WINTER 2009

IN THIS ISSUE: PARADIGM LOST

RESUMING CONTRIBUTIONS TO UCRP:

WHO HAS TO PAY?

WHAT CAN FACULTY DO?

Follow two issues closely:

- **the restart of contributions to UCRP (the earlier, the better), and**
- **the AFSCME Initiative to change the UCRS Advisory Board (block this Initiative from getting on the ballot or defeat it if it gets on).**

Insist that the State honor its longstanding agreement to pay the retirement contribution for State and student fee-supported UC employees.

Change the UCRP Funding Policy: the UC employee contribution should not exceed the smaller of a) 5% of covered comp., or b) 33% of the Normal Cost.

Join the Faculty Association at UCLA **Application to Join on page 8**

FA Q & A: Who Has to Pay?

The Fall FA Newsletter explored some financial nuts and bolts about funding a retirement plan. We showed the important difference between the funding ratio calculated with the Market Value of Assets (MVA) and with the Actuarial Value of Assets (AVA). The MVA ratio shows if the assets are currently able to pay the liabilities. The AVA figure offers a more historical perspective: the sufficiency of the average return of assets over the past 5 years to pay the costs promised by the plan. Although the AVA is used for ensuring stability in setting contributions, the MVA is a current barometer of the funding status.

The 07-08 UCRP Annual Report gave the AVA funded ratio for UCRP as of 07/01/08 at 103% and the Market Value of the Assets at $42.03 B. At the end of 2008 after the market fall, the MVA funded ratio of UCRP was probably close to 60%, with assets just under $32 B. Even with an annual contribution of 17% of covered comp. and market returns at the actuarial estimate of 7.5%, the 60% funding level will fall about 3% a yr. Lower returns and contributions will bring the funding level down faster. In bad economic times, retirement assets fall in value at just the time employers and employees find it harder to contribute more to cover both increasing liabilities and funding shortfalls. In this Newsletter, the FA would like to explore the sources of UCRP contributions. Who has to contribute what and why? What agreements did UC have with the State to pay contributions to UCRP before 1990? After almost 20 years of a contribution holiday, the old paradigm is nearly lost, resulting in much uncertainty about who has the obligation to contribute at all let alone what amount. Before 1990, the State made the full employer contribution to UCRP for state-supported UC employees for well over 40 years, which, in turn, obligated the federal government and other granting agencies as well as the UC medical enterprises to pay the same level of retirement contribution for the UC employees they supported.

During the past few years, The UC Regents have tried to resume contributions to UCRP, but the State has pulled back from its obligation to provide the retirement contri-bution for State supported UC employees. During this stalemate, while there has been no “State employer” contribution to UCRP, the federal govt. and other granting agencies, as well as the UC medical enterprises, are not paying either for a much larger percentage of UC employees entitled to the full benefits of UCRP. Other groups, among them AFSCME UC union employees, are also resisting their obligation to contribute in the face of below market salary levels. It is a chain reaction: without the State contribution (roughly only 25% of UC payroll), the federal govt. and others don't pay; and, in turn, the employees don't pay. The result? The funding level of UCRP falls even faster without any contributions and with below target levels of return on UCRP assets.

As always, the FA admits that we may be oversimplifying complex questions about a complex topic, but in the interest of engaging faculty in these important questions that could affect their own retirement as well as their general welfare in profound ways, we take that risk.

The Numbers: Current Budget Situation

Q After the State budget agreement of Feb. 20, 2009, how much of a cut in State funding does UC expect for the rest of 2008-09 and 2009-10?

A Maybe as high as $450 M or about 15% of $3+B State funding: $115 M in new cuts, $122 M in under-funded enrollments, and $213M in unfunded mandatory costs over a two-year period for utilities, employee health benefits, and other inflationary costs.

Q How do the new budget cuts as well as the amount of the State underfunding to UC compare in size with the projected cost of resuming UCRP contributions?

A About the same. The full UCRP contribution at the level of the Normal Cost—17% of payroll-- is about $408M based on a State payroll of $2.4 B.

Q But if the UCRP MVA funding ratio is nearer 60% than 100%, what would be the projected contributions necessary to restore 100% funding?

A Maybe higher than $1.3 B. At their Nov. 2008 Regents' Meeting, the UC actuary recommended a total combined contribution for both UC employers and employees to total around $875 M in 2009-10. The California Legislative Analyst's Office (LAO) predicts the amount of the total contribution to UCRP from all sources—employer and employee—for all UC employees covered by the plan will rise in the next few years to $1.3B to keep UCRP fully funded. Additional increases will be needed, resulting from inflation and payroll, among other actuarial factors. (See 2009-10 Budget Analysis Series, Higher Education, Jan. 29, 2009 at: http://www.lao.ca.gov /analysis_2009/higher-ed/highered_anl09.pdf.) The UC Regents asked the State to make a contribution only for those employees whose salaries are covered by the State General Fund appropriations.

State Support for UCRP: Before the Contribution Holiday

Q Were UC employees ever in the State retirement system?

A Yes. Prior to 1961, the non academic UC emp-loyees were in the State plan SERS (State Employee's Retirement System), and the academic employees were in the UC retirement plan PRAS (Pension and Retiring Annuities System).

Q Did the State pay the retirement contribution for both groups of employees?

A Yes.

Q Why were the academic employees in a separate UC retirement system?

A That was the same question the faculty asked themselves in 1951. They wanted out of PRAS and into SERS because the benefits were richer in the State system. The faculty voted overwhelmingly to transfer to the State retirement system, and the State was willing to accept them. This move required legislation because the CA Constitution Section 9 of Article IX gives The Regents autonomy from the Legislature: "The University of California shall constitute a public trust, to be administered by the existing corporation known as 'The Regents of the University of California,' with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services."

The faculty would have had to amend the state constitution to allow them to leave PRAS if the UC Regents wanted them to stay. Legislation to accomplish this move was introduced, but remained pending while the Regents debated the question: Did they want to bring both aca-demic and non academic employees into a UC managed retirement plan or should they let both groups join the State plan?

Q Why would the UC Regents want to maintain a separate retirement system when UC employees were entitled to join the State system and receive the State contribution?

A Because UC's decision to offer a separate retirement system did not alter the agreement of the State to pay the retirement benefits of UC State and student fee-supported employees. However, there was one condition: the State would not pay more for a separate UC system than they paid for the current State system.

Q What did the Regents decide to do?

A In 1954, the Regents voted to establish a new retirement system, now called UCRS (University of California Retirement System: note that the word "System" includes retirement savings funds like 403b plans, whereas UCRP denotes only the retirement plan itself). The Regents promised the State that their retirement plan would "afford its members substantially the same benefits as those" of the State system, except for the imposition of an 80% maxi-mum, at "less expense to the State of California and at no greater expense to the members" of the system.

Q Did the State accept the Regents' promise?

A Yes. Between the period of 1954 and 1961 the Regents fulfilled their promise to manage a retirement plan that was far less costly to the State than the State system, now called CalPERS (California Public Employees Retire-ment System). During these years, the non academic UC employees stayed in CalPERS, received the full employer contribution of the State, and paid their employee contri-bution to CalPERS. At the same time, the State paid the full employer contribution into UCRP for UC academic emp-loyees, who paid their retirement contributions to UCRP. The Regents demonstrated that they could achieve higher investment returns than the State plan by investing in more equities than fixed income assets. The UC plan was also less costly than CalPERS because UCRP was a younger system, with smaller past service liability to amortize. Most importantly, the UC plan was less expensive because the State plan offered higher benefits, with no caps on maximum benefits.

Q When did the non academic UC employees join UCRS?

A In April 1961 the Board of Regents decided to maintain its separate system and extend it to all employees and to reject the still pending legislation that would have brought UC academic employees into CalPERS. Those UC non academic employees covered by CalPERS were given the choice of remaining in the State system or joining the new UCRS.

Q Did the State continue to fund UCRP at the level the UC actuaries requested?

A Yes. Because the Regents lived up to their promise—UCRS was less expensive to the State than CalPERS. Between 1978 and 1984, the average State employer contribution as a percentage of payroll to CalPERS was about 18.3%, whereas the State contributed on average 14.3% of payroll to UCRS. UC employees contributed about 3% into UCRP, and State employees a fixed 5% into CalPERS.

Q When did UCRS remove the 80% cap on benefits?

A July 1, 1989. On this date, the benefit structure of UCRS moved closer to the level offered by CalPERS.

Q Has the State always contributed to UCRP at the level requested by the UC actuaries?

A No. Before 1983-84, the State always accepted the UCRS's actuarial assumptions about the funding level of UCRP. In 1983, the LAO looked more closely at the UCRS financial position and questioned the accuracy of UC actuarial assumptions. They felt that UCRS had a surplus of funding, but conservative actuarial assumptions were hiding that surplus. Applying the assumptions used by CalPERS to UCRP, the LAO concluded that UCRP was more than fully funded and recommended that no State contribution should be made for the 1983-84 fiscal year and that future contributions be substantially decreased. The State made no contribution for 1983-84 to UCRS.

Q How did UC react?

A UC treated this non-payment as a deferral of the payment due to UCRP pending a reevaluation by the UC actuaries of their assumptions. The amount not paid--$101.4M --was treated as a deferral to be repaid over 30 years depending on the State's acceptance of the UC Actuary's assumptions.

Q Did the UC actuary change the assumptions?

A Yes. With the pressure of the LAO's action in 1983, the UC actuaries came up with, and the Regents adopted, a new set of actuarial assumptions.

Q What was the result of the new UC actuarial assumptions on the contributions to UCRP?

A The State employer contribution was lowered from 14.97% of payroll to 9.57%, a reduction of 5.4%. The UC employee contribution was lowered to 2%.

Q Were there other years that the State deferred payment?

A Yes. In fiscal year 1989-1990, the State agreed to pay contributions to UCRP in the amount of $57.2 M in annual installments with interest at the discount rate used in the 1990 actuarial valuation.

Q How much did the State save in contributions to UCRP over the contribution holiday?

A UC estimates the State's savings at over $2 B.

State Support for UCRP: Politics After the Contribution Holiday is Over

Q How much have the UC Regents asked the State to contribute for 2009-10?

A UC asked for $228 M from the State to resume contributions to UCRP on July 1, 2009, which is only 9.5% of payroll. At first the State gave $95 M for UCRP contributions, which would have allowed UC to resume contributions at the level of 4% of payroll. Later the State authorized $20 M for UCRP contributions from the "General Government" portion of the State budget, which would be less than 1% of payroll. After the State budget agreement on Feb. 20, the State withdrew the $20 M.

Q If the State saved money on contributions to UCRP since 1954 over the level it paid on behalf of other State supported employees and over $2 B during the last 18 years by not having to pay any contributions to UCRP, how can the State contribute less or, in this case, zero, for the State and student fee-supported UC employees and not pay the amount the UC actuaries determine is necessary?

A The State has two major choices: a) recognize its longstanding obligation to UCRP and make a contribution or put in an IOU as it has done in the past for the amount of its contribution to get the ball rolling for matching con-tributions from the federal govt and other agencies as well as employee contributions; b) or the State can claim financial exigency, pay nothing, and wait.

The LAO, a bipartisan agency that advises the Legislature but does not set State policy, has offered its analyses of the situation: the State has only "assisted" the UC Regents in the past in paying the employer contribution for State and student-fee supported employees at UC; it had no legal obligation to do so then, nor does it now. Jason Dickerson, Retirement, LAO, wrote on Jan. 30, 2009 to a member of the FA Executive Board: "The state treasury, we believe, is not obligated to provide annual contributions to the UC retirement system. The Regents control the system's benefits and are the fiduciaries responsible for seeing that it is funded. The federal government would be expected to contribute if the Regents did so."

Q Has UC asked the State for an IOU now for repayment of $228 M?

A No. The Faculty Association wrote a letter asking UC President Yudof to ask the State for an IOU for $228M. We argued that if the State issued an "IOU" for $228 M, then other agencies that provide research funding, like the federal government, will follow suit and contribute at the same level as the State promised to pay in the future.

Q What was the outcome of the FA request?

A President Yudof sent the FA a response dated Jan. 29, 2009, in which he did not mention the "IOU" concept at all. Instead, he explained

> "The Governor, in weighing and balancing among all the programs in the State budget, funded only a portion of this request. It is sufficient to allow us to restart employer contributions at the 4% level if we move the start date to April 15, 2010.
>
> "I agree that the optimal decision would have been to fund the entire year at 4% in order to get other fund sources contributing sooner, but also because our ability to catch up to a normal level of funding liability in future years will be strained at best. Unfortunately, the fact is that the State is facing a fiscal crisis of unprecedented magnitude that is likely to be a multi-year problem. We view it as a great signal of support that the $20M was included in the Governor's proposal in such a difficult year."

Q Then why don't the UC Regents make a payment-$95 M or even $228 M— at the level of 4% or 9.5% so that the federal government and other granting agencies would make matching contributions at that same level earlier rather than later?

A That is the BIG question. On the one hand, the State is not funding UCRP at the level requested by the UC Regents and calculated by the UC Actuaries. On the other hand, UC does not want to make up the difference in the State's contribution because it would set a precedent for the State to renege on its longstanding agreement and obligations to pay the retirement contribution for State and student fee-supported employees at UC.

Q Has the State offered an explanation?

A No, the LAO has recommended that the State address that question in the future, but for now, UC employees need to start contributing into UCRP. The LAO notes that employees in CalPERS pay 5% of their salary for retirement, while UC employees resist even paying 2%, the amount currently deposited each month in their DCP accounts. The LAO questioned why the State should pay into UCRP if the employees won't pay their fair share.

Q Is the question of who has to pay primarily a legal or political one?

A	A political one. The Regents have always had the legal obligation, but longstanding agreements and past practice between UC and the State show the State's responsibility to pay the retirement contribution for State supported employees at UC.

Q	What are the implications of having the legal responsibility for UCRP?

A	Under the federal & State constitutions, The Regents' obligation to provide funds sufficient to fund UCRP benefits comes first in a long line of obligations, along with paying off general UC issued obligation bonds, and ahead of any other purpose. If necessary, the Regents would have to lay off all employees, send away all students, & sell off the campuses before they could renege UCRP obligations.

Q	What happens in the meantime?

A	The funding level of UCRP continues to decline. If the State restores the $20 M for UCRP, UC will resume contributions on April 15, 2010, so that for just less than 3 months, the State contribution of $20 M results in 4% employer contribution and the employees will contribute 2% of covered compensation up to the Social Security wage base ($106,800 in 2009) and 4% above the wage base, less $19 per month and then increase by 1% each year to ultimately parallel the contribution rates for members in CalPERS—5%. By delaying the resumption of contributions until the State's share rises to 4% for the remaining part of the fiscal year, UC expected that the State's contribution would reignite the contribution of the other research and grant providers, like the federal government as well as the UC medical enterprises, at the same level--4%. If the State does not restore the $20M, it is unclear what will happen, unless The UC Regents decide to put in an IOU to restart contributions.

Q	If the State does not restore any contribution for UCRP, will UC be forced to find the State contribution through accounting maneuvers with State funding that had been designated for other uses?

A	Yes. UC intends to start with a smaller contribution and then ramp up to the Normal Cost, about 17% of payroll, and then go higher to fund the shortfall. Without additional State funding, UC will have to take the equivalent amount from currently budgeted State funds.

Q	Would a contribution from The UC Regents or an IOU restart the contributions of the federal govt., other granting agencies, and the UC medical enterprises?

A	Yes. A UC reallocation of State funds to create a contribution for State and student fee-supported UC employees will get the ball rolling for matching funding.

Q	Wouldn't matching contributions from those UC employees on federal grants be a special hardship in the middle of a granting period?

A	It will be a hardship for everyone to begin contri-buting to UCRP. But after so many years of not having to set aside the amount of employer retirement contributions from federal funding, to do so will be a special hardship for UC employees funded by federal grants because it will ultimately reduce the funds allocated to research by as much as 17% or higher in the face of other budget cuts. Since many federal grants are for 3 years, there will be a 3-year adjustment period before the resumption of retirement contributions feels like customary procedure.

Q	Would the State suffer any ill effects from forcing the UC Regents into budget reallocations to cover retirement contributions for State supported employees?

A	Yes. The LAO has stated that failure to provide additional funds to cover contributions to UCRP will mean that UC will have to identify other resources to cover the full costs of its employer contributions to UCRP, including, perhaps, reductions in services or increases in student fees.

The FA contends that the State would be forcing the premium public university both in the State and the Nation to reallocate scarce State resources to pay retirement benefits of State supported employees when the other CA state and community colleges would be spared this high level of budget reallocations.

Finding the Funds to Pay UCRP Employee Contributions

Q Will UC employee contributions cap at the level established before contributions stopped?

A That LAO is putting this question before the Legislature, advising them to call on UC employees to cover approximately 33% of the total contributions needed to fund their pension benefit, but it is unclear whether they were including the amortization of unfunded liability in total contributions. State employees pay 5% of their covered comp. into CalPERS, or roughly a third of the Normal Cost of CalPERS benefits, but it is significantly less than one-third of the total contribution, which includes a substantial amount to amortize CalPERS' unfunded liability. However, the LAO is suggesting that UC

employees be obligated to pay for any future cost increases that result from benefit enhancements, and their wording could be interpreted as saying UC employees should also pay one-third of the cost of amortizing UCRP's unfunded liability, which could result in an employee contribution of as much as 10% of covered compensation.

Q Wouldn't a higher contribution from UC emp-loyees than State employees violate the agreement made in 1954 between the State and UC that UC employees who stayed in or opted into UCRP would never have to pay higher contributions than State employees in CalPERS?

A Yes. And the employee contribution rate for existing employees in CalPERS cannot legally be raised above 5% of covered compensation.

Q In the UCRP Funding Policy approved on Sept. 18, 2008, what did the Regents state was the maximum amount of the employee contribution?

A Even funding between the employer and employee. The new UCRP Funding Policy states, "The employee contribution would be based on total contri-butions and would never be higher than the employer contribution." The employee contribution could vary each year and would be set according to "the availability of funds, the impact of employee contributions on the competitiveness of UC's total remuneration package, and collective bargaining."

Q Are there any advantages to a proportional employee contribution over a fixed one?

A The major advantage is that a proportional contribution can go down when the retirement fund needs fewer contributions to achieve the targeted funding level. UC employees did not have to pay retirement contri-butions for almost 20 yrs, while State employees paid 5%, when funding levels of CalPERS exceeded 100%.

Politics and the UC Employee Contribution

Q How will UC employees pay an increasingly higher contribution to UCRP without commensurate salary increases? Without even a cost of living increase, won't the resumption of employee contributions especially at higher levels result in a serious reduction in total remuneration?

A Yes. UC employee contributions has become political because of the reduction in total remuneration in an environment where several groups of employees, including faculty, receive below market salary.

Q Would all UC employees have to pay the same percentage of their salary when contributions resume?

A Yes, except for those covered by collective bargaining, which may have separate agreements. The UC unions, in particular AFSCME, which represents about 20,000 UC hospital and service workers, are resisting their obligation to pay retirement contributions to UCRP because they allege that their salaries are seriously under market and a UCRP contribution would further damage to their total compensation package.

Q Have AFSCME employees gotten raises to offset their retirement contributions?

A Yes. On Jan. 28, 2009, UC reached tentative agreement with AFSCME on a new 5-year contract: AFSCME employees will receive $64 M in total wage increases, including a 3% COLA in each year of the contract with an additional 1% increase effective July 2009, with increases in the minimum hourly rates.

Q With these wage increases will AFSCME employees pay their full contribution to UCRP?

A Yes, but they are also trying to change the CA Constitution to take authority over UC post-retirement benefits and vest it in a new Board composed of state elected officials, Regents, but with a majority consisting of current employees & retirees. The main Union complaint is that employees & retirees are in the minority on the current UCRS Advisory Board, and the Board has little authority. The Unions contend that this situation allowed the Regents to change the investment management and strategy of UCRP to outside managers in 2000 without adequate employee oversight. According to AFSCME these changes resulted in a drop in performance and raised serious questions of conflict of interest with the outside investment mgt firms The Regents selected to manage UCRP assets.

Q How can the UC Unions or anyone complain about the investment returns of a retirement fund that was overfunded--even superfunded—so that no contributions were necessary for almost 20 years?

A Critics of UCRP select specific dates between 2000 and 2009 on which UCRP's performance lagged that of CalPERS to show UCRP's poor performance. However, investment returns are volatile, and slight changes in the time period considered can easily reverse rankings. With CalPERS's heavy investment in real estate during this same period, it is now likely that CalPERS returns have fallen and will continue to fall more than UCRP's. Over the 5 & 10-year periods ending June 30, 2008, UCRP's performance exceeded the policy benchmark, earning 8.61% and 5.66%, resp. The 5 yr annualized total return exceeded the 7.5% actuarial return, but the 10 yr fell short by 1.84%.

Q Who has AFSCME contacted concerning their allegations about UCRP returns?

A They have gone directly to the State Legislature and the LAO and made their complaints widely known, in particular to the Assembly and Senate committees on higher ed. Also, AFSCME has proposed a statewide initiative to the voters of CA to change the structure of the UCRP Advisory Board and take away from the UC Regents the power to manage UCRP investments and determine the benefits offered by UCRP. The AFL-CIO Local 3299 contends UC has the only public pension system in CA without direct employee representation.

Q Could a ballot initiative to change the UCRS Advisory Board be adopted by the voters of CA?

A Yes. There is an atmosphere of suspicion regarding UC around the state. Issues like the most recent one involving a severance payment of $100,200 in early 2009 authorized by then UC President Dynes to a UC employee who took voluntary termination at UCOP, but immediately accepted a job at UCB for the same salary, heighten concern about UC among legislators and the general public. If the AFSCME Initiative goes to the ballot, it can be adopted by a simple majority vote.

Q Why exactly would AFSCME want a different Advisory Board for UCRS?

A Such a Board might be able to force The UC Regents to appropriate employer and employee contribution levels, but that is not clear.

Q Why should faculty be concerned about the AFSCME ballot initiative?

A The danger is that the initiative could relieve The Regents of the obligation to fund the pension benefits.

Q But would AFSCME have the funds to get the high number of signatures (694,354) necessary to get their initiative on the ballot by the deadline of June 8?

A Yes, given the large membership statewide and at all UC campuses, in addition to newer ways of using the internet to gather signatures, it is possible.

Q Why doesn't UC just voluntarily add more staff & union reps to the UCRS Advisory Board?

A UC is concerned about violating "direct dealing" provisions in HEERA (Higher Ed. Employee Relations Act, Sec. 3571). The "direct dealing" provision prohibits an employer consulting directly with an individual concerning the individual's terms and conditions of employment instead of dealing with the employee's collective bargaining representative. Faculty in an Academic Senate are excluded from "direct dealing." UC has begun the process of adding a Staff Advisor to The Regents to foster greater communication between the staff and The Regents.

Q If the Regents are autonomous, can a ballot initi-ative take away their oversight of UCRP, when the LAO now advises that The Regents (and not the State) are legally responsible to pay retirement benefits promised by UCRP?

A Because the initiative amends the State Con-stitution, it probably can do this. Clearly, there would be a court challenge.

Q Do other ballot initiatives threaten the UCRP?

A Yes. The Howard Jarvis Taxpayers Assoc. is discussing an initiative to restructure the retirement benefit calculations of current employees and retirees in DBP plans by increasing the retirement age and/or capping the maximum payments.

Q Could these initiatives include UC & UCRP?

A Yes. In 1995, a CA ballot initiative required all new state employees to enroll in DCP Plans & included UC. The FA launched a "dueling" initiative that provided the same reform but excluded UC.

Restarting Contributions to UCRP: This Could Be THE BIG ONE!

Image by Dusza, Monmouth Regional High School, and Evensen, Roxbury High School

FACULTY ACTION PLAN:

1. Follow closely two issues: First, when contributions to UCRP start, because until they start from the State or the UC Regents, UC loses all the matching contri-butions. The longer the contribution start time is post-poned, the lower the UCRP funding ratio will fall. And Second, block/defeat the AFSCME Initiative to change the UCRS Advisory Board.

2. Insist that the State should honor its long-time agree-ments and understanding with UC to pay the retire-ment contribution of State and student-fee supported UC employees.

3. Request that the UCRP Funding Policy should be revised immediately to include the provision that the UC employee contribution should not exceed the smaller of (a) 5% of covered comp., or (b) one third of the Normal Cost, to ensure that the UC employee contribution stays in line with the level paid by other State employees. The UCRP Funding Policy approved in Sept. 2008 was formulated before anyone could have foreseen the magnitude of the Market Drop and the effect such a drop would have on both employer and employee contributions in the future.