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 – January 28, 2014 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 Resolution No. 485 – Stephens and Wuerth Settlement and Mutual Release Agreement
   o Issue: Proposed Settlement and Mutual Release Agreement on the FPDR One Fire Apparatus Operator Pay cases has been prepared for the Board’s review.
   o Expected Outcome: Board adopts Resolution No. 485.

2 Resolution No. 486 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.7.03, 5.7.10, 5.7.11, 5.8.03, 5.8.11, 5.8.12 and 5.9.06.
   o Expected Outcome: Board adopts amendments as proposed by staff.

3 Resolution No. 487 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.7.05, 5.7.09, 5.7.12, 5.8.10 and 5.8.13.
   o Expected Outcome: Board adopts amendments as proposed by staff.

4 Resolution No. 488 – Administrative Rule Amendments
   o Issue: Amendments to Sections 5.7.01, 5.8.01, 5.9.01 and 5.10.02.
   o Expected Outcome: Board adopts amendments as proposed by staff.

5 Annual Adjustment Review
   o Issue: What shall be the FPDR Two 2014 benefit adjustment.
   o Expected Outcome: Board determines FPDR Two 2014 benefit adjustment and gives direction on future steps.
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  Budget Update
2  FPDR Director – Strategic Plan
3  FPDR Updates
4  Future Meeting Agenda Items

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) 823-6823 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
A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 28th day of January 2014 at 1:03 p.m.

Board Members Present Included:

Mayor Charlie Hales, Chair (entered meeting at 1:10 p.m.)
Mr. Justin Delaney, Citizen Trustee (Chair until Mayor arrived)
Mr. Jason Lehman, Fire Trustee
Mr. David Dougherty, Citizen Trustee
Mr. Robert Foesch, Police Trustee

Also Present Were:

Mr. Samuel Hutchison, FPDR Director
Ms. Kimberly Mitchell, FPDR Claims Manager
Ms. Nancy Hartline, FPDR Finance Manager
Ms. Derily Bechthold, Deputy City Attorney
Mr. Kenneth A. McGair, Deputy City Attorney
Mr. Lorne Dauenhauer, Outside Legal Counsel
Mr. Gabe Sansone, Fire Liaison
Mr. Alan Ferschweiler, President PFFA
Mr. Ty Walthers, Retired Fire Member
Mr. Nelson Hall, Attorney
Ms. Julie Falender, Attorney
Mr. Henry Groepper, Retired Police Member

Mr. Delaney called the meeting to order.

**Mr. Dougherty made a motion, which was seconded by Mr. Foesch and unanimously passed to approve the November 19, 2013 minutes.**

<table>
<thead>
<tr>
<th>Aye</th>
<th>Mr. Delaney, Mr. Foesch, Mr. Lehman, Mr. Dougherty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nay</td>
<td>None</td>
</tr>
<tr>
<td>Abstain</td>
<td>Mayor Hales</td>
</tr>
<tr>
<td>Absent</td>
<td>None</td>
</tr>
</tbody>
</table>

Introductions of all in attendance was then made.

General Public Comments:
Mr. Ty Walthers addressed the Board. He commented on the class action litigation regarding the state offset overpayments and the FPDR Two members. He stated that as a member of the class of retirees who received a 40 percent refund of the withholding from
Regular Meeting on January 28, 2014 of the Board of Trustees 
Fire & Police Disability & Retirement Fund 
Page 2 of 4 
Minutes - Summary

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

the cost of living adjustments, the case is over for him. However, he pointed out that there are police and fire retirees who repaid the overpayment in full who were not included in the class action. He further stated that if the Board feels that it is beyond their legal authority to include those retirees in the class action, then he would hope that Mayor Hales would put the matter to City Council. He added that he would like the Board to “not let this matter simply die” and add it to their next agenda.

**Action Item No. 1 – Discussion Regarding Executive Session**

Mr. Hutchison went over the Board’s executive session protocol and provided the Board with a memorandum. He requested that the Board abide by the attendee list provided in the memorandum unless the Board wants someone else to be included into their executive session. Mr. Delaney recapped that if any Board member wishes to bring a staff member or assistant into an executive session, they would need to ask permission of the Board prior to going into executive session.

Public Comment was then taken: Mr. Alan Ferschweiller requested that executive session matters be the last item on the agenda each month.

**Action Item No. 2 – Adopt 2014-2015 Budget**

Ms. Hartline went over the FPDR’s recommended budget and budget recommendations. She also stated that there were more details provided in the five-year forecast provided to the Board. Ms. Hartline stated that for this year’s retirement estimate they are using the actuarial projection based on the actuary’s pattern of expected retirements. She added the because the PPA Collective Bargaining Agreement was recently implemented with increases that are largely effective January 1, 2014, it was not expected that there would be a lot of police retirements for the rest of the year. However, she added that staff is still recommending they stick with the base actuarial projection because they feel it is the best long-term practice for estimating retirements.

Concerning benefit adjustments, she stated that the Fire FPDR One participants would see an increase based on the wage COLA that is estimated by the City Economist to be 1.8 percent. She also stated that Police FPDR One members would see the same COLA increase plus a 0.9 percent COLA increase that was effective in the PPA Collective Bargaining Agreement on August 29 and then a 1 percent longevity increase that was effective January 1, 2014. Ms. Hartline stated that for the FPDR Two members staff is estimating the maximum PERS COLA, which under SB 861 is 1.25 percent. She added that the Board will determine the actual adjustment in March or later in the spring. Ms. Hartline also went over the chart of historical and projected retirements.

She also explained that the FPDR Three PERS contributions are the fastest growing part of the budget and consist of interagency agreements with the Police and Fire Bureaus.
She stated that the cost increase is driven by an expected 1.8 percent wage COLA and new hires. She went on to explain that disability benefits are trended with wage and medical inflation. She also stated that the administrative budget is declining slightly and external materials and services are down. Ms. Hartline also explained that the capital budget is showing an increase over the budget but a decrease compared to the projection to the current year. She stated that contingency remains at 9 percent in recognition of the risks to the forecast, e.g. challenges to SB 822 and SB 861. Ms. Hartline also went over the interest assumption, subrogation, other miscellaneous review and interagency revenue. She also went over a summary of resources and requirements and stated that pensions and PERS contributions are going up by about 4 percent and disability and death benefits are declining by over 10 percent.

With regards to the five-year forecast, Ms. Hartline noted that pensions are increasing by about 16 percent, PERS contributions by almost 130 percent, with disability essentially level, and administration and delivery increasing with expected inflation. For resources, she stated that property taxes are increasing 24 percent, which is in line with the long-term growth assumption by the City Economist for real market value. She added that the good news, when you look at the tax levy, is that the real market value rates are going to be stable in the $1.40’s. She stated that if they can maintain this level in the $1.40’s as their long-term mean levy rate, they should see a significantly reduced risk of exceeding the levy when they see the levy adequacy analysis a year from now.

Mr. Delaney stated that in spite of the good news on the levy rate, the potential future fluctuations in the PERS contribution rates could be something critical. He asked that the next levy adequacy analysis look into the fluctuations and perhaps they can model the historical PERS fluctuations and overlay it on the FPDR’s future.

**Mr. Lehman made a motion, which was seconded by Mr. Delaney and unanimously passed by a roll call vote of 5-0 to adopt the 2014/2015 recommended budget.**

<table>
<thead>
<tr>
<th>Aye</th>
<th>Mr. Delaney, Mr. Foesch, Mr. Lehman, Mr. Dougherty, Mayor Hales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nay</td>
<td>None</td>
</tr>
<tr>
<td>Abstain</td>
<td>None</td>
</tr>
<tr>
<td>Absent</td>
<td>None</td>
</tr>
</tbody>
</table>

**Action Item No. 3 – Appoint Actuarial Committee**

Ms. Hartline stated that because it is a valuation year, she would like to ask for another member to join Trustee Dougherty on the Actuarial Committee to meet with the actuary to review assumptions as a result of the experience study and then any other assumptions that need to be reviewed for the next valuation. Mr. Foesch volunteered for the committee.
Information Item No. 1 – Financial Audit

Ms. Hartline went over the financial audit and stated that the FPDR had a clean audit opinion.

Information Item No. 2 – FPDR Updates

Mr. Hutchison addressed Mr. Walthers concerns about the 55 retirees who had paid in full the overpaid monies regarding the tax offset benefit. He stated that those retirees had made their payment prior to the settlement and were not in the class. He stated he met with the City Attorneys and the Mayor’s staff regarding this issue and looked through the suit and options. However, he stated that the only option to include them would be to redo the whole agreement, the negotiations, and the approval by the IRS. In other words, he stated that they would have to start from ground zero if they wanted to expand the class to include the 55 people. He added that they also looked at whether the FPDR could return part of the overpayment that the retirees had given to the FPDR, but there is nothing in the Charter that justifies giving that money back that was overpaid.

Mr. Walthers stated that if in fact there is nothing the Board can do legally, why shouldn’t this matter be punted to City Council with directions from the trustees that a majority of them support exploring a way to solve this. He stated that it is an inequity for a small group of members. Mayor Hales stated that he would take this matter under advisement and speak with his staff and the City Attorney and come back to the Board.

Mr. Hutchison stated that the next meeting agenda will include:
1) Annual adjustment discussion
2) Wrap up the last of the rules that were first presented in June of last year
3) Director’s strategic direction for the FPDR bureau

The next meeting is scheduled for March 25, 2014. Mr. Delaney stated that he will not be able to attend meeting.

There being no further business, the meeting was adjourned at 1:40 p.m.

Samuel Hutchison
Director

/kk
RESOLUTION NO. 485

WHEREAS, in 2007 Apparatus Operator Premium was added to the Portland Fire Fighters Association (PFFA) contract; and

WHEREAS, to be eligible for the premium, a fire fighter would be required to have a DPSST Apparatus Operator certificate and a valid driver’s license; and

WHEREAS, an FPDR One member’s retirement benefit is based on the current salary of a First Class Fire Fighter; and

WHEREAS, at the time the premium was added to the PFFA contract, some FPDR One retirees requested that the premium be added to the pension amounts because they claimed it was part of the current salary of a First Class Fire Fighter; and

WHEREAS, the staff of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that the premium was a premium pay for extra duty or services and not part of the pension amount and denied the FPDR One retirees request; and

WHEREAS, FPDR One retirees requested a hearing before the Office of Administrative Hearing (OAH); and

WHEREAS, a hearing was held and the OAH Administrative Law Judge overturned the FPDR’s denial and issued a Consolidated Final Order dated April 27, 2011; and


WHEREAS, there are appeals pending in this matter in three of the above cases; and

WHEREAS, the City of Portland and the FPDR One Retirees would like to resolve this dispute and have reached a proposed settlement which is set forth in the Settlement and Mutual Release Agreement, attached to this resolution as Exhibit “A”. The City Attorney’s Office has previously briefed the Board on the terms of the settlement and agrees that this settlement is reasonable; and

1 “Participant” shall mean all FPDR One Fire Members, or the beneficiaries and alternate payees of Fire Members of the Fire and Police Disability Retirement and Death Benefit Plan (“Plan”), who received pension or disability payments from the Fire and Police Disability Retirement and Death Benefit Plan on or after August 1, 2007.

1
NOW, THEREFORE, BE IT RESOLVED that the Settlement and Mutual Release Agreement (the “Agreement”) attached hereto as Exhibit “A” is hereby accepted and the FPDR Director is authorized to execute said agreement on behalf of the FPDR Board of Trustees. The FPDR staff and the City Attorney’s Office are authorized to implement the agreement by taking all necessary actions contemplated in the Agreement.

ADOPTED by the Board of Trustees on the ____ day of March, 2014.

___________________________
Samuel Hutchison
FPDR Director
SETTLEMENT AND MUTUAL RELEASE AGREEMENT

WHEREAS, the following cases potentially impact 501 retired or disabled City of Portland Fire and Police Disability, Retirement and Death Benefit Plan ("FPDR") Participants:\footnote{Participant} shall mean all FPDR One Fire Members, or the beneficiaries and alternate payees of Fire Members of the Fire and Police Disability Retirement and Death Benefit Plan ("Plan"), who received pension or disability payments from the Fire and Police Disability Retirement and Death Benefit Plan on or after August 1, 2007. 

WHEREAS, the Court has approved a motion for class certification in the case Clark Stephens and Robert Wuerth v. City of Portland, et. al., Multnomah County Circuit Court, Case No. 1312-16520 on February 10, 2014 as a method of reaching a global settlement of all of the above-referenced cases.

WHEREAS, the cases cited above are all currently pending and involve the similar parties, facts and questions of law and the class representatives certified in the case Clark Stephens and Robert Wuerth v. City of Portland fairly and adequately protect the interests of the class members and there is no conflict between the Stephens plaintiffs and the plaintiffs in Gray I, Coffey, and Gray Mandamus and defendants in Gray II above.

WHEREAS, any settlement is subject to the approval of the Board of Trustees of the Fire and Police Disability, Retirement and Death Benefit Plan ("Board").

WHEREAS, on July 21, 2010, Judge Henry C. Breithaupt entered an Order dismissing Gray I plaintiffs’ case on procedural grounds.

WHEREAS, plaintiffs in Gray I, Coffey, Gray Mandamus, and Stephens and defendants in Gray II are retired firefighters or their surviving spouses who were denied increases to their FPDR One pension benefits because the FPDR Director did not include Apparatus Operator Premium pay ("AO Pay") in the definition of the “current salary of a First Class Fire Fighter.”

WHEREAS, each of the plaintiffs in Coffey, Gray Mandamus and Stephens and defendants in Gray II filed administrative appeals of the FPDR Director’s decision not to include AO Pay in the definition of “current salary of a First Class Fire Fighter” under Section 5.04 of the FPDR Administrative Rules.

WHEREAS, Gray II defendants’ and Coffey plaintiffs’ objection to the denial of inclusion of AO Pay in the current salary of a First Class Fire Fighter resulted in a consolidated appeal of the Director’s decision and hearing before the Office of Administrative Hearings.

WHEREAS, a hearing was held before the Office of Administrative Hearings on January 31, 2011, and the hearing record was closed on March 28, 2011.

\footnote{Participant} shall mean all FPDR One Fire Members, or the beneficiaries and alternate payees of Fire Members of the Fire and Police Disability Retirement and Death Benefit Plan ("Plan"), who received pension or disability payments from the Fire and Police Disability Retirement and Death Benefit Plan on or after August 1, 2007.
WHEREAS, on April 27, 2011, Administrative Law Judge Rick Barber issued a Consolidated Final Order reversing the decision of the Director of FPDR in not including AO Pay in the regular pay of a First Class Fire Fighter, and the pension benefit of an FPDR One Member.

WHEREAS, on June 17, 2011, a Petition for Writ of Review was filed by the City in Multnomah County Circuit Court (Gray II above). The City filed their Petition alleging that the determination of the Office of Administrative Hearings should be reversed because the determination was not supported by substantial evidence, was not supported by substantial reason, was the result of the failure to follow procedure applicable to the matter, and was based upon the applicable law being improperly construed.

WHEREAS, on June 23, 2011, Coffey plaintiffs filed a class action Complaint in Multnomah County Circuit Court (Coffey case cited above) asserting a breach of contract and a wage claim violation pursuant to ORS 652.610(3).

WHEREAS, on September 28, 2011, Gray II defendants filed an Answer, Affirmative Defenses, and Counterclaims asserting a breach of contract and a wage claim violation pursuant to ORS 652.610(3).

WHEREAS, on September 30, 2011, Judge Leslie Roberts entered an Order of Dismissal in Coffey as follows:

1. City Defendants’ first motion, Motion to Dismiss is granted;
2. City Defendants’ second motion, Motion for Abatement is moot; and
3. Coffey Plaintiffs’ Complaint is dismissed.

WHEREAS, on December 15, 2011, Judge Youlee You heard argument on the cross motions for summary judgment in Gray II.

WHEREAS, on April 20, 2012, Judge Youlee You heard argument regarding Gray II plaintiffs’ counterclaims.

WHEREAS, on June 18, 2012, an Order was entered by Judge You as follows:

4. The decision of the Administrative Law Judge is affirmed. City Plaintiff’s Writ of Review is dismissed.
5. Because counterclaims are not allowed in a writ of review, City plaintiff’s motion to dismiss is granted and the Gray II defendants’ counterclaims are dismissed with prejudice.

WHEREAS, appeals are pending in Gray I, Gray II, and Coffey.

WHEREAS, on June 19, 2012, the parties engaged in mediation of Gray I, Gray II, and Coffey in hopes reaching a settlement of all issues involved while all appeals are pending.
WHEREAS, on October 24, 2013 Judge Jerome LaBarre authorized the Clerk of the Multnomah County Circuit Court to issue a Writ of Mandamus in the Gray Mandamus action, directing the FPDR Fund to incorporate Apparatus Operator pay into the pension benefit calculations of three FPDR One members, and a petition for attorneys’ fees is still pending in that matter, and whereas other FPDR One beneficiaries stand ready to file similar mandamus actions.

WHEREAS at the time of this Agreement, there are 303 living FPDR One Fire Participants and 166 FPDR One Fire Participants whose benefits ceased upon their death, or their reaching age 18 in the case of a dependent minor child, who received pension or disability benefits effective July 1, 2008 or after.

WHEREAS, if these matters are resolved, there is significant legal work that would need to be completed in the future to complete the settlement. That work would include class notifications and preparation of related settlement documents.

WHEREAS, if the matters are not resolved, the expense of further litigation will be costly and time consuming.

IT IS, THEREFORE, AGREED:

I

FOR THE SOLE CONSIDERATION enumerated below, the parties which include all plaintiffs, defendants and class members of the cases cited above, hereby mutually release and forever discharge one another, as well as their agents, officers, employees, officials, heirs, assigns, and all other persons, firms, corporations or other entities liable or who might be claimed to be liable from any and all claims for damages and/or injuries from or relating to the FPDR Director's decision not to include AO Pay in the definition of “current salary of a First Class Fire Fighter” under the Fire and Police Disability, Retirement and Death Benefit Plan that is the subject of the lawsuits filed in the above-referenced Multnomah County Circuit Court Cases and appeals. This mutual release shall also apply to all class members approved by the Court in this matter who do not elect to opt out of the class, including the plaintiffs or defendants in the related cases cited above.

II

IT IS UNDERSTOOD AND AGREED that the parties have read this Settlement and Mutual Release Agreement and that it is fully understood and voluntarily accepted for the purpose of making a full and complete settlement and compromise of any and all claims and appeals arising out of the above-described matter in paragraph I, in whatever legal form or theory plaintiffs might assert, whether disputed or otherwise, and in particular including, but not limited to, those matters set forth in the complaints of Case Nos. 0906-08908; A146304 (Gray I), Case Nos. 1106-07794; A152175 (Gray II), Case Nos. 1106-08147; A149858 (Coffey), Gray, et al. v. City of Portland, et al., Multnomah County Circuit Court, Case No. 1303-03647 (Gray Mandamus) and Case No. 1312-16520 (Stephens) in the Circuit Court of the State of Oregon for the County of Multnomah.
III

IT IS UNDERSTOOD AND AGREED that Gray I, Coffey, Gray Mandamus and Stephens plaintiffs and Gray II defendants are retired firefighters or their surviving beneficiaries who did not receive increased FPDR One pension or disability benefits as the result of the FPDR Director’s decision not to include AO Pay in the definition of “current salary of a First Class Fire Fighter”.

IV

IT IS UNDERSTOOD AND AGREED that all plaintiffs and approved class members waive all claims for penalties and pre-judgment interest.

V

IT IS UNDERSTOOD AND AGREED that FPDR agrees to pay to the class a maximum settlement sum of up to Two Million Two-Hundred Forty-Five Thousand Eight Hundred and Fifty-Nine Dollars and Thirty-Seven Cents ($2,245,859.37) for retroactive pension and disability benefits based upon the 3% AO Pay for the period from July 1, 2008 until June 1, 2014.²

VI

IT IS UNDERSTOOD AND AGREED that FPDR will prospectively include AO Pay in the calculation of pension and disability benefits payable to FPDR One Fire Participants effective June 1, 2014, and thereafter if due.

VII

IT IS UNDERSTOOD AND AGREED that Gray I, Coffey, Gray Mandamus and Stephens plaintiffs’ and Gray II defendants’ attorneys shall receive a twenty-five percent (25%) common fund recovery fee, in the maximum amount of up to Five Hundred Sixty-One Thousand Four Hundred and Sixty-Four Dollars and Eighty-Four Cents ($561,464.84),³ out of the class retroactive settlement amount in paragraph V above. The City of Portland further agrees that all challenges to the attorneys’ fees will be waived. Gray I, Coffey, Gray Mandamus and Stephens plaintiffs and Gray II defendants and their counsel agree to give up the right to add a multiplier to the attorneys’ fees.

VIII

IT IS UNDERSTOOD AND AGREED that the FPDR will not pay any interest on the retroactive settlement amount provided in paragraph V.

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² These figures assume that all Participants alive as of February 2014 will remain alive through the date of distribution of payments, and that none will opt out of the class. The figures may be later adjusted for deaths and opt-outs.
³ Subject to the same qualifications set forth in Note 2 above.
IX

IT IS UNDERSTOOD AND AGREED that the FPDR will pay any retroactive pension or disability benefit less a pro-rata share of attorneys' fees to each class member in a one-time payment. There will be no payment of attorneys' fees for this matter out of future pension or disability benefits.

X

IT IS UNDERSTOOD AND AGREED that notices have been sent to all class members regarding this proposed settlement.

XI

IT IS UNDERSTOOD AND AGREED that the notice sent to class members includes the amount of their retroactive benefit payment, if any.

XII

IT IS UNDERSTOOD AND AGREED that the Court has ultimate authority to determine the language of the notice and any other communications with members of the certified class.

XIII

IT IS UNDERSTOOD AND AGREED that the terms of this Agreement are subject to Court approval. If the Court does not approve the terms of this Agreement, then the Agreement is void and no aspect of the Agreement is binding in any way on any person and/or party to the case.

XIV

IT IS UNDERSTOOD AND AGREED that this Settlement Agreement pertains only to the issue of inclusion of AO Pay in the pension and disability benefits of FPDR One Fire Participants and to no other issues related to FPDR benefits.

XV

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Settlement and Mutual Release Agreement is intended to, and does, cover not only all known losses and damages, but any further losses and damages arising out of the facts alleged in the above-referenced complaints and appeals not now known or anticipated which may later develop or be discovered including all effects and consequences thereof.

XVI

IT IS UNDERSTOOD AND AGREED that the payments made to the Gray I, Coffey, Gray Mandamus and Stephens plaintiffs and Gray II defendants and class members under this Agreement are not to be construed as an admission of liability. The City of Portland expressly denies liability to the undersigned, or any other person for injuries or damages arising out of the aforementioned recoupment of overpaid retirement benefits. Gray I, Coffey, Gray Mandamus
and Stephens plaintiffs and Gray II defendants expressly deny liability on the counterclaims asserted by the City.

XVII


XVII

THE TERMS SET FORTH HEREIN are contractual and not a mere recital.

XIX

IT IS UNDERSTOOD AND AGREED THAT the parties reserve the right to add mutually agreeable provisions to this written Settlement Agreement.

CITY OF PORTLAND

By: Sam Hutchison, Director
Dated: ______________________, 2014

Clark Stephens
Robert Wuerth
Joseph Gray
Mariloris Oliverio
Donald Buss, Personal Rep. of Estate of Madge Buss, Surviving Spouse of Vernon Buss
Arnie Schumann
Diana Sullivan, surviving spouse of Robert Sullivan
Delmar Coffey
Carolyn Keller, surviving spouse of Phillip Keller
George Pickett
Lawrence Reverman
Lois Smith
Statement of Rulemaking Need and Fiscal Impact
(Resolution No. 486)

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 amending Sections:

5.7 Service-Connected or Occupational Disability Benefits
   5.7.03 Application for Benefits
   5.7.10 Independent Medical Examinations
   5.7.11 Suspension, Reduction or Termination of Benefits

5.8 Nonservice-Connected Disability Benefits
   5.8.03 Application for Benefits
   5.8.11 Independent Medical Examinations
   5.8.12 Suspension, Reduction or Termination of Benefits

5.9 Medical Benefits
   5.9.06 Independent Medical Examinations

See Exhibits “A” and “B” for complete description of proposed rule changes

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

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

No impact anticipated.
RESOLUTION NO. 486

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 Question and Answer session on proposed amendments to the FPDR Administrative Rules was held on February 14, 2014; and

WHEREAS, the Board has considered and recommends changes to Sections 5.7.03, 5.7.10, 5.7.11, 5.8.03, 5.8.11, 5.8.12 and 5.9.06 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, the Board also authorizes FPDR staff to make any housekeeping changes to the proposed amendments that are strictly related to spacing, pagination, section lettering, cross-references in the Rules and Charter, and spelling that will not impact the meaning of the Administrative Rules.

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

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 25th day of March 2014.

Samuel Hutchison
FPDR Director
## Proposed Rule Changes - Application for Benefits

### Proposed New Wording

<table>
<thead>
<tr>
<th>Row</th>
<th>5.7.03 Service Connected Disability</th>
<th>5.8.03 Nonservice Connected Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that it deems necessary to carry out FPDR’s duties.</td>
<td>(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that it deems necessary to carry out FPDR’s duties.</td>
</tr>
<tr>
<td>2</td>
<td>(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.</td>
<td>(E) 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.</td>
</tr>
<tr>
<td>3</td>
<td>(G) All applications for service-connected 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.</td>
<td>(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.</td>
</tr>
</tbody>
</table>

**Change applies to 5.7.03 & 5.8.03**

**No wording changes - match paragraph breaks**

**Change applies to 5.7.03 only**
<table>
<thead>
<tr>
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<tr>
<td>4</td>
<td>(H) 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.</td>
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<td>(I) Although information comes from many sources, Claim assessment 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 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 upon the claimant’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.</td>
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<td>(H) 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.</td>
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Change applies to 5.7.03 only

Change applies to 5.7.03 & 5.8.03

Change applies to 5.8.03; Add to 5.7.03
## Proposed Rule Changes - Independent Medical Examinations

<table>
<thead>
<tr>
<th>Row</th>
<th>5.7.10 Service Connected Disability</th>
<th>5.8.11 Nonservice Connected Disability</th>
<th>5.9.06 Medical Benefits</th>
</tr>
</thead>
<tbody>
<tr>
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<td>(A) If requested by the Director, any Member eligible to receive benefits under this program is required to undergo a medical examination by one or more licensed physician or psychologist. 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.</td>
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<td>(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.</td>
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<tr>
<td>2</td>
<td>(C)(2) The Member may request a change in the appointment date, time or place for good cause.</td>
<td>(B) The Member may request a change in the IME appointment date, time or place for good cause.</td>
<td></td>
</tr>
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Change applies to 5.7.10, 5.8.11 & 5.9.06; add to 5.7.10, &5.10.11
## Proposed Rule Changes - Independent Medical Examinations

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<td>3</td>
<td><strong>5.7.10</strong> Service Connected Disability</td>
</tr>
<tr>
<td></td>
<td><strong>Proposed New Wording</strong></td>
</tr>
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<td>3</td>
<td>(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, 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:</td>
</tr>
<tr>
<td></td>
<td>(1) The name of the examiner or facility;</td>
</tr>
<tr>
<td></td>
<td>(2) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;</td>
</tr>
<tr>
<td></td>
<td>(3) The date, time and place of the examination; and</td>
</tr>
<tr>
<td></td>
<td>(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.</td>
</tr>
<tr>
<td></td>
<td>Ten day notification may be waived at Member’s request or with the Member’s permission.</td>
</tr>
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<td>4</td>
<td>(C) When necessary, the following expenses associated with the Member’s attending the medical examination will be considered by the Director:</td>
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<td></td>
<td>(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and</td>
</tr>
<tr>
<td></td>
<td>(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.</td>
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</table>

**Note:**

5.9.06 (C)(2), (C)(3) & (C)(4) were retained but given their own paragraph letter.

Change applies to 5.7.10, 5.8.11 & 5.9.06

*No changes to 5.7 & 5.8; add to 5.9*
## Proposed Rule Changes - Independent Medical Examinations

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<td>(D) 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.</td>
<td>(D) 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.</td>
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<td><strong>6</strong></td>
<td>(D) 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.</td>
<td>HOUSEKEEPING (I) 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.</td>
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## Proposed Rule Changes - Suspension, Reduction or Termination of Benefits

<table>
<thead>
<tr>
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| 1   | (A)(2) The Member is not cooperating in a designated examination under Charter Section 5-202(a); | (A)(2) The Member is not cooperating in a designated examination under Charter Section 5-202(a);  
Change applies to 5.7.11 & 5.8.12 |
| 2   | (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; | HOUSEKEEPING  
(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 administrative rules;  
Change applies to 5.7.11 & 5.8.12 |
| 3   | (7) 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; | (A)(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;  
Change applies to 5.7.11 & 5.8.12 |
| 4   | (A)(8) The Member has failed to provide notification and request approval to engage in other employment within the specified timeframe; | (A)(7) The Member has failed to provide notification and request approval to engage in other employment within the specified timeframe;  
Change applies to 5.7.11 & 5.8.12 |
| 5   | (A)(9) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified timeframe; or | (A)(8) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified timeframe; or  
Change applies to 5.7.11 & 5.8.12 |
| 6   | (A)(10) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination. | Deleted as part of September 16, 2013 adopted rule changes  
(A)(10) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination.  
Change applies to 5.7.11 only  
Note: Included in (A)(2) above (Row 1) |
GENERAL
PROPOSED RULE CHANGES:

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 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 related 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.

(H) 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.

(I) 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 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.

(I) 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.

* * *

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 physician or psychologist. 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 Member may request a change in the IME appointment date, time or place for good cause.

(B)(C) 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: 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
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.

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.

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.

5.7.11 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(A) Service-connected and Occupational Disability Benefits

The Director may determine to suspend, reduce or terminate benefits for service connected and occupational disability benefits, 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); an Independent Medical Examination or other Director arranged medical or mental examination;

(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 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 deemed 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;

(9) The Member has failed to provide other/wage information to allow for wage offset purposes within the specified 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.

(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 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.
5.8.03 – **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 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.

(D) 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.

(E) 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.

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

(G) 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 request.

General – Proposed Rule Changes
Page5
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.

(H) 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.

* * *

5.8.11 – 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 physician or psychologist. 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 Member may request a change in the IME appointment date, time or place for good cause.

(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.

(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) 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.

(D)(E) 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.

5.8.12 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

(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), an Independent Medical Examination or other Director arranged medical or mental examination;

(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 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 timeframe;

(8) The Member has failed to provide other outside wage information to allow for wage offset purposes within the specified timeframe; or

(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.
5.9.06 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member potentially eligible to receive benefits under this program is required to undergo an Independent Medical Examination (IME) by one or more licensed physician or psychologist. 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 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.

(C) 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.

(C) The Member may request a change in the IME appointment date, time or place for good cause.

(D) 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 Member agrees.

(E) The Member’s notification of the medical examination shall include the following information:

(1) The name of the examiner and 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.

(F) 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.

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

(H) 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.

(I) 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.

(J) When Elective Surgery is recommended by the Member’s Attending 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 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 Primary 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.
Statement of Rulemaking Need and Fiscal Impact
(Resolution No. 487)

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 amending Sections:

5.7 Service-Connected or Occupational Disability Benefits
   5.7.05 Amount of Benefits
   5.7.09 Recipient of Disability Benefits
   5.7.12 Offsets to Service-Connected and Occupational Disability Benefits

5.8 Nonservice Connected Disability Benefits
   5.8.10 Recipient of Disability Benefits
   5.8.13 Offsets to Nonservice-Connected Disability Benefits

See Exhibits “A” and “B” for complete description of proposed rule changes

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

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

No impact anticipated.
Definitions

“Full-Time Work.” For the purpose of Other Employment, the term Full-Time Work” means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

[Found in 5.7.09(C) & 5.8.13(B) & 5.10.02]

{BHR Rule: 8.01 Hours of Work and Schedules}

“Self-Employment.” The Term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for himself or herself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

[Found in 5.7.12(D)(5) & 5.8.13(D)(5)]

{This is based on what IRS uses to define self-employment.}

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

{This is based on Admin Rules: 5.7.02 (B); 5.12.05 (B)}
RESOLUTION NO. 487

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 Question and Answer session on proposed amendments to the FPDR Administrative Rules was held on February 14, 2014; and

WHEREAS, the Board has considered and recommends changes to Sections 5.7.05, 5.7.09, 5.7.12, 5.8.10 and 5.8.13 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, the Board also authorizes FPDR staff to make any housekeeping changes to the proposed amendments that are strictly related to spacing, pagination, section lettering, cross-references in the Rules and Charter, and spelling that will not impact the meaning of the Administrative Rules.

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

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 25th day of March 2014.

Samuel Hutchison
FPDR Director
### Proposed Rule Changes - Recipient of Disability Benefits

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<tbody>
<tr>
<td>1</td>
<td><strong>5.7.09</strong> Service Connected Disability</td>
<td><strong>5.8.10</strong> Nonservice Connected Disability</td>
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|     | **C** A Member receiving service-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, 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. | **HOUSEKEEPING**

(C) A Member receiving service-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, 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.

Changes apply to 5.7 & 5.8

Note: 5.8.13(B) is now moved to 5.8.10(C)
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<td>(A) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term &quot;wages earned in other employment&quot; as defined subsection (D) (5), below. The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of &quot;wages earned in other employment.&quot;</td>
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<td><strong>Proposed New Wording</strong></td>
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<td><strong>HOUSEKEEPING</strong> Moved 5.8.13(B) to 5.8.10(C)</td>
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Change applies to 5.8.13 only
## Proposed Rule Changes - Offsets

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| 8   | (B)(2) If at anytime during the Member’s disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed “Request to Engage in Outside Employment” form for the Director’s approval. Failure to do so may result in a reduction or suspension of benefits | (D)(2) If at anytime during the Member’s disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed “Request to Engage in Outside Employment” form for the Director’s approval. Failure to do so may result in a reduction or suspension of benefits | HOUSEKEEPING |

| 9   | (B)(4) A Report of earnings report will be returned with proper documentation within time frame stated in the request. Failure to do so may result in a reduction or suspension of benefits | (D)(4) A Report of earnings report will be returned with proper documentation within time frame stated in the request. Failure to do so may result in a reduction or suspension of benefits. | HOUSEKEEPING |

Change applies to 5.7.12 & 5.8.13
### Proposed Rule Changes - Offsets

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| 10  | (B)(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered “outside wages” and is subject to the wage offset. | (D)(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered “outside wages” and is subject to the wage offset. | MOVED to 5.7.01 and 5.8.01 
(5) The term "wages earned in other employment" includes:
(a) the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer in Other Employment, other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes:
(b) any salary, fees, commissions, profits or other remuneration that the Member receives from his or her Self-Employment in a profession, trade or business; and
(c) however, if you own any rental income, if the Member owns a rental(s) and the IRS requires that the rental income be reported as Self-Employment income, your rental income is considered “outside wages” and is subject to the wage offset.

(6) The term "wages earned in other employment" does not include income from investments such as interest, dividends, rentals and capital gains. |
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| 11  | 5.7.12 Service Connected Disability | (9) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:  
   (a) The Director will initially estimate the member’s Self-Employment wages as one-third of the Member’s Base Pay in Effect at Disability.  
   (b) The Member will be required to submit his/her tax returns and other wage, hour and expense documentation annually or when requested by the Director.  
   (c) After receipt of wage, hour and expense documentation, The Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member’s Self-Employment wages for the current and next year.  
   (d) The Director will recover any overpayment by offsetting one-twelth of the overpaid amount from future payments until the overpayment is recovered in full.  
Change applies to 5.7.12 & 5.8.13  
Note: See 5.7.14 and 5.8.15 regarding overpayment collection |
|     | 5.8.13 Nonservice Connected Disability | |
| 12  | | (8) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum in lieu of submitting wage information to FPDR for purpose of wage offset.  
Change applies to 5.7.12 only |
SELF EMPLOYMENT
PROPOSED RULE CHANGES:

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:

   (1) 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.

   (2) 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.

   (3) 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.

(D) 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.

(E) Notwithstanding any other provision of Chapter 5 of the City Charter, 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.
**5.7.09 – 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.

(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 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.

* * *

**5.7.12 – OFFSET TO SERVICE-CONNECTED AND OCCUPATIONAL DISABILITY BENEFITS PAYABLE UNDER ARTICLE 3 OF THE PLAN**

(A) Members receiving service-connected or occupational disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving “wages earned in Other Employment” shall notify the Director, in writing, of the Member’s intention. The notice shall be accompanied by a written statement reflecting an estimate of the Member’s earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this Administrative Rule.

(B) Guidelines for Wage Offset Administration

(1) A Member must complete the “Outside Employment” section of the “Disability in Line of Duty Report” (DILD) at the time of Claim filing. The FPPD Director may require an update on the Member’s outside Other Employment status.
periodically throughout the Member’s course of disability.

(2) If at any time during the Member’s disability he/she has engaged or wishes to engage in outside Other Employment, the Member will be required to submit a completed “Request to Engage in Outside Employment” form for the Director’s approval. Failure to do so may result in a reduction or suspension of benefits.

(3) Once the Request to Engage in Outside Employment has been approved by the Director, the Member will be required to submit a report of his/her outside earnings upon the request of and at intervals determined by the Director.

(4) A “Report of Earnings from Outside Employment” report will be returned with proper documentation within timeframe stated in the request. Failure to do so may result in a reduction or suspension of benefits.

(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered “outside wages” and is subject to the wage offset.

(6)(5) Documentation acceptable for reporting outside employment wages include valid copies of payroll records, pay stubs, W-2 and income tax returns.

(C) Guidelines for Substantial Gainful Activity Wage Offset Administration

(1) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:

(a) The Director will initially estimate the Member’s Self-Employment wages as one-third of the Member’s Base Pay in Effect at Disability.

(b) The Member will be required to submit his/her tax returns and other wage, hour and expense documentation annually or when requested by the Director.

(c) After receipt of wage, hour and expense documentation, the Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member's Self-Employment wages
for the current and next year.

(d) The Director will recover any overpayment by offsetting one-twelfth of the overpaid amount from future overpayments until the overpayment is recovered in full.

(2) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum in lieu of submitting wage information to FPDR for purpose of wage offset.
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 required 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 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, 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.

* * *

5.8.13 – **OFFSETS TO NONSERVICE-CONNECTED DISABILITY BENEFITS PAYABLE UNDER ARTICLE 3 OF THE PLAN**

(A) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term “wages earned in other employment” as defined subsection (D) (5), below. The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of “wages earned in other employment.” Members receiving nonservice-connected disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving “wages earned in Other Employment” shall notify the Director, in writing, of the Member’s intention. The notice shall be accompanied by a written statement reflecting an estimate of the Member’s earnings from such activities. Thereafter, the Member shall furnish
the Director with such information and at such intervals as the Director deems
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(B) A Member receiving nonservice-connected disability benefits under Article 3 of the
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The concept of an active work search includes consideration of the customary
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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 resumes.

(C)(B) A Member’s failure to pursue Other Employment may result in a reduction or
termination of benefits.

(D)(C) Guidelines for Wage Offset Administration

(1) A Member must complete the “Outside Employment” section of the
“Nonservice-connected Disability Report” at the time of Claim filing. The
FPDR Director may require an update on the Member’s outside Other
Employment status periodically throughout the Member’s course of disability.

(2) If at anytime during the Member’s disability he/she has engaged or
wishes to engage in other Employment, the Member will be required
to submit a completed “Request to Engage in Outside Employment” form for
the Director’s approval. Failure to do so may result in a reduction or suspension
of benefits.

(3) Once the Request to Engage in Outside Employment has been approved by
the Director, the Member will be required to submit a report of his/her outside
earnings upon the request of and at intervals determined by the Director.

(4) A “Report of Earnings from Outside Employment” report will be returned
with proper documentation within the timeframe stated in the request. Failure to do so may result in a reduction or suspension of benefits.

(5) The term wages earned in other employment includes the gross salary,
overtime pay, fees, commissions, or other remuneration received by a Member
for services rendered as an employee to an employer other than the Bureau of
Fire or Bureau of Police. The term wages earned in other employment also
includes any salary, fees, commissions, profits or other remuneration that the
Member receives from his or her self-employment in a profession, trade or
business. The term wages does not include income from investments such as
interest, dividends, rentals and capital gains. However, if you own a rental(s)
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(1) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:

(a) The Director will initially estimate the Member’s Self-Employment wages as one-third of the Member’s Base Pay in Effect at Disability.

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(c) After receipt of wage, hour and expense documentation, the Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member’s Self-Employment wages for the current and next year.

(d) The Director will recover any overpayment by offsetting one-twelfth of the overpaid amount from future overpayments until the overpayment is recovered in full.
Statement of Rulemaking Need and Fiscal Impact
(Resolution No. 488)

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 amending Sections:

5.7 Service-Connected or Occupational Disability Benefits
   5.7.01 Definitions

5.8 Nonservice Connected Disability Benefits
   5.8.01 Definitions

5.9 Medical Benefits
   5.9.01 Definitions

5.10 Return to Work and Vocational Rehabilitation Programs
   5.10.02 Definitions

See Exhibits “A” and “B” for complete description of proposed rule changes

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

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

No impact anticipated.
RESOLUTION NO. 488

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 Question and Answer session on proposed amendments to the FPDR Administrative Rules was held on February 14, 2014; and

WHEREAS, the Board has considered and recommends changes to Sections 5.7.01, 5.8.01, 5.9.01 and 5.10.02 of the FPDR Administrative Rules as shown on Exhibits “A” and “B”, attached hereto and by this reference made a part hereof; and

WHEREAS, the Board also authorizes FPDR staff to make any housekeeping changes to the proposed amendments that are strictly related to spacing, pagination, section lettering, cross-references in the Rules and Charter, and spelling that will not impact the meaning of the Administrative Rules.

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

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 25th day of March 2014.

Samuel Hutchison
FPDR Director
### Proposed Rule Changes for Definitions

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<td>1</td>
<td><strong>5.7.01</strong> Service Connected Disability</td>
<td><strong>5.7.01</strong> Service Connected Disability</td>
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<tr>
<td></td>
<td><strong>5.8.01</strong> Nonservice Connected Disability</td>
<td><strong>5.8.01</strong> Nonservice Connected Disability</td>
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<td></td>
<td><strong>5.9.01</strong> Medical Benefits</td>
<td><strong>5.9.01</strong> Medical Benefits</td>
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<tr>
<td></td>
<td><strong>5.10.02</strong> Return to Work and Vocational Rehabilitation Programs</td>
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</tr>
<tr>
<td>1</td>
<td>&quot;Attending Physician.&quot; The term &quot;Attending Physician&quot; means:</td>
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<td>(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or</td>
<td>(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or</td>
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<td></td>
<td>(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.</td>
<td>(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.</td>
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<tr>
<td>2</td>
<td>&quot;Base Pay.&quot; The term “Base Pay” means the base pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.</td>
<td>&quot;Base Pay.&quot; The term “Base Pay” means the base pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.</td>
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<td>&quot;Base Pay in Effect at Disability.&quot; The term “Base Pay in Effect at Disability” means the Member’s Base Pay amount at the time the disability payment is due.</td>
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<td>3</td>
<td>&quot;Chart Note.&quot; The term “Chart Note” means a chronological documentation in an individual’s medical record, and includes subjective and objective findings, diagnosis, treatment rendered and proposed, status, and recovery and return to work objectives.</td>
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**Proposed New Wording**

"Attending Physician." The term "Attending Physician" means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

**Return to Work and Vocational Rehabilitation Programs**

"Base Pay in Effect at Disability." The term “Base Pay in Effect at Disability” means the Member’s Base Pay amount at the time the disability payment is due.

**Chart Note." The term "Chart Note" means a chronological documentation in an individual’s medical record, and includes subjective and objective findings, diagnosis, treatment rendered and proposed, status, and recovery and return to work objectives.**

Changes apply to 5.07.01, 5.08.01 & 5.09.01; Add to 5.10.02
<table>
<thead>
<tr>
<th>Row</th>
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<tbody>
<tr>
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<td><strong>Proposed New Wording</strong></td>
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<td><strong>Existing Wording</strong></td>
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### Existing Wording

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<th>5.7.01 Service Connected Disability</th>
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<th>5.9.01 Medical Benefits</th>
<th>5.10.02 Return to Work and Vocational Rehabilitation Programs</th>
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<tr>
<td>4</td>
<td>Claim: The term &quot;Claim&quot; means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active member, his/her representative or legal beneficiary, or surviving spouse or other legal representative of a deceased member. This term may be used synonymously with the term &quot;application.&quot;</td>
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<tr>
<td>6</td>
<td>Date of Disability: The term &quot;Date of Disability&quot; means the date that the Member is first unable to perform the Member’s required duties as a result of an injury/illness that has been determined to arise out of and in the course of the Member’s employment in the Bureau of Police or Fire.</td>
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<td>7</td>
<td>Documented Absence: The term &quot;Documented Absence&quot; means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.</td>
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### Proposed New Wording

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<td>4</td>
<td>HOUSEKEEPING &quot;Claim.&quot; The term &quot;Claim&quot; means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active member, his/her representative or legal beneficiary, or surviving spouse or other legal representative of a deceased member. This term may be used synonymously with the term &quot;application.&quot;</td>
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Changes apply to 5.7.01, 5.8.01, 5.9.01 & 5.10.02
## Proposed Rule Changes for Definitions

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<td>8</td>
<td>“Full-Time Work.” For the purpose of Other Employment, the term Full-Time Work” means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.</td>
<td>“Full-Time Work.” For the purpose of Other Employment, the term Full-Time Work means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician. Add to 5.7.01, 5.8.01 &amp; 5.10.02</td>
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<td>9</td>
<td>“Home Health Care.” The term “Home Health Care means medically necessary medical and medically related services provided in the Member’s home environment. These services may include professional nursing care, medical administration, or personal hygiene, or assistance with mobility and transportation.</td>
<td>“Home Health Care.” The term “Home Health Care” means medically necessary medical and medically related services provided in the Member’s home environment. These services may include professional nursing care, medical administration, or personal hygiene, or assistance with mobility and transportation. Changes apply to 5.9.01 only</td>
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<td>10</td>
<td>“Independent Medical Examination (IME).” An examination by one or more licensed medical providers in order to provide an opinion of findings in connection with an injury/illness or occupational Claim. A Physical Capacitiesy Evaluation (PCE) or a Work Capacitiesy Evaluation (WCE) is considered an “IME” under these rules.</td>
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| 11  | “Interim Disability Benefits”. The term “Interim Disability Benefits” means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of his/her application for service-connected or occupational disability benefits. | HOUSEKEEPING  
“Interim Disability Benefits”. The term “Interim Disability Benefits” means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of his/her application for service-connected injury/illness or occupational disability benefits. Changes apply to 5.7.01 only |
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<td><strong>Existing Wording</strong></td>
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<tr>
<td>12</td>
<td>&quot;Medical Evidence.&quot; The term &quot;Medical Evidence&quot; means expert written testimony, statements and opinions; sworn affidavits and testimony of medical experts; records, reports, documents, diagnostic test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration. acronym</td>
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<td><strong>Changes apply to 5.9.01 only</strong></td>
</tr>
<tr>
<td>13</td>
<td>Monthly Disability Benefits.&quot; The term &quot;Monthly Disability Benefits&quot; means benefits payable once per month on approved service-connected and occupational disability claims after a member's first year of receiving disability benefits.</td>
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<td></td>
<td><strong>HOUSEKEEPING</strong> Monthly Disability Benefits.&quot; The term &quot;Monthly Disability Benefits&quot; means benefits payable once per month on approved service-connected and occupational disability claims after a member's first year of receiving disability benefits.</td>
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<td>14</td>
<td>&quot;Monthly Disability Benefits.&quot; The term &quot;Monthly Disability Benefits&quot; means benefits payable once per month on approved non service-connected disability claims.</td>
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<td>15</td>
<td>&quot;Original Injury.&quot; The term &quot;Original Injury&quot; means the period from the first occasion of medical treatment or disability resulting from a service-connected or occupational disability through the date the member first reaches a medically stationary status.</td>
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<td><strong>Changes apply to 5.7.01, 5.9.01 &amp; 5.10.01 only</strong></td>
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<tr>
<td>16</td>
<td>“Other Employment.” The term “Other Employment” means employment with any person,</td>
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<td>firm, company, corporation, government agency, municipality or Self-Employment, and</td>
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<td>does not include employment as an Active Member of the Bureau of Fire or Bureau of</td>
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<td>Police, or work performed as part of an approved Transitional Duty Return to Work</td>
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<td>Program in accordance with Administrative Rule 5.10.03.</td>
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<td>Changes apply to 5.7.01, 5.8.01 &amp; 5.10.02 only</td>
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<td>17</td>
<td>“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of</td>
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<td>a complete application for benefits on an original Claim or for a Recurrence Claim</td>
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<td>during which FPDR is evaluating the Claim to determine if the injury or illness</td>
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<td>arose out of and in the course of the Member’s employment with the Bureau of Fire</td>
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<td></td>
<td>or Police.</td>
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<td></td>
<td>Add to 5.7.01 &amp; 5.8.01 only</td>
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<td></td>
<td>Changes apply to 5.9.01 only</td>
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<tr>
<td>19</td>
<td>“Pursue Other Employment.” “Pursue Other Employment” means: an active, serious, and</td>
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<td>continuing effort to seek full-time work each week that the Member claims benefits.</td>
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<td>Changes apply to 5.10.02 only</td>
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<td>Row</td>
<td>5.7.01 Service Connected Disability</td>
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<tr>
<td>20</td>
<td>Existing Wording</td>
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|     | "Self-Employment." The Term "Self-
Employment" means the Member is working as: |
|     | • a sole proprietor who conducts a trade or business; |
|     | • an independent contractor; |
|     | • a member of a partnership that conducts a trade or business; or |
|     | • otherwise is in business for himself or herself |
|     | Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician. |

Add to 5.7.01 & 5.8.01 |

"Substantial Gainful Activity." The term "Substantial Gainful Activity" means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay at disability in Effect at Disability. |

Change applies to 5.7.01, 5.8.01 & 5.10.02 |

"Suspension of Benefits." The term "Suspension of Benefits" means disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter, or with a particular FPDR Administrative Rule provision. |

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Changes apply to 5.7.01 & 5.8.01 only
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<td><strong>Existing Wording</strong></td>
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<tr>
<td>23</td>
<td>“Usual and Customary Fee.” The term “Usual and Customary Fee” means a treatment service fee that falls within the range of fees normally charged for treatment of occupational injuries and illnesses in Oregon. Changes apply to 5.9.01 only</td>
</tr>
<tr>
<td>24</td>
<td>*** MOVED FROM 5.7.12 and 5.8.13 ***</td>
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<tr>
<td>25</td>
<td>“Work Capacity Evaluation.” The term &quot;Work Capacity Evaluation&quot; means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluation. Changes apply to 5.9.01 only</td>
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### Proposed Rule Changes for Definitions

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<td>26</td>
<td>“Worsening.” The term “Worsening” means objective findings indicating a worsening of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening of the approved service-connected injury/illness or occupational disability.</td>
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**Existing Wording**

26 “Worsening.” The term “Worsening” means objective findings indicating a worsening of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening of the approved service-connected injury/illness or occupational disability.

Changes apply to 5.7.01 & 5.9.01 only.
DEFINITIONS
PROPOSED RULE CHANGES:

5.7.01 – DEFINITIONS

“Aggravation.” The term “Aggravation” means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member’s condition has been deemed Medically Stationary.

“Attending Physician.” The term “Attending Physician” means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

“Base Pay.” The term “Base Pay” means the Base Pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Base Pay in Effect at Disability.” The term “Base Pay in Effect at Disability” means the Member’s base pay amount at the time the disability payment is due.

“Bi-weekly Disability Benefits.” The term “Bi-weekly” Disability Benefits” means disability benefits payable on the same schedule as the Member’s regular payroll on approved service-connected and occupational disability Claims during a member’s first year of receiving disability benefits.

“Claim.” The term “Claim” means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active Member, his/her representative or legal beneficiary, or surviving spouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term “application.”

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’
required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

“Documented Absence.” The term “Documented Absence” means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

“Full-Time Work.” For the purpose of Other Employment, the term “Full-Time Work” means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Independent Medical Examination (IME).” The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Interim Disability Benefits.” The term “Interim Disability Benefits” means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of his/her application for service-connected injury/illness or occupational disability benefits.

“Medically Stationary.” The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

“Monthly Disability Benefits.” The term “Monthly Disability Benefits” means benefits payable once per month on approved service-connected and occupational disability claims after a Member’s first year of receiving disability benefits.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the member first reaches a medically stationary status.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.
“Preponderance of the Evidence.” The term “Preponderance of the Evidence” means the greater weight of the evidence.

“Primary Physician.” See “Attending Physician.”

“Proximate Cause.” The term “Proximate Cause” means a cause that directly produces an event and without which the event would not have occurred.

“Recurrence.” An Aggravation of a service-connected injury/illness or occupational disability that requires Claim re-opening for additional disability benefits and/or medical benefits.

“Self-Employment.” The term “Self-Employment” means the Member is working as:
- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for himself or herself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Significant Factor.” The term a “Significant Factor” means an important, proximate cause.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s “Attending Physician” on an approved Claim.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay at disability in Effect at Disability.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter, or with a particular FPDR Administrative Rule or provision.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:

(a) the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police. The term Wages Earned in Other Employment also includes;
(b) any salary, fees, commissions, profits or other remuneration that the Member receives from his or her Self-Employment in a profession, trade or business; and

(c) any rental income, if the Member owns a rental(s) and the IRS requires that the rental income be reported as Self-Employment income, your rental income is considered “outside wages” and is subject to the wage offset.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Worsening” The term “Worsening” means objective findings indicating a deterioration worsening of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening of the approved service-connected injury/illness or occupational disability.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.
5.8.01 – DEFINITIONS

“Attending Physician.” The term “Attending Physician” means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon, Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States.

“Base Pay.” The term “Base Pay” means the Base Pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Base Pay in Effect at Disability.” The term “Base Pay in Effect at Disability” means the Member’s Base Pay amount at the time the disability payment is due.

“Claim.” The term “Claim” means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active Member, his/her representative or legal beneficiary, or surviving spouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term “application.”

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’s required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member’s employment in the Bureau of Police or Fire.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

“Documented Absence.” The term “Documented Absence” means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

“Full-Time Work.” For the purpose of Other Employment, the term “Full-Time Work” means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.
“Independent Medical Examination (IME).” The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Monthly Disability Benefits.” The term “Monthly Disability Benefits” means benefits payable once per month on approved non-service-connected disability Claims.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for himself or herself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s “Attending Physician” on an approved Claim.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay at disability in Effect at Disability.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter, or with a particular FPDR Administrative Rules provision.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:
(a) the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police. The term Wages Earned in Other Employment also includes;

(b) any salary, fees, commissions, profits or other remuneration that the Member receives from his or her Self-Employment in a profession, trade or business; and

(c) any rental income, if the Member owns a rental(s) and the IRS requires that the rental income be reported as Self-Employment income, your rental income is considered “outside wages” and is subject to the wage offset.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.
5.9.01 – DEFINITIONS

“Aggravation.” The term “Aggravation” means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member’s condition has been deemed Medically Stationary.

“Ancillary Services.” The term “Ancillary Services” means services that supplement the care provided by the Member’s physician or other authorized health care provider (e.g., physical therapy, occupational therapy, etc.).

“Attending Physician.” The term “Attending Physician” means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

“Chart Note.” The term “Chart Note” means a chronological documentation in an individual’s medical record, and includes subjective and objective findings, diagnosis, treatment rendered and proposed, status, and recovery and return to work objectives.

“Claim.” The term “Claim” means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active Member, his/her representative or legal beneficiary, or surviving spouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term “application.”

“Curative Care.” The term “Curative Care” means Medical Services required to diagnose, heal or permanently relieve or eliminate a medical condition.


“Customary Fee.” The term “Customary Fee” means a fee that falls within the range of fees normally charged in Oregon for a given service.

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first determined by the Member is
unable to perform the Member’s required duties *as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.*

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

“Elective Surgery.” The term “Elective Surgery” is surgery which may be necessary in the process of recovery from an injury or illness, but need not be done as an emergency to preserve life, function or health.

“Home Health Care.” The term “Home Health Care” means medically necessary medical and medically related services provided in the Member’s home environment. These services may include professional nursing care, medical administration, or personal hygiene, or assistance with mobility and transportation.

“Independent Medical Examination (IME).” **The term “Independent Medical Examination”** means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a *service-connected* injury/illness or a *occupational disability* Claim. A Physical Capacities Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Medical Evidence.” The term “Medical Evidence” means expert written testimony, statements and opinions; sworn affidavits and testimony of medical experts; records, reports, documents, diagnostic test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

“Medical Service.” The term “Medical Service” means any medical treatment, including:

(A) Surgery
(B) Diagnostic procedures
(C) Chiropractic
(D) Dental
(E) In-patient and Out-patient hospitalization
(F) Professional nursing
(G) Ambulance transport
(H) Prescription drugs
(I) Medicine
(J) Durable medical equipment
(K) Crutches
(L) Braces and supports
(M) Prosthetic appliances
(N) Physical Restorative Services
“Medical Treatment.” The term “Medical Treatment” means the management and care of a Member by a licensed medical provider for the purpose of combating disease, injury, or disorder.

“Medically Stationary.” The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

“Nurse Case Manager.” A licensed nurse assigned by the Director to follow and monitor the progress of recovery of an injury/illness or occupational Claim.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the member reaches a Medically Stationary status.

“Palliative Care.” The term “Palliative Care” means post-Medically Stationary Medical Services required to reduce or temporarily moderate the intensity of an otherwise stable condition. It does not include those Medical Services needed to diagnose, heal, or permanently alleviate a medical condition.

“Physical Capacity Evaluation.” The term “Physical Capacity Evaluation” means an objective, directly observed, measurement of a Member’s ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship’s Functional Evaluation, and Functional Capacity Assessment will be considered to have the same meaning as Physician Capacity Evaluation.

“Physical Restorative Services.” The term “Physical Restorative Services means services prescribed by the Member’s physician that are designed to restore and maintain the Member to the highest functional ability consistent with the Member's condition.

“Preponderance of the Evidence.” The term “Preponderance of the Evidence” means the greater weight of the evidence.

“Primary Physician.” See “Attending Physician.”

“Proximate Cause.” The term “Proximate Cause” means a cause that directly produces an event and without which the event would not have occurred.

“Recurrence.” An Aggravation of a service-connected injury/illness or occupational disability that requires Claim re-opening for additional disability benefits and/or medical benefits after the Member has reached Medically Stationary status with respect to the approved service-connected injury/illness or occupational disability.

“Significant Factor.” The term a “Significant Factor” means an important, Proximate Cause. “Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s “Attending Physician” on an approved Claim.
“Work Capacity Evaluation.” The term “Work Capacity Evaluation” means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluations.

“Worsening” The term “Worsening” means objective findings indicating a deterioration worsening of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening deterioration of the approved service-connected injury/illness or occupational disability.
“Attending Physician.” The term “Attending Physician” means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

“Base Pay.” The term “Base Pay” means the Base Pay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

“Base Pay at Disability.” The term “Base Pay at Disability” means the Member's base pay amount at the time the disability payment is due.

“Date of Disability.” The term “Date of Disability” means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

“Full-Time Work.” For the purpose of Other Employment, the term “Full-Time Work” means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the member first reaches a medically stationary status.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of
Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pursue Other Employment.” “Pursue Other Employment” means: an active, serious, and continuing effort to seek Full-Time Work each week that the Member claims benefits.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base at Disability in Effect at Disability.

“Transferable Skills.” The term “Transferable Skills” means the knowledge, skills and abilities demonstrated in past training and employment which make a Member employable at work, with a new employer, with earnings equal to or exceeding one-third of the Member’s rate of Base Pay at Disability.

“Transitional Duty.” The term “Transitional Duty” means available tasks that allow a disabled member to return to work at an assignment that is less physically/mentally demanding than the member’s regular work for a limited period of time. Also known as “Limited Duty.”

“Vocational Assessment.” The term “Vocational Assessment” means an evaluation, performed by a certified vocational counselor, consisting of one or more tests conducted to determine if a Member has reached a level of Substantial Gainful Activity.

“Vocational Rehabilitation.” The term “Vocational Rehabilitation” means any services, goods, or allowance intended to support the Member’s return to work efforts. A process initiated as early as possible for a Member who has been disabled and may require a different job or career as a result. May include Vocational Assessment, labor market surveys, developing alternative work plans, retraining, and assistance with job-seeking skills.
Date: March 19, 2014

To: FPDR Board of Trustees

From: Nancy Hartline, FPDR Financial Manager

Re: FPDR Two Benefit Adjustment for 2014

Charter Section 5-312 states in part that, “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 of change applied to retirement benefits payable to police and fire employees by the Public Employee Retirement System of the State of Oregon.”

FPDR has interpreted the Section 5-312 rate limit to be the maximum rate used by PERS when multiple rates are used. The following Administrative Rule 5.4 section shows the changes made in March 2011. Prior to that date, the rule said the FPDR Two “percentage of rate of change shall be equal to” the PERS rate. The application of that rule was to use exactly the same rates as PERS if PERS had multiple rates due to a Consumer Price Index (CPI) change less than two percent, because to do otherwise would be to increase the benefit for the most recent retirees by more than the rate of inflation. In March 2011, the rule was changed to provide for annual review of the FPDR Two adjustment percentage or percentages that would not exceed the PERS rate. The concept of a CPI bank was also added to the rule then.

5.4.05 – PENSION BENEFIT ADJUSTMENTS

(A) Benefits payable under Section 5-304 (Retirement Benefits) and Section 5-305 (Retirement Benefits Upon Termination) adjusted pursuant to Section 5-312 (Benefit Adjustments) of the Plan will be reviewed annually by the Board of Trustees for adjustment effective July 1 of each year to reflect changes in the cost of living. The percentage rate of change shall not exceed be equal to that applied to retirement benefits payable to police officers and fire fighters covered under the Public Employees Retirement System of the State of Oregon (PERS). A Member’s benefits will be adjusted on July 1 of any given year only if the Member separates from service on or before June 30 of that year.

(B) To the extent there is any change in the Consumer Price Index (CPI) used by PERS to determine its annual benefit adjustment outside of the adjustment limits established for PERS, the difference between the CPI change and, as appropriate, the maximum PERS benefit increase or the maximum PERS benefit decrease will adjust a benefits adjustment bank (CPI Bank) for each fiscal year of retirement. The Board of Trustees may draw upon the CPI Bank to set the adjustment percentage(s) for FPDR Two Members and Beneficiaries.
Senate Bill 861 (SB 861), attached, was passed in the 2013 Special Legislative Session and created a tiered or marginal rate cost-of-living adjustment (COLA) scheme for PERS:

- 1.25% on the first $60,000 of yearly base pension, plus
- 0.15% on yearly base pension amounts over $60,000

SB 861 also provides for supplementary payments, but these payments are not included in the yearly base pension for calculating future COLA increases and are not increased by additional tax offset benefits:

- A supplementary payment to each pensioner of 0.25% of the yearly base pension, up to a maximum of $150 (someone with a $60,000 base pension would receive the $150 maximum)
- An additional supplementary payment of 0.25% of the yearly base pension for a pensioner with a yearly base pension of $20,000 or less

The supplementary payments sunset after 2019, but the Public Employees Retirement Board is directed to report to the Legislature its recommendations for the PERS COLA and the supplementary payments in 2018. Because the supplementary payments are not included in a member’s yearly base pension for future cost-of-living adjustments by PERS, the FPDR staff does not believe that the FPDR Board can use the supplementary payment percentages in determining the FPDR Two benefit adjustment rate.

For the 2014 FPDR Two benefit adjustment, two options for the Board’s consideration are:

<table>
<thead>
<tr>
<th>Methodology</th>
<th>FY 2014-15 Cost, Current Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.25% increase for all participants – or – the highest percentage rate payable to sworn PERS retirees in 2014. These actions would have the same effect.</td>
<td>$915,110</td>
</tr>
<tr>
<td>PERS tiered increase</td>
<td>$809,701</td>
</tr>
</tbody>
</table>

The change in the annual Consumer Price Index-All Urban Consumers (CPI-U) for Portland-Salem in 2013 was 2.5%. The second-half CPI-W series that determines wage and FPDR One benefit adjustments increased by 2.7%.

The attachment provides a breakdown of pension participants’ base pension amounts by participant type and shows their average tiered increase percentages. Also shown is the percent of original purchasing power for the 1.25% and PERS tiered increase, as well as 2% for reference to the previous PERS maximum, for new retirees in 10, 20 and 30 years. For current retirees, the percent of original purchasing power is shown at 10, 20 and 25 years with a 1.25% increase in 2014; the percentages would be only slightly less at 10 and 20 years with a tiered increase in 2014.
### Pension Participants by Type and Base Pension Amount

<table>
<thead>
<tr>
<th>Base Pension Amount</th>
<th>Participant Type</th>
<th>Alt Payee</th>
<th>Member</th>
<th>Survivor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 1000</td>
<td></td>
<td>35</td>
<td>5</td>
<td>7</td>
<td>47</td>
</tr>
<tr>
<td>1000 - 1999</td>
<td></td>
<td>36</td>
<td>16</td>
<td>36</td>
<td>88</td>
</tr>
<tr>
<td>2000 - 2999</td>
<td></td>
<td>12</td>
<td>32</td>
<td>20</td>
<td>64</td>
</tr>
<tr>
<td>3000 - 3999</td>
<td></td>
<td>3</td>
<td>104</td>
<td>11</td>
<td>118</td>
</tr>
<tr>
<td>4000 - 4999</td>
<td></td>
<td>1</td>
<td>381</td>
<td></td>
<td>382</td>
</tr>
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<td>5000 - 5999</td>
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<td>307</td>
</tr>
<tr>
<td>6000 - 6999</td>
<td></td>
<td></td>
<td>170</td>
<td></td>
<td>170</td>
</tr>
<tr>
<td>7000 - 7999</td>
<td></td>
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<td></td>
<td>65</td>
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<td>9000 - 9999</td>
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<td>15</td>
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<td>15</td>
</tr>
<tr>
<td>10000 +</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>87</td>
<td>1,136</td>
<td>74</td>
<td>1,297</td>
</tr>
</tbody>
</table>

Average Base Pension $1,395 $5,266 $1,938 $4,817
Avg Tiered Increase Pct 1.25% 1.14% 1.25% 1.16%
Pet of Participants Above $5000 0% 53% 0% 46%
Avg Tiered Increase Pct Above $5000 1.05%
Minimum Tiered Increase Percent 0.59%

### Percent of Original Purchasing Power with Senate Bill 861 - New Retirees in 10, 20 & 30 Years

<table>
<thead>
<tr>
<th>Years</th>
<th>Price Level with 2.5% Annual Inflation</th>
<th>Percent of Original Benefit with 1.25% Adjustment</th>
<th>Percent of Original Purchasing Power, 1.25% Adjustment</th>
<th>Average New Retiree ($5,933 base) with PERS Tiered COLA*</th>
<th>Percent of Original Purchasing Power, Tiered Adjustment after x Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>210%</td>
<td>145%</td>
<td>69%</td>
<td>133%</td>
<td>63% 0.85%</td>
</tr>
<tr>
<td>20</td>
<td>164%</td>
<td>128%</td>
<td>78%</td>
<td>122%</td>
<td>74% 0.92%</td>
</tr>
<tr>
<td>10</td>
<td>128%</td>
<td>113%</td>
<td>88%</td>
<td>111%</td>
<td>87% 0.99%</td>
</tr>
</tbody>
</table>

*Assumes $5000 threshold for lower adjustment is fixed

### Percent of Original Purchasing Power with 2% Adjustment

<table>
<thead>
<tr>
<th>Years</th>
<th>Price Level with 2.5% Annual Inflation</th>
<th>Percent of Original Benefit with 2% Annual Adjustment</th>
<th>Percent of Original Purchasing Power, 2% Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>210%</td>
<td>181%</td>
<td>86%</td>
</tr>
<tr>
<td>20</td>
<td>164%</td>
<td>149%</td>
<td>91%</td>
</tr>
<tr>
<td>10</td>
<td>128%</td>
<td>122%</td>
<td>95%</td>
</tr>
</tbody>
</table>

### Percent of Original Purchasing Power with 1.25% in 2014 - Current Retirees

<table>
<thead>
<tr>
<th>Years</th>
<th>CPI-U Change</th>
<th>Pension Change</th>
<th>Percent of Original Purchasing Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>105%</td>
<td>62%</td>
<td>79%</td>
</tr>
<tr>
<td>20</td>
<td>63%</td>
<td>47%</td>
<td>90%</td>
</tr>
<tr>
<td>10</td>
<td>26%</td>
<td>20%</td>
<td>95%</td>
</tr>
</tbody>
</table>
A-Engrossed
Senate Bill 861
Ordered by the Senate October 1
Including Senate Amendments dated October 1
Sponsored by JOINT COMMITTEE ON SPECIAL SESSION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

**Modifies cost-of-living adjustment under Public Employees Retirement System.**

Directs Public Employees Retirement Board to make annual supplementary payments to members or member's beneficiaries with yearly allowance or yearly pension or benefit of $20,000 or less. Directs board to develop formula for determining whether it is reasonably prudent to make annual supplementary payments to members and member's beneficiaries with yearly allowance or yearly pension or benefit of more than $20,000 and not more than $60,000.

Directs board to report to Legislative Assembly with recommendations relating to cost-of-living adjustment and supplementary payments.

Sunsets supplementary payments on December 31, 2019.

Directs board to report to Governor, President of Senate and Speaker of House of Representatives on recommendations relating to cost-of-living adjustment and supplementary payments.

Provides for expedited review by Supreme Court upon petition by adversely affected party.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

Relating to cost-of-living adjustments under the Public Employees Retirement System; creating new provisions; amending ORS 238.360, 238.465 and 238A.210; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**COST-OF-LIVING ADJUSTMENTS**

**SECTION 1.** ORS 238.360, as amended by sections 1 and 3, chapter 53, Oregon Laws 2013, is amended to read:

238.360. (1) On July 1 of each year, the Public Employees Retirement Board shall increase the yearly allowance that a member or member's beneficiary receives or is entitled to receive, as provided in [subsections (2) and (3)] subsection (2) of this section. The increase is first payable with the allowance that the member or the member's beneficiary receives or is entitled to receive on August 1.

(2)(a) If the member's or member's beneficiary's yearly allowance [for the previous year totaled $20,000] is $60,000 or less, the allowance shall be increased by [two] **1.25** percent.

[(b) If the member's or member's beneficiary's yearly allowance for the previous year totaled more than $20,000 but not more than $40,000, the allowance shall be increased by $400 plus 1.5 percent of the amount of the yearly allowance exceeding $20,000.]

[(c) If the member's or member's beneficiary's yearly allowance for the previous year totaled more than $40,000 but not more than $60,000, the allowance shall be increased by $700 plus one percent of...]

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

LC 1
the amount of the yearly allowance exceeding $40,000.]
[(d)] (b) If the member’s or member’s beneficiary’s yearly allowance [for the previous year totaled] is more than $60,000, the allowance shall be increased by [[$900 plus .25] $750 plus 0.15 percent of the amount of the yearly allowance exceeding $60,000.

[(3) If a member or member’s beneficiary has been receiving an allowance for less than 12 months on July 1 of any year, the board shall calculate the increase under subsection (2) of this section on the basis of the yearly allowance the member or member’s beneficiary would have received if the member or member’s beneficiary had received the monthly allowance for 12 months.]
[(4)] (3) Any increase in the allowance shall be paid from contributions of the public employer under ORS 238.225.

(4) As used in this section, “yearly allowance” means the monthly allowance that a member or member’s beneficiary is entitled to on July 1 of the year in which the board is calculating the increase under subsection (1) of this section, multiplied by 12.

SECTION 2. The amendments to ORS 238.360 by section 1 of this 2013 special session Act apply to all increases to allowances made under ORS 238.360 on and after July 1, 2014.

SECTION 3. ORS 238A.210, as amended by sections 5 and 7, chapter 53, Oregon Laws 2013, is amended to read:

238A.210. (1) On July 1 of each year, the board shall increase every pension payable under ORS 238A.180, 238A.185 and 238A.190, every disability benefit under ORS 238A.235 and every death benefit payable under ORS 238A.230 as provided in subsections (2) and (3) of this section. The increase shall be made for the payments payable on August 1 and thereafter.

(2)(a) If a person’s yearly pension or benefit [for the previous year totaled $20,000] is $60,000 or less, the pension or benefit shall be increased by [two] 1.25 percent.

[(b) If a person’s yearly pension or benefit for the previous year totaled more than $20,000 but not more than $40,000, the pension or benefit shall be increased by $400 plus 1.5 percent of the amount of the yearly pension or benefit exceeding $20,000.]

[(c) If a person’s yearly pension or benefit for the previous year totaled more than $40,000 but not more than $60,000, the pension or benefit shall be increased by $700 plus one percent of the amount of the yearly pension or benefit exceeding $40,000.]

[(d)] (b) If a person’s yearly pension or benefit [for the previous year totaled] is more than $60,000, the pension or benefit shall be increased by [[$900 plus .25] $750 plus 0.15 percent of the amount of the yearly pension or benefit exceeding $60,000.

[(3) If a person has been receiving a pension or benefit for less than 12 months on July 1 of any year, the board shall calculate the increase under subsection (2) of this section on the basis of the yearly allowance the person would have received if the person had received the pension or benefit for 12 months.]

(3) As used in this section, “yearly pension or benefit” means the monthly pension or benefit that a person is entitled to on July 1 of the year in which the board is calculating the increase under subsection (1) of this section, multiplied by 12.

SECTION 4. The amendments to ORS 238A.210 by section 3 of this 2013 special session Act apply to all increases to pensions or benefits made under ORS 238A.210 on and after July 1, 2014.

SECTION 5. (1) The amendments to ORS 238.360 and 238A.210 by sections 1 and 3 of this 2013 special session Act become operative on July 1, 2014.

(2) The Public Employees Retirement Board may take any action before the operative
date specified in subsection (1) of this section to enable the board, on and after the operative
date specified in subsection (1) of this section, to exercise all the duties, functions and pow-
ers conferred on the board by the amendments to ORS 238.360 and 238A.210 by sections 1 and
3 of this 2013 special session Act.

SECTION 6. ORS 238.465 is amended to read:

238.465. (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this
chapter or ORS chapter 238A of any pension, annuity, retirement allowance, disability benefit, death
benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto
under this chapter or ORS chapter 238A shall be paid, in whole or in part, by the Public Employees
Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of
any judgment of annulment or dissolution of marriage or of separation, or the terms of any court
order or court-approved property settlement agreement incident to any judgment of annulment or
dissolution of marriage or of separation. [Notwithstanding any other provisions of this section] Except
as provided in subsection (5) of this section, the total value of benefits payable to a member and
to an alternate payee under this section may not be greater than the value of the benefits the
member would otherwise be eligible to receive. Any payment under this subsection to an alternate
payee bars recovery by any other person.

(2) A judgment, order or settlement providing for payment to an alternate payee under sub-
section (1) of this section may also provide:

(a) That payments to the alternate payee may commence, at the election of the alternate payee,
at any time after the earlier of:

(A) The earliest date the member would be eligible to receive retirement benefits if the member
separates from service; or

(B) The date the member actually separates from service due to death, disability, retirement or
termination of employment.

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, re-
tirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit
in the form of a joint and survivor annuity, that would be available to the member under this
chapter or ORS chapter 238A, or that would be available to the member if the member retired or
separated from service at the time of election by the alternate payee, without regard to the form
of benefit elected by the member.

(c) That the alternate payee’s life is the measuring life for the purpose of measuring payments
to the alternate payee under the form of benefit selected by the alternate payee and for the purpose
of determining necessary employer reserves.

(d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the
member as a beneficiary under ORS 238.300, 238.305, 238.325, 238A.190 or 238A.400 be changed, even
though the member has retired and has begun receiving a retirement allowance or pension. If a
change of beneficiary is ordered under this paragraph, the board shall adjust the anticipated benefits
that would be payable to the member and the beneficiary to ensure that the cost to the system of
providing benefits to the member and the new beneficiary does not exceed the cost that the system
would have incurred to provide benefits to the member and the original beneficiary. The judgment,
order or settlement may not provide for any change to the option selected by the retired member
under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400 as to the form of the retirement
benefit.

(3) The board shall adopt rules that provide for:
(a) The creation of a separate account in the name of the alternate payee reflecting the judgment’s, order’s or agreement’s distribution of the member's benefits under this chapter or ORS chapter 238A;

(b) The establishing of criteria to determine whether domestic relations judgments, orders and agreements comply with this section; and

(c) The definitions and procedures for the administration of this section.

(4) An alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395, 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute payment in full of the alternate payee’s interest under the judgment, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the [spouse or former spouse of the member] alternate payee in the same proportion, except that:

(a) An alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member; and

(b) Cost-of-living adjustments under ORS 238.360 or 238A.210 to the retirement allowance paid to an alternate payee shall be calculated on the basis of the amount of the alternate payee’s yearly allowance or yearly pension or benefit, as those terms are defined in ORS 238.360 and 238A.210.

(6) An alternate payee under this section is not eligible to receive the benefits provided under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

(7) An alternate payee who elects to begin receiving payments under subsection (1) of this section before the member’s effective date of retirement is not eligible to receive any additional payment by reason of credit in the system acquired by the member after the alternate payee begins to receive payments.

(8) Subsection (1) of this section applies only to payments made by the board after the date of receipt by the board of written notice of the judgment, order or agreement and such additional information and documentation as the board may prescribe.

(9) Whenever the board is required to make payment to an alternate payee under the provisions of this section, the board shall charge and collect out of the benefits payable to the member and the alternate payee actual and reasonable administrative expenses and related costs incurred by the board in obtaining data and making calculations that are necessary by reason of the provisions of
this section. The board may not charge more than $300 for total administrative expenses and related

costs incurred in obtaining data or making calculations that are necessary by reason of the pro-

visions of this section. The board shall allocate expenses and costs charged under the provisions of

this subsection between the member and the alternate payee based on the fraction of the benefit

received by the member or alternate payee.

(10) Unless otherwise provided by the judgment, order or agreement, a member has no interest

in the benefit payable to an alternate payee under this section. Upon the death of an alternate

payee, the board shall make such payment to the beneficiary designated by the alternate payee as

may be required under the form of benefit elected by the alternate payee. If a death benefit ispay-

able under ORS 238.390 or 238.395 by reason of the death of an alternate payee, payment of the

death benefit shall be made to the beneficiary designated by the alternate payee under ORS 238.390

(1), or as otherwise provided by ORS 238.390 and 238.395.

(11) As used in this section, “court” means any court of appropriate jurisdiction of this or any

other state or of the District of Columbia.

SUPPLEMENTARY PAYMENTS

SECTION 7. Section 8 of this 2013 special session Act is added to and made a part of ORS

chapter 238.

SECTION 8. (1) As used in this section:

(a) “Yearly allowance” has the meaning given that term in ORS 238.360.

(b) “Yearly pension or benefit” has the meaning given that term in ORS 238A.210.

(2) Each year, the Public Employees Retirement Board shall make a supplementary pay-

ment to each member or member’s beneficiary. The supplementary payment shall be equal

to 0.25 percent of the member’s or member’s beneficiary’s yearly allowance or yearly pension

or benefit, but in no event may the supplementary payment exceed $150.

(3) In addition to the supplementary payment under subsection (2) of this section, the

board shall make an additional supplementary payment each year to each member or

member’s beneficiary with a yearly allowance or yearly pension or benefit of $20,000 or less. A

supplementary payment made under this subsection shall be equal to 0.25 percent of the

member’s or member’s beneficiary’s yearly allowance or yearly pension or benefit.

(4) The board shall make the first supplementary payments under subsections (2) and (3)

of this section in 2014.

(5) A supplementary payment made under this section may not be included in a member’s

or member’s beneficiary’s yearly allowance or yearly pension or benefit for purposes of cal-

culating cost-of-living adjustments under ORS 238.360, 238.575 or 238A.210.

(6) The board shall pay supplementary payments under this section out of the reserve

account established under ORS 238.670 (1).

REPORT TO LEGISLATURE

SECTION 9. On or before September 30, 2018, the Public Employees Retirement Board

shall report to the Governor, the President of the Senate and the Speaker of the House of

Representatives on:

(1) Recommendations relating to the cost-of-living adjustment under the Public Employ-
ees Retirement System;

(2) Recommendations relating to the continuation of supplementary payments to members and members’ beneficiaries under section 8 of this 2013 special session Act; and

(3) Recommendations on approaches to calculating cost-of-living adjustments under the system that take into consideration a retired member’s years of creditable service.

SUNSET

SECTION 10. Sections 8 and 9 of this 2013 special session Act are repealed on December 31, 2019.

JUDICIAL REVIEW

SECTION 11. (1) Jurisdiction is conferred on the Supreme Court to determine in the manner provided by this section whether this 2013 special session Act breaches any contract between members of the Public Employees Retirement System and their employers, violates any constitutional provision, including but not limited to impairment of contract rights of members of the Public Employees Retirement System under Article I, section 21, of the Oregon Constitution, or Article I, section 10, clause 1, of the United States Constitution, or is invalid for any other reason.

(2) A person who is adversely affected by this 2013 special session Act or who will be adversely affected by this 2013 special session Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed within 60 days after the effective date of this 2013 special session Act.

(b) The petition must include the following:

(A) A statement of the basis of the challenge; and

(B) A statement and supporting affidavit showing how the petitioner is adversely affected.

(3) The petitioner shall serve a copy of the petition by registered or certified mail upon the Public Employees Retirement Board, the Attorney General and the Governor.

(4) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(5) The Supreme Court shall allow public employers participating in the Public Employees Retirement System to intervene in any proceeding under this section.

(6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

CAPTIONS

SECTION 12. The unit captions used in this 2013 special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 special session Act.
EMERGENCY CLAUSE

SECTION 13. This 2013 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 special session Act takes effect on its passage.
Director’s Strategic Direction for FPDR Bureau
FY 2014-15

Goal
Leverage and integrate people, processes and technology to assure that FPDR effectively and efficiently delivers on its mission.

Strategic Focus
A. Assure Long Term Bureau Success and Viability
   - Continuity of Operations
   - Technology
   - Staff Development
   - Board Development
   - Fiscal Sustainability
B. Customer Service – Further develop FPDR’s service philosophy
C. Disability Claims – Further develop our claim adjudication and management approach and philosophy
D. Relationships – Build and strengthen relationships with stakeholders

Details
1) Build upon and further develop our service philosophy (vision)
   - Update Bureau Mission and Vision statements
   - Technology
     - Phone system improvements
     - Web site improvements – e.g. member portal
2) Build upon and further develop our claim adjudication and management approach and philosophy
   - Disability claim audit and response
     - Medical claim/case management
     - Return to work program evaluation and expansion
     - Metrics development
     - Process improvement
     - Controls review and development
   - Bill pay audit and response
   - Nonservice connected disability – analysis and recommendation
   - Claim filing timeliness requirement (a.k.a. 30 day filing requirement) – analysis and recommendation

March 19, 2014
3) Monitor and improve our pension administration
   ▪ Limit or mitigate litigation and grievances
   ▪ Pension audit (Issue RFP in December 2014) and response
     o Process improvement
     o Metrics development
     o Controls review and development

4) Improve bureau operations, administration and reduce costs
   ▪ Continuity of Operations plan
   ▪ Technology
     o 5 year vision and roadmap
     o Phone system improvements
     o Go paperless – document management (TRIM?)
     o Web site improvements – e.g. member portal
   ▪ Process documentation and mapping (foundation to technology assessment, knowledge sharing, process improvement, operational metrics and controls)

5) Define key metrics

6) Strengthen a well functioning department and staff
   ▪ Staff development (knowledge sharing/transfer)
   ▪ Succession planning (aging workforce)

7) Build and strengthen relationships with stakeholders

8) Develop and support the FPDR Board
   ▪ Handbook
   ▪ Training
   ▪ Board election process (“under supervision of Auditor’s Office”)