. They need to cooperate. The Charter tells them they have to cooperate. So, is it once every three or four weeks, once a month, I mean, how often, but really, every other week? Okay. Point made. And, again, the job efforts, my question is, is that within the home radius, is that within the medical release. You see, these are some questions…just by saying you’re going to do this job effort every
other week, you know, are we talking about respecting the fact that the job efforts may need to be within certain medical restrictions or within certain educational and training limits. I think you also, it wouldn’t hurt to have just a sentence, a provision in there where the director, through delegated authority, can waive that opportunity, which historically has been the case and, you know, you’ll see in the rules where the member is supposed to report periodically in terms of medical status unless the director has waived that requirement. So I think some flexibility there. I think I’m finished, Mr. Hutchison.

Mr. Hutchison: Seven minutes left, you’re sure?

Mr. Hall: Seven minutes left?

Mr. Hutchison: Yeah. Dare I ask you for more?

Mr. Hall: No, I don’t want to become the bad example of the lawyer with the microphone, but unless the two presidents have additional comments to make, I think we’ve submitted ours.

Mr. Hutchison: Okay. Everybody else is...

Mr. Foesch: I’d just like to make one comment. I think what would have been helpful...there’s an awful lot of attorneys in here...I know that there might be a perception that there’s an adversarial relationship between the Associations and the FPDR. I think what would have been really productive prior to this is that you guys all sit down and try to hash this thing out. Clearly there’s some misunderstanding of your interpretation of the rules as you’ve read them because there’s nobody there to explain them. I think we need to get beyond this adversarial relationship and try to figure out a way that we can work through these issues and not have to go through the stuff and perhaps come together. There’s going to be disagreements, but I think a lot of these things, the Associations agree with. There’s some concerns, obviously, for the Board and also the Associations in trying to get to the best position they could possibly be in, but we could’ve saved a lot of time for everybody if the attorneys could have sat down together and said “look, how does this work out for you?” “Is this a problem for you?” “Why are you doing this?” That’s, I think, a lot of your questions and I appreciate that we’re getting there to taking the next step. I honestly believe, in spite of what some people think, that neither party is trying to screw each other and we need (unintelligible) and I think this is a good first step. We need to make it go further.

Mr. Hall: Real quick. When you say the attorneys getting together, if you’re talking about, for example, staff’s lawyer, the City’s lawyers...absolutely, and that’s why I was asking initially when I sat down, can we have another off the record kind of, roll up our sleeves discussion between now and then. But to answer your question, Bob, the lawyers here, we did get together and that’s why you’re only hearing from one voice.

Mr. Foesch: What I feel like I’m missing at this point is the City’s position.
Mr. Hutchison: Let me say what part of the challenge is. I’ve bit my tongue pretty hard because I think there’s some interpretations in here that are a little bit different that I disagree with. I think there’s reasoning behind it, but again this is not an interactive session to it. I think, not to downplay, some of these are here because it isn’t just one case, it’s several cases that we’ve had and we just need a little bit more effort just to hey make some people step up and do certain things with it. There are certain things tied behind their back. You know, I appreciate your proactive ones. They’re not in the position right now to go through. I’ve logged those down and we’ll take a look. I think I heard some of these before from the two gentlemen to your sides, have said them so, they’re there. There’s little challenges here with it. Some of them aren’t practical...you know, this hasn’t been an interactive session so I appreciate your time here. There’s some different things...we will talk here as a panel and try to see where we go forward. I think where we’re driving to here is in the future with this stuff is, I wouldn’t say get the attorneys involved, it would be the members and members representatives and FPDR staff. I think that’s where ideally in the future it should go and Nelson, please don’t take this the wrong way, cause my son took the bar last week so I’ll insult him in the process, but I don’t think this should be an attorney-type role, it should be a member versus the Board. I’m very glad to have you represent, but that’s the role I think we should be taking. So, I’ve heard it quite a few times in the past three months, even before I started here. So this is my first attempt. It’s a baby step but at some point we’re going to go forward with it. I appreciate you coming in and, I really do appreciate your time and comments...well thought out. I took a couple reams of paper taking notes on it. We will come back in as a panel and make some recommendations to the Board with this. So as we move forward we’ll find different, you know, more ways to increase discussions with it. So, again, this is a baby step. I appreciate it. I think there were some times here, I think we may need to, like Bob said, get in here and talk about it so we can go back and forth so you understand why certain things are being done and go from there. So, again, let’s just start with it and I appreciate your time.

Mr. Hall: Hopefully, you heard the chorus here and that is we do recognize this is a step and we appreciate that step.

Mr. Turner: And I think part of that is the collaboration we talked about. Like you said, getting together, collaborating together. If we had probably sat down prior to this time on these rules and sat down together, we probably wouldn’t be here this long.

Mr. Hutchison: Well, I think in the future...part of the challenge here with it is, you know, these were in motion, had been in motion, for quite a long time and actually were a fall out from some other previous work that had been done six, seven months ago. I think in the future coming forward, my intention, unless there was something unusual coming in, we will not come at you with a book of rules. My personal goal is let’s move this through as much as possible. If there’s some points we need to talk, we go back...careful there Daryl. So anyway, I do appreciate it. We’ll do that. Derily did you have some comments?
Ms. Bechthold: And I just want to say I don’t necessarily know if you want a bunch of lawyers sitting in a room writing these kinds of rules. These do generate primarily from FPDR staff based on their claims experience. In that regard, we may provide advice as to how to clarify their purpose or suggest wording to make it consistent, but this is something that’s really generated from the FPDR staff because they’re the experts. So, I just want to clarify that. My role is very limited with...in regards to providing feedback. That’s all.

Mr. Hutchison: Well, thank you very much.

Mr. Ferschweiler: And I think, for the record again, Alan Ferschweiler. And I think that, Sam, you hit a couple of these points which really, and I’ve got 5.7.12 where it wasn’t the intent of the language and how we read it and I don’t know if there’s a way to make it where we have the changes in red but almost to add in parentheses what the purpose is or, you know, for public information so that we can see what the intent is because once you explained, and I have it written three times...when you explained it, it was definitely different than how I had read it on what you’re intending to do. So, I think that would definitely be helpful for the process.

Ms. Bechthold: And that’s something that can be captured in the board’s meetings with minutes and the discussion of the Board because it creates legislative history that can be used to clarify. So, it may be helpful that when it goes to the Board that that discussion comes up again for the record so that it becomes part of the entire picture.

Mr. Lehman: I’ve noticed in the past with some of that, that somebody will say “well this is just for clarification” and we’ll just move on and a lot of it gets lost in that. So I don’t know what the process is. If we need to take every rule and ask that question and have somebody from legal talk about it. But when you say we’re going to do this between the Associations and staff, does the staff include our legal?

Mr. Hutchison: Well, we’ll have it but I think...

Mr. Lehman: Well, that’s my point. I think if I’m...if something is being explained from one side and that’s the side that has the legal group, I might need or somebody might need somebody on the other side giving the other point of view.

Mr. Hutchison: Well, I think the members will have Nelson and our new esteemed attorneys to the side representing them, so they will have attorneys. Derily and I we talk and Kim and I, we have spent time talking, going through and clarifying, and we will continue to do that and if we need to elevate it...I think part of, a few of these things are, is trying to get more education on how we do our job with it. I think it may take a little bit of the us versus them out of it cause this is really what our intent is to do it and I think that would clarify some and also as we talked about, okay, so here’s why we do this. Why do we have some of these that appear to be a hammer. Unfortunately, we’ve had to
use a hammer on a couple of claims and it's more than once. You know, you may recognize one or two people in here, but there are more. For every one or two you recognize there's probably two or three, four more behind the scenes that have border lined on... well, like with an IME. Some people will go in and just sit or barely answer the questions with one word answers and obviously making no attempt to do any of the touching the nose, touching the toes so you walk into it. To me, that's not cooperating and it's not that they couldn't do it. It's that they were mad that they had to go to the IME and we've seen that a few times. So that's why we tried to put a little more weight with the IMEs going in with it. So, just to give you some background, I think part of it is, you know, and working more with the Board here getting them to understand how we do our business and why and what are some of the challenges we run into and how this is put in here trying to make it clear for what we do. This also directs Kim's staff, a lot of it too. She's got to adhere to a lot of it and keep true to the work that they do so it's not only a hammer to make sure people are doing them. It's also to making sure we have the parameter in which we do our job.

Ms. Bechthold: As a practical matter, Trustee Lehman, when the director does his presentation to the Board of the rules and their proposed changes, he can have a statement of purpose that will clarify the intent of the rule and that context will be captured in the minutes as part of the legislative history. So, there is a process for capturing the intent other than making a notation in the Charter, but that is something that procedurally can be done during the board meeting and typically is. I know with the board meetings it's kind of... with the time in between we can forget, but I can say that, and probably from Mr. Hall and myself that, when these things come into controversy, we look at the legislative history which are the meeting minutes and the written materials and the recordings to listen to what the purpose is because there are legal standards that do require us to do that when interpreting rules. So, the director when making those proposals can provide clarification on the record for those rules and I think that will help clarify the purpose.

Mr. Hall: I understand those exceptions that you and the staff deal with. Philosophically as a general rulemaking statement, I would ask that we not let the exception control the broader (unintelligible... speaking without microphone)...

Mr. Hutchison: Understood.

Mr. Hall: Thank you, again.

Mr. Hutchison: Okay. Thank you. So, to the people recording, we are now done so you can shut down the recording. Thank you.

Hearing was concluded at 2:30 p.m.
Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends the following amendments:

Issues:

Amends Section 5.4.13 – “FPDR Two Vested Termination”
  o Makes housekeeping changes.

Amends Section 5.5.09 – “FPDR Two and Three Member Benefits on Nonservice-Connected Death Before Retirement”
  o Incorporates HEART Act provision for qualified military service to be included in eligibility determination.

Amends Section 5.7.04 - “Claim Approval or Denial”
  o Added language concerning when a Member is not eligible for service-connected disability benefits.
  o Makes housekeeping changes.

Amends Section 5.7.05 – “Amount of Benefits”
  o Makes housekeeping changes.
  o Adds language to paragraph covering incarcerated Member and FPDR’s right to recover overpaid amounts.

Amends Section 5.7.06 – “Form of Benefits”
  o Makes housekeeping changes.
  o Clarifies when a Member is eligible for a disability benefit payment.

Amends Section 5.7.07 – “Transitional Duty Program”
  o Adds the term “or designee” as it is the Bureau Chiefs’ designee who most often is involved in this process.
  o Makes housekeeping changes.

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TDD (For Hearing and Speech Impaired) at 503-823-6868
Amends Section 5.7.09 – "Recipient of Disability Benefits"
  o Adds language previously noted in other sections of this rule concerning Members on
disability and the requirement of periodic examination.
  o Makes housekeeping changes.

Amends Section 5.7.11 – "Suspension, Reduction or Termination of Benefits"
  o Deletes the first paragraph as statement is made in other sections of the administrative
rules.
  o Adds Member's noncooperation in vocational rehabilitation as one of the reasons that
may cause the Director to suspend, reduce or terminate disability benefits.
  o Makes housekeeping changes.

Amends Section 5.7.13 – "PERS Offset"
  o Makes housekeeping changes.

Amends Section 5.8.02 – "Disability Benefits Generally"
  o Makes housekeeping changes.

Amends Section 5.8.03 – "Application for Benefits"
  o Amends timelines for making application for disability benefits to include applications for
reimbursement of lost wages or leave restoration.
  o Deletes language that is addressed in another section of the rules.
  o Makes housekeeping changes.

Amends Section 5.8.04 – "Eligibility"
  o Makes housekeeping changes.

Amends Section 5.8.05 – "Claim Approval or Denial"
  o Makes housekeeping changes.

Amends Section 5.8.06 – "Amount of Benefits"
  o Adds language to paragraph covering incarcerated Member and FPDR's right to recover
overpaid amounts.

Amends Section 5.8.07 – "Form of Benefits"
  o Cites Section 5.8.16 for information on Disability Retirement Age.

Amends Section 5.8.08 – "Transitional Duty Program"
  o Adds the term "or designee" as it is the Bureau Chiefs' designee who most often is
involved in this process.
  o Makes housekeeping changes.

Amends Section 5.8.10 – "Recipient of Disability Benefits"
  o Adds language concerning requirement of period examination.

Amends Section 5.8.12 – "Suspension, Reduction or Termination of Benefits"
  o Deletes the first paragraph as statement is made in other sections of the administrative
rules.

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TDD (For Hearing and Speech Impaired) at 503-823-6868
- Adds Member’s noncooperation in vocational rehabilitation as one of the reasons that may cause the Director to suspend, reduce or terminate disability benefits.
- Adds language concerning the procedure that is followed when the Director makes a determination to suspend, reduce or terminate benefits.
- Makes housekeeping changes.

Amends Section 5.8.14 – “PERS Offset”
- Makes housekeeping changes.

Amends Section 5.9.02 – “Recipients of Disability Benefits”
- Makes housekeeping changes.

Amends Section 5.9.03 – “Medical Services”
- Change the word Board to Director as it is the Director who enters into fee agreements with medical and hospital service providers.
- Makes housekeeping changes.

Amends Section 5.9.04 – “Medical Services Guidelines”
- Change the word Board to Director as it is the Director who enters into fee agreements with medical and hospital service providers.
- Makes housekeeping changes.

Amends Section 5.9.05 – “Noncovered Services”
- Makes housekeeping changes.

Amends Section 5.9.07 – “Medical Management Programs”
- Adds language under Utilization Review that states the Director may deny a Medical Services request if the organization that the Director has a fee agreement with denies pre-certification of the request.
- Makes housekeeping changes.

Amends Section 5.9.08 – “Medical Fees and Payments”
- Adds timeline for submitting health care provider billings to FPDR, the consequence of late submission and an iteration that Members are held harmless by the health care provider whose bill is reduced or denied for untimely submission.
- Makes housekeeping changes.

Amends Section 5.9.10 from “Post-Retirement Medical Benefits”
- Makes housekeeping changes.

Amends Section 5.10.04 – “Vocational Rehabilitation Program Goals”
- Makes housekeeping changes.

Amends Section 5.10.06 – “Vocational Rehabilitation Program Eligibility”
- Adds language that clarifies when vocational rehabilitation services are considered for Members’ determined to be capable of Substantial Gainful Activity.
- Makes housekeeping changes.

Amends Section 5.10.07 – “Vocational Rehabilitation Plan”
- Makes housekeeping changes.

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TDD (For Hearing and Speech Impaired) at 503-823-6868
Amends Section 5.10.08 – “Cooperation in Vocational Rehabilitation”
  o Makes housekeeping changes.

Amends Section 5.10.10 – “Suspension, Reduction or Termination of Benefits”
  o Makes housekeeping changes.

Amends Section 5.10.11 – “Cessation of Eligibility for Vocational Rehabilitation Services”
  o Makes housekeeping changes.

Amends Section 5.10.12 – “Vocational Rehabilitation Expenses”
  o Adds language concerning resource used to determine amounts payable for services.
  o Makes housekeeping changes.

Amends Section 5.10.13 – “Right to Request a Different Vocational Rehabilitation Specialist”
  o Makes housekeeping changes.

NOTE: Housekeeping changes consist primarily of typographical and grammatical corrections.

Desired Outcome: Board adopts amendments as recommended by staff.

Fiscal Impact Statement

FPDR finance staff has reviewed the proposed rules changes for fiscal impact:

- Housekeeping amendments – No impact anticipated.

- 5.5.09, there is a low probability of financial impact. If a member dies before accruing five years of FPDR service but has enough qualifying military service that, if counted as FPDR years of service, he or she would meet the eligibility requirement, then a small nonservice death benefit would be payable to any surviving spouse at age 55 or to any dependent minor child(ren).

- No additional impact anticipated.
RESOLUTION NO. 479

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney’s office provided input; and

WHEREAS, a public hearing on proposed amendments to the FPDR Administrative Rules was held on August 27, 2013; and

WHEREAS, the Board has considered and recommends changes to parts of Sections 5.4, 5.5, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the sections of the FPDR Administrative Rules be amended as shown on Exhibit “B”.

ADOPTED by the Board of Trustees on the 24th day of September 2013.

Samuel Hutchison
FPDR Director

fund\resolution\479
EXHIBIT “A”
(Resolution No. 479)

Amends Section 5.4.13 – “FPDR Two Vested Termination”

Amends Section 5.5.09 – “FPDR Two and Three Member Benefits on Nonservice-Connected Death Benefits Before Retirement

Amends Section 5.7.04 – “Claim Approval or Denial”

Amends Section 5.7.05 – “Amount of Benefits”

Amends Section 5.7.06 – “Form of Benefits”

Amends Section 5.7.07 – “Transitional Duty Program”

Amends Section 5.7.09 – “Recipient of Disability Benefits”

Amends Section 5.7.11 – “Suspension, Reduction or Termination of Benefits”

Amends Section 5.7.13 – “PERS Offset”

Amends Section 5.8.02 – “Disability Benefits Generally”

Amends Section 5.8.03 – “Application for Benefits”

Amends Section 5.8.04 – “Eligibility”

Amends Section 5.8.05 – “Claim Approval or Denial”

Amends Section 5.8.06 – “Amount of Benefits”

Amends Section 5.8.07 – “Form of Benefits”

Amends Section 5.8.08 – “Transitional Duty Program”

Amends Section 5.8.10 – “Recipient of Disability Benefits”

Amends Section 5.8.12 – “Suspension, Reduction or Termination of Benefits”

Amends Section 5.8.14 – “PERS Offset”

Amends Section 5.9.02 – “Recipients of Disability Benefits”

Amends Section 5.9.03 – “Medical Services”

Amends Section 5.9.04 – “Medical Services Guidelines”

Amends Section 5.9.05 – “Noncovered Services”
Amends Section 5.9.07 – “Medical Management Programs”

Amends Section 5.9.08 – “Medical Fees and Payments”

Amends Section 5.9.10 from “Post-Retirement Medical Benefits”

Amends Section 5.10.04 – “Vocational Rehabilitation Program Goals”

Amends Section 5.10.06 – “Vocational Rehabilitation Program Eligibility”

Amends Section 5.10.07 – “Vocational Rehabilitation Plan”

Amends Section 5.10.08 – “Cooperation in Vocational Rehabilitation”

Amends Section 5.10.10 – “Suspension, Reduction or Termination of Benefits”

Amends Section 5.10.11 – “Cessation of Eligibility for Vocational Rehabilitation Services”

Amends Section 5.10.12 – “Vocational Rehabilitation Expenses”

Amends Section 5.10.13 – “Right to Request a Different Vocational Rehabilitation Specialist”
EXHIBIT “B”
(Sections of proposed Administrative Rules as listed on Exhibit A - Resolution No. 479)
5.4.13 – FPDR TWO VESTED TERMINATION

(A) Termination prior to January 1, 2013: An FPDR Two Member who has completed five Years of Service and whose employment with the Bureau of Fire or Police terminates prior to January 1, 2013 shall be eligible for an increase in his or her benefit on vested termination if the FPDR Two Member is employed after termination in service recognized by the Public Employees Retirement System of the State of Oregon for accrual of benefits or as a waiting period before such accrual begins. The benefit on vested termination shall be increased in the same proportion as any increases during the period of such service in the rate of Base Pay for the FPDR Two Member's position in the Bureau of Fire or Police held at termination.

(B) Termination on or after January 1, 2013: An FPDR Two Member who has completed five Years of Service and whose employment with the Bureau of Fire or Police terminates on or after January 1, 2013 shall not be eligible for an increase in his or her benefit on vested termination based on subsequent employment.
5.5.09 – FPDR TWO AND THREE MEMBER BENEFITS ON NONSERVICE-CONNECTED DEATH BEFORE RETIREMENT

(A) Eligibility:

(1) Surviving Spouse: A Surviving Spouse of a Member who has one or more Years of Service and dies before retirement not as a result of an illness or injury that qualifies as service-connected or occupational death, shall be eligible to receive a death benefit.

(2) Dependent Minor Child or children:

(a) A Dependent Minor Child of such a Member shall be eligible to receive the benefit if the Member has no Surviving Spouse or if the spouse is under age 55 years. If the Member has more than one Dependent Minor Child, the benefit payable to the children shall be divided equally among them.

(b) If the Member has a Surviving Spouse and one or more Dependent Minor Children of a former marriage, one-half the benefit shall be paid to the Surviving Spouse. The other half shall be paid to the Dependent Minor Children of a former marriage until the last ceases to be minor and then paid to the Surviving Spouse. If the Member has more than one Dependent Minor Child, the benefit payable to the children shall be divided equally among them.

(c) Any Dependent Minor Child's interest in said benefit shall cease when the child is no longer a Dependent Minor Child as defined herein.

(B) Exception for Death while on Qualified Military Service: If an FPDR Two or Three Member dies while on qualified military service on or after January 1, 2007, the Member's Years of Service includes the time the Member spent on qualified military service for the purpose of determining eligibility for the amount and form of the benefit addressed in (C) and (D) below. Years of Service retains its standard definition for the computation of the amount of the benefit in (C).

(B)(C) Amount of Benefit:

(1) Amount of benefit for death before five Years of Service:

(a) The benefit shall be a lump sum equal to the amount of the Member's contributions as provided in 5-305 (d)(1) of Chapter 5, less any benefit paid to the Member under this Chapter. This is a taxable benefit.

(b) No benefit is payable to the survivors of a FPDR Two Member who had not made contributions to the Fund prior to July 1, 1990.

Exhibit “B” (Resolution No. 479)
(c) Survivors of a FPDR Three Member would not be eligible for a lump sum benefit as there would be no situations where said member would have made contributions to the Fund prior to July 1, 1990.

(2) Amount of benefit for death after five Years of Service:

(a) If the FPDR Two Member had five or more Years of Service, the benefit shall be an annuity equal to 50 percent of the Member’s accrued retirement benefit under Section 5-304 of Chapter 5, based on 2.6 percent of the Member’s Final Pay instead of 2.2 percent. This is a taxable benefit.

(b) If the FPDR Three Member had five or more Years of Service, the benefit shall be an annuity equal to 50 percent of what the Member’s accrued retirement benefit under Section 5-304 of Chapter 5 would have been if the Member had been an FPDR Two Member, based on 2.6 percent of the Member’s Final Pay instead of 2.2 percent. This is a taxable benefit.

(D) Form of Benefit:

(1) Less than five Years of Service: A benefit payable shall be in a lump sum.

(2) More than five Years of Service:

(a) Surviving Spouse shall be paid the benefit monthly commencing with the Month after the Member’s death if the spouse is age 55 or over and otherwise with the month after the spouse attains age 55 and shall continue for the spouse’s life.

(b) A Dependent Minor Child shall be paid commencing with the month after the Member’s death and shall continue until the child ceases to be a minor.

(c) The benefit will be suspended in cases where there is a gap between when the last Dependent Minor Child ceases to be a minor and when the Surviving Spouse attains age 55.

(d) The benefit will resume to the Surviving Spouse beginning the month after the spouse attains age 55, at the level that was payable when the benefit was suspended and with no adjustment in the interim.

(e) The benefit shall be adjusted after payment commences. The Board shall determine the amount and timing of such adjustments in its discretion, except the percentage rate of change shall not exceed the
percentage rate applied to retirement benefits payable to police and fire employees by PERS.

(E) Offset: The monthly amount of nonservice-connected death benefits under Chapter 5 of the City Charter shall be reduced by any monthly death benefit payable made by PERS up to the amount provided in this section. The Director shall reduce any nonservice-connected death benefit payable under Chapter 5 in the amount determined to be necessary by the Director to meet the limitation imposed by this subsection.

(F) More Than One Status: No person shall receive more than one survivor benefit under Chapter 5 at the same time, despite qualifying under more than one category, or qualifying with respect to more than one Member. A person so qualifying shall receive in any month the greatest of the benefits payable for that month.
5.7.04 – CLAIM APPROVAL OR DENIAL

(A) Disability Claim applications fall into one of the following two categories:

(1) Service-Connected Disability Claims – Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member’s employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member’s personal pleasure. (Relocated from after (e) below.)

Stress or Mental Disorder Claims – The Director shall determine if each of the following elements exists:

(a) The employment conditions producing the stress or mental disorder exist in a real and objective sense;

(b) The employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical and or psychological community;

(d) There is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and

(e) The Member’s employment conditions are the primary cause of the stress or mental disorder.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member’s personal pleasure.

(2) Occupational Disability Claims – The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(c) of the City Charter unless the Director determines, by a preponderance of the evidence:

Exhibit “B” (Resolution No. 479)
evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.

(B) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member's representative, and the Member's Attending Physician within sixty (60) days of the Director's receipt of a written application for benefits. This applies to the initial claim for benefits and subsequent Claims for Recurrence or Aggravation benefits.

(1) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the injury/illness service-connected injury/illness or occupational disability occurring on the particular date has been approved. The notice also shall include information on how the Member can request reimbursement for covered expenses personally paid for by the Member.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member's right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director's receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days from of the Director’s receipt of a written application for benefits, then the claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.7.05 – AMOUNT OF BENEFITS

During the period the Member continues to be eligible under this section, benefits shall be paid as follows:

(A) First year from date of disability:

(1) During the first year from the date of disability, the Member shall be paid 75 percent of the Member’s rate of Base Pay in Effect at Disability.

(2) The Member’s disability benefit rate shall be reduced by 50 percent of any wages earned in other employment during the period the benefit is payable.

(B) Second year from date of disability and after:

(1) The Member shall continue to be paid the benefit described in "Paragraph A" after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity.

(C) Fourth anniversary of the date of disability:
If not medically stationary sooner, the Member shall be deemed medically stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the status of the Member's medical condition.

If the Member is incapable of Substantial Gainful Activity, the benefit will remain at 75 percent of the Member's rate of Base Pay in Effect at Disability.

If the Member is capable of Substantial Gainful Activity, the benefit shall be 50 percent of the Member's rate of Base Pay in Effect at Disability, reduced by 25 percent of any wages earned in other employment during the same period.

The minimum benefit shall be 25 percent of the Member's rate of Base Pay in Effect at Disability, regardless of the amount of wages earned in other employment.

Notwithstanding any other provision of the Chapter 5 or of the City Charter, or a disabled Member receiving or eligible to receive service-connected or occupational Disability benefits under Section 5-306 shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration. FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.

5.7.06 – FORM OF BENEFITS

The service-connected and occupational disability benefits shall be payable on the same schedule as Member's regular payroll during the first year from the Date of Disability and monthly thereafter. After the first year of disability benefits, the Director may pay the disability benefit on the same schedule as Member's regular payroll if the Member has returned to work and the period of disability is due to part-time employment restrictions or an intermittent absence on an approved service-connected injury/illness or occupational disability claim. The Director may pay the benefit monthly during the first year of disability if the Member has been medically separated prior to the end of the first year of disability benefits. The benefits shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability.

After Claim approval and prior to the Member reaching Medically Stationary status, a Member may be paid a disability benefit by FPDR for each authorized Documented Absence from work for periods during a scheduled work shift of up to four (4) hours to attend any one medical appointment for the Member's approved service-connected or occupational disability benefits Claim. As with all applications for benefits under Section 5.7, the Member must provide to FPDR written verification of any appointment from the Member's authorized healthcare health care provider within 30 days of the medical appointment.
5.7.07 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member’s Bureau Chief or designee of that fact. Included in the notification will be a report of the Member’s limitations and a request that the Bureau Chief provide the Member with a job that is compatible with the Member’s limitations. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

* * *

5.7.09 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. The purpose of the examination will be to determine if the Member’s approved service-connected injury/illness or occupational disability condition(s) continue to prevent the Member from performing the Member’s Required Duties in the Fire or Police Bureaus. (Relocated from 5.7.02 (3) and (4).)

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member’s Attending or Specialty Physician of the Member’s continued disability for each disability pay period, unless otherwise waived by the Director.

(C) A Member receiving service-connected injury/illness or occupational disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of maintaining a Substantial Gainful Activity, but who is unable to return to the Bureau, shall pursue other employment within the Member’s restrictions. “Pursue other employment” means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.

* * *

5.7.11 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For service-connected and occupational disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity Assessment, or is not pursuing other employment, the Director shall notify the Member of the Director’s determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and
during regular business hours, the Member shall be entitled to review the non-
privileged evidence upon which the decision is based. The Member will have 14
days to provide a written response for the Director's reconsideration. The Member
shall also be notified of the rights under Charter Section 5-202(h) of the right to
appeal for a Hearing. Any such written request must be filed with the Director within
60 days after the date of the decision being appealed.

(B)(A) Service-connected and occupational benefits under Article 3—

The Director may determine to suspend, reduce or terminate benefits for service
connected and occupational disability benefits under Article 3 of the Charter, if the
Director obtains evidence that:

1. The Member is not cooperating in treatment;

2. The Member is not cooperating in a designated examination under Charter
   Section 5-202(a);

3. The Member is not cooperating in the administration of the Claim and/or
   fulfilling the Member's duties and obligations under the Charter and the FPDR
   Administrative Rules;

4. The Member is no longer disabled or eligible;

5. The Member's injury/illness service-connected injury/illness or
   occupational disability no longer arises out of and in the course of the
   Member's employment with the Bureau of Fire and Rescue or the Police
   Bureau, as provided for in Section 5-306 of the Charter.

6. The Member has engaged in fraud or a material misrepresentation;

7. The Member has failed to seek other employment once he/she has been
deeemed capable of substantial gainful activity, or has achieved his/her
vocational rehabilitation goals;

8. The Member has failed to provide notification and request approval to engage
   in other employment within the specified timeframe timeframe.

9. The Member has failed to provide other/outside wage information to allow for
   wage offset purposes within the specified timeframe timeframe; or

10. The Member has failed to participate in an Independent Medical Examination
    or other Director arranged medical or mental examination.

11. The Member is not cooperating in vocational rehabilitation, including
    participating in a substantial gainful activity assessment.

(C)(B) The Director shall notify the Member of the Director's decision to suspend, reduce
or terminate benefits. A summary of the evidence and the decision shall be
provided to the Member. By appointment and during regular business hours, the
Member shall be entitled to review the non-privileged nonprivileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director’s reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) and the right to appeal for a hearing the decision as provided for in Section 3 5.6 of these FPDR Administrative Rules. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

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5.7.13 – PERS OFFSET

FPDR Disability benefits will be offset by Public Employees Retirement System (PERS) Disability benefits pursuant to Chapter 5 of the City Charter.
5.8.02 – DISABILITY BENEFITS GENERALLY

(A) Payment of Disability Benefits - Disability benefits will be paid to a Member only during such time as the Member is unable to perform his or her required duties in the Bureau of Fire and Rescue or Bureau of Police. Thus, the disability benefits being paid to a Member shall cease when the Member is capable of performing the duties required of him or her.

A Member who is unable to perform his or her required duties but is able to do other work to which the Member may be assigned in his or her respective Bureau, is ineligible for disability benefits if such a job is available to the Member. For example, a police officer whose injury prevents him or her from performing police duties in the field will be ineligible for disability benefits if the officer is capable of performing more sedentary duties and such sedentary position is available to the officer.

(B) Changes in Related to Member Employment Status While on Disability

(1) If Member is demoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the Base Pay of the position held at the time the Member first became disabled on the Claim.

(2) If Member is demoted and is not receiving disability benefits at the time of demotion, and later begins receiving disability benefits, said benefits will be based on the reduced base wage of the new classification.

(3) If Member is promoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the Base Pay of the Member’s new position.

5.8.03 – APPLICATION FOR BENEFITS

(A) No disability benefits shall be paid to a Member unless the Member files with the Director a complete and timely application requesting such benefits, including but not limited to applications for reimbursement of wages or restoration of leave accrual. Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness or occupational disability, unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.

(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that it the Director deems necessary to carry out FPDR’s duties.

(C) Application for disability benefits may be made by the Member, or the Member’s authorized representative. A representative shall submit to the Director written proof of the representative’s authority.
Applications for disability benefits must be submitted to the Director not later than 30 days from the date of lost wages due to a Member's nonservice-connected injury or illness unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.

By making application for disability benefits, each applicant thereby authorizes the Director to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant's health, income and employment which in any way relates to the applicant's Claim of disability and/or capacity to engage in Substantial Gainful Activity.

The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Director upon request. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law, and by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Director or the Director's authorized representatives.

All applications for nonservice-connected disability benefit shall contain a report of the Member's Attending Physician.

Although information comes from many sources, Claim assessment evaluation is frequently based in part on information provided by the Fire and Police Bureaus. If the Bureau designates a process for requesting documents, then the Fund FPDR staff will comply with that process. With the exception of attorney-client privileged documents, all information gathered and made part of the Claim file will be accessible to the Member, or the Member's authorized representative, upon the Member's request. If a Bureau deems some records as privileged, it is that Bureau's responsibility to identify what information is privileged and to withhold the information.

A Member is required to cooperate with FPDR staff in the investigation of an application for benefits. This includes submitting for and cooperating with personal or telephone interviews and gathering of information. Failure to cooperate with this rule in an initial Claim for benefits may delay a compensability determination or result in a Claim denial. Failure to cooperate with this rule on any application for benefits subsequent to approval of the initial Claim may result in a suspension of benefits.

5.8.04 ELIGIBILITY

An Active Member shall be eligible for the nonservice-connected disability benefit if the Member has 10 or more Years of Service and is unable to perform the Member's Required Duties because of an injury or illness that does not qualify as a service-connected injury/illness or an occupational disability under subsection 5-306(a), (b) or (c) of Chapter 5 of the City Charter.
5.8.05 CLAIM APPROVAL OR DENIAL

(A) No Member shall receive nonservice-connected disability benefits for disabilities resulting from the following:

(1) Willful injuries;

(2) Injuries sustained while, or illness contracted as a result of, willfully doing an unlawful act; or

(3) Weakness, illness or disability resulting directly or indirectly from the habitual excessive use of or addiction to use of alcoholic beverages or illegal drugs.

(B) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member’s representative, and the Member’s attending Physician within sixty (60) days of the Director’s receipt of a written application for benefits. This applies to the initial Claim for benefits and subsequent Claims for recurrence or aggravation benefits.

(2) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the nonservice-connected disability claim has been approved.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member’s right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director’s receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days from of the Director’s receipt of a written application for benefits, then the Claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.8.06 AMOUNT OF BENEFITS

(A) The benefit shall be 50 percent of the Member’s Base Pay in Effect at Disability, reduced by 50 percent of any wages the Member earns in other employment during the period the benefit is payable. The Director may reduce, suspend or terminate the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.

(B) Notwithstanding any other provision of the Chapter or the City Charter, a disabled Member receiving or eligible to receive nonservice-connected Disability Benefits under Section 5-307, shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. FPDR reserves the right to recover overpaid amounts in situations...
where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.

5.8.07 FORM OF BENEFITS

The nonservice-connected disability benefit shall be payable monthly from the Date of Disability. The Director may pay this benefit in some other form as deemed appropriate, but no less frequently than monthly. The amount shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability. The benefit shall cease when the Member reaches Disability Retirement Age under subsection 5-304(a) and Section 5.8.16 of this Administrative Rule.

5.8.08 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member’s Bureau Chief or designee of that fact. Included in the notification will be a report of the Member’s limitations and a request that the Bureau Chief or designee provide the Member with a job that is compatible with the Member’s limitations. Members’ cooperation with the return to work program is a requirement of the Non-Service connected disability benefits program. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

* * *

5.8.10 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. The purpose of the examination will be to determine if the Member’s approved nonservice-connected injury/illness condition(s) continue to prevent the member from performing the Member’s duties in the Fire or Police Bureau.

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member’s Attending or Specialty Physician of the Member’s continued disability for each disability pay period, unless otherwise waived by the Director.

(C) A Member receiving nonservice-connected injury/illness benefits under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the bureau, shall pursue other employment within the Member’s restrictions. Pursue other employment means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and

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should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.

5.8.12 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For nonservice-connected disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Suitable Gainful Activity Assessment, or is not pursuing other employment, the Director shall notify Member of the Director’s determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the decision is based. The Member will have 14 days to provide a written response for the Director’s consideration. Regarding non-service-connected disability benefits, the Director may reduce, suspend or terminate benefits. The Member shall also be notified of the rights under Charter Section 5-202(h) of the right to appeal for a Hearing. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

(B)(A) The Director may determine to suspend, reduce or terminate benefits for nonservice-connected disability benefits under Article 3 of the Charter, if the Director obtains evidence that:

1. The Member is not cooperating in treatment;
2. The Member is not cooperating in a designated examination under Charter Section 5-202(a);
3. The Member is not cooperating in the administration of the eClaim and/or fulfilling the Member’s duties and obligations under the Charter and the FPDR Administrative Rules;
4. The Member is no longer disabled or eligible;
5. The Member has engaged in fraud or a material misrepresentation;
6. The Member has failed to seek other employment once he/she has been deemed capable of substantial gainful activity, or has achieved his/her vocational rehabilitation goals;
7. The Member has failed to provide notification and request approval to engage in other employment within the specified time frame timeframe;
8. The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified time frame timeframe; or
9. The Member has failed to participate in an Independent Medical Examination or other Director-arranged medical or mental examination.

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(10)(9) The Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.

(B) The Director shall notify Member of the Director’s determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the nonprivileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director’s reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) to appeal the decision as provided for in Section 5.6 of the FPDR Administrative Rules. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

5.8.14 – PERS OFFSET

FPDR Disability benefits will be offset by Public Employees Retirement System (PERS) Disability benefits pursuant to Chapter 5 of the City Charter.
5.9.02 – RECIPIENTS OF DISABILITY BENEFITS

All Members drawing disability benefits, of whatever nature shall identify a physician as defined in and under the conditions prescribed for under "Primary Attending Physician" in Section 5.9.01 of this Administrative Rule.

5.9.03 – MEDICAL SERVICES

(A) Reimbursement for actual, reasonable and necessary expenses, as determined by the Director, paid for or incurred by a Member as a result of a service-connected or occupational injury or illness shall be paid as provided below:

(1) Members shall be reimbursed for the actual, reasonable and necessary medical expenses they have paid for or incurred. Payment directly to the medical care provider shall be deemed to be reimbursement of the Member.

(2) Actual, reasonable and necessary costs for travel, prescriptions and other necessary expenses paid by the Member will be reimbursed upon request by the Member.

(3) All requests for reimbursement shall be made on forms provided by the Director and accompanied by itemized documentation which supports the request. For example, requests for reimbursement for prescriptions must be accompanied by a receipt from the provider identifying the prescription and its price and requests for mileage reimbursement must be accompanied by a statement reflecting the actual mileage traveled.

(4) Reimbursement for the cost of meals, lodging, public transportation or use of a private vehicle shall be at the rate of reimbursement paid to City employees when incurring such expenses.

(5) Reimbursement for the cost of meals, lodging, or travel exceeding 50 miles will be paid only if such expenses are pre-approved by the Director.

(6) Expenses incurred for public transportation or the use of a private automobile will be reimbursed based on the most direct route between the Member's home and the facility where the service is to be performed.

(7) All requests for reimbursement for expenses paid by the Member must be submitted to and received by the Director within 60 days of making payment for or incurring the expense for which reimbursement is sought.

(8) Initial determinations regarding actual, reasonable and necessary medical and other expenses shall be made by the Director. Members shall be advised, in writing, of any denials. In the event that a denial is issued by the Director, the Member may appeal such determination by filing with the Director a written notice of appeal requesting reconsideration before a hearings officer. However, the reconsideration shall not be granted unless
the notice of appeal is received by the Director within 60 days after the mailing of the determination, unless the Member can establish good cause why the notice of appeal was not received until after the required 60 days.

(9) Medical or hospital service providers that have fee arrangements agreements with the Board Director. Notwithstanding the provisions of subsection (1) above, Members receiving disability benefits under FPDR-Two and Three must obtain hospital and Medical Services for service-connected or occupational injuries or illnesses from providers or organizations that have fee arrangements agreements with the Board Director, except in those circumstances described in subparagraph (310) below. A listing of such providers shall be on file in and available from the Director’s office.

Medical or hospital service providers or organizations that have a fee arrangement agreement with the Board Director shall provide Medical Services to Members that are subject to the terms and conditions of said agreement.

(10) Medical or hospital service providers that do not have a fee arrangement agreement with the Board Director. Members may obtain and will be reimbursed for the actual and reasonable costs of necessary medical or hospital services received from providers who do not have fee arrangements agreements with the Board Director, in the circumstances described below. Payment directly to the provider will be considered to be reimbursement to the Member.

(a) The Member has a life-threatening emergency requiring immediate medical care at the nearest emergency facility. The Member has a life-threatening emergency requiring immediate medical care at the nearest emergency facility. Life-threatening emergencies include, but are not limited to, situations such as profuse bleeding, loss of consciousness, breathing difficulty or sudden severe head trauma.

(b) The Member is traveling in an area in which there are no providers who have a fee arrangement agreement with the Board Director and a service-connected or occupational injury or illness or occupational disability requires immediate medical treatment.

(c) The Member is referred by either the Bureau of Police or the Bureau of Fire and Rescue to a provider with whom the Bureau has made arrangements for vaccinations or evaluation and treatment for on-the-job exposures to blood-borne pathogens or hazardous materials.

(d) Other exceptions specifically authorized by the Director or his or her designee. The Director or his or her designee may waive the requirement that a Member seek hospital or Medical Services from a provider who has a fee arrangement agreement with the Board Director upon a showing by the Member that it is a necessity that the Member be treated by another

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provider or that it would cause an undue hardship on the Member to require that he or she seek treatment only from a provider who has a fee arrangement with the Board-Director.

(11) Medical treatment and services provided by approved health care providers must be consistent with the nature of the approved service-connected injury or illness or occupational disease disability, and care that is reasonable and necessary to promote recovery.

(B) The Director reserves the right to request of the Member’s Primary Attending or Specialty Physician, evidence of the frequency, extent and efficacy of treatment and services.

(C) Ancillary Services provided by a health care provider other than the Member’s Primary Attending Physician will not be reimbursed unless prescribed by the Member’s Primary Attending or Specialty Physician. These services must be according to a treatment plan that has been provided to the Member’s Primary Attending or Specialty Physician within a reasonable time of when the ancillary treatment begins. The treatment plan must include the following:

(1) Objectives of planned treatment;
(2) Description of modalities to be provided;
(3) Frequency of treatments; and
(4) Duration of treatments.

The Member’s Primary Attending or Specialty Physician shall sign off on the ancillary treatment plan and send a copy to the Director.

5.9.04 – MEDICAL SERVICES GUIDELINES

Medical Services provided to the injured Member must not be more than is reasonable and necessary to treat the approved service-connected injury/illness or occupational disability. The Director may deny services that are shown to be more than the nature of the approved service-connected injury/illness or occupational disability, or the process of recovery requires. Accepted professional standards will be relied upon in making these determinations.

(A) The utilization and treatment standard for physical therapy included in any fee arrangement agreement with a medical or hospital service provider will be followed. If none exists, the number and duration of therapy visits covered will not exceed what is medically reasonable and necessary under accepted professional standards. The Member’s Primary Attending or Specialty Physician will be required to provide the Director with a written explanation for visits exceeding this standard.
(B) Attending Physicians may prescribe treatment or services to be carried out by persons not licensed to provide a Medical Service or treat independently only when such services or treatment is rendered under the Attending or Specialty Physician's direction.

(C) Massage therapy not administered under the direct oversight of an Attending Physician must comply with the requirements for "Ancillary Services" in these rules.

(D) Prescription drugs may be purchased by the Member at a pharmacy of the Member's choice. The Director may ask that the Member access the services of providers that the Board Director has made fee arrangements agreements with. Except in an emergency, drugs and medicine for oral consumption supplied by an Attending Physician must not exceed that which is medically necessary to treat the Member.

(E) Post-Medically Stationary medical care may fall into one of the following categories:

Curative Care – Medical care necessary to stabilize a temporary and acute flare up of symptoms of the Member’s condition; or

Palliative Care - Medical care that is reasonable and necessary to reduce or temporarily moderate the intensity of an otherwise stable condition and/or is reasonable and necessary to enable the Member to continue current employment or a vocational training program.

In both cases, the Member's Primary Attending Physician will be required to submit to the Director a written request that provides the following:

(1) A description of the objective findings;

(2) The diagnosed medical condition for which the care is being requested, to include the appropriate ICD-9-CM diagnosis code;

(3) Provide an explanation of how and why requested care is reasonable and necessary and will improve the Member's condition; and/or is reasonable and necessary to enable the Member to continue current employment or a vocational training program.

(4) A description of how the care is medically reasonable and necessary to treat the approved Claim.

5.9.05 – NON-COVERED NONCOVERED SERVICES

(A) Medical treatment that is excessive, unscientific, unproven as to its effectiveness, outmoded, inappropriate or experimental in nature is not reimbursable. Accepted professional standards will be relied upon in making these determinations.

(B) Dietary supplements, unless prescribed by the Member's Primary Attending or Specialty Physician specifically as medical treatment for an approved dietary

Exhibit “B” (Resolution No. 479)
deficiency condition are not reimbursable.

(C) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not covered unless a need is clearly justified by a report which establishes that the “nature of the injury or the process of recovery requires” the item be furnished. The report must specifically set forth why the Member requires an item not usually considered necessary in the great majority of workers with similar impairments.

(D) Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist that render such treatment medically reasonable and necessary.

(E) Physical Restorative Services may include but are not limited to a regular exercise program, gym membership or swim therapy. Such services are not compensable unless the nature of the Member’s limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The Attending Physician must justify by report why the Member requires services not usually considered necessary for the majority of injured workers.

(F) The Director may deny services that are shown to be more than the nature of the approved service-connected injury/illness or occupational disability or the process of recovery requires. Accepted professional standards will be relied upon in making these determinations.

5.9.07 – MEDICAL MANAGEMENT PROGRAMS

(A) Clinical Case Management – the use of a combination of medical professionals (nurses and physicians) to manage or assist in managing the medical and disability aspects of service-connected injury/illness and occupational disability Claims.

(1) Typical clinical case management providers and services may include telephonic and field nurse case management services, utilization management, and physician advisor.

(2) A Nurse Case Manager may be assigned to monitor and track recovery of a Member’s approved injury/illness Claim when deemed appropriate by the Director.

(a) Members are required to cooperate with the Nurse Case Manager assigned to their injury/illness Claim. Cooperation includes submitting to personal and/or phone contact and answering relevant medical and vocational questions posed to them by the Nurse Case Manager.

(b) Members may decline to allow the Nurse Case Manager to accompany them to their medical appointments.
(c) Members may request a change of Nurse Case Manager. However, it is at the discretion of the Director to assign a new Nurse Case Manager.

(B) Utilization Review - FPDR may require the use of utilization review services to provide pre-certiﬁcation of surgical and specialty care prior to approval of the Medical Service. The Director may deny a Medical Services request if utilization review services deny precertiﬁcation of such request.

5.9.08 – MEDICAL FEES AND PAYMENTS

(A) The Director may contract with medical or hospital service providers or groups of providers for medical or hospital services and enter into fee arrangement agreements with such to reimburse medical fees of approved Claims under these rules.

(B) Health care providers will submit their fees for services rendered pursuant to current Charter and FPDR Administrative Rules. Billings must be itemized and include Chart Notes, and must be submitted directly to FPDR, no later than 90 days from the date of service or in accordance with the terms of their provider panel agreement with whom FPDR is contracted. A health care provider must establish good cause if billing is submitted later than 90 days from the date of service or in accordance with the terms of their provider panel agreement with whom FPDR is contracted. Failure to show good cause may result in a reduction or nonpayment of allowable charges. Members will be “held harmless” by the health care provider for any costs that, if not for late submission, would have been covered by FPDR.

(C) Medical fees will be reimbursed according to the fee arrangement agreements made between the medical providers and FPDR.

(D) If no fee arrangement agreement has been made with the medical provider, and the service complies with these administrative rules in all other respects, FPDR will reimburse at the “Usual and Customary Fee” for the Medical Service.

(E) FPDR payment shall be considered payment in full. Members will be “held harmless” by the medical provider for any costs above the usual and customary fee—schedule rate, as defined in 5.9.01 of these Administrative Rules, or an agreed upon fee arrangement agreement amount payable by FPDR on an otherwise approved billing.

(F) FPDR will date stamp each medical bill received. Bills for services rendered on approved Claims will be adjudicated within 30 days of receipt. Payments will be in accordance with adopted fee schedules.

(G) If there is a dispute concerning the amount of a bill, the appropriateness of the service rendered, or the relationship of the services to the approved Claim, FPDR must pay any undisputed portion of the bill and notify the provider of the specific reasons for non-payment nonpayment or reduction of the remainder of the bill.
5.9.10 – POST-RETIREMENT MEDICAL BENEFITS

(A) Disability Retirement – Medical and hospital expenses arising from an approved service-connected injury/illness or occupational injury/illness disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.

(B) Service Retirement – For Members who are retired as of January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational injury/illness disability shall not be reimbursable.

(C) Service Retirement – For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational injury/illness disability shall be reimbursable.

(D) The Director shall deny the Claim for medical or hospital expense if the Director determines by a Preponderance of the Evidence that a Claim under subsection (C) from a retired Member is due to the following:

(1) Medical or hospital expenses related to an injury/illness that was based upon fraud, misrepresentation, an omission, or illegal activity by the Member, or

(2) Medical or hospital expenses related to an injury/illness that was accepted in good faith, in a case not involving fraud, misrepresentation, an omission, or illegal activity by the Member, and within two (2) years of the initial acceptance the Director obtains evidence that the Claim is not a service-connected or occupational illness/injury or FPDR is not responsible for the injury/illness, or

(3) Medical or hospital expenses are not related to the service-connected injury/illness or occupational disability.
5.10.04 – VOCATIONAL REHABILITATION PROGRAM GOALS

The goals of a Vocational Rehabilitation program are to assess the feasibility and benefit of Vocational Rehabilitation services to the Fund and the disabled Member; and

(A) Return the Member to his or her former job with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police; or

(B) Return the Member to the same (but modified) job with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police; or

(C) Return the Member to work, performing a different job that capitalizes on Transferable Skills with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police, or with another City of Portland agency; or

(D) Return the Member to work, performing a different job that capitalizes on Transferable Skills with a different employer; or

(E) Return the Member to work, performing a different job that requires training with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police, another City of Portland agency or a different employer.

* * *

5.10.06 – VOCATIONAL REHABILITATION PROGRAM ELIGIBILITY

(A) A Member is eligible for Vocational Rehabilitation Services when:

(1) The Member has fully participated in an Vocational Assessment as provided in these Administrative Rules; and

(2) Vocational Rehabilitation services and associated costs are reasonably expected to reduce overall disability benefits that would likely be incurred until the Member's reaches Disability Retirement date Age.

(B) A Member shall participate in Vocational Rehabilitation services if the Member meets the eligibility criteria in this section and the Member is not capable of "Substantial Gainful Activity", as defined in these Administrative Rules.

(C) A Member may request Vocational Rehabilitation services if the Member meets the eligibility criteria in this section, even if the Member is capable of "substantial gainful activity", if after analysis, the Fund determines that there is a reasonable likelihood of a reduction in disability benefits total until the Member’s mandatory retirement date with completion of the Vocational Rehabilitation services.

A Member who is determined to be capable of Substantial Gainful Activity may be approved for Vocational Rehabilitation services only if, after analysis, the Director determines that there is a reasonable likelihood that such services will result in a reduction in disability costs.

Exhibit “B” (Resolution No. 479)
5.10.07 – VOCATIONAL REHABILITATION PLAN

(A) A Member who is determined to be eligible for Vocational Rehabilitation services, along with a Vocational Rehabilitation specialist, will develop a specifically achievable Vocational Rehabilitation plan.

(B) The components of the Vocational Rehabilitation plan may include but not be limited to:

1. Written vocational goals and objectives;
2. The actions that must be taken to achieve the goals and objectives;
3. The services (including any recommended training) needed to fulfill the plan;
4. The projected start date and completion date of the actions to be taken and services to be provided;
5. The job-seeking and placement-related activities that will facilitate securing employment;
6. The way in which progress towards completing the plan will be evaluated; and
7. The cost of the services and other expenses associated with the plan.

(C) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum upon successful completion (or 60 days after successful completion) of a vocational training program, in lieu of submitting wage information to FPDR for purpose of wage offset.

(D) PLAN TYPES Vocational Rehabilitation plan types include:

1. Return to Work Plans - Services that are geared toward the Member being provided:

   a. A bona fide offer of return to work, performing a different job that capitalizes on Transferable Skills with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police; or

   b. A bona fide offer of return to work, performing a different job that capitalizes on Transferable Skills with another City of Portland agency.

2. Direct Employment Plans – Services provided to a Member who has the necessary Transferable work skills to obtain suitable new employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay in Effect at disability. Direct Employment Services may consist of one or more of the following:
(a) Employment Counseling.
(b) Job Search Skills Instruction.
(c) Job Development.
(d) Job Analysis.

(3) Training Programs – Training programs shall consist of formal or informal instruction designed to teach a Member job skills which will enable the Member to obtain employment in or outside of the Bureau which employed the Member.

(b)(a) Training program services shall include plan development, training, monthly monitoring of training progress, and job placement services if necessary.

(b) Training program services shall be limited to an aggregate of 16 months. As appropriate, the Director may allow an extension to 21 months, an additional 5 months.

(c) Training plan objectives and the kind of training shall attempt to minimize the length and cost of training necessary to prepare the Member for suitable employment.

(4) Optional Services – Optional services are limited services which may be provided to a Member and may be provided to an otherwise ineligible Member or to an eligible Member in excess of those services described in these Administrative Rules. Such services are provided at the discretion of the Director. The cost associated with such limited services shall not exceed 10 percent of the total expense limit provided in Section 5.10.11 (K) of these Administrative Rules.

5.10.08 – COOPERATION IN VOCATIONAL REHABILITATION

(A) A Member who meets the criteria for an assessment under Section 5.10.05 shall cooperate in Vocational Rehabilitation. “Cooperate in Vocational Rehabilitation” means:

A Member receiving disability benefits must cooperate in Vocational Rehabilitation processes as follows:

(1) Fully participate in an assessment of Substantial Gainful Activity and the feasibility of Vocational Rehabilitation;

(2) If determined capable of Substantial Gainful Activity without retraining, participate in any Direct Employment or other Optional Services available in these rules.

(3) If determined eligible for Vocational Rehabilitation, cooperate in the development of a reasonable and specifically achievable Vocational

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Rehabilitation plan consistent with the purpose and goals of Vocational Rehabilitation;

(4) Fully participate in the approved Vocational Rehabilitation plan; and

(5) Upon completion of an approved Vocational Rehabilitation services plan, the Member “pursues other employment,” as defined in these Administrative Rules, in the field for which the Vocational Rehabilitation services were provided.

(B) For service-connected injury/illness or occupational disability benefits, a Member’s failure to cooperate in any Vocational Rehabilitation services or plans may result in suspension or reduction of benefits.

(C) For nonservice-connected disability benefits, a Member’s failure to cooperate in any Vocational Rehabilitation services or plans may result in reduction or termination of benefits.

* * *

5.10.10 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(A) For service-connected and occupational disability benefits and for nonservice connected disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in Vocational Rehabilitation, or is not pursuing other employment, the Director shall notify Member of the Director’s determination to suspend, reduce or terminate benefits.

(B) The Member shall be notified of the rights under Charter Section 5-202(h) (3) of the right to appeal the decision. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

5.10.11 – CESSATION OF ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES

A Member’s eligibility for Vocational Rehabilitation services will end when any of the following conditions have been met:

(A) The applicable purpose and goals of the Vocational Rehabilitation program plan referred to in this section of the Administrative Rules have been attained.

(B) The Member has been employed with the Bureau of which he or she was a Member at the time of becoming disabled for 60 days, or has been employed by another bureau or employer or has been self-employed for 60 days. This provision shall not apply if additional Vocational Rehabilitation services are required to overcome obstacles to the Member’s continued employment.

(C) The Member’s employment ends for a reason unrelated to the Member’s service-connected, occupational or nonservice-connected disability.
(D) The Member has refused an offer of employment after he or she has been rehabilitated to the extent necessary that he or she possesses the physical capacities, knowledge, skills and abilities for such employment or has failed to fully participate in available light-duty work.

(E) The Member has declined Vocational Rehabilitation services, has become unavailable for Vocational Rehabilitation services or has retired.

(F) The Member has failed, after written warning, to fully participate in an *Vocational Assessment* of his or her eligibility for Vocational Rehabilitation services or to provide requested information.

(G) The Member has failed, after written warning, to fully comply with the Member's responsibilities under a Vocational Rehabilitation plan.

(H) The Member has stopped attending training without notifying either the *Vocational Rehabilitation* services provider or the Director.

(I) The Member's lack of employment or self-employment for which he or she has the necessary physical capacity, knowledge, or Transferable skills and abilities cannot be resolved by Vocational Rehabilitation services.

(J) The Member has misrepresented a matter which was material to the assessment of eligibility or the provision of Vocational Rehabilitation services.

(K) Notwithstanding any other provision in these rules, the period of time between plan implementation and plan completion reaches 24 months; or the total expenses associated with the plan reaches the maximum allowance for the authorized plan, whichever comes first. The expense limit may be adjusted annually by the Board *Director* in keeping with similar annual adjustments made by the Oregon Department of Consumer and Business Services, Workers Compensation Division, in OAR 436-129 and *published in Bulletin 124*.

### 5.10.12 – VOCATIONAL REHABILITATION EXPENSES

(A) *Reimbursement will be consistent with the fee schedule established by the Oregon Workers' Compensation Division Administrative Rule 436-120-0720 and Bulletin 124.*

(B) To receive reimbursement for Vocational Rehabilitation services, a disabled Member must obtain such services from a provider of Vocational Rehabilitation services approved by the Director.

(C) Reimbursement for Vocational Rehabilitation services provided to a Member will be authorized only if the services are included in a Vocational Rehabilitation plan which has been approved in advance by the Director, subject to the limits provided in these *Administrative Rules.*
5.10.13 – RIGHT TO REQUEST A DIFFERENT VOCATIONAL REHABILITATION SPECIALIST

A Member has the right to request a different Vocational Rehabilitation specialist providing Vocational Rehabilitation services. Any such request should be made to the Director, who shall review the request, and in the event good cause for the requested change is established, the Director shall authorize the Member to work with a different Vocational Rehabilitation specialist.
Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends the following amendments:

Issues:

Amends Section 5.6.01 – “Definitions”

- The changes to this rule and 5.6.02 below are to update the rules to match Board Resolution No. 477 passed by the Board on May 23, 2013.

Resolution No.477 authorized the Director to renew FPDR’s agreement with OAH to conduct hearings and appellate reviews for FPDR. The resolution also included a provision regarding the right of recusal of a hearings officer for good cause as defined in OAR 471-050-005.

The motion to approve this resolution included an amendment “to include the right of either part to request of the head ALJ the removal of one of the hearings officers for good cause as defined...”

Resolution 477 with the amendment passed by a 4-1 vote.

- Section 5.6.01 defines ‘good cause”

Amends Section 5.6.02 – “Claim Processing; Request for Hearing”

- Section 5.6.02 outlines the recusal process

    During the hearing, the need to file a recusal request with the head ALJ was of concern.

    Since the proposed rule matched wording from Resolution 477, a Board vote is needed to change the resolution wording.
Amends Section 5.7.15 – “Disability Retirement Age”

- Proposed wording for 5.9.11 (similar wording was proposed for 5.10.02 and 5.7.15):

  A Member receiving service-connected injury/illness or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age.

During the hearing, we were asked why we included the social security wording. Could we just leave it as 30 years of service?

This wording with both 30 years of service and social security retirement age is taken from section 5-304 of the City Charter. A charter amendment would be needed to drop the social security wording.

Adds Section 5.9.11 – “Disability Retirement Age”

- See explanation for Rule 5.7.15 above

Amends Section 5.10.09 – “Seeking Other Employment”

- Rule change requires the member to provide verifiable documentation of his or her reasonable efforts to find gainful employment to the Director every other week.

  During the hearing, it was recommended that we extend reporting period to once every three or four weeks.

  Oregon Employment Department requires weekly reporting.

**Desired Outcome:** Board adopts amendments as recommended by staff.

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**Fiscal Impact Statement**

FPDR finance staff has review the proposed rules changes for fiscal impact:

- No impact anticipated.
RESOLUTION NO. 480

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney’s office provided input; and

WHEREAS, a public hearing on proposed amendments to the FPDR Administrative Rules was held on August 27, 2013; and

WHEREAS, the Board has considered and recommends changes to parts of Sections 5.6, 5.7, 5.9 and 5.10 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the sections of the FPDR Administrative Rules be amended as shown on Exhibit “B”.

ADOPTED by the Board of Trustees on the 24th day of September 2013.

Samuel Hutchison
FPDR Director
EXHIBIT “A”
(Resolution No. 480)

Amends Section 5.6.01 – “Definitions”

Amends Section 5.6.02 – “Claim Processing; Request for Hearing”

Amends Section 5.7.15 – “Disability Retirement Age”

Adds Section 5.9.11 – “Disability Retirement Age”

Amends Section 5.10.09 – “Seeking Other Employment”
EXHIBIT "B"
(Sections of proposed Administrative Rules as listed on Exhibit A - Resolution No. 480)
5.6.01 – DEFINITIONS

"Board of Trustees." As used in these rules relating to hearings procedures, the term "the Board of Trustees" or "the Board" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund or a hearings officer appointed by the Board of Trustees pursuant to Charter Section 5-202(b).

"Discovery." The term "Discovery" means claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member's claim(s) to and from the Office of Administrative Hearings. Discovery does not include claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member's attorney or Member's representative or the Fund, Fund's attorney or Fund's representative.

"Good Cause." The term "Good Cause" means any reason why a hearing officer's impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

"Member." The term "Member" means

(A) Those sworn permanent employees of the Bureau of Fire and Rescue having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator;

(B) Those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.
(C) Persons first sworn on or after January 1, 2013 shall be a Member of this plan, and eligible for benefits under these Administrative Rules, upon completion of six (6) consecutive months of employment as a permanently appointed sworn employee in the Bureau of Fire or Police.

Membership shall commence at the time a sworn employee effectively receives his or her initial appointment to either the Bureau of Fire and Rescue or the Bureau of Police and shall continue until the Member's employment with the Bureau of Fire and Rescue or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

Exceptions

(A) Persons other than FPDR Three Members who are currently employed by the Bureau of Fire and Rescue or the Bureau of Police who participate in the Public Employee Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.

(B) The chief of the Bureau of Police or the Bureau of Fire and Rescue shall be a Member unless the terms of employment of such chief provide otherwise.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half year of service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, Prior Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A member who returns to duty, in a regularly budgeted sworn job classification, in the Bureau of which he or she is a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire and Rescue or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.
“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to conduct an evidentiary hearing under these rules on disputed issues concerning a Member’s benefits under the Plan.

“Surviving Spouse.” The term “Surviving Spouse” shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members’ surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to “surviving spouse” shall be understood to apply on equal terms to the same sex domestic partner of the Member.

5.6.02 – CLAIM PROCESSING; REQUEST FOR HEARING

(A) If the Director denies a claim, the Member shall be notified in writing of the decision along with the notice of the right to request a fact finding hearing. If a Member wishes to proceed with a hearing, a request for hearing signed by or on behalf of the Member must be made, in writing, and received by the Director within 60 days of the mailing date of the denial. An untimely request for hearing may be accepted by the designated hearings officer upon a finding of good cause for the untimely request. Good cause for an untimely request shall be determined by the designated hearings officer and may be established as provided for in Oregon Rule of Civil Procedure 71B.

(B) Within 14 days of receiving the Member’s request for hearing, the Fund shall:

(1) Send a letter to the Member acknowledging the Fund’s receipt of the request for hearing and simultaneously copy the Member’s attorney or representative, if any;

(2) Provide the Member, Member’s representative, or Member’s attorney with copies of all discovery in the Fund’s possession;

(3) Complete and send a Hearings Referral Form to OAH, along with a copy of the denial; and

(4) Assign the case to the Fund’s attorney.

(C) OAH shall designate a hearings officer to adjudicate the hearing and shall schedule a pre-hearing conference with the Member, Member’s representative, or Member’s attorney, and the Fund’s attorney within 30 days of OAH’s receipt of the referral. OAH shall provide formal written notification of the date and time of the pre-hearing conference to the Member, Member’s representative, or Member’s attorney, and to the Fund and the Fund’s attorney. The purpose of the pre-hearing conference is to identify the issues for the hearing, to schedule the hearing, and to set deadlines for disclosure of
Either party may request a change of hearings officer for Good Cause. The request must be made in writing and submitted to the Chief Administrative Law Judge at OAH prior to the date of the prehearing conference. The requesting party shall mail copies of the request simultaneously to all parties. The designated hearings officer shall provide any relevant information regarding the request to the Chief Administrative Law Judge prior to the Good Cause determination. If the Chief Administrative Law Judge determines there is Good Cause, OAH shall designate a new hearings officer to adjudicate the hearing and shall schedule a prehearing conference with the parties within 30 days of the new hearings officer's designation.

Within a reasonable time after the pre-hearing conference has been held, OAH shall provide formal written notification of the date, time, and location of the hearing to the Member, Member's representative, or Member's attorney, and to the Fund and the Fund's attorney.

After the Fund's initial provision of discovery to the Member, Member's representative, or Member's attorney, the Member and the Fund shall produce to the other party, on an ongoing basis, any previously undisclosed discovery within 14 days of coming into possession of such documents.

At least 45 days prior to hearing, the Fund's attorney will submit a complete set of exhibits to OAH and provide a copy of it to the Member, Member's attorney, or Member's representative. Each proposed hearing exhibit shall be marked, arranged in chronological order, and numbered in the lower right corner of each page, beginning with the document of the earliest date, with the abbreviation "Ex" preceding the number of each exhibit. The page number of documents with multiple pages shall be designated by hyphenating the exhibit number and including the page number after the hyphen. E.g., the second page of Exhibit 1 would be marked "Ex. 1-2." The Fund's attorney will prepare the exhibits and submit the exhibits and an index of the exhibits to the hearings officer and simultaneously to the Member, Member's representative, or Member's attorney.

The hearings officer may receive evidence submitted within 45 days of the hearing if such evidence was not in the possession of the party offering such evidence at the time of the initial submission of exhibits. The hearings officer may hold the record open for rebuttal evidence when there is a submission within 45 days of the hearing, or if the rebuttal report is not available at the time of the hearing despite the due diligence of the party soliciting the report. Subject to the limitations in subsection (H) of this rule, the hearing officer may hold the record open for cross examination of a medical expert by deposition.

The Member may take the deposition of the author of any expert medical report solicited by the Fund if:
(1) The Fund intends to rely on that report at the hearing;

(2) The Fund does not call that medical expert to testify at the hearing; and

(3) Within 14 days of disclosure of an expert medical report to the Member, Member’s representative, or Member’s attorney, the Fund’s attorney is provided with a written request for cross examination of that medical expert report’s author by the Member or on behalf of the Member by his or her representative or attorney.

(4)(J) For any deposition satisfying all the criteria in subsection (H) of this rule, the Fund shall pay the fee of the medical expert to be deposed for the time spent in the deposition, and the Fund shall pay the court reporter’s fee. The Fund shall also pay these same fees for any such deposition of a medical expert it requests. The Fund’s right to depose a medical expert shall be subject to the limitations imposed on a Member by subsection (H) of this rule.

(5)(K) The Member or Director may request a reset of a scheduled hearing for “extraordinary circumstances” as provided for in subsection (K) of this section. The request must be made in writing as soon as practicable and include an explanation of the reason for the request to reset the hearing. If the request to reset the scheduled hearing is granted, a rescheduled hearing will then be set as soon as the hearings officer’s and parties’ calendars will permit. In any event, a hearing shall not be postponed for more than one year from the date the Member requested a hearing except in extraordinary circumstances beyond the control of the Member or the Fund.

(6)(L) Extraordinary circumstances for resetting a scheduled hearing may include, but are not limited to investigation by outside agencies, illness and any other basis deemed an extraordinary circumstance by the designated hearings officer.

(7)(M) The decision concerning a request to reset a scheduled hearing shall be made by the hearings officer designated to adjudicate the issue(s) in dispute.
5.7.15 – DISABILITY RETIREMENT AGE

(A) Service-connected injury/illness or occupational disability benefits payable under Article 3 of the Plan to a FPDR Two Member shall cease upon attaining at Disability Retirement Age except as provided in Section BC hereof. A Member receiving service-connected injury/illness or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age. Since a Member who receives a disability benefit which is less than 75 percent of the Member’s Base Pay in any given year will not be credited with a full Year of Service for any such year (refer to § 5-302(e) of the Plan), there will be more than 30 years between the time a Member was hired and the time he or she will be deemed to have reached Disability Retirement Age based on 30 Years of Service. For example, assume that a Member who has 10 Years of Service becomes disabled. Assuming that the Member receives service-connected disability benefits equal to 75 percent of Base Pay during the first year of disability and 50 percent of Base Pay thereafter, the Member would have to be disabled for 16 years before he or she would be considered to have attained Disability Retirement Age based upon 30 Years of Service. For purposes of this rule, social security retirement age means the retirement age provided in 42 USC § 416(l)(1).

(B) Service-connected injury/illness or occupational disability benefits payable to a FPDR Three Member shall cease at Normal Retirement Age under PERS except as provided in Section C hereof.

(B)(C) A disabled Member who is receiving service-connected or occupational disability benefits pursuant to Article 3 of the Plan at the time he or she attains Disability Retirement Age shall only be eligible to receive disability benefits up to the date he or she attains Disability Retirement Age, at which time the disabled Member shall be entitled to receive only a retirement benefit. If the Director determines the service-connected injury/illness or occupational disability to be temporary, benefits may continue after Disability Retirement Age for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member up to two (2) years from the date of such disability. A Member covered under Article 3 of the Plan, who is actively employed and suffers a service-connected illness/injury, or occupational disability after attaining Disability Retirement Age for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member, shall be eligible to receive disability benefits for a period of up to two (2) years from the date of such disability, at which time the disabled Member shall be entitled to receive only a retirement benefit if the Director determines the disability to be temporary.
5.9.11 – **DISABILITY RETIREMENT AGE**

(A) Service-connected injury/illness or occupational disability benefits payable to a FPDR Two Member shall cease at Disability Retirement Age except as provided in Section BC hereof. A Member receiving service-connected injury/illness or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age. For purposes of this rule, social security retirement age means the retirement age provided in 42 USC § 416(l)(1).

(B) Service-connected injury/illness or occupational disability benefits payable to a FPDR Three Member shall cease at Normal Retirement Age under PERS except as provided in Section C hereof.

(C) If the Director determines the service-connected injury/illness or occupational disability to be temporary, benefits may continue after Disability Retirement Age for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member up to two (2) years from the date of such disability. A Member, who is actively employed and suffers a service-connected illness/injury, or occupational disability after attaining Disability Retirement Age for a FPDR Two Member or PERS Normal Retirement Age for a FPDR Three Member, shall be eligible to receive disability benefits for a period of up to two (2) years from the date of such disability if the Director determines the disability to be temporary.
5.10.09 – SEEKING OTHER EMPLOYMENT

A Member receiving service-connected injury/illness or occupational disability, or nonservice-connected disability benefits, under Article 3 of the plan, who is released to modified duty and capable of Substantial Gainful Activity, but who is unable to return to the Bureau of which he or she was an employee at the time of becoming disabled, shall Pursue Other Employment within the Member's restrictions.

(A) The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training.

(B) A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. The Member will be required to provide verifiable documentation of his or her reasonable efforts to find gainful employment to the Director every other week. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.
Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends the following amendments:

Issues:

Amends Section 5.7.03 – “Application for Benefits”

- Additional changes to this rule were made after the hearing. Please refer to the latest version.

- Changes: Edits to sections (A) & (D) were removed

- During the hearing, there was some concern about the phrase in section (H), "any other gathering of information". Part of the discussion centered around concerns with IMEs.

Amends Section 5.7.10 – “Independent Medical Examinations”

- Key discussion points in the hearing were:
  1. How IME physicians are selected and how can the member challenge the physician selection
  2. When to schedule an IME around a members work schedule
  3. Should “good cause” be included in the rule for requesting a different IME appointment time, for not cooperating with an IME? If so, its definition?

Amends Section 5.8.11 – “Independent Medical Examinations”

- Rule changes similar to those in 5.7.10; assure consistency between sections
Amends Section 5.9.06 – “Independent Medical Examinations”

- Rule changes similar to those in 5.7.10; assure consistency between sections.

- During the hearing, there was some discussion on Section (F) – Elective Surgery and IMEs. The concern is the length of time to complete an IME prior to an elective surgery; per the rules it can take as long as 58 days to approve an elective surgery. Questions were brought up about shortening the timeline and coordinating with the medical insurer to eliminate any delay in the surgery.

  These elective surgery approval timelines are not new. They exist now in section (D).

Desired Outcome: Board adopts amendments as recommended by staff.

**Fiscal Impact Statement**

FPDR finance staff has review the proposed rules changes for fiscal impact:

- No impact anticipated.
RESOLUTION NO. 481

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney’s office provided input; and

WHEREAS, a public hearing on proposed amendments to the FPDR Administrative Rules was held on August 27, 2013; and

WHEREAS, the Board has considered and recommends changes to parts of Sections 5.7, 5.8 and 5.9 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the sections of the FPDR Administrative Rules be amended as shown on Exhibit “B”.

ADOPTED by the Board of Trustees on the 24th day of September 2013.

Samuel Hutchison
FPDR Director
EXHIBIT “A”
(Resolution No. 481)

Amends Section 5.7.03 — "Application for Benefits"
Amends Section 5.7.10 — "Independent Medical Examinations"
Amends Section 5.8.11 — "Independent Medical Examinations"
Amends Section 5.9.06 — "Independent Medical Examinations"
EXHIBIT "B"
(Sections of proposed Administrative Rules
as listed on Exhibit A - Resolution No. 481)
5.7.03 – APPLICATION FOR BENEFITS

(A) No disability benefits shall be paid to a Member unless the Member files with the Director a complete and timely application requesting such benefits.

(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that it the Director deems necessary to carry out FPDR’s duties.

(C) Applications for disability benefits may be made by the Member, or the Member's authorized representative. A representative shall submit to the Director written proof of the representative's authority.

(D) Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness, unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.

(E) By making application for disability benefits, each applicant thereby authorizes the Director to recover overpaid Interim Disability Benefits paid to the Member, should the application/Claim for benefits be withdrawn by the Member or be denied by the Director and the denial become final.

(F) By making application for disability benefits, each applicant thereby authorizes the Director to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant’s health, income and employment which in any way relates to the applicant’s Claim of disability and/or capacity to engage in Substantial Gainful Activity.

The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Director upon request. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law and, by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Director or the Director's authorized representatives.

(G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer, the signature of the Chief of the Bureau affected and a report of the Member's Attending Physician.
All applications for occupational disability benefits shall contain a report of a superior officer, the signature of the Chief of the Bureau affected, together with a report of the Member's Attending Physician.

Although information comes from many sources, Claim assessment evaluation is frequently based in part on information provided by the Fire and Police Bureaus. If the Bureau designates a process for requesting documents, then the Fund FPDR staff will comply with that process. With the exception of attorney-client privileged documents, all information gathered and made part of the Claim file will be accessible to the claimant Member, or the Member's authorized representative, upon the claimant's Member's request. If the Bureau deems some records as privileged, it is that Bureau's responsibility to identify what information is privileged and to withhold the information.

**A Member is required to cooperate with FPDR staff in the investigation of an application for benefits. This includes submitting for and cooperating with personal or telephone interviews and any other gathering of information. Failure to cooperate with this rule in an initial Claim for benefits may delay a compensability determination or result in a Claim denial. Failure to cooperate with this rule on any application for benefits subsequent to approval of the initial Claim may result in a suspension of benefits.**

* * *

5.7.10 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member potentially eligible to receive benefits under this program is required to undergo an independent medical examination (IME) by one or more licensed physicians or psychologists. Should the Member fail to submit to the examination, or obstructs the same, the Member's rights to benefits may be suspended or reduced by the Director until the exam has taken place.

(B) The Director is not required to schedule an IME appointment during Member's work hours. Members will be required to attend an IME during off work hours, as well as work hours, if so scheduled, and unless there is good cause for not attending the IME. An IME scheduled during a Member's off work hours is not considered good cause, of and by itself, for not attending an IME.

(C) FPDR will mail a written notice to the Member by certified and regular mail at least 14 calendar days prior to the IME appointment date. If the member has an attorney, the Member's attorney shall be simultaneously
notified in writing of a scheduled medical examination under these Administrative Rules. FPDR may provide fewer than 14 days notice if the Member agrees.

(B) The Member and the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. Unless waived at the Member's request or with the Member's permission, FPDR may provide fewer than 14 days notice if the Member agrees. The Member's Notification of the medical examination shall be in writing, sent at least ten (10) days prior to the date of the examination, and include the following information:

(D) The Member's notification of the medical examination shall include the following information:

(1) The name of the examiner or facility;

(2) A statement of the specific purpose for the examination and identification of the medical specialties of the examiners;

(3) The date, time and place of the examination; and

(4) The first and last name of the Member's Attending Physician and verification that the Member's Attending Physician was informed of the examination.

Ten day notification may be waived at Member's request or with the Member's permission.

(E) The Member may request a change in the appointment date, time or place for good-cause. With approval of the director, attempts will be made to reschedule the IME. Until a new IME appointment is scheduled and approved by the director, the member is required to attend the original IME appointment.

(F) When necessary, the following expenses associated with the Member's attending the medical examination will be considered by the Director:

(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and

(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.

(G) Requests for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely review and consideration prior to the date of the examination. Mileage reimbursement will be based on City of Portland
rates in effect at the time of incurred expense.

(H) The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination and IME Physician unless the Member can show good cause for noncooperation.

* * *

5.8.11 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member potentially eligible to receive benefits under this program is required to undergo an independent medical examination (IME) by one or more licensed physicians or psychologists. Should the Member fail to submit to the examination, or obstructs the same, the Member's rights to benefits may be suspended or reduced by the Director until the exam has taken place.

(B) The Director is not required to schedule an IME appointment during Member's work hours. Members will be required to attend an IME during off work hours, as well as work hours, if so scheduled, and unless there is good cause for not attending the IME. An IME scheduled during a Member's off work hours is not considered good cause, of and by itself, for not attending an IME.

(B)(C) FPDR will mail a written notice to the Member by certified and regular mail at least 14 calendar days prior to the IME appointment date. If the Member has an attorney, the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. FPDR may provide fewer than 14 days notice if the Member agrees.

FPDR shall provide fewer than 14 days notice if the Member agrees.

(D) The Member's notification of the medical examination shall include the following information:

(1) The name of the examiner or facility;

(2) A statement of the specific purpose for the examination and identification of the medical specialties of the examiners;

(3) The date, time and place of the examination; and

(4) The first and last name of the Member's Attending Physician and verification that the Member's Attending Physician was informed of the examination.
(E) The Member may request a change in the appointment date, time or place for good cause. With the approval of the director, attempts will be made to reschedule the IME. Until a new IME appointment is scheduled and approved by the director, the member is required to attend the original IME appointment.

(G) When necessary, the following expenses associated with the Member's attending the medical examination will be considered by the Director:

(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and

(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.

(G) Requests for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely review and consideration prior to the date of the examination. Mileage reimbursement will be based on City of Portland rates in effect at the time of incurred expense.

(H) The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination and IME Physician unless the Member can show good cause for noncooperation.

(I) Suspension or reduction of benefits may result from noncooperation in participation with an IME.

* * *

5.9.06 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member potentially eligible to receive benefits under this program is required to undergo an IME by one or more licensed physician(s) or psychologist(s). Should the Member fail to submit to the examination, or obstructs the same, the Member's rights to benefits may be suspended or reduced by the Director until the examination has taken place.

(B) The Director is not required to schedule an IME appointment during a Member's work hours. Members will be required to attend an IME during off work hours, as well as work hours, if so scheduled, and unless there is good cause for not attending the IME. An IME scheduled during a Member's off work hours is not considered good cause, of and by itself, for not attending an IME.
Independent Medical Examinations (IME) during the course of a Member's Injury/Illness or Occupational Claim:

1. The Member will be notified in writing by certified and regular mail at least 14 calendar days prior to the IME appointment date.

2. The Member may request a change in the appointment date, time or place for good-cause.

3. The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination unless the Member can show good-cause for non-cooperation.

4. Suspension or reduction of benefits may result from non-cooperation in participation with an IME.

When Elective Surgery is recommended by the Member's Primary or Specialty Physician the Member may be required to attend an IME with an independent consultant prior to approval of the surgery.

1. The Director will notify the physician within 7 days of receiving a request to approve surgery that an IME will be required prior to approval of the surgery. The Director will arrange the IME as soon as possible, but no later than 30 days following the request for surgery by the Member's Primary Physician or Specialty Physician.

2. The Director will issue a decision to approve or deny the request for surgery as soon as possible, but no later than 21 days, following the date of the IME.

FPDR will mail a written notice to the Member by certified and regular mail at least 14 calendar days prior to the IME appointment date. If the Member has an attorney, the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. FPDR may provide fewer than 14 days notice if the Member agrees.

The Member's notification of the medical examination shall include the following information:

1. The name of the examiner or facility;

2. A statement of the specific purpose for the examination and identification of the medical specialties of the examiners;

3. The date, time and place of the examination; and
(4) The first and last name of the Member's Attending Physician and verification that the Member's Attending Physician was informed of the examination.

(E) The Member may request a change in the appointment date, time or place for good-cause. With approval of the director, attempts will be made to reschedule the IME. Until a new IME appointment is scheduled and approved by the director, the member is required to attend the original IME appointment.

(F) When Elective Surgery is recommended by the Member's Attending or Specialty Physician the Member may be required to attend an IME with an independent consultant prior to approval of the surgery.

(1) The Director will notify the Attending or Specialty Physician within 7 days of receiving a request to approve surgery that an IME will be required prior to approval of the surgery.

(2) The Director will arrange the IME as soon as possible, but no later than 30 days following the request for surgery by the Member's Attending Physician or Specialty Physician.

(3) The Director will issue a decision to approve or deny the request for surgery as soon as possible, but no later than 21 days, following the date of the IME.

(G) When necessary, the following expenses associated with the Member's attending the medical examination will be considered by the Director:

(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and

(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.

(H) Requests for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely review and consideration prior to the date of the examination. Mileage reimbursement will be based on City of Portland rates in effect at the time of incurred expense.

(I) The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination and IME Physician unless the Member can show good cause for non-cooperation.
(J) Suspension or reduction of benefits may result from noncooperation in participation with an IME.
Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends the following amendments:

Issues:

Amends Section 5.10.05 – “Vocational Assessment”

- This rule includes the use of labor market survey to determine Substantial Gainful Activity. It specifies the survey will be confined to within a 50 mile radius of Portland.

During the hearing, concern was expressed with using Portland as the center of the survey. Some Firefighters and Police Officers live more than 50 miles outside of Portland. Requiring a member to travel 50 miles to Portland may be too onerous for a normal 8 hours job.

Desired Outcome: Board adopts amendments as recommended by staff.

Fiscal Impact Statement

FPDR finance staff has review the proposed rules changes for fiscal impact:

- There are currently 15 Members on Monthly Disability receiving 75% of Base Pay. If one of these were to be determined capable of Substantial Gainful Activity as a result of the proposed labor market survey area, the annual savings would be $21,500 based on the average benefit of these Members. Otherwise, no impact anticipated.
RESOLUTION NO. 482

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney’s office provided input; and

WHEREAS, a public hearing on proposed amendments to the FPDR Administrative Rules was held on August 27, 2013; and

WHEREAS, the Board has considered and recommends changes to Section 5.10 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that Section 5.10 of the FPDR Administrative Rules be changed in accordance with the recommendations of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Section 5.10 of the FPDR Administrative Rules be amended as shown on Exhibit “B”.

ADOPTED by the Board of Trustees on the 24th day of September 2013.

Samuel Hutchison
FPDR Director
EXHIBIT “A”
(Resolution No. 482)

Amends Section 5.10.05 – “Vocational Assessment”
EXHIBIT “B”
(Sections of proposed Administrative Rules as listed on Exhibit A - Resolution No. 482)
5.10.05 – VOCATIONAL REHABILITATION PROGRAM ASSESSMENT

(A) The purpose of an Vocational Assessment is to determine if the Member is capable of Substantial Gainful Activity, as defined in these Administrative Rules; as well as to determine if the Member is eligible for Vocational Rehabilitation services.

(B) An Vocational Assessment of the feasibility of Vocational Rehabilitation will be done regarding a Member who:

(1) Experiences a service-connected injury/illness or occupational disability or a nonservice-connected injury/illness; and

(2) Has been declared or is reasonably expected to be declared Medically Stationary by the Member's Attending Physician; or

(3) Is treated Medically Stationary pursuant to Section 5-306(d)(2) and administratively placed in Medically Stationary status by FPDR; and or

(4) Has been determined by the Member’s Attending Physician to have permanent restrictions or a reasonable expectation of permanent restrictions as a consequence of a service-connected injury/illness or occupational disability, or a nonservice-connected injury/illness.

(C) An assessment shall not be done if the cost of the assessment exceeds the anticipated savings to the Fund.

(D)(C) Components of an Vocational Assessment may include but not be limited to:

(1) Relevant work history for at least the preceding five years;

(2) Level of education, and proficiency in spoken and written English or other languages, where relevant;

(3) Achievement or aptitude test data;

(4) Permanent limitations due to the injury or disease disability;

(5) An analysis of the Member’s Transferable Skills;

(6) A list of jobs for which the Member has the knowledge, skills and abilities, and for which a reasonable labor market is documented to exist; and

Exhibit “B” (Resolution No. 482) Page 1 of 2
(7) Consideration of the vocational impact of any *permanent* limitations which existed prior to the injury—or—disease—
disability.

(D) *For the purpose of determining Substantial Gainful Activity, labor
market surveys will be confined to within a 50-mile radius of the
location of the Member’s City of Portland employment or a 50-mile
radius of the Member’s current residence if the labor market in which
the Member currently resides offers more opportunity for gainful
employment.*
RESOLUTION NO. 483

WHEREAS, the Bureau of Fire and Police Disability and Retirement (FPDR) requires the continued services of Online Business Systems (OBS) to provide computer systems design, maintenance and programming services; and

WHEREAS, by Contract No. 30002409, the FPDR entered into an agreement with OBS to provide computer systems design, maintenance and programming services; and

WHEREAS, due to the projects that are being implemented and assigned to OBS, compensation paid to OBS will soon exceed the amount allotted by the contract; and

WHEREAS, additional compensation not to exceed an additional $125,000 is requested; and

WHEREAS, a copy of a contract amendment between the FPDR and OBS is attached as Exhibit “A” and by this reference made a part hereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Fire and Police Disability and Retirement Fund, that the FPDR Director be and hereby is authorized to administer, on behalf of the Board, an Amendment to Contract substantially in accordance with the form of Amendment to Contract attached hereto as Exhibit “A”.

ADOPTED by the Board of Trustees on this 24th day of September 2013.

________________________________________
Samuel Hutchison
Director
AMENDMENT NUMBER __1__

CONTRACT NUMBER __30002409__

FOR

THE FIRE AND POLICE DISABILITY AND RETIREMENT APPLICATION REPLACEMENT

This Contract was made and entered by and between Online Business Systems, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City.

1. Additional work was necessary to respond to the following needs:
   - Medical Bill processing module ($50,500)
   - Legislative & Charter changes ($4,000)
   - Adjustments to current functionality (not in original specs - $13,000)
   - Enhancement needs and new functionality (new screens, taxes, adjustments, security-$33,000)
   - Program Audit requirements (possible future need)
   - Misc small projects ($1,000 per month)

2. Additional compensation is necessary and shall not exceed $ 125,000.

All other terms and conditions shall remain unchanged and in full force and effect.

. CONTRACTOR SIGNATURE:

This contract amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same contract amendment.

The parties agree the City and Contractor may conduct this transaction by electronic means, including the use of electronic signatures.

______________________________
Online Business Systems

By: ____________________________ Date: __________________

Name: David Neufeld

Title: Vice President

Address: 400 SW 6th Avenue, Suite 500, Portland, OR 97204

Telephone: 503-221-4517

EXHIBIT “A”
1 of 2
Contract Number: 30002409          Amendment Number: 1

Contract Title: THE FIRE AND POLICE DISABILITY AND RETIREMENT APPLICATION REPLATTFORM

CITY OF PORTLAND SIGNATURES:

By: _________________________________ Date: __________
    Chief Procurement Officer

By: _________________________________ Date: __________
    FPDR Director

Approved as to Form:

By: _________________________________ Date: __________
    Office of City Attorney

EXHIBIT “A”
NEW YORK, August 15, 2013 -- Moody's Investors Service has confirmed Portland, Oregon's Aaa GOULT rating. At this time, Moody's also confirms the city's various related ratings that are notched from the GOULT rating, including: Aa1 rating on various GOLT obligations, Aa2 moral obligation pledge on certain housing authority obligations, and Aa3 rating on urban renewal bonds additionally secured by a special city-wide limited property tax. Additionally, the Aa2 rating on the city's gas tax revenue bonds was confirmed. Moody's also removed the ratings from review for possible downgrade and revised the city's outlook to stable.

The ratings were placed on review for downgrade due to the city's large adjusted net pension liability (ANPL) relative to its rating category under our recently announced approach to analyzing pension liabilities for local governments. For further details, please see our 17 April 2013 release, " Moody's announces new approach to analyzing state, local, government pensions; 29 local governments placed under review."

SUMMARY RATING RATIONALE

The confirmation of Portland's Aaa GOULT rating and various related ratings primarily reflects the city's overall strong credit fundamentals that include its role as a regional center featuring a broad and resilient metro economy. The tax base remains large compared to many similarly rated peers, even following recent declines. The city's financial position remains satisfactory though narrow compared to many similarly rated peers, but continues to benefit from strong management that adheres to established operating policies. The city's debt profile is favorable and features a low net direct debt burden with rapid amortization. Importantly, the rating incorporates Portland's sizable pension liabilities with an ANPL of 3.3 times operating revenues, although this is well above norms at the current rating level, this is offset by the city's proactive and relatively unique measures to manage the pension liability over the long term.

Specifically, a large portion of Portland's pension burden is supported by a dedicated property tax that supports the full annual costs of the Fire and Police Disability and Retirement Fund, a single-agent pension plan for the city (FPDR). This approach is unusual for several reasons. Not only does the dedicated property tax flow to a legally segregated trust fund, thus eliminating any required support from the city's operating revenues, but the dedicated tax funds direct annual retirement payments, as opposed to the more usual pension contribution. Unlike most public pension plans, the FPDR plan lacks a significant pool of accumulated investment assets to offset accrued liabilities. The city's charter does not allow for pre-funding the plan's total accrued liabilities, thus leaving the plan unfunded. The remainder of Portland's pension burden is supported by operating revenues that fund required annual contributions to the Oregon Public Employees Retirement System, a multi-employer cost-sharing plan administered by the state (OPERS).

The stable outlook reflects our expectation that recovery for Portland's economy and tax base will be at least comparable to peers. We anticipate that strong management will act to maintain an adequate financial position at least in line with established operating policies. The city is expected to continue to fully pay annual pension requirements over the medium term, including the ability to levy sufficient and dedicated property taxes to fully cover FPDR's annual obligations. The city's financial position and current rating levels would be pressured particularly if the FPDR levy no longer fully supports the plan's annual obligations, or if there are substantial increases in required OPERS contributions relative to operating revenues. We also note that the city's ANPL will benefit over the long term from prior closure of the FPDR defined benefit plans that will cause legacy costs to eventually decline over the long term as new hires since 2007 have benefits administered through the statewide
OPERS plan.

The Aa2 rating on the city's gas tax revenue bonds has been confirmed in accordance with provisions of Moody's Special Tax Methodology that include a strong economic base as well as extraordinarily high coverage of debt service, and also reflects lack of legal separation from the city's shared operations and management.

STRENGTHS

- Regional center with a large and diverse economy featuring skilled workers and advanced industries
- Strong management, including operating policies and multi-year financial planning
- Economic recovery continues to support recovery in tax revenues
- Favorable debt profile

CHALLENGES

- General fund reserves below average compared to similarly rated peers
- Outsized pension liabilities, though a significant portion is supported by a dedicated property tax

DETAILED CREDIT DISCUSSION

LARGE PENSION LIABILITIES BENEFIT FROM DEDICATED PROPERTY TAX FOR FPDR PLAN

Portland has a high employee pension burden based on unfunded accrued liabilities for its single-agent FPDR plan and its share of the statewide OPERS plan. Based on standard adjustments by Moody's, Portland's FPDR and OPERS pensions had a combined adjusted net pension liability (ANPL) of $2.6 billion as of FY2011. FPDR's pension liabilities account for nearly 80% of the city's ANPL ($2.1 billion) and are funded by the plan's dedicated property tax that is separate and apart from the city's other levies. The city's fixed costs burden was high at approximately 35% of operating revenues for FY2011, though the FPDR levy insulates most of the sizable pension burden from general operations. Fixed costs included net direct debt service, payments for other postemployment benefits (OPEB), and the projected average annual costs for pensions that are informed by the city's third party pension consultant. Operating revenues include those of the general, transportation operating, technology services, and general obligation debt service funds as well as the FPDR levy. Net direct debt service, OPEB, and the estimated annual OPERS payments supported by general governmental operations accounted for a manageable 10% of revenues from operating funds.

Administration of the FPDR plan is strong with mechanics governed by the city's charter. In particular, FPDR levy revenues must be deposited into the FPDR's trust funds that are segregated from the city's operations. Also, the FPDR levy is dedicated solely to funding annual FPDR expenditures which mostly comprise annual pensioner payments. Further, the city council is compelled to set the FPDR levy rate sufficient to meet the fund's requirements for the upcoming fiscal year that include pension payments and other administrative costs.

FPDR was created with voter approval initially in 1948 with intermittent reforms approved though subsequent ballot initiatives. A significant reform to the FPDR plan was approved by voters in 2006 which closed the existing defined benefit plans (Tiers 1 and 2) and required all future police and fire hires to participate in a new FPDR Tier 3, which is administered through the active tier of the statewide OPERS system known as OPSRP, a hybrid defined benefit and defined contribution plan. The FPDR levy continues to fund all eligible public safety staff, even recent hires with benefits administered through OPERS under FPDR Tier 3. Importantly, the FPDR plan will transition over the long term from a pay-go funded system as legacy Tiers 1 and 2 beneficiaries expire and Tier 3 beneficiaries become an ever growing share of FPDR participants. Moreover, pension contributions for Tier 3 participants fund a pool of investment assets administered under the state OPERS system that will offset accrued liabilities and future pension benefit payments, following a more typical method used by local governments to fund pension liabilities.

FPDR LEVY MAINTAINS SIGNIFICANT MARGIN UNDER RATE LIMITATIONS

The city has voter approved and constitutional limitations on the FPDR levy's rate capacity, but the annual levy remains well within constraints even at its maximum permissible rate. Specifically, voter approved provisions limit the FPDR levy to $2.80 per $1,000 of real market value of the tax base (RMV). However, as a practical matter the levy rate has been well below this limitation including a levy of $1.57 of RMV for FY2014 that is about 60% of the
maximum allowable rate. A ramp up in the FPDR levy over time toward its maximum permissible rate would be credit negative, and the city’s financial position would be pressured if the FPDR levy became insufficient to fully fund the plan’s annual liabilities and support from the city’s operating funds became necessary to support annual FPDR payments.

The FPDR levy is also subject to state constitutional limits under Measure 5 provisions that cap overlapping property taxes for non-school purposes to $10 per $1,000 of RMV per property. Property tax rates remain well under Measure 5 limitation with perpetual and fixed rate operating levies for overlapping local governments totaling approximately $7.49 per $1,000 of RMV, also including the FPDR levy rate from FY2013 (of $1.45). As such, the FPDR levy continues to have significant capacity to increase its rate as necessary up to the maximum approved by voters. In the event of compression to meet the overlapping rate limit for a property, voter-approved supplemental levies (known as “local option levies” limited in duration to only a few years) are first compressed as necessary to meet the Measure 5 limit. Effectively, the overlapping permanent fixed operating levies of local governments and the FPDR levy are senior in the event of compression for a property. Of note, GOULT levies are exempt from Measure 5 limitations which means that voter-approved debt service levy requirements do not crowd out other property taxes.

The FPDR plan benefits from strong city management that includes dedicated staff whom administer the plan. The city also retains a third party consultant, Milliman Inc., which provides an FPDR levy adequacy analysis on a biannual basis. The latest analysis published in January 2013 anticipates that the FPDR levy will maintain capacity to levy sufficient property taxes to fund annual liabilities of the plan. Median projections over the period indicate that the required annual levy would peak at $1.83 per $1,000 of RMV and remain below the permissible maximum rate of $2.80. Under 1,000 trials simulating many scenarios over a forecast period ending FY2032, the consultant’s analysis estimates a small probability of up to 5% that the maximum levy rate would be insufficient to fully fund FPDR liabilities from FY2022-32. The consultant’s forecast assumptions include: RMV growth averaging 5% annually over the projection period, an average inflation rate of 2.75% (which factors into actuarial projections of active plan member salary increases and retiree COLA’s), and allowances for delinquencies and tax rate compression. Subsequent analyses could indicate greater or lesser adequacy for the FPDR levy in funding plan liabilities, depending upon changes like expectations for inflation or compression, or future tax base trends.

**LARGE AND DIVERSE ECONOMY IN NASCENT RECOVERY**

Moody’s expects continued improvement in the Portland metro economy due to the presence of a skilled workforce and its strong education infrastructure. The city also benefits from international trade ties, particularly air and marine exports to Asia. The unemployment rate fell to 6.9% as of May 2013 and is below levels for both the state and U.S. Further, the city’s office vacancy rate fell to 9.9% as of the first quarter of 2013 as businesses rebound from the recent downturn. The greater metro area has a large workforce greater than one million and is leading the state’s recovery while more rural areas continue to struggle following the recent downturn. Wealth measures are modest with median family incomes of 100.2% of U.S. levels per the 2011 American Community Survey and is similar to other large, urban cities.

The city’s tax base remains one of the largest amongst highly rated cities with a RMV of $79.9 billion as of 2013. The city’s real estate market correction was delayed relative to other metro areas and property values have fallen, albeit less sharply than for many peers nationally as RMV declined by 11.6% over the last four years. Like many other metro areas nationally, market data indicate that property values have improved more recently.

Importantly, assessed valuation (AV) continues to realize stable annual growth despite recent declines in RMV, which is due to Measure 5 provisions. AV for properties across most classes grow by up to 3% annually as long as AV remains below RMV, plus adjustments for new development and improvements, allowing for downside protection in the taxable base in periods of RMV contraction. Specifically, AV grew at a five-year average rate of 3.1% through 2013 (to $52.5 billion) while RMV realized declines. Looking forward, officials anticipate that AV will grow by at least 3% year-over-year for 2014, implying a return to stability in the tax base and a return to growth in property values, not unlike expectations for many large metro areas nationally.

The city’s aggregate ratio of AV to RMV increased to a recent high of 65.7% in aggregate as of 2013, still implying significant margin for continued AV growth despite RMV declines. Of note, AV growth slowed to below typical levels of 3% or more in the last two years due to persistent weakness in RMV for some properties. We note that the city’s overlapping tax rate limits under Measure 5 (detailed above) benefit from Measure 5 provisions which allow for consistent growth in the taxable base (the AV) from which property taxes are levied.

**SATISFACTORY FINANCIAL POSITION BUOYED BY STRONG MANAGEMENT**
Portland's general fund reserves weakened in the recent recession to 13.8% of revenues ($77.3 million) as of FY2012, presented on an audited GAAP basis. Reserve levels are below average compared to similarly rated peers, but comply with the city's long established policies require maintenance of a general fund reserve of at least 10% of revenues, plus allowances for contingencies and planned under-spending equal to an additional 3-4% of revenues. General fund reserves were modestly stronger at a pro forma 14.4% ($81.2 million) for FY2012, net of overnight loans to grant funds for cash flow mismatches that are paid on June 30th at fiscal year-end and repaid immediately on July 1st in compliance with state budget laws.

Recent general fund performance was impacted significantly by the recession. However, the city's reserves are similar to levels following the prior recession in the early 2000s. Property taxes are the city's largest resource (34.6% of revenues as of FY2012) and benefit from Measure 90 provisions (described above) that provided downside protection for the city's fixed operating levy ($4.577 per $1,000 of AV) despite recent tax base declines. However, business license taxes (13%) weakened, but are in recovery after the recession weighed on taxable business incomes. Additionally, franchise fees (9.4%) benefitted from increases in utility rates. General fund expenditures are driven by public safety (64.3% of expenditures as of FY2012) that rose consistently in recent years under established bargaining contracts.

Management estimates that general fund reserves improved in FY2013 to 16.7% ($79.8 million). Property tax revenues were in-line with projections given modest AV growth and an accurate prediction of compression under Measure 5 provisions. Additionally, excise taxes (from hotels, liquor sales, and franchises) were approximately $5 million over budget. Also, a new Mayor took office mid-year and ordered departments to reduce spending starting in the third fiscal quarter that supported under-spending of budgets by at least the typical 3% of expenses.

Looking forward, officials anticipate that general fund reserves for FY2014 will be similar to the prior year at an estimated 16.4% of budgeted revenues ($80 million). Financial performance is supported by economic improvement supporting cyclical revenues and management's continued efforts to suppress spending. In particular, the budget included spending cuts equivalent to 4.2% of revenues ($20.7 million) driven by reduced staff headcount as well as lowering cost of living adjustments for some employee groups. Revenue assumptions appear reasonable with a slight decline in property taxes with conservatively projected compression given a newly approved permanent library district, modest growth of 3% for business license collections, utility franchise taxes growth of 7% due partly to user rate hikes, and hotel lodging taxes expected to grow at a slower 5% over the prior year.

MODEST DIRECT DEBT BURDEN

Portland's net direct debt burden is favorable compared to peers at 0.3% and payout is rapid at 83.9% in ten years. The city's direct debt service burden for GOLT obligations averages 4.8% of FY2012 revenues over the next five years, and remains well within the city's policy limiting debt service on non self-supporting debt to 7% of general fund revenues. Future debt plans are modest and include a GOLT issuance estimated at up to $80 million within the next year to finance a capital project related to a bridge.

WHAT COULD MOVE THE RATING DOWN

- Declines in general fund reserves
- Increased fixed costs, including significant growth in pension liabilities
- FPDR property tax levy becomes insufficient to support the plan's annual liabilities

KEY STATISTICS

Estimated population: 587,885

Real market value, 2013: $79.9 billion

Real market value per capita, 2013: $135,909

Median family income, 2011 American Community Survey: 100.2% of U.S. ($63,120)

Moody's adjusted net pension liability (ANPL): 3.3 times operating revenues ($2.6 billion UAL)

Funded ratios for pensions, Moody's adjusted actuarial basis (FY2011): 0.8% for FPDR / 64.4% for OPERS

General fund balance, FY2013 estimate: 16.7% of revenues
General fund balance, FY2012: 13.8% of revenues
General fund's net cash: FY2012: 11.5% of revenues
Net direct debt burden: 0.3%
Overall debt burden: 1.5%
Payout of principal, 10 years: 83.9%

RATING METHODOLOGIES


REGULATORY DISCLOSURES

For ratings issued on a program, series or category/class of debt, this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the rating action on the support provider and in relation to each particular rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on www.moodys.com.

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Date: September 18, 2013

To: FPDR Board of Trustees

From: Nancy Hartline, FPDR Financial Manager

Re: FPDR Disability Retirement

At the Board’s June meeting, Del Stevens, a former FPDR trustee, raised the question of why FPDR does not provide a nontaxable disability retirement benefit. This memorandum responds to the Board’s request for further information regarding the taxation of disability benefits and why FPDR’s disability benefits are non-taxable prior to retirement age, but become taxable once the disabled participant attains retirement age.

Executive Summary
As discussed more fully below, FPDR disability benefits paid prior to a disabled member’s Disability Retirement Age (“Pre-Retirement Disability benefits”) are non-taxable, but become taxable when the member attains “Disability Retirement Age,” at which point the Pre-Retirement Disability benefit ends and is replaced with a Retirement Disability benefit. The differing tax treatment of these two forms of disability benefit is due to how the disability benefits are calculated. While it is possible to have a non-taxable disability benefit continue for so long as the disabled member lives, to gain this tax treatment under the FPDR system would require voter-approved Charter amendments.

Background and Discussion
As you know, all benefits provided by the FPDR system are governed by Chapter 5 of the Charter of the City of Portland (the “Charter”). Taxability of those benefits is determined in accordance with the Internal Revenue Code of 1986, as amended (the “IRC”). Under IRC section 104(a)(1), disability benefits are excludable from income of the recipient only to the extent they are attributable to personal injury or sickness incurred during the course of the participant’s employment and the amount of the disability benefits are not determined with reference to a participant’s age, length of service, or prior contributions.

Mr. Stevens correctly noted that in several public safety officer pension systems across the country, including, e.g., New York City, all service-connected disability benefits are non-taxable. However, in systems such as that covering NYC public safety officers, the member’s disability benefit is at all times determined based solely on the member’s rate of pay and is never affected by the member’s age or length of service. Other systems similar to NYC include, for example, Los Angeles and San Francisco. However, and as discussed below, the FPDR’s disability program is materially different from the design used by NYC and other systems; the FPDR’s
Charter provisions mean that the tax-advantaged FPDR pre-retirement disability benefit ends when the disabled member attains a certain age.

Under the Charter, FPDR One, Two and Three members who became disabled prior to retirement receive Pre-Retirement Disability benefits. These Pre-Retirement Disability benefits are based purely on disabled members’ rates of pay and do not vary according to the member’s age, length of service, or prior contributions to the system. Accordingly, these Pre-Retirement Disability benefits are eligible for favorable tax treatment under IRC section 104(a)(1).

However, when a disabled member receiving Pre-Retirement Disability benefits attains Disability Retirement Age, the Pre-Retirement Disability benefit stops and, in the case of FPDR One and Two members, is replaced with a Disability Retirement benefit. For FPDR One members, the member’s Disability Retirement Age generally is the date on which that member attains age 64. For FPDR Two members, the member’s Disability Retirement Age is the earlier of the date the member earns 30 Years of Service or the date the member attains “social security retirement age” as provided under the Social Security Act. For FPDR Three members, the member’s Disability Retirement Age is the member’s Normal Retirement Age under Oregon PERS.

Unlike Pre-Retirement Disability benefits, the Disability Retirement benefits payable to FPDR One and Two members are not based solely on the member’s rate of pay, but also take the members’ length of service into consideration. Because the Disability Retirement benefits are not based solely on the member’s rate of pay, the Disability Retirement benefit is not eligible for favorable tax treatment under IRC section 104(a)(1).

The disability benefit structure used by FPDR is not unique: Chicago Fire tax-advantaged duty disability benefits, for example, are payable until the member’s retirement age, at which point they convert to a taxable benefit; similarly, pre-retirement disability benefits for members of the Oregon Public Safety Retirement Program (OPSRP) cease when a disabled member attains normal retirement age under that program. Moreover, not all public safety officer retirement systems even provide tax-advantaged pre-retirement disability benefits. See, for example, Washington State’s LEOFF 2 system, where no disability benefits appear to be eligible for favorable tax treatment.

Because the taxability of disability retirement benefits depends exclusively on how the disability benefit is determined, and because FPDR disability benefits are governed by the Charter, making all disability benefits non-taxable under IRC 104(a)(1) would require a change to Chapter 5 of the Charter. Even if the Charter were amended, the favorable tax treatment probably would be limited to those members who have not yet begun to receive Disability Retirement benefits. Moreover, the tax-advantaged benefit would also not be available to FPDR Three members, since they have a prefunded PERS retirement benefit.

Other possible issues to consider if the Board decides to explore an amendment to the Charter creating a tax-advantaged disability retirement benefit include:

- If such a benefit is intended to be financially superior to the service retirement, it creates an incentive to go on disability and remain on disability indefinitely. Depending on how it is designed, it may also create a disincentive to return to work while receiving disability benefits.
- At what point would a member be eligible for disability retirement – at the time of disability or at Disability Retirement Age? The New York City Fire plan, which Mr.
Stevens mentioned, provides for disability retirement upon the finding of permanent total or permanent partial disability (some members with permanent partial disability may return to modified duty assignments). This disability determination appears to be a final decision, with no consideration of degree of disability, no wage offset and no possibility of subsequent return to work or other termination of benefits. Such a benefit would eliminate FPDR’s ability to professionally manage disability claims and would not be financially neutral for a member with earnings potential.

- Is there an equity concern if disabled members have a more attractive pension than members who retire from active service, because of the tax-free nature of a disability retirement benefit?
- If such a benefit is intended to be at least financially neutral for FPDR, then it needs to consider the different lengths of service members may have at Disability Retirement Age in the analysis. Is there a financially neutral benefit that would also be attractive enough to members that it would be selected if members retiring from disability could choose? Please see the comparison below.

**Conclusion and Next Steps**
As discussed above, Mr. Stevens is correct that, unlike some other retirement systems, FPDR ceases to pay tax-advantaged disability benefits when disabled members attain Disability Retirement Age. However, providing tax-advantaged disability benefits for the life of disabled members is not an easy change and would require that significant voter-approved design changes be made to the Charter’s disability retirement provisions – and it is unclear whether such changes would be cost-neutral to the system. We look forward to discussing this matter more fully with the Board.

**Comparing Possible Disability Retirement and Service Retirement**

<table>
<thead>
<tr>
<th>Percent of Final Pay</th>
<th>Description</th>
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<tbody>
<tr>
<td>75% Disability retirement benefit based on Final Pay</td>
<td>assume retirement at disability retirement age, 25% survivor benefit and same benefit adjustment for comparison</td>
</tr>
<tr>
<td>84% 30-year taxable service retirement with 25% survivor benefit*</td>
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75% is less than 84%, but not all FPDR Two members will have 30 years of service at age 67:
- over 50 active FPDR Two members will not have 30 years of service at age 67; 15 will not have 25 years of service
- members receiving 50% disability reduced by wage offset may have 20 or fewer years of service
- half of FPDR Two members now on monthly disability who are not due to retire this fiscal year receive 50% disability benefits

Should the disability retirement benefit be equal to or less than the 25-year service retirement?
70% 25-year taxable service retirement with 25% survivor benefit*

Or equal to or less than the 20-year service retirement to be financially neutral for all members?
58% 20-year taxable service retirement with 25% survivor benefit*

Is 56% so low that most members retiring from disability would prefer the taxable service retirement if given the choice?

Would the financial neutrality goal mean creating a new type of benefit almost no one would select?

*Not counting any tax offset benefit that might be payable (over 60% of active FPDR Two members are ineligible based on entry date; more would be ineligible based on state of residence *)