

# **Report of the Ad Hoc Committee on the Mitigating Rate**

Ohio State University

April 12,2021

## **Committee Members**

Enrico Bonello (Department of Plant Pathology)

John Bridges (Department of Biomedical Informatics and Surgery)

Kari Hoyt (Department of Pharmaceutics and Pharmacology),

Eric MacGilvray (Department of Political Science)

Stephen Post (Graduate Associate Compensation & Benefits Committee, Chair)

Brent Sohngen (Department of Agr., Env. and Development Economics)

Chrissy Sprouse (University Staff Advisory Committee, Chair)

## **Non-voting Meeting Attendees**

Kris Devine (OSU Vice President of Operations and Deputy Chief Financial Officer)

Julie Hovance (OSU Office of Human Resources)

Brian Perera (OSU Office of Government Affairs)

The Ad Hoc Committee on the Mitigating Rate for the Alternative Retirement Plan was convened in February of 2020 in response to a Faculty Council resolution that passed on November 7, 2019. The resolution (see appendix A) requested that several steps be taken at the University to respond to the mitigating rate. On November 21, 2019, the Senate Steering Committee recommended the formation of this committee, with a tentative reporting date of April 2020.

### **Background:**

Before 1999, the only retirement plans available to University faculty and staff were the traditional defined benefit (DB) pension plans maintained by the Ohio State Teachers Retirement System (STRS) and the Ohio Public Employees Retirement System (OPERS). In the late 1990s, the Ohio General Assembly enacted House Bill (HB) 586, which allowed Ohio public colleges and universities to offer alternative retirement plans to their employees. Alternative retirement plans are defined contribution (DC) plans, meaning that individual and the university contributions are made to an individual account, and the individual then controls and bears the risk of their investments. Ohio State adopted its alternative retirement plan, known as the ARP, in 1999.

Also in 1999, the General Assembly required STRS and OPERS to create their own DC plans through HB 628 and SB 190. These plans are similar to private DB plans, except they are maintained by STRS or OPERS rather than private investment companies, and they are available to eligible state employees.

The General Assembly noted that these alternative retirement plans could have a negative financial impact on the traditional defined benefit plans maintained by STRS and OPERS. As a result, the statutes authorizing the alternative retirement plans also required the payment of what is referred to as the “mitigating rate”. Section 3305.06(D) of the Ohio Revised Code states:

"Each public institution of higher education employing an electing employee shall contribute on behalf of that employee to the state retirement system that otherwise applies to the electing employee's position a percentage of the electing employee's compensation to mitigate any negative financial impact of the alternative retirement program on the state retirement system. The percentage shall be determined by the actuarial study conducted under section 145.222, [3307.514](#), or 3309.212 of the Revised Code, as applicable."

There was considerable debate about the initial mitigating rate, as outlined in a 2014 report on the mitigating rate conducted by the Ohio Retirement Study Council (ORSC)<sup>1</sup>. Studies by consultants for STRS and ORSC suggested mitigating rates in the 5-6% range, while a study based on participation by faculty in other states by consultants for the Inter-University Council (IUC), an organization composed of higher education institutions in Ohio, suggested a much lower rate would be sufficient.

The mitigating rate for alternative retirement plans originally was set by the General Assembly at 6% in HB 586, with a requirement that the ORSC conduct a study and adjust the rate. The rate remained at 6% until 2000 when it fell to 5.76% based on a study by Milliman and Robertson for STRS. However, when STRS created their own defined contribution plan in 2000, they set the mitigating rate for that plan at 3.5%, effectively establishing two mitigating rates, one for private ARP members set at 5.76% and another rate for STRS DC members at 3.5%. The presence of two rates for the same issue was noticed

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<sup>1</sup> Ohio Retirement Study Council.2014. Alternative Retirement Plant Mitigation Rate Report on Rate History and Operation, as Required by Am. H.B. 483 of the 130<sup>th</sup> General Assembly. See [www.orsc.org](http://www.orsc.org).

by the legislature, and they responded with HB 94 in 2001, which required that the STRS ARP rate could not exceed the rate set for their own DC plan. Also in 2001, HB 535 gave the ORSC discretion over whether to change the ARP mitigating rate

The mitigating rate remained at 3.5% until July 2013, when STRS raised the mitigating rate to 4.5% without a ruling or consent from the ORSC. In 2014, STRS recommended to its board that it further increase the rate to 5.5%. The Ohio Attorney General wrote an opinion stating that ORSC was the only entity that could change the mitigating rate, and the Ohio Legislative Service Commission agreed. The legislature responded with HB 483 in 2014 which put a moratorium on increasing the mitigating rate, capping it at 4.5%. This unilateral increase in the mitigating rate by STRS from July 2013 until HB 483 came into effect was the subject of a class action lawsuit, Clark et al. v STRS filed in 2016. The lawsuit was recently settled for \$5.9 million, and the plaintiffs, including faculty at Ohio State University, have received payments from the settlement.

The legislature further addressed the mitigating rate in HB 520 in 2017. This legislation created a formula by statute for calculating the mitigating rate, required an update to the mitigating rate every 5 years, and eliminated the sunset clause, which could have eventually eliminated the mitigating rate, from the Ohio Revised Code. The law maintained the cap on the mitigating rate at 4.5%. The current mitigating rate is 4.47% for faculty (STRS) ARP participants and 2.44% for staff (OPERS) ARP participants. The retirement allocation for those who elected the ARP plan available through OPERS or STRS is shown in table 1.

Table 1: Employee and employer contributions to the DB plans in STRS and OPERS retirement systems as well as the contributions for those eligible for ARP in STRS and OPERS.

	STRS <sup>1</sup>			OPERS <sup>1</sup>		
	DB	DC	ARP	DB	DC <sup>2</sup>	ARP
Employee contribution	14%	14%	14%	10%	10%	10%
Employer contribution to STRS/OPERS on behalf of employee	14%	4.47%	4.47%	14%	2.5%	2.44%
Employer contribution to ARP/DC on behalf of employee	0%	9.53%	9.53%	0%	7.5%	11.56%

<sup>1</sup> The %'s for the Defined Benefit (DB) plans for STRS or OPERS are the contribution as a % of gross salary. Contributions to DB and some DC plans are conditional on vesting and other plan requirements.

<sup>2</sup> The OPERS DC contribution also includes currently a 4% contribution to a retiree medical account, and 0.5% for administrative expenses.

For individuals in an ARP, currently 4.47% or 2.44% of an employee's annual gross income is legally obtained from university contributions to individual ARP retirement accounts and provided to STRS or OPERS in order to mitigate the effect that the individual's decision to join ARP/DC may have had on the retirement system. In the case of a STRS (OPERS) eligible individual, this diversion currently represents 15.9% (8.7%) of their retirement contributions. For individuals in STRS DC, the same contributions as with the ARP apply at present. For individuals in OPERS DC, mitigating rate is lower, but an administrative fee of 0.5% makes it closer. Also, individuals must contribute to a medical account maintained by OPERS.

## **Faculty Efforts on the Mitigating Rate**

A group of faculty at Ohio State (FAARP – Faculty Association of ARP members) has been working for a number of years to identify ways to reduce and eventually eliminate the mitigating rate. This group has brought its concerns to state legislators, to the Faculty Compensation and Benefits Committee, and to administrators at Ohio State. These concerns include the way in which the presence of the mitigating rate has been communicated to new faculty who must decide what system to join, the perceived negative impact of the mitigating rate on each ARP participant's retirement savings, the lack of a transparent assessment of the effect of individual decisions not to join STRS/OPERS on the financial stability of those systems, a lack of transparency by STRS/OPERS about how funds that have been recovered through the mitigating rate have been used to reduce its unfunded liability, and the calculation of the mitigating rate as implemented in state law.

These concerns, and others, led several faculty members to bring a resolution to the Faculty Council that, if passed by the University Senate, would formally ask the University to take more aggressive actions with respect to the mitigating rate (see appendix). These actions include requesting that the University work more aggressively to change state law in order to reduce the mitigating rate, and to compensate employees for all or part of the employer contributions that have been diverted into STRS/OPERS via the mitigating rate. The purpose of this report is to assess the reasonableness and feasibility of these and other options.

Specifically, the charges of the committee are as follows:

1. Investigate the effect of the mitigating rate on employees at Ohio State.
2. Discuss and review the feasibility and impacts of potential solutions to the mitigating rate, including the resolution approved by the Faculty Council.
3. Develop specific actions to address the mitigating rate across all employee groups.
4. Deliver recommendations for actions the university could consider to address any negative impacts created by the mitigating rate.

The remainder of the report describes the committee's efforts to address these charges. The committee formally began its work in early March 2020. During spring term 2020, we met 5 times, and during spring term 2021 we met an additional 2 times. The following report reflects the consensus of the individuals on the committee.

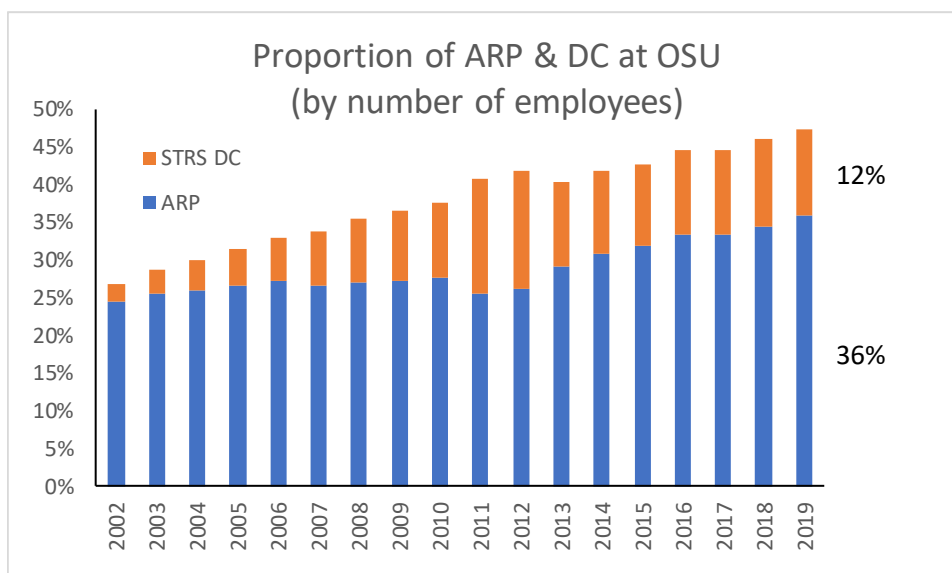
## Charge 1: Report on the effect of the mitigating rate on employees at Ohio State

### How many people at Ohio State are directly affected by the mitigating rate as members of ARP or a DC plan?

Based on data obtained from STRS through a public records request, as of April 2020, 36% of eligible STRS members at Ohio State participated in ARP, and an additional 12% participated in the STRS DC or combined plan. In dollar amounts, this means that of the total salary pool that is eligible for STRS at Ohio State, 43% is enrolled in ARP, and 12% of the pool is enrolled in the STRS DC/combined plan. Both of these proportions have increased since 2002 (Figure 1a & 1b).<sup>2</sup>

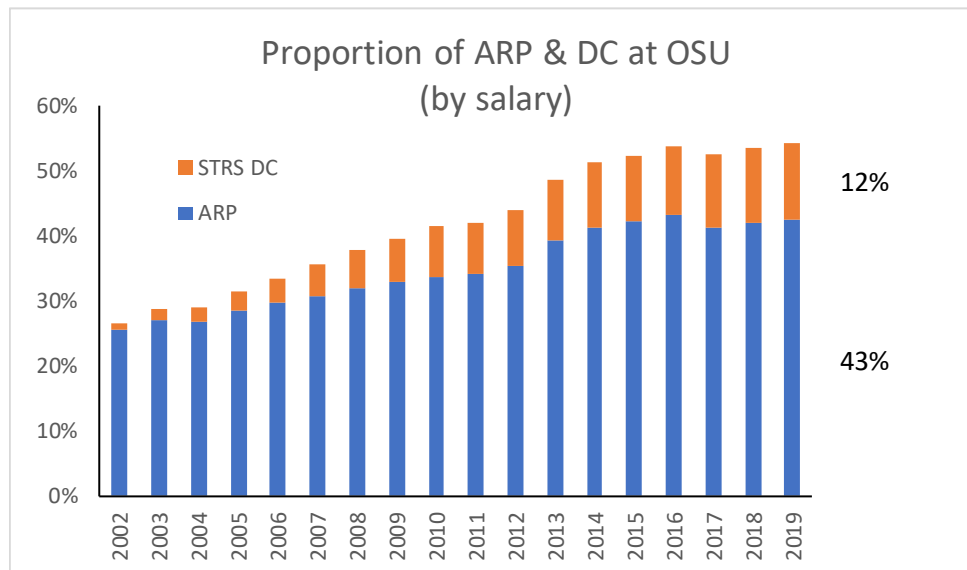
As of December 2020, approximately 10% of OPERS eligible staff at Ohio State have chosen the ARP. We do not have similar data on long-term trends, however, the proportion increase from 8% in 2019.

Figure 1a: Proportion of STRS-ARP and STRS-DC participants among all eligible employees at Ohio State University (Source: Public records request fulfilled by Joy Nelson of STRS on 4/1/2020)



<sup>2</sup> Data from STRS public records request from Joy Nelson on 4/1/2020

Figure 1b: Proportion of STRS-ARP and STRS-DC salaries of all eligible salaries at Ohio State University. (Source: Public records request fulfilled by Joy Nelson of STRS on 4/1/2020)



### What is the impact of the mitigating rate on employees in ARP?

The mitigating rate reduces the contribution that the University would otherwise make to employee ARP accounts. For individuals who would be eligible for STRS, the reduction is currently 4.47% of the individual's salary. For individuals who would be eligible for OPERS, the reduction is currently 2.44% of the individual's salary. The mitigating rate is reviewed every 5 years in accordance with state law.

Although OSU continues to pay a retirement benefit rate of 14% of employee salaries, this amount is apportioned in part to the individual's retirement account, and the rest – the mitigating rate – is provided to the retirement system to which the individual would otherwise belong (see Table 1 for current rates). Based on data obtained from STRS<sup>3</sup>, between 1999 and 2019, Ohio State University contributed \$142 million to STRS on behalf of ARP plan members through the mitigating rate<sup>4</sup>. This amounts to 15.7% of the total potential retirement contribution by Ohio State University if they had contributed the entire amount, \$904 million, to employees.<sup>2</sup> The actual impact on individual retirement outcomes will vary depending on when a given employee entered and/or exited the system, as well as their own investment returns.

Based on data obtained from STRS via a public records request on April 1, 2020, those who were in STRS DC at Ohio State had experienced a reduction in the employer contribution to their retirement accounts amounting to \$30 million since 2002, when these plans were introduced. These individuals would also

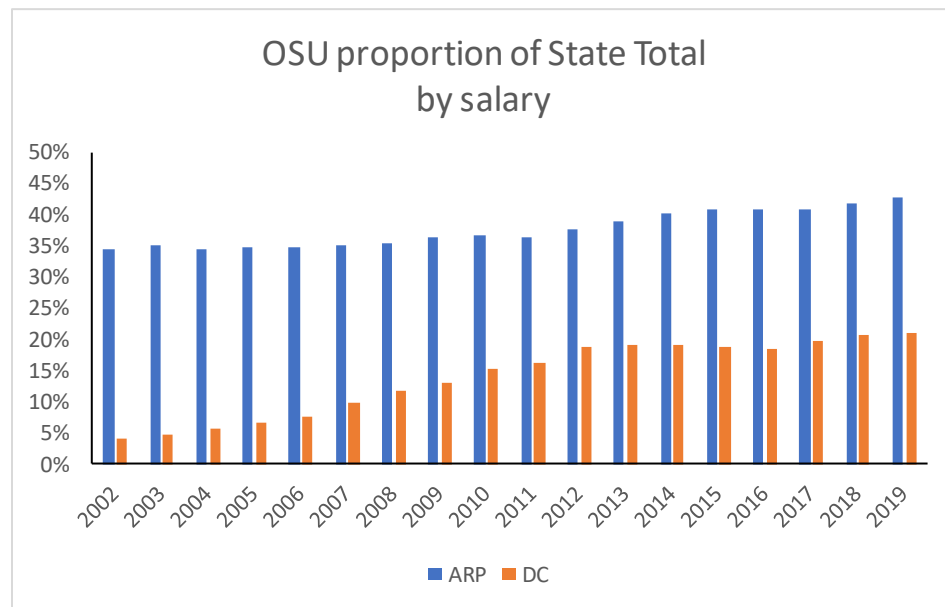
<sup>3</sup> Data provided by Joy Nelson to Brent Sohngen of STRS on 4/1/2020 via a public records request

<sup>4</sup> Estimated from Annual Actuarial Valuations of STRS submitted to the Ohio Retirement Study Council and available on their website: <http://www.orsc.org/>.

have less potential savings at retirement, but because the funds are managed by STRS and there are multiple options for DC or combined DC/DB plans within STRS, it is not possible to know the effect.

Statewide, ARP faculty at Ohio State University represented 43% of the total eligible salaries at all institutions that have elected ARP in March 2020. STRS-DC faculty at Ohio State represent 21% of the total eligible salaries at all institutions that have selected the STRS-DC plan in March 2020. Both of these proportions have grown over time (Figure 2). In total, among all institutions statewide, from 1999 to 2020, \$550 million has been mitigated from ARP and STRS DC employer contributions.

Figure 2: ARP and DC salaries at OSU as a proportion of ARP and DC salaries at all institutions statewide.



The committee does not have similar data for individuals in OPERS ARP or OPERS DC. Because the mitigating rate is lower, the impact of mitigation on individuals in OPERS ARP and DC is correspondingly less. However, typical salaries for employees in the OPERS system are also less, suggesting that the financial impact of mitigation could be proportionally large for that population.

#### **What is the impact of the mitigating rate on individuals in STRS DB or OPERS DB?**

Across all of Ohio, the mitigating rate provided an additional \$550 million in funds for STRS as of 2020 based on salary estimates published in the annual actuarial valuations for STRS. Using the returns STRS achieved over that time period, this amounts to a total of \$972 million. To put this number in perspective, in their 2019 actuarial valuation STRS stated assets of \$74.4 billion, liabilities of \$97.6 billion, and an unfunded liability of \$23.1 billion. Therefore, the value of mitigation represents 1.3% of the total assets and 4.1% of the total unfunded liability. With the mitigating rate, ARP participants receive retirement contributions that are 15.9% lower than they would be if the mitigating rate were 0%. In 2020, STRS reported a total mitigation payment of \$58.9 million, which amounted to 5.3% of the reduction in the unfunded portion of the liability in 2020.

On the surface, the mitigating rate provides a source of revenue for STRS and OPERS that the two funds otherwise would not have. In this way, the mitigating rate thus benefits current and future retirees in the DB plans. Indeed, the argument advanced by STRS at the time the program was established was that the current unfunded liability was a result of benefit enhancements – agreed to by employers – which was to be funded by employer contributions.<sup>5</sup>

In 2014, the Ohio Retirement Study Council presented a study that examined the history and rationale for the mitigating rate. As described in the 2014 ORSC Mitigating Rate Study on page 5<sup>6</sup>, there are three reasons that the ARP might cause additional liabilities for STRS or OPERS:

- 1) Existing unfunded liabilities are amortized based on current demographics. As some members elect to instead participate in an ARP, the funding base on which the amortization was made is eroded;
- 2) Those anticipated to participate in the ARP are those who would expect to receive a lesser benefit under STRS than an ARP, and those who stay in STRS are those who expect to receive a higher benefit under STRS than in an ARP. To the extent this *anti-selection* occurs, it would increase costs;
- 3) University employees are higher paid employees and contribute a higher amount to health care. However, health care costs do not vary according to salary. As high income employees participate in an ARP, health care funding is reduced.

The first point above would apply to individuals who were part of STRS initially but then opted out when they had the chance. It could also apply to some of the first cohorts to enter ARP rather than STRS because the benefit formula – which is what creates future liabilities – is relatively fixed and does not change frequently. However, over time, a retirement system like STRS should adjust their funding formula to account for their actual population. STRS has done that in the last 6-8 years, with numerous changes in retirement requirements (increase in years of service required, increase in retirement age, shift to 5-year final average salary calculation, reduction/short-term elimination of COLA, shifts in healthcare benefits, etc.).

The second point, anti-selection, was well researched before enactment. In an analysis of the potential effect of the ARP in 1994, Debra Pelley of Milliman and Robertson examined the role of anti-selection. Debra Pelley's analysis points out that if STRS is actuarially fair, then if employees from the university were randomly removed from STRS they would not cost the system anything. The concern about the ARPs, was that, because the law allowed people to choose which system to join, people who would represent a net cost to the system would remain in it, while those who would otherwise represent a net gain to the system would leave. As discussed in the background section above, there was debate about the scale of anti-selection during early discussions about the laws to introduce the ARPs, and the first two triennial reviews of the mitigating rate by Milliman in 2002 and 2005 did purport to calculate the effects of the specific decisions made by individuals in STRS. No studies were conducted in 2008, 2011, or 2014 before HB 520 was ultimately passed in 2017 and different methods were used to calculate the mitigating rate.

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<sup>5</sup> STRS Fact Sheet:Mitigating rate. 40-307. Dated 02.16.2020. A copy of this document can be found on the OSU Senate website: [https://senate.osu.edu/sites/default/files/links\\_files/STRS\\_40-307.pdf](https://senate.osu.edu/sites/default/files/links_files/STRS_40-307.pdf)

<sup>6</sup> Ohio Retirement Study Council.2014. Alternative Retirement Plant Mitigation Rate Report on Rate History and Operation, as Required by Am. H.B. 483 of the 130<sup>th</sup> General Assembly. See [www.orsc.org](http://www.orsc.org).



The third point has been alleviated because health care is no longer funded by annual contributions by employees or employers in STRS. This change started in 2014 through a decision by the STRS Board. However, it is useful to note that from 1999 to 2014, STRS included health care payments in their calculation of liabilities caused by the choice to join ARP. Thus, from 1999 to 2014, this issue applied, but after 2014, no employer or employee contributions from individuals within STRS or through the mitigating rate have been allocated to health care.

In addition to providing a rationale for the mitigating rate, the 2014 ORSC report also describes how the mitigating rate was calculated. Milliman and Robertson, who did the calculations in 1999, 2002, and 2005, purported to calculate the rate as "the excess of total contributions which would have been made by the member and the employer over the employee's entire career over the portion of those future contributions which would be provided as a benefit in the future."<sup>7</sup> The 2014 ORSC report on page 8 points out that "the studies are frustratingly opaque. ORSC staff struggled to find a way to replicate or review the analyses to understand their results."

The 2014 ORSC report further details that the method most likely used by Milliman and Robertson is the method currently used to estimate the UAL funding rate, as a direct proportion of salary. This rate is calculated as the difference between what is collected from employers and employees minus the normal cost minus any contributions to health care. The normal cost is the future benefits accrued annually by current plan participants as a proportion of annual salary. In 2019 this calculation was:

Total collected from employees	+ 14.00%
Total collected from employers	+ 14.00%
Normal cost	- 10.83%
Health care	- 0.00%
UAL Funding rate	= 17.17%

This calculation essentially says that current ARP participants should be paying 17.17% of their salaries to fund the UAL, while they are in fact paying 4.47% due to state law.

Importantly, this is not an analysis of the effect of individuals in ARP who have opted out of STRS. Two things happen when an individual chooses ARP over STRS. First, a flow of money that would otherwise have entered the system has been diverted into ARP accounts so current and future assets fall. Second, the accrued liability declines, because individuals in the ARP and DC programs will not collect STRS or OPERS benefits after retirement. As noted by D. Pelley, in an actuarially fair system, if people select out randomly, these two effects are balanced and there is no impact on the unfunded actuarial liability.

However, several circumstances related to the specific population of faculty members in the ARP could cause liabilities to be greater than assets, and thus for the unfunded actuarial liability (UAL) to increase as a result of the ARP. For example, university faculty may move away from Ohio more frequently than K-12 teachers before they are fully vested in the STRS system, thus taking away less than was invested on their behalf. This outcome – that young faculty may have been deterred in the past from coming to Ohio State because they only had access to STRS – is one reason why Ohio State and other institutions, initially lobbied for the ARPs, which would make employment in Ohio more attractive by making retirement more portable. The implication of this, of course, is that compared to the general population

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<sup>7</sup> ORSC. 2014. Mitigating Rate Study page 8

of STRS (and likely OPERS), faculty members and university employees receive smaller payouts in net present value terms from STRS than they provide in payments, on average<sup>8</sup>.

To date, there has not been a publicly accessible analysis of who joined STRS and OPERS, who joined the ARP, and what impact those choices had on assets and liabilities at STRS or OPERS. This point was made by ORSC in their 2014 report. It is not possible with the aggregate data provided in the STRS or OPERS annual valuation reports to determine how the ARP affected liabilities because each sub-population in STRS and OPERS is different. ***It is thus not possible to determine for the purposes of this report whether individual choices to enter ARP have in fact increased the unfunded liability of STRS or OPERS.***

A review of past annual actuarial valuation reports for STRS<sup>9</sup> indicates that these reports do not provide clear evidence that decisions by faculty to join ARP or STRS DC has affected STRS unfunded actuarial liability (UAL). It also is difficult to know whether the funds obtained through mitigation have in fact reduced the UAL. STRS independent actuaries noted in their 2014 annual actuarial valuation report that until 2015, STRS policy led to negative amortization of the unfunded actuarial liability. Page 17 of the report states:

*The current approach for amortizing the unfunded actuarial accrued liability is based on a 30-year open period and is determined as a level percentage of payroll. This approach results in negative amortization and the UAAL is expected to grow indefinitely if contributions were to be made on this basis. We recommend that the Board establish a funding policy, which outlines the basis of an actuarially determined contribution rate that is expected to fully fund the UAAL over time.*

This means that until 2015, STRS effectively paid nothing to amortize their unfunded liability, although money was clearly directed for this purpose from ARP members through collection of the mitigating rate. Policy changed in 2015, but until 2017, STRS did not report the payment by ARP and STRS DC members in their annual actuarial valuation. Starting with the 2018 actuarial valuation, STRS began to provide an explicit calculation of the payment made to reduce the unfunded liability (Table IV-3 in 2018 and Table V-3 in 2020). Given the data provided in the various actuarial valuations over the years, it is impossible to know how much of the mitigation payment, or the contributions by STRS members, STRS actually has contributed to reducing the unfunded liability.

STRS unfunded actuarial liability (UAL) has grown since 1999, but it has declined from its high of \$47 billion in 2012. Although it is difficult to determine how ARP members have influenced liabilities, and it is not clear that the mitigating rate has been applied to reducing the UAL, data from the annual actuarial valuation reports do illustrate how liabilities and assets have changed over time, and provide a clear indication about how other decisions made by STRS, or market corrections, have affected the UAL.

Figure 3 shows STRS actuarially projected liabilities and actual assets at the end of the fiscal year from 1994 to 2019, with the difference being the UAL. The effect of two stock market corrections on assets can be seen clearly, one in 2001/02 and another in 2007/08. The effect of the increase in employee contributions after 2013 can also be seen in as a slight uptick in assets. The effect of the decisions to reduce benefits on liabilities can also be seen. The first was the reduction in the COLA in 2012, as well as the changes to final payout calculations which were announced in 2012, and thus affected the valuation

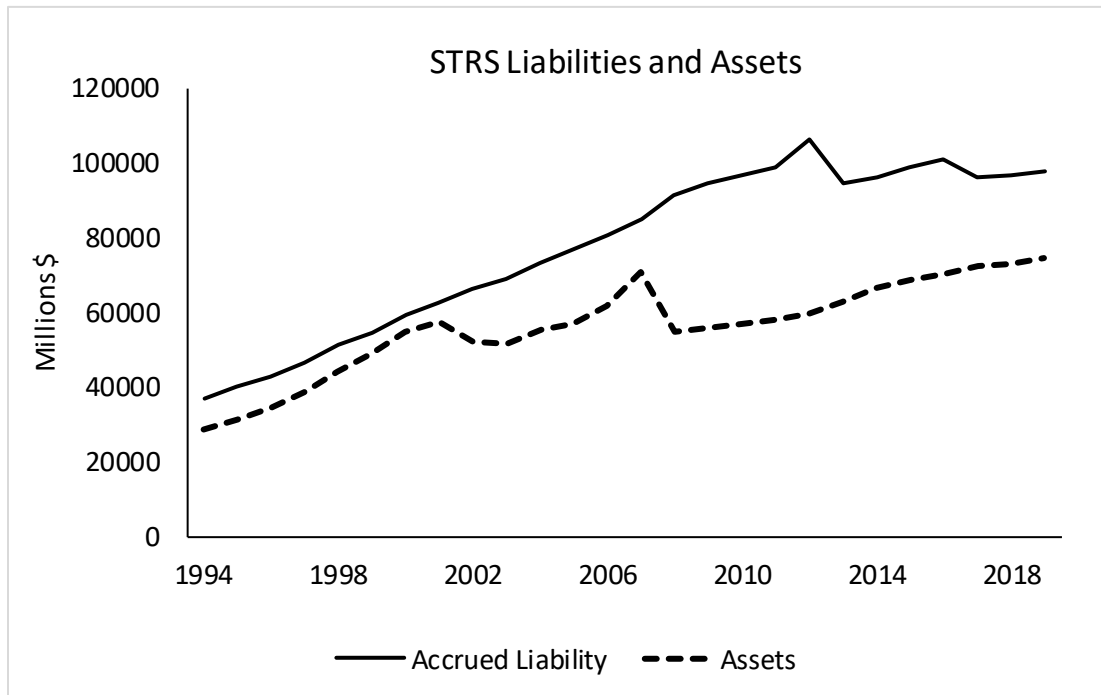
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<sup>8</sup> Much of this analysis has been conducted for STRS, but we suspect the same issues for OPERS.

<sup>9</sup> All reports are available at [www.orsc.org](http://www.orsc.org)

of future liabilities in 2013 can be observed as reductions in liabilities in 2013.<sup>10</sup> Additional reductions in liabilities occurred in 2017 as STRS made a series of additional changes to their basic assumptions about the future, including assumptions on inflation, investment return, salary increases, payroll growth, disability and mortality, and retirement rates.<sup>11</sup>

Figure 3: STRS Liabilities and assets 1994-2019.



### What is the impact of mitigating rate on employee recruitment?

An additional concern is that the mitigating rate could negatively impact employee recruitment if employees at Ohio State receive lower employer contributions to their retirement accounts than they would receive elsewhere. Table 2 shows contribution amounts at a number of peer institutions.

With the STRS mitigating rate, Ohio State provides less in retirement benefits to individuals in the ARP than several other universities in the Big Ten, and less than peer institutions in other parts of the country (Table 1). Perhaps a more important concern is that employees at Ohio State are not enrolled in Social Security. As a result, Ohio State employees who are enrolled in the ARP do not have the relatively certain income base that Social Security provides to employees at peer institutions.

<sup>10</sup> STRS Annual Actuarial Valuation on July 1, 2013 by Segal Consulting, available at [www.orsc.org](http://www.orsc.org)

<sup>11</sup> STRS Annual Actuarial Valuation on July 1, 2017 by Segal Consulting, available at [www.orsc.org](http://www.orsc.org)

Table 2: Retirement contributions by individuals in comparable defined contribution (DC) plans at peer institutions.

		Retirement Plan		Social Security		Total
		Contribution by		Contribution by		
		Employee	Employer	Employee	Employer	
		%				
<b>OSU STRS</b>	<b>ARP (DC)</b>	<b>14</b>	<b>9.53</b>	<b>0</b>	<b>0</b>	<b>23.53</b>
Mich. State U.	DC	5	10	6.2	6.2	27.4
Penn. State U.	DC	5	9.29	6.2	6.2	26.7
U Wisconsin	DB	6.75	6.75	6.2	6.2	25.9
U Minnesota	DC	5.5	10	6.2	6.2	27.9
Indiana U.	DC	0	10	6.2	6.2	22.4
U Virginia	ORP (DC)	5	8.9	6.2	6.2	26.3
Oregon State U.	ORP (DC)	4	12	6.2	6.2	28.4

### How has OSU addressed the mitigating rate?

OSU presumably played a role in achieving a DB option for OSU employees in the 1990s. For example, in a statement to the House Insurance Committee on April 9, 1996, Tim Krouse, Associate Director-Benefits Administration for OSU stated<sup>12</sup>:

*The Ohio State University, a member of the Inter-University Council, has been supportive of the Ohio Legislature's effort to establish an Alternative Retirement Plan for faculty and staff members of Ohio's Public Colleges and Universities. This University anticipates that by offering a defined-contribution pension option, administered by one or more nationally recognized and respected pension provider, it will enhance its ability to attract the highest quality faculty and staff from across the country. The Alternative Retirement Plan option will be especially helpful in recruiting mid-career faculty members and administrators, many of whom will have established retirement accounts with one of the ARP providers.*

Testimony by Mr. Krouse and Jim McCollum of the Inter-University Council, however, suggest that both entities were clearly hesitant about the mitigating rate, and concerned about its potential size. For example, the record of testimony to the House Insurance Committee on April 9, 1996 notes that "In response to Rep. Jerse's questions regarding the attractiveness of HB482, if OSU had to pay a 6% supplemental contribution, Krouse indicated the proposal would become less attractive and did not know what OSU's position would be." In testimony to the House Insurance Committee on May 1, 1996, Jim McCollum of the IUC stated:

*They are concerned about the rate chosen for the assessment. They feel that anything over 3% will act as a disincentive to the employees who might chose the plan. Under the bill if the school is now contributing 13% to the retirement plan the assessment (currently at 6%) would go to the existing retirement plan and the remainder (14%-6%)*

<sup>12</sup> Statement obtained from archives of the Ohio State University by B. Sohngen on 9/23/2019.

*would go to the employees optional plan. McCollum feels the lower contribution rate would not be enough to make the plan a realistic option and termed it "an exorbitant diversion" of the employees retirement compensation.*

Beyond these publicly available records, there is not much more recorded about the role OSU or the IUC played in the establishment of the ARP, the STRS and OPERS DC plans, and the mitigating rate. No records of public statements are available regarding related legislative changes that occurred in the early 2000s or most recently in 2014-2016 when the mitigating rate was increased.

Prior to May of 2014, there was little to no discussion about the mitigating rate within the Ohio State University employee community. In the total compensation package sent to faculty, Ohio State reported the amount of the mitigation as part of the total compensation package for employees. The university chose to do this to represent what the university was paying towards retirement on their behalf. That is, the mitigating rate was not broken out as a separate payment, and based on the total compensation report, there was no indication that these funds did not go into an individual's retirement account. The potential fluctuation of the mitigating rate was included in retirement communications through HR, OPERS and STRS.

On May 7, 2014, Senior Vice President A.J. Douglass emailed faculty at OSU informing them about the increase in the mitigating rate from 3.5% to 4.5% that had occurred in July 2013, as well as the proposed further increase from 4.5% to 5.5%. At that time, Vice President Douglass stated: "Ohio State opposed the additional increase at the time, and we successfully endorsed a legislative moratorium to prevent further increases until July 1, 2015."

In 2014, several faculty took note of the mitigating rate, and formed the FAARP group under the leadership of Professor Smita Mathur. This group advocated to the Faculty Compensation and Benefits Committee, OHR, General Council, Government Affairs, and the State legislature to eliminate the mitigating rate. The Faculty Compensation and Benefits Committee at the time recognized that the University needed to provide more clear documentation to new hires about the mitigating rate, and recommended that the University improve language on materials provided to new hires or prospective hires. In 2015, Ohio State also started to provide information on the mitigating rate in individual paystubs.

#### **Summary conclusions on the impact of the mitigating rate by the committee:**

- There is persistent and widespread concern and uncertainty about the mitigating rate for several reasons including its effect on retirement contributions, the permanence of the decision to go into DC or DB plans, and the potential for the rate to change after the irreversible decision to join ARP or a DC plan has been made.
- The effect of ARP/DC membership on the unfunded actuarial liability of the STRS and OPERS DB plans has not clearly been demonstrated by STRS or OPERS. Furthermore, STRS does not provide in its annual actuarial reports historical evidence that the mitigating rate has been used to reduce the liability. Both organizations have a responsibility to explain and illustrate how ARP and DC plans affect their future assets and liabilities, and how any mitigation is applied to

reducing the unfunded actuarial liability. Improved public disclosure of relevant data and analysis, as well as improved communication would benefit members and non-members alike.

- The lack of transparency on the effect of the ARP and DC plans on the DB plans and the calculation of the mitigating rate by STRS and OPERS, combined with the influence of the mitigating rate on contributions by OSU to ARP and DC plans by pits faculty and staff in each system against each other.
- The uncertainty related to the STRS/OPERS unfunded liability, the future size of the mitigating rate and its impact on retirement contributions have an unknown impact on recruitment and retention. Furthermore, the mitigating rate may have differential effects on individuals that are correlated with race, gender, and socio-economic status. The committee did not have sufficient time to explore these issues in any detail.

## **Part II: What can we do about the mitigating rate?**

The committee reviewed and discussed the items under vote in the February 2020 Faculty Council resolution on the mitigating rate. We were able to reach consensus on recommending further action on two of them. We did not reach consensus on the other three for the reasons given below. In addition, based on our discussions, we provide two other recommendations that the committee believes are in the interest of the University to undertake.

### **Consensus Recommendations**

*(1) The Ohio State Office of Human Resources should continue to clarify the language in materials provided to new employees, provide educational opportunities for employees to learn about various retirement options, and provide opportunities for employees to learn about the risks, benefits, and costs of investing on their own.*

Discussion among the committee members suggests that there continue to be concerns about how the Office of Human Resources describes the mitigating rate in documentation provided to faculty and staff as they are making decisions about whether to work at Ohio State. There is no doubt that the information provided is legally adequate, but it may be possible to do better than the minimum legal requirement. For instance, the documentation provided to new employees retrieved online at [hr.osu.edu](http://hr.osu.edu) currently states that "Ohio law ([Ohio Revised Code Section 3305.06](#)) requires a portion of the employer contribution for an ARP member go to the state retirement system to mitigate any negative financial impact of the ARP on the state retirement system. This portion is known as the mitigating rate."

This language could be clarified by making it explicit that employees do not receive any current or future benefit from the current 4.47% that goes "to the state retirement system". New hires may believe that they will receive future benefits from STRS as a result of this contribution. It should be made abundantly clear that these funds will not be returned to the employee in the future. Ohio State can also provide the total proportion or percentage of income that is provided to the individual's retirement account.

The language could also be clarified to indicate that the mitigating rate can fluctuate from year to year.

Finally, the Committee understands that the Office of Human Resources provides financial literacy and training courses for new employees on the basics of defined benefit plans, defined contribution plans, market risks and returns, and other issues related to retirement planning. The Committee recommends that the Office of Human Resources continue to evaluate these educational programs and work to provide the highest quality educational materials, and to routinely advertise these educational materials through a range of university mediums.

*(2) The University should work with the legislature, STRS, and OPERS, to increase the amount of time an individual must decide which system to join.*

The length of time a new employee must decide whether to join ARP, STRS DC or STRS DB is 120 days from employment by statute (ORC 3305.05(B)2). Given the importance of the decision, the uncertainty about future fluctuations in the mitigating rate, the uncertainty about future benefit calculations for STRS or OPERS, and uncertainty about employment longevity, especially for untenured faculty as well as staff members, the Committee recommends that the time period during which an employee can decide which plan to join should be extended to 1 year. This would better allow new employees to educate themselves about the available options.

*(3) OSU retirees deserve transparency about how the mitigating rate is calculated, how ARP and DC member mitigation payments have been used to reduce the UAL, and how STRS and OPERS DB member contributions have been used to reduce the mitigating rate. The Committee recommends that the University hire an independent auditor to conduct an audit of STRS and OPERS to achieve this goal.*

The 2014 ORSC report on the mitigating rate highlighted numerous inadequacies in the historical calculation of the mitigating rate by STRS and its actuaries. For example, the auditors who estimated the mitigating rate in the early 2000s purported to calculate the difference between an individual's contributions to STRS and the benefits that they would ultimately receive. However, the methodology that was used to arrive at these estimates was not made public, and the analysis could not be replicated. Thus, the actual effect that the existence of the ARP and DC programs has on the assets and liabilities of the STRS or OPERS systems is not known. Further, until 2017 STRS did not document contributions of funds from the mitigating rate to the UAL in their annual actuarial reports. These are now documented annually, but should be documented historically.

The legislature has implemented a formula to calculate the mitigating rate that does not actually account for the effect of ARP on the UAL. The formula uses a sum of two estimates of the mitigating rate. One estimate assumes that employers are liable to pay a percentage of an ARP members income for the UAL that is equal to the ratio of ARP payroll to the entire STRS DB eligible payroll, or about 6% presently. A second estimate assumes that employers pay the amount equivalent to the total employee + employer contribution minus the normal rate, or around 17.4% in 2020. The normal rate is the accumulation of benefits by a typical individual in a given year.

To put this in perspective, the normal rate was 10.6% in 2020, so a person earning \$100,000 per year earned \$10,600 in benefits that year in the DB plan. Because their total employee + employer contribution was 28%, or \$28,000, this same person also provided 17.4% in payments to reduce the UAL according to this second approach, or \$17,400. The implication is that an individual in the ARP is also responsible for this \$17,400.

The Committee is concerned that the current mitigating rate calculation does not represent the actual impact of ARP members on the UAL of STRS or OPERS. The Committee recommends that the mitigating rate should be determined by a calculation that reflects the actual effect of ARP participants on the UAL, using an approach that calculates the effect of ARP participation on STRS assets and liabilities. The methodology used should be publicly presented, and the data should be publicly available and reproducible. The Committee believes that an independent auditor is the best and most cost-effective way to achieve both of these goals.

*(4) The Committee recommends that the independent auditors hired by the University examine alternatives for implementing a phase-down or cap on individual mitigation payments*

The possibility that the mitigating rate would sunset was written into the original ARP legislation, but was removed in 2017 under HB 520 in favor of the current approach, which uses a specified formula to calculate the mitigating rate. One of the most important variables in this formula is the size of the UAL, which can be influenced by many decisions made by STRS including accounting practices, benefit levels, investment decisions, and management costs. It can also be influenced by decisions that cannot be controlled by STRS, including unanticipated market corrections, employee demographics, longevity and mortality rates, payroll and hiring growth, and legislative decisions about contribution rates.

The statutory formula yields a mitigating rate that has a large effect on individual ARP participants. For example, an employee starting at \$80,000 today, with 2% annual salary increases, and working for 35 years would pay nearly \$200,000 in mitigation (undiscounted) over their career. This amount is more than their highest salary over the 35-year period. In the case of market corrections that affect the mitigating rate, an ARP participant might experience an increase in the mitigating rate and a decrease in their own investment portfolio at the same time.

The Committee recommends that the auditor examine the possibility of implementing a cap on the mitigation owed by individual employees, either a time-certain period of contribution or an individual cap (e.g., \$100,000). This would satisfy the current legislative requirement to mitigate for the decision to enter ARP versus STRS/OPERS, but would limit the liability that individual ARP participants are exposed to over time.

**Items from the Faculty Vote that the Committee did not achieve consensus on recommending.**

The committee investigated the following proposals from the Faculty Council resolution and could not agree on recommending that the university move forward in implementing them.

*(1) The President, Provost, and Senior VP for Talent, Culture, and Human Resources actively work to abolish the mitigating rate as soon as possible, using all appropriate tools at their disposal.*

The committee examined the historical rationale for the mitigating rate, how it has been calculated over the years, and how the legislature has changed state law to adjust those calculations. As stated in the 2014 ORSC report on the mitigating rate, before HB 520 in 2017 the method used by STRS to calculate the mitigating rate was not clearly described, and the data have not been made available for independent bodies like ORSC to reproduce or evaluate the results.

That said, the mitigating rate has a large effect on ARP and DC employees, currently amounting to a reduction in their potential annual retirement contributions of 15.9%. We have not found evidence



that there is a similarly large impact on individuals who have remained in the STRS DB plan, although numerous changes in the retirement system over the last 9 years have led to increased employee contributions and lower retirement benefits for future retirees. The extent to which ARP has contributed to the need for these reductions is not clear.

While new information provided through a university-sponsored audit of STRS may ultimately reveal the need for additional efforts by the university or IUC to persuade the legislature to repeal the mitigating rate, current information is not sufficient to recommend taking this step now.

*(2) The university provides an additional match to ARP and STRS/OPERS DC participants to make up for the mitigating rate.*

This suggestion is based on the Faculty Council resolution "That all faculty receive 100% of the University contribution to their retirement accounts" which passed 28-3 with 8 abstentions and 8 individuals not voting. Based on current information, the university would spend an additional \$4.2 to \$18.7 million per year if it provided a 1% or 4.47% additional payment to STRS-eligible employees (Table 3). We do not have the data to conduct the same calculation for OPERS-eligible employees.

Table 3: Calculation of additional contribution required to pay the mitigating rate for faculty in ARP who otherwise would be in STRS.

	<b>STRS Eligible</b>
# of employees	8601
Total Salary in 2019	\$776,368,981
% ARP & STRS DC	54%
ARP & STRS DC Salary	\$419,239,250
1% of Salary	\$4,192,392
4.47% of Salary	\$18,739,994

We are uncertain about what the implications of increasing payroll costs to this extent would be. Budgets within the university are generally zero-sum games, meaning that increasing payroll costs could have a negative impact on other important areas of investment, such as hiring new faculty or increasing the annual AMCP pool.

*(3) The university compensates individuals in ARP and STRS/OPERS DC to make up for the mitigating rate applied historically.*

This suggestion is based on the Faculty Council resolution item 2: "That ARP faculty be fully compensated by the University for the amount diverted through the mitigating rate, retroactive to the date of election into ARP." This resolution received a vote of 19-11 with 9 abstentions and 8 individuals not voting. We estimate that the cost of historical compensation for STRS ARP and DC members is \$172 million.

As is evident in the Faculty Council vote, there was significantly less agreement on this proposal. The committee agrees with Faculty Council that this outcome has little potential of success.

## Appendix

### Faculty Council Voting Results: ARP Mitigating Rate Resolution

Prepared for Senate Steering Committee Ad Hoc Committee on the Mitigating Rate  
2/10/2020

#### Item 1:

I vote to approve the proposed resolution below: That all faculty receive 100% of the University contribution to their retirement accounts.

Yes- 71.79% 28  
No- 7.69% 3  
Abstain- 20.51% 8

#### Item 2:

I vote to approve the proposed resolution below: That ARP faculty be fully compensated by the University for the amount diverted through the mitigating rate, retroactive to the date of election into ARP.

Yes- 48.72% 19  
No- 28.21% 11  
Abstain- 23.08% 9

#### Item 3:

I vote to approve the proposed resolution below: That the President, Provost, and Senior VP for Talent, Culture, and Human Resources actively work to abolish the mitigating rate as soon as possible, using all appropriate tools at their disposal.

Yes- 76.92% 30  
No- 10.26% 4  
Abstain- 12.82% 5

#### Item 4:

I vote to approve the proposed resolution below: That the Steering Committee of the Senate places this resolution for discussion and vote by the full University senate.

Yes- 82.05% 32  
No- 5.13% 2  
Abstain- 12.82% 5

39/47 Responding