

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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SANTA BARBARA • SANTA CRUZ

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Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

March 3, 2010

**MARK YUDOF, PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: UCFW statement on assuring adequate funding for UCRP

Dear Mark:

At its meeting on February 24, the Academic Council endorsed an update of the May 2009 “TFIR Recommendation to Assure Adequate Funding for UCRP” (11 in favor, 1 abstention). The new version proposes that, absent state funds, the University could provide the employer contribution to UCRP by issuing Pension Obligation Bonds (POBs). UCFW argues that funding debt service on POBs will have a less adverse impact on future UC budgets than failing to make adequate contributions now.

The Academic Council requests that you forward this endorsement and the enclosed recommendation to the Regents. Please do not hesitate to contact me if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Henry C. Powell'.

Henry C. Powell, Chair
Academic Council

Copy: Larry Pitts, Interim Provost
Nathan Brostrom, Executive Vice President, Business Operations
Dwayne Duckett, Vice President, Human Resources
Peter Taylor, Chief Financial Officer
Academic Council
Martha Winnacker, Academic Senate Executive Director

Encl (2)



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Shane White, Chair
snwhite@dentistry.ucla.edu

Assembly of the Academic Senate
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February 16, 2010

**HARRY POWELL, CHAIR
ACADEMIC COUNCIL**

RE: Assuring Adequate Funding for UCRP

Dear Harry,

The attached document, entitled "TFIR Recommendation to Assure Adequate Funding for UCRP", has been approved for transmission to the Academic Council by UCFW, and we request that Council transmit it to the President, and he to The Regents. We also ask that this document be placed on the Senate website.

As you know, TFIR and UCFW have been intensely engaged in assessing the current and future funding status of UCRP in the contexts of both the continued lack of contributions and the market turmoil of the past few years. It is now clear that the long term prospects for UCRP are exceedingly dire unless steps are taken immediately to dramatically increase contributions to the fund, in line with the Funding Policy adopted by The Regents in September 2008. The gentle ramp-up of both employee and employer contributions envisioned by the Regents in their November 2008, plan for contribution resumption – and its subsequent deferral until April of 2010 – is entirely inadequate to restore the funding status of UCRP to an acceptable level in the foreseeable future. Neither can reductions in benefits address the funding question. We recognize that drawing the needed level of funding out of the current budget would require drastic cuts in University activity, and recommend that Pension Obligation Bonds be issued to fund the payments, until sufficient funds can be found in the general budget. The enormity of this problem and our recommendation on how to address it are the subject of this communication.

This document is an update of a statement that was approved by the Council in May 2009. The most significant change is the discussion of Pension Obligation Bonds.

UCFW recognizes that implementation of this recommendation will not be simple and that modifications or adjustments may be required. But we believe that we must not let the inevitable complications deter us from making clear to The Regents the scope of the problem and the urgency and boldness with which it must be addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane White" with a stylized flourish.

Shane White, UCFW Chair

Copy: UCFW
Martha Winnacker, Executive Director, Academic Senate

Encl.

TFIR Recommendation to Assure Adequate Funding for UCRP

May 13, 2009—Updated February 9, 2010

Executive Summary:

Like any pension plan, UCRP needs ongoing contributions to maintain its funded status. Even if the securities markets had not declined in 2008 and early 2009, the accumulation of additional liabilities in the Plan from the additional service credit accrued by employees each year would have required the prompt restart of employee and employer contributions to maintain 100% funding. But the market declines have made the problem urgent: UCRP now has a large unfunded liability, and amortizing this unfunded liability will require substantial additional contributions, over and above those needed to cover the additional service credit earned each year. Although the markets have risen substantially since March 2009, those gains have not erased the unfunded liability; indeed, there is no realistic prospect that market gains alone will ever return UCRP to full funding.

UC's current plan is to gradually ramp up contributions until they reach the level recommended under the Funding Policy adopted by The Regents in September, 2008. The gradual ramp-up currently planned will result in contributions that fall far short of the level recommended under the Funding Policy for many years, likely twenty years or longer. Each dollar of contributions that is deferred now will increase future required contributions by substantially

more than a dollar. As a result, the contributions under the Funding Policy are projected to rise above 50% of covered compensation by 2022, a level that would require draconian cuts in UC operations, likely including the closure of campuses.

The deferral of contributions creates another serious problem. Less than one-third of UCRP covered compensation is paid from state funds. The other fund sources will not contribute at a higher rate than the contribution on state-funded employees. Thus, every dollar of state-funded contributions that is deferred results in the deferral of over two dollars in contributions from other fund sources. There is no guarantee that these deferred contributions can be recovered from the other fund sources in the future. Indeed, federal grants and contracts regulations contain a “use it or lose it” provision, under which actuarially required contributions that are deferred can *never* be recovered. As a consequence, deferral of state-funded contributions means that UC and its state funding absorbs the liability for pensions that should have been funded by the other sources. The deadline to make the contributions for the 2009-10 fiscal year, and avoid a permanent loss of approximately \$58 million, is 12/31/10. These permanent losses will rise steeply in future years unless UC makes the recommended level under the Regents’ Funding Policy.

Reducing UCRP benefits will not solve either problem. At most modest cuts can be made, for both legal and competitive reasons. The bulk of the high projected future contributions comes from the amortization of the past unfunded liability, and UC cannot legally renege on this past unfunded liability.

Painful as it will be, the least bad option is to raise UCRP contributions as

soon as possible to the full recommended contribution under the Funding Policy. Doing so avoids far higher contributions in the future, and also ensures that non-state sources pay their share of the unfunded liability and the additional pension benefits that are earned each year. Every dollar of contributions made on behalf of employees whose salaries are paid from state funds is matched, on a two-for-one basis, by the contributions that will be made from other fund sources. TFIR therefore recommends that The Regents commit to allocate funds sufficient to follow the Funding Policy, starting no later than July 1, 2011; in the attached actuarial projections from Segal Company, this is referred to as the TFIR Recommendation.

We recognize that, in the present budget climate which has seen substantial reductions in state funding, large tuition increases, as well as furloughs and layoffs of employees, it will be difficult to find incremental funding sufficient to make the full contributions required for UCRP. Until the University is able to obtain sufficient incremental funding, the only feasible way to make these essential contributions is through the issuance of Pension Obligation Bonds, or some other form of bond funding. These bonds constitute a liability that will need to be repaid out of future operating funds. However, the debt service on Pension Obligation Bonds will have a much less adverse impact on future UC budgets than failing to make adequate UCRP contributions now.

TFIR Analysis and Recommendation:

The Current Funding Situation:

As of June 30, 2008, UCRP was just slightly more than 100% funded. This means that it had adequate resources to pay the pension benefits that had been accrued as of that date, assuming that future investment returns matched the actuarial assumed 7.5% rate of return and that assumptions about future salary increases and life expectancy were met. However, active employees in UCRP accrue additional service credit each year, and contributions are needed each year to fund this additional liability; the value of the additional liability accrued each year (normal cost) is about 17% of UCRP covered compensation. In addition, with each passing year, the future pension obligations are one year closer, and thus the present value of the liability for those future years grows by 7.5%.

In September, 2008, The Regents adopted a Funding Policy for UCRP. The Funding Policy calls for five-year smoothing of investment returns, 15-year amortization of any future actuarial deficit, and 30-year amortization of any future actuarial surplus. Based on this plan, the Segal Company (UCRP's actuary) recommended a total contribution of 11.5% of covered compensation, effective 7/1/2009. At the time, it was anticipated that each employee would contribute 2% of salary up to the Social Security wage base (4% above the wage base), and the fund source which provided the employee's salary would contribute 9.5% of salary. The Academic Senate recommended in favor of The Regents' Funding Policy, and continues to view the maintenance of a healthy UCRP as fundamental to preserving UC's ability to recruit and retain excellent faculty and staff.

In November, 2008, The Regents adopted the employee contribution and a reduced employer contribution of only 4% of salary, effective 7/1/2009. Apparently, the employer contribution was reduced based on the belief that it was unrealistic to hope for state funding of the 9.5% called for under the terms of the September Funding Plan. Subsequently, the Governor's budget reduced state funding to \$20M; as a result, The Regents deferred both employer and employee contributions until 4/15/2010. The Legislature did not allocate even this money, and placed language in the Education Code indicating it did not intend to provide incremental funding to UC to support UCRP contributions. Subject to collective bargaining, where applicable, employer and employee contributions will restart on 4/15/2010; since it has not received any incremental state appropriation, UC will reallocate UC General Funds to cover the 4% employer contribution from 4/15/2010 through 6/30/2010.

In November, 2009, The Regents adopted a proposed 2010-11 budget, including \$108.9M (\$95.7M in additional state funding and \$13.2M from UC General Funds) to continue the 4% employer contribution through 6/30/2011. Regrettably, the Governor's proposed budget for 2010-11 contains no state funding for the contributions. Since it is essential to make the contribution, UC will need to reallocate its internal funding, presumably by covering the entire \$108.9M from UC General Funds.

UC's Current Plan, a Slow Ramp-Up in Contributions, is Inadequate:

UC currently plans a Slow Ramp-Up in Contributions: employer contributions would rise 2% per year starting 7/1/2011 until they reach the

actuary's recommended contribution under the September 2008 funding policy, and employee contributions would rise 1% per year starting 7/1/2011, until they reach 5% of covered compensation. This Slow Ramp-Up plan has not been formally adopted by The Regents.

The Slow Ramp-Up of contributions was first envisioned a few years ago. Since that time, the fund's liabilities have increased (as employees have accrued additional service credit) and its assets have been eroded by payments to current retirees, and by declines in the value of financial assets. Even if securities markets had not fallen dramatically in the period since July 1, 2008, the Slow Ramp-Up currently envisaged would have been undesirable; deferring the contributions required under the Funding Plan only results in larger required contributions later. However, taking into account the recent performance of the markets, the Slow Ramp-Up will lead to a catastrophic underfunding of UCRP over the next 15 years. While the markets recovered dramatically from their lows in March, 2009, UCRP remained substantially underfunded at the end of 2009, and there is no realistic prospect that market gains alone will ever return UCRP to full funding.

Markets will eventually return to, and surpass, their all-time high. The question is when. If markets return to their all-time next week, UCRP would be approximately 100% funded, and contributions of normal cost (17% of covered compensation) would be sufficient. However, if markets return to their all-time high in two years' time, a quite optimistic scenario, the liabilities would have grown by 15.5% (7.5% discount factor, compounded over two years), in addition to the value of an additional two years of service credit; there would still be a substantial unfunded liability, and additional contributions above normal cost

would be required to amortize that liability. Large contributions will be required simply to keep the UCRP funding ratio from declining further.

Since UCRP is now significantly underfunded, the Funding Policy prescribes contributions equal to the 17% normal cost, plus large additional contributions to amortize the unfunded liability. The Funding Policy prescribes contributions of 20.4% of covered compensation starting July 1, 2010, projected to rise to approximately 37% of covered compensation by July 1, 2014, then slowly declining. This is a frightening scenario: meeting the Funding Policy contributions will pose enormous challenges to the University budget.

Following the Slow Ramp-Up currently proposed makes the situation *much* worse. This approach would result in contributions that are far below those required under the Funding Policy for many, many years. Each dollar of contributions that is deferred cannot be invested to meet future pension obligations; the loss of investment earnings drives the Funding Policy contributions higher and higher. By 2022, under the Slow Ramp-Up, the Funding Policy contributions are projected by Segal to exceed 50% of covered compensation! However, in 2022, the 35% contributions (30% employer, 5% employee) proposed under the Slow Ramp-Up are *still* far short of those required under the Funding Policy. As a consequence, additional deferrals continue until the Slow Ramp-Up contributions reach the Funding Policy contributions, some time around 2030; it is only at that point that the deferral starts to be made up. *A dollar deferred in 2011 would require \$4.25 to be contributed if the deferral were made up in 2031, including 20 years of earnings at the assumed 7.5% rate of return.*

Further increasing the urgency of making contributions is that fact that less than one-third of UC salaries are paid by state funds, with federal grants and contracts and self-supporting entities, such as the clinical enterprises, making up the other two-thirds. The employer contribution on behalf of each employee is charged to the fund source which provides the employee's salary. These other fund sources will not make employer contributions larger than those made on behalf of state-funded employees, but they will contribute at the same rate. Thus, each dollar of contributions on behalf of state-funded employees results in over two dollars in contributions from other sources. Each dollar of contributions on behalf of state-funded employees that is deferred results in the loss of an additional *two dollars* of contributions from *non-state* sources. The Slow Ramp-Up therefore means that UC is continuing to price its benefits far below cost, effectively giving a discount to outside funding sources; this policy is not sustainable because UC cannot obtain a binding commitment from these fund sources to make up the shortfall through future contributions.¹

Federal grants and contracts are subject to the provisions of [OMB Circular A-21](#), whose [Appendix A](#) provides that pension costs may be recovered from a federal grant or contract provided, *inter alia*, (1) the methods of cost allocation are equitable for all activities; (2) The amount of pension cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles; (3) and the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. The Regents'

¹ The only exception is the Department of Energy, which has made a binding commitment to make up any future deficit arising from employees and retirees of Lawrence Berkeley National Laboratory (LBL) and the segment from Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL) retained within UCRP; conversely, the Department of Energy is entitled to any surplus arising from the labs that remains after all benefits have been paid.

Funding Plan, adopted in September 2008, is an actuarial plan assigning pension costs to each fiscal year in accordance with generally accepted accounting principles. The Recommended Contribution under the Plan is the cost assigned to each year under generally accepted accounting principles. Unless UC contributes the full Recommended Contribution on *all* UCRP members within six months after the end of a given fiscal year, the portion attributable to employees covered by federal grants and contracts can *never* be recovered; the burden falls on The Regents.²

UCOP HR&Benefits estimates that approximately \$575 million of UCRP covered compensation will be paid from federal grants and contracts in 2009-10, excluding LBL. The Recommended Contribution for 2009-10 is 11.6% of covered compensation; the actual amount contributed will be approximately 1.5%. As a result, approximately \$58 million of pension contributions that could be recovered from federal grants and contracts will be irrevocably lost, along with all the future earnings those contributions would generate. The deadline to make the full Recommended Contribution, and avoid the loss, is 12/31/10. The Recommended Contribution for 2010-11 is 20.4% of covered compensation; the actual amount contributed will be approximately 6%; as a result, an additional \$83 million of pension contributions will be irrevocably lost, along with the future earnings those contributions would generate. The deadline to make the full Recommended Contribution, and avoid the 2010-11 loss, is 12/31/11. Since the Recommended Contribution grows significantly more rapidly than the Slow Ramp-Up, the amount of contributions irrevocably lost will rise rapidly in

² We have not been able to determine whether pension costs related to LBL are subject to the provisions of Circular A-21. If Circular 21 applies, this could negate the DoE commitment to make up any shortfall arising from LBL.

subsequent years.

The Regents can demand that the clinical enterprises pay their required contributions, but they cannot get blood from a stone. If required contributions were to rise above 50% of covered compensation, it is very difficult to see how UC clinical enterprises could obtain contracts with health insurers. In other words, the very high future contributions that will result from deferring contributions now threaten to cut off UC's income from the other fund sources. If these fund sources wither away, so will the associated pension contributions. In the absence of these other fund sources, the entire burden of amortizing the unfunded liability will fall on The Regents and UC's state funds. UC cannot constitutionally renege on its obligation to pay vested benefits, so it would have to bear the entire burden of amortizing the unfunded liability, even though two-thirds of that unfunded liability relates to employees who had been paid from non-state funds. This path can only lead to UC being forced to dramatically curtail its operations and sell off the lands and buildings of several of its campuses. In short, contributions need to rise to recommended levels as soon as possible, both to avoid far higher rates in the future, and to reduce the threat they pose to UC's continued existence.

Reducing UCRP benefits will not solve the funding problem:

First, there is overwhelming legal precedent saying UC cannot renege on the benefits that have already been accrued. 100% of the Actuarial Accrued Liability comes from past service; it cannot be reduced by cutting benefits.

Second, any attempt to reduce the future accrual of benefits for current

employees is certain to be litigated, and the outcome of that litigation is unpredictable. Even if UC prevailed in court, that decision would certainly be appealed in the political arena, either through Legislative action or the initiative process or both.

Third, even if UC somehow managed to completely stop the future accrual of UCRP benefits, the cost of amortizing the unfunded liability under the Funding Policy would amount to approximately 20% of covered compensation. But since the active employees would not be accruing benefits under UCRP, it is highly doubtful that UCRP employer contributions could be charged to outside fund sources such as federal grants and contracts;³ the bulk of the burden of the unfunded liability would become the responsibility of the state-funded portion of the budget, even though only about one-third of the liability arose from state-funded employees.

Fourth, UC needs to offer a competitive package of cash compensation and benefits to recruit and retain faculty and staff. However, with a 5% employee contribution, the value of UCRP to active faculty is *below* the average value of pension plans at the Comparison 8 universities. If the future accrual of UCRP benefits were stopped, there would have to be either dramatic salary increases or a new pension plan, with substantial employer contributions, in order for UC to remain competitive.

Finally, although UC can legally reduce the pension benefits of new employees hired in the future, it would take a long time for this to significantly

³ Except, as noted above, for the Department of Energy laboratories.

reduce the accrued liability compared to current projections. New employees will have to be offered a competitive total remuneration package, so a substantial employer pension contribution will still be required. If new employees are provided with substantially less generous pension benefits, then it may prove difficult to obtain employer contributions on behalf of those new employees to amortize the unfunded liability incurred on behalf of employees with more generous benefits.

The Needed Level of Contributions:

Thus, painful as it will be, the least bad option is to raise contributions as quickly as possible to the contribution level prescribed by the Funding Policy. Delay only means even higher contributions in the future. This was already clear before the recent collapse of financial markets, but these recent losses mean that future contributions will soon approach unsustainable levels, unless the Funding Policy is promptly followed. Each dollar of deferred contributions on state-funded salaries results in the deferral more than two dollars in contributions from other fund sources. TFIR concludes that a realistic approach to funding the University's liability to UCRP is imperative and must be the highest level budget priority for the University. TFIR recommends that the Regents commit to allocate funds sufficient to follow the Funding Policy, starting no later than July 1, 2011.

Pension Obligation Bonds (POBs) are an Essential Part of the Solution:

The University budget remains under extraordinary stress, as a result of the state budget problems. Funding the essential UCRP contributions out of current revenue would require either 1) a large increase in state funding, which appears

unlikely in the near term; 2) a large additional increase in student fees, which appears impossible on top of the large increases recently imposed; 3) extending the duration and increasing the size of the furloughs, which would have devastating consequences on employee retention; or 4) massive layoffs, which would cripple the University's performance of its core mission.

While UC must urgently seek additional state funding to make the required contributions, it cannot afford to wait until such funding becomes available. POBs are an essential part of the solution.

POBs could be issued by either the State or by The Regents, with the proceeds used to make the required UCRP contribution related to state-funded employees. Alternatively, the State or The Regents could simply place into UCRP an IOU promising to pay the required contribution, plus interest, at a specified date in the future. This alternative process is administratively simpler, and was used by the State to fund contributions in 1983-84.

POBs could also be issued by or on behalf of the Medical Centers, if they needed time to increase clinical revenue and/or reduce other operating costs in order to accommodate the increase in pension costs.

POBs do not make the problem go away. They defer the needed contributions into the future, but eventually they must be repaid. However, issuing POBs significantly reduces the size of the problem, for two main reasons. First, \$1 in POBs to fund required contributions for state-funded employees allows UC to collect \$2 in contributions from the other funding sources, including federal grants and contracts and the medical centers. Second, the expected rate

of return in UCRP, given its portfolio allocation, is higher than the interest rate that would be paid on the POBs.⁴ For these reasons, issuing POBs reduces the University's net liability for UCRP by significantly more than the amount (principal plus interest) owed on the POBs; the University's total net liability is significantly smaller with POBs than without them.

⁴ Under current federal law, POBs would be taxable bonds. However, most state and local pension plans face a substantial unfunded liability, and almost all states are facing severe budget shortfalls that threaten draconian expenditure reductions which could abort the nascent economic recovery. Consequently, there is a strong argument that Congress should authorize state and local governments and their agencies to issue POBs on a tax-exempt basis, at least for a period of time. This would significantly reduce the interest rate on the bonds, allowing state and local governments a more affordable means of addressing the funding shortfalls, while avoiding expenditure reductions that could cripple the recovery. UC should aggressively lobby Congress and the Obama Administration on this issue. If Congress permitted UC to issue tax-exempt POBs, that would be preferable to UC depositing an IOU into UCRP; however, if POBs remain taxable bonds, the IOU route is administratively simpler and likely preferable to selling POBs in the market.

Restart of UCRP Contributions TFIR Recommendation

DRAFT

**Update of May 2009 Analysis with July 1, 2009
Valuation Results**

5057484v4

Disclaimer

- **The “TFIR Recommendation” was not developed by The Segal Company**
- **The hypothetical modeling that follows was authorized by UCOP Human Resources, at the request of TFIR.**
- **Segal remains a neutral party to the proposal**
 - **Neither endorses or opposes the “TFIR Recommendation”**

New UCRP Funding Policy

- **Adopted by Regents in September 2008**
 - **Effective July 1, 2008 for 2009/2010 Plan Year**
- **Funding Policy starts with Normal Cost**
- **Current Surplus and any future Unfunded Liability (UAAL) are amortized in layers**
 - **3 year amortization of initial surplus**
 - **15 years for future changes in either current Surplus or future Unfunded Liability**
 - **Level dollar amortization payments**
- **Retain “Entry Age Normal”, 5 year asset smoothing**
- **Regents set actual contribution level based on available funding and other factors**

Regents Approved Contributions

- **Employer – Beginning April 15, 2010**
 - **FY 09/10 – 4% for all employer payroll funding sources**
 - **FY 10/11 – At least 4%, higher if funding available**

- **Member – Beginning April 15, 2010**
 - **Amounts currently redirected to the DC Plan (about 2%)**
 - **Same amounts for FY 10/11**
 - **Subject to collective bargaining, as applicable**

Contribution Projections – “Projected”

- **Lowest (red ) line shows total “Projected” UCRP contributions (University and employee)**
 - **Both employer and employee rates start on 4/15/2010 at Regent approved levels**
 - **Employee rates are assumed to increase by 1% per year starting July 1, 2011 until reach an ultimate level of 5%**
 - **Employer rates are assumed to increase by 2% per year starting July 1, 2011 until total reaches funding policy**
- **At this time, The Regents have approved actual employer and employee contribution rates through the period ending June 30, 2011**

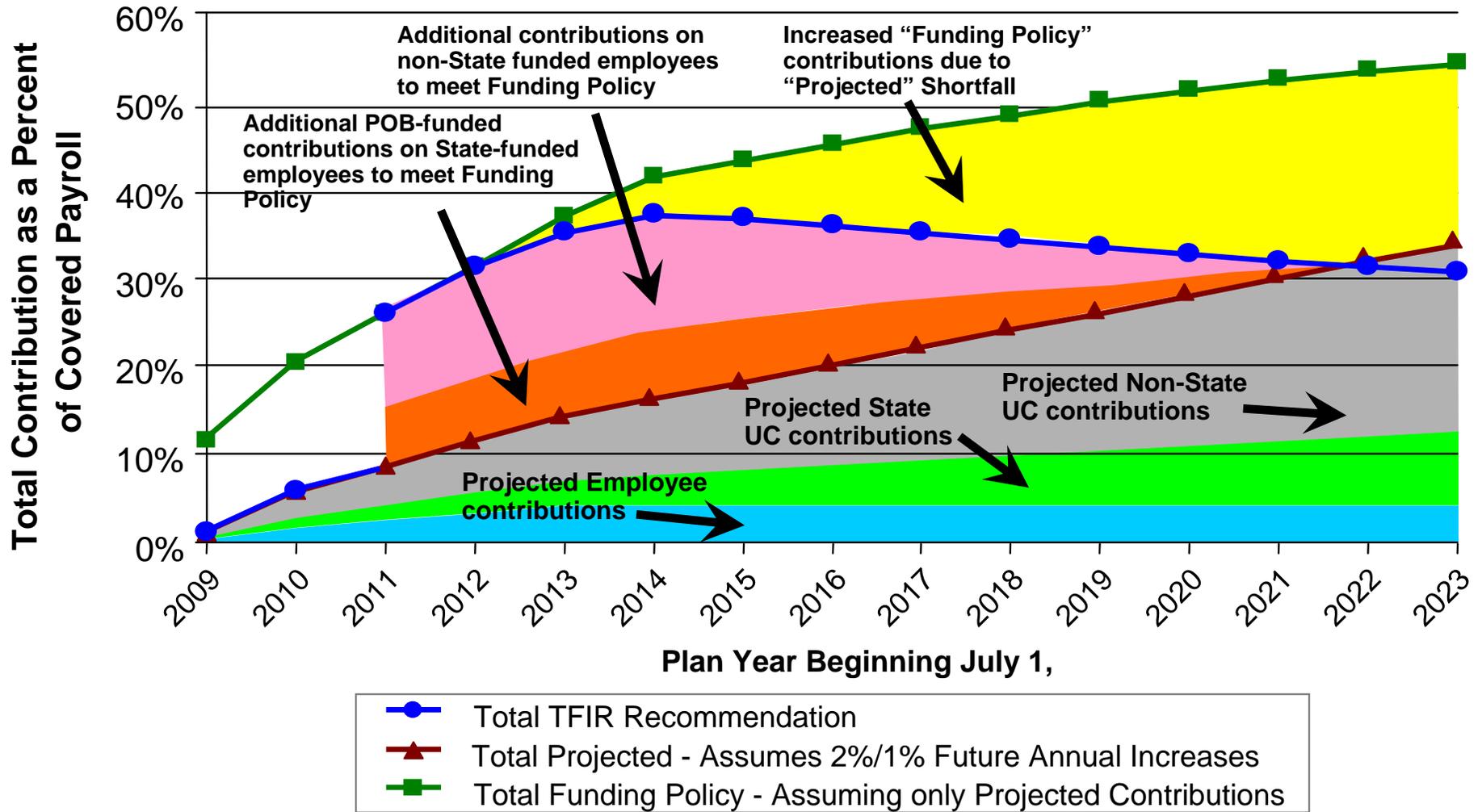
Contribution Projections – “Funding Policy”

- Highest (green ) line shows the resulting total “Funding Policy” contributions if the “Projected” contributions are made
 - Future funding policy contributions increase when projected contributions fall short of funding policy contributions
 - Contribution shortfall increases Unfunded Actuarial Accrued Liability (UAAL), which increases future funding policy contributions (yellow area)
 - Funding less now means funding more later

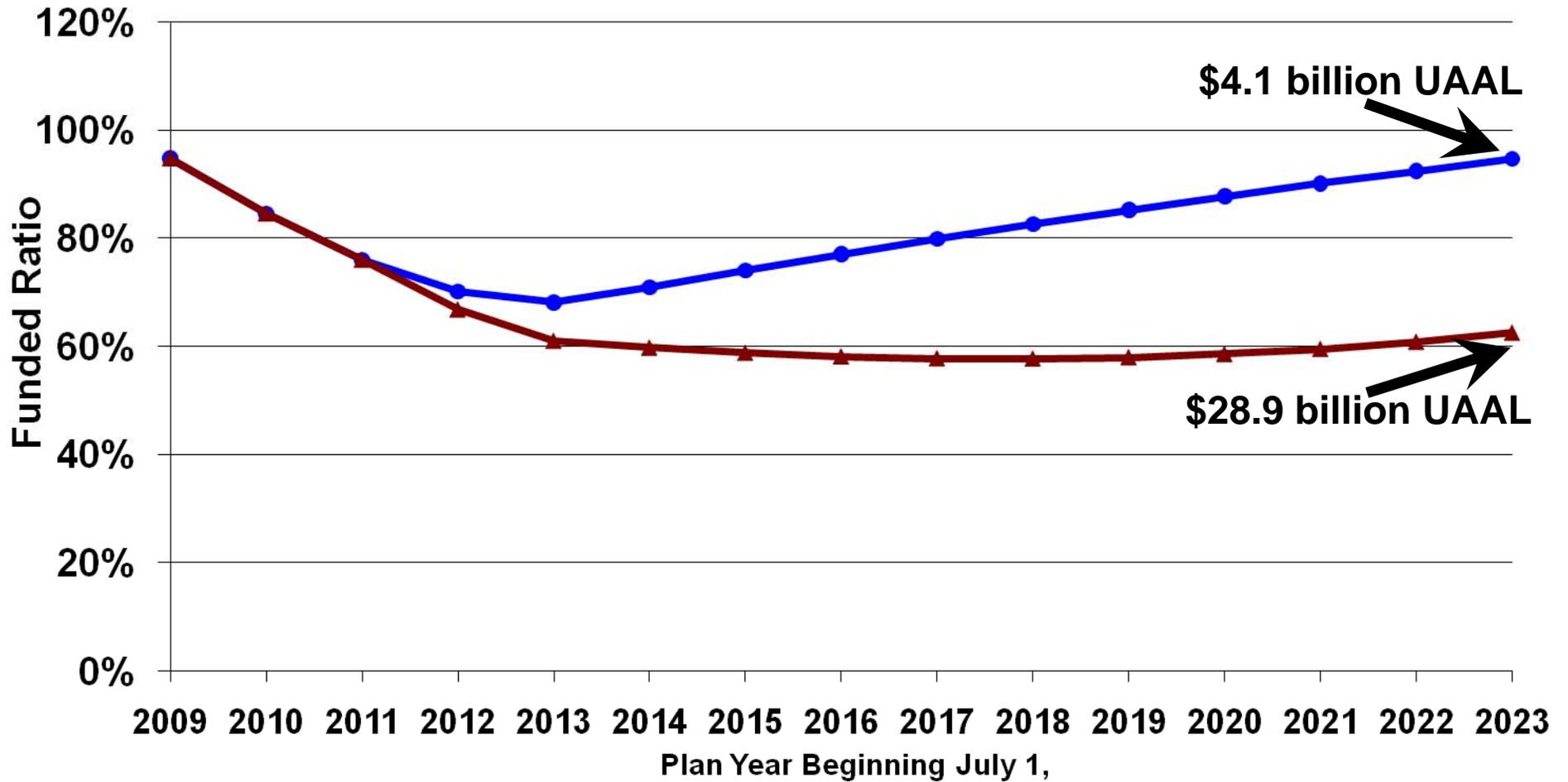
Contribution Projections – “TFIR Alternative”

- **Middle (blue —●—) line shows total “TFIR Alternative”**
 - Same as projected contributions for the first two years
 - Thereafter, equals future funding policy contributions
- **Difference between blue and red lines shows additional contribution needed to avoid increases in future funding policy contributions**
 - Orange area is additional State portion (funded all or in part by Pension Obligation Bonds)
 - Leverages additional contributions from non-State UC funding sources (pink area)
- **Result is that future funding policy contributions follow blue line instead of green line**

Projected and Funding Policy Total Contributions

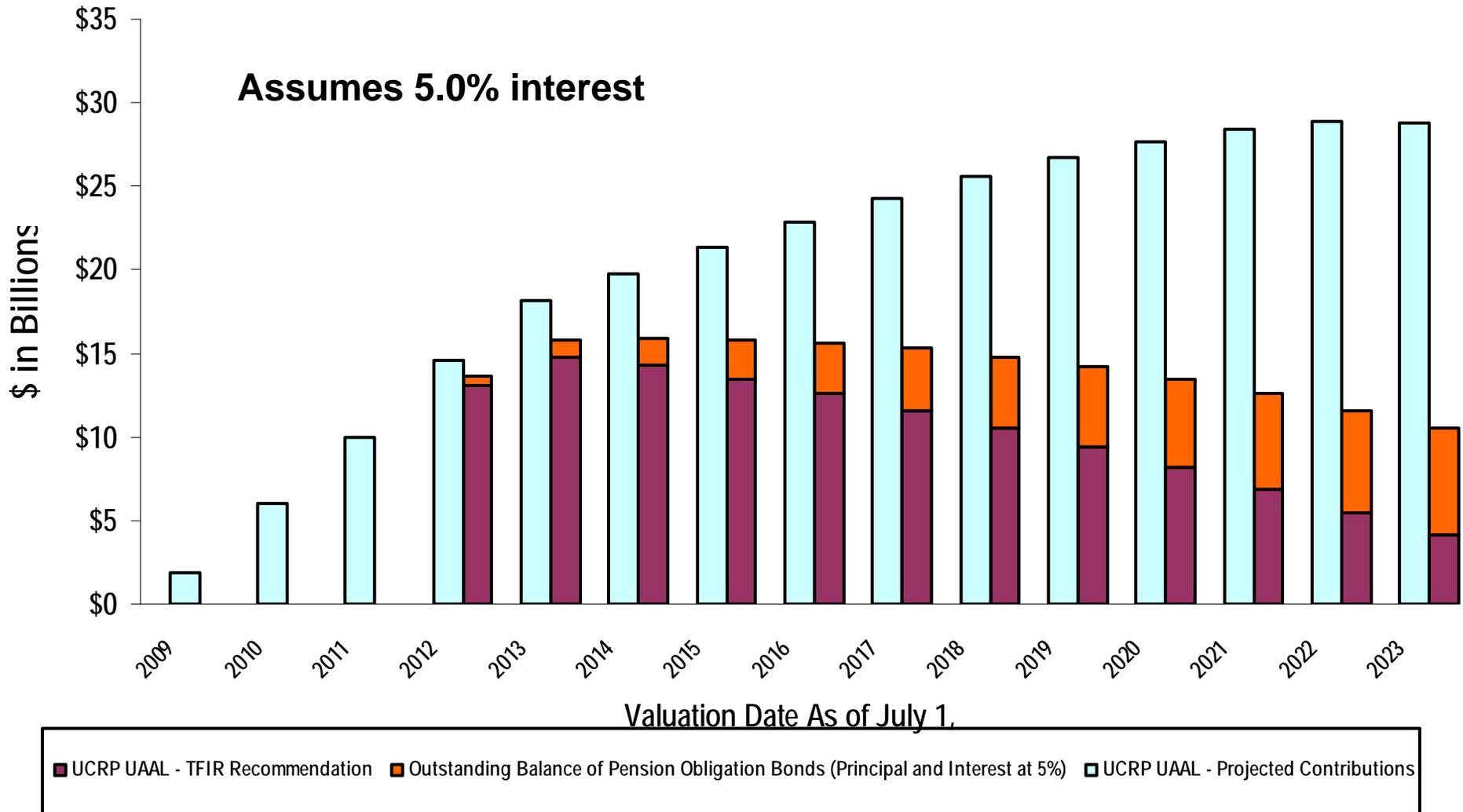


Funded Ratio (Actuarial Value Basis)



● Total TFIR Recommendation
▲ Total Projected - Assumes 2%/1% Future Annual Increases

Comparison of UCRP Unfunded Liability and Outstanding Balance of Pension Obligation Bonds



TFIR Recommendation Total Contributions in Dollars

