KANSAS BOARD OF REGENTS
Retirement Plan Committee
April 16, 2020

AGENDA

Kansas Board of Regents
Retirement Plan Committee
April 16, 2020 at 1:00 p.m.

1. Approve: Minutes from March 17, 2020

2. TIAA fund switch – Money Market funds – Brad Tollander
   Act on ACG's recommended change to the new Voluntary Plan lineup contingent on the Board's approval of the lineup at their April 15th meeting

3. CARES Act Retirement Plan provisions – Natalie Yoza
   Act on potential amendments to the Mandatory and Voluntary Retirement Plan Documents, allowing participants to utilize new CARES Act distribution and/or loan provisions.

4. Good of the Order

5. Next meeting September xx, 2020

KANSAS BOARD OF REGENTS

Retirement Plan Committee (RPC)

MINUTES

March 17, 2020

Regent Bangerter called the March 17, 2020, video conference meeting of the Kansas Board of Regents Retirement Plan Committee to order at 12:30 p.m.

Members Participating:

Regent Shane Bangerter, Chair	Mike Barnett, FHSU
Dipak Ghosh, ESU	Diane Goddard, KU
Dr. Rick Lecompte, WSU	President Steve Scott, PSU
Michele Sexton, PSU	Stacey Snakenberg, KUMC
Jay Stephens, KSU	Madi Vannaman, KBOR

Participating from Advanced Capital Group, were consultants Brad Tollander and Justin Dorsey. Also participating, from TIAA: Nicolette Dixon, Senior Relationship Manager; Tom Carmody, Managing Director, Brendan Horgan, Managing Director, Senior Investment Strategist; and Maggie Dehn, Managing Director; from Voya: John O'Brien, Regional Vice President; and Cindy Delfelder, Client Relations; from the Board Office: Natalie Yoza, Associate General Counsel, and Elaine Frisbie, Vice President Administration and Finance; and from KUMC: Kim Barksdale.

Minutes

The minutes from the September 17, 2019, meeting were approved unanimously. Michele Sexton moved to approve; seconded by Dipak Ghosh.

Introductions

Jay Stephens, KSU, the new HR representative on the RPC was introduced and welcomed. Brad Tollander provided information about Bernie Heffernon's departure from ACG and introduced Justin Dorsey, a principal with ACG.

KBOR Voluntary Retirement Plan

1. Natalie Yoza provided information about the process to revoke the retirement regulations, K.A.R. 88-10-1 *et seq.* and K.A.R. 88-11-1 *et seq*. The Kansas Budget Director approved the economic impact statement and the Kansas Department of Administration approved the language revoking the regulations. Board staff are waiting on the Kansas Attorney General's Office approval. The regulations will then go to the Joint Committee on Administrative Rules and Regulations, and Board staff will hold a public meeting. Then the Board will be asked to approve the revocations.

2. Natalie Yoza provided an update about communications regarding the upcoming changes to the Board's 403(b) Voluntary Retirement Plan. There have been three communications since the RPC last met in September 2019. Beginning with the first pay period in January 2021, TIAA and Voya will be the only approved vendors for new contributions to the Voluntary Plan. All other active and frozen vendors currently participating in the Voluntary Plan received letters informing them of the upcoming change. There were no complaints and only one vendor had a question about identifying affected participants. Plan participants received two emails—one informing them that TIAA and Voya would be the only approved vendors for new contributions beginning in January 2021 and a second one about the retirement regulations revocation. The majority of inquiries asked for verification that the Voluntary Plan will continue. One participant expressed his unhappiness as his deselected vendor has a fixed account with a guaranteed minimum of 4%.

He was informed that he could leave his funds in that account and that there are overall benefits for the new plans with TIAA and Voya. The RPC was informed that the participant could visit with TIAA and/or Voya reps who will perform a full review of his assets, taking into account his goals, and determine whether it would be in his best interest to make any changes based on objective advice.

3. For the consolidation of the Voluntary Plan in 2021, Justin Dorsey discussed several topics included in the ACG agenda material including whether to recommend employer-controlled contracts to replace the current participant-controlled contracts, whether to enter the proposed contracts that contain pricing reductions that will benefit all Plan participants, whether to approve ACG's new fund menu and whether to approve ACG's recommendations on where to direct new contributions of current TIAA and Voya participant assets if they do not make an affirmative selection before the new contracts take effect.

John O'Brien provided updated information that funds in the current Voya Voluntary Plan contract can be moved to the new contract pro-rata (not fund specific).

Brad Tollander asked the representatives from TIAA and Voya based on past experience what percentage of assets could be anticipated to move over the course of one year from the current to new Voluntary Plan contracts. Nicolette Dixon stated that because of plan participant inertia, TIAA does not expect to see a lot of consolidation but, if requested, TIAA could launch a consolidation campaign. TIAA's ultimate recommendation on whether a participation should move assets into the new account would be based on the participant's best interest. John O'Brien, agreed, stating that without any assistance, a small amount of funds would be transferred. The Voya representatives will work with each participant to review this as part of the annual review to ensure they clearly understand the new Voluntary Plan and its benefits and to determine what would be in the participant's best interest. But, the current market environment is making everything different and participants may be reticent to do anything and may be more attracted to a fixed account than they were six months ago.

Brad Tollander provided information about the Voluntary Plan investment analysis for the recommended TIAA and Voya plan lineups under the new contracts, including offering self-directed brokerage accounts, and recommended mapping new contributions for those current TIAA and Voya participants who do not take affirmative action for their contributions to their new Voluntary Plan accounts.

Rick LeCompte asked whether, in the future, we might limit the number of funds in the large blend category. Brad Tollander responded that yes, absolutely, if we move to the employer-controlled contract, additional eliminations could be considered as well as reviewing the lineups in the Mandatory and Voluntary Plan to see if they can be more consistent.

The RPC considered the following motion. Rick Lecompte moved and Jay Stephens seconded the approval of the following four motions which was passed unanimously as recommendations to be made to the Board of Regents:

1. Adopt employer-controlled contracts (in place of the current participant-controlled contracts) with TIAA and Voya for the Voluntary Plan effective with the first 2021 paycheck. Overall, Plan participants with TIAA and Voya will benefit from the reduced Plan pricing and additional

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flexibility in the employer-controlled contracts, even though the new contracts offer lower fixed account minimum guarantees and it will cause Plan disruption for participants because, for example, participants will need to move legacy assets into the new contract or maintain two accounts.
2. Adopt the proposed contracts with TIAA and Voya. The chart on pages 4-8 of the meeting materials outlines the benefits of accepting the proposed contracts with TIAA and Voya. One of those benefits is that TIAA participants will benefit from reduced pricing for the Mandatory and Voluntary Plan. And Voya participants will benefit from reduced pricing on the Voluntary Plan.
3. Adopt ACG's proposed fund lineups for the new Voluntary Plan contracts with TIAA and Voya.
4. Adopt ACG's recommendations on where to map new contributions for TIAA and Voya Voluntary Plan participants who do not make affirmative elections for their contributions under the new contract.

ACG Semi-Annual Report through December 31, 2019

Brad Tollander highlighted information from the ACG report, including a review of the very strong fourth quarter 2019, an update on various fund items and their management teams, and a review of funds on the watch list.

Brad Tollander shared that there are three types of recessions/bear markets:

1. Cyclical – occurred in 1980-1981 with elevated inflation and rising interest rates to combat inflation. Short-term rates were 20%. The average duration is 26 months and average draw down is -30%.
2. Structural – Occurred in the 2008 financial crisis and are the longest and most severe. The average duration is 42 months and average draw down is -57%.
3. Event driven – which is possibly what we are currently experiencing. The average duration is 7 months, the average draw down is -26% and losses are recovered in about one year. At the earliest, recovery could possibly begin in the late fall.

ACG recommended that the TIAA-CREF Large-Cap Value Institutional Fund remain on the watch list even though the near-term performance results have improved significantly, ACG's preference is to see meaningful improvement in the fund's long-term relative performance results and management team stability before recommending removal from the watch list. ACG will evaluate again at the Fall 2020 RPC meeting.

ACG recommends the TIAA-CREF Mid-Cap Value Institutional Fund remain on the watch list due to the additional management changes as well as a change in investment process from deep value to a relative value approach and will evaluate again at the Fall 2020 RPC meeting.

ACG recommends the Voya Small-Cap Opportunities Portfolio Fund be replaced due to both continued underperformance as well asset outflows. Although the fund has been on the watch list for a year, the fund assets have continued to decline and now stand at approximately $296M. At approximately $19.3M of this, KBOR Mandatory Plan participants account for approximately 6.5% of assets in the share class. KBOR participants would represent approximately 2.8% of the combined share class assets.

ACG Fund Line-up Recommendations

TIAA did not propose any changes to the Mandatory Investment lineup this year, and Voya made two recommendations:

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1. Replace the Voya Small-Cap Opportunities Portfolio with a different small cap growth option. ACG agrees with this recommendation and provided considerations and search information in the agenda material. Voya provided two options for consideration: Loomis Sayles Small Cap Growth Institutional and Janus Henderson Triton T. ACG recommends the Loomis Sayles Small Cap Growth fund for the following reasons:
    a. Greater diversification benefits than the current option and Janus Triton compared to similar options in the plan (Vanguard Small Cap Index and Champlain Mid Cap Institutional);
    b. Seasoned team of Portfolio Managers supported by four analysts, which average 17 years on the strategy;
    c. Style purity relative to Janus Henderson Triton, a small-mid growth fund;
    d. Better upside/downside capture ratio;
    e. Has outperformed Voya Small Cap Opportunities in 51 of 73 rolling five-year periods (70% of the time) and has positive alpha relative to both other options.

2. Add a foreign small cap equity option to their lineup. ACG agrees with this recommendation and provided considerations and search information in the agenda material. Voya provided two options for consideration: DFA International Small Company I (0.54% expense ratio) and Fidelity Advisor International Small Cap Z (1.04%). ACG recommends adding the Fidelity Advisory Institutional Small Cap Z for the following reasons:
    a. Strongest trailing returns of the two options;
    b. Strongest three and five-year rolling returns, outperforming the DFA International Small Company I in 73 of 73 (100%) rolling 5-year time periods;
    c. Most favorable five-year risk-reward and up and down-market capture
    d. Strongest head-to-head rolling-period-of-time analysis;
    e. A slight value bias, resulting in lower historical correlations to current growth-leaning international options.

Mike Barnett moved, and President Scott seconded the motion, to recommend to the Board of Regents to replace the Voya Small-Cap Opportunities fund with the Loomis Sayles Small Cap Growth fund and add the Fidelity Advisory Institutional Small Cap Z fund in the Mandatory Retirement Plan.

KUMC Research Institute Retirement Plan

Natalie Yoza provided an update about the KU Medical Center Research Institute retirement plan issue which had been brought to the attention of Board staff. Employees of the KUMC Research Institute (KUMCRI), a not-for-profit corporation subordinate entity to KUMC, transitioned employment to KUMC. As part of that transition, employees were terminated from KUMCRI, and were hired by, KUMC. As a result, employees enrolled in the KUMCRI retirement plan have been caught in limbo with an inability to rollover their funds. Ice Miller was hired to provide counsel and guidance about what options are available for the KUMCRI retirement plan, merged with or transferred to the KBOR retirement plan.

Voya's Response to Recent Media Articles

John O'Brien provided information relative to recent media articles about a potential sale of Voya Financial. There are no active conversations ongoing about Voya being for sale.

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COVID-19 Related Activities: TIAA and Voya

Cindy Delfelder shared that Voya is fully prepared and has implemented work-at-home strategies for its employees, where necessary. Voya representatives working with universities and health care markets are using Zoom technology to communicate with participants. Voya has three call centers across the U.S. that are being utilized and call center staff are setup with work from home capabilities as well.

Nicolette Dixon shared that as of March 16th, TIAA implemented a work from home approach where feasible for its employees. There is a full business continuity plan in place to ensure that maximum possible service levels are maintained and to minimize any disruptions. TIAA has three call centers across the U.S. that are being utilized.

Regent Bangerter asked about the type of participant inquires being received. Cindy Delfelder stated that many participants are calling just to talk about the situation and not necessarily to take any action. The Voya representatives are reviewing participant accounts, along with their ages and when they want to access their funds. Many participants appear to be in a holding pattern for now, and many are asking whether now is the time to buy. Nicolette Dixon stated that there has been an uptick in calls from KBOR participants. TIAA's approach is to help keep participants calm (even though it may be difficult) and to help them understand that now is a great time to be properly diversified. [After the meeting additional information was shared with the RPC. Nicolette Dixon shared TIAA's full business continuity plan that is in place and Roger Ferguson's article about market volatility and staying calm and focused on long-term financial goals. Cindy Delfelder shared one of many Voya articles available to participants regarding Market Volatility and the Voya business continuity plan.

Good of the Order

The RPC recognized and thanked a founding member, Michele Sexton, who will be retiring in June. Michele volunteered to host future RPC meetings at her Las Vegas residence, and we hope that we will see Elvis Presley there!

Next RPC meeting:

The next regular RPC meeting will be scheduled for September 2020 TBD.

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April 8, 2020

Natalie Yoza
Associate General Counsel
Kansas Board of Regents

RE: KBOR – and impact of Federal Reserve Rate Reductions on TIAA Money Market funds

Conclusion:

We recommend substituting the "TIAA-CREF Money Market" fund in place of the "CREF Money Market" fund in the new employer controlled KBOR Voluntary Plan.

Discussion:

The purpose of this memo is to explore the possibility that in this unique "negative yield" environment, Money Market funds may "break-the-buck." E.g. Their "Net Asset Value" may go below par. Historically, Money Market funds were expected "not" to break-the-buck. But, that changed after 2008. Today it is possible – and because of the annuity-structure of the CREF Money Market – it is likely to do so. To illustrate with a hypothetical, Par (or Net Asset Value 'NAV') of a Money Market fund is generally $1 per share. And an example of it "breaking-the-buck" would be if an account had a $100 Money Market balance and the fund lost 12 "basis points" – it would then be worth $99.88.

Against that back-drop, TIAA offers two different Money Market funds: 1) CREF Money Market and 2) TIAA-CREF Money Market. They have the same investment objective and similar holdings but one is part of College Retirement Equites Fund and the other is part of TIAA Investments, a division of Nuveen. The CREF Money Market Fund is in both the KBOR Mandatory Plan and Voluntary Plan. The TIAA-CREF Money Market fund is in the Voluntary Plan – but not in the Mandatory Plan. The CREF Money Market fund is an annuity product under the TIAA umbrella. And as such, one of its attributes is that it allows participants the ability to annuitize at retirement.

Principal Preservation Options Available to Date

TIAA Mandatory Plan	TIAA Voluntary Plan (Existing)	TIAA Voluntary Plan (Approved)
TIAA Traditional (10 yr lock-up)	TIAA Traditional (liquid)	TIAA Traditional (liquid)
TIAA Stable Value	TIAA-CREF Money Market	- -
CREF Money Market	CREF Money Market	CREF Money Market

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Both the CREF Money Market Account and the TIAA-CREF Money Market Fund are backed by the holdings of their respective fund/account. The distinction or difference is that CREF runs at cost so in the situation like we are approaching now where the return won't cover the expense ratio it will go negative.

On the other hand, Mutual Funds which are run for a profit have the ability to backstop losses through other profits so it won't break the buck. With special regulatory approval, TIAA can pass-through a loss on the CREF Money Market Account to its General Account and be able to maintain its $1 NAV. In 2008, TIAA was able to absorb the loss but only after getting a fee waiver approved by the regulators. And even then, it wasn't technically backed by the TIAA General Account. TIAA has again applied for this exception. But there is no guarantee it will get it – and even if approved it will be a stop-gap solution.

The net impact of the preceding is that for Participants with account balances in the CREF Money Market Account their account balances could possibly have a negative return.

And as a final note, while it appears likely (as of this writing) that the CREF Money Market Account will break the buck, it is also theoretically possible for "mutual fund" MM's to break-the-buck. To that end, we reached out to Vanguard (the MM which Voya uses) to see if they could "guarantee" that their fund would "not" break-the-buck. Their answer was "not at this time."

Participant Counts

Provider	Mandatory Plan	Voluntary Plan
TIAA	CREF Money Market = 1,633	CREF Money Market = 294 TIAA-CREF Money Market = 99
Voya	Vanguard Treasury Money Market = 191	N.A.

<u>According to TIAA</u> a participant communication will be going out on or around 4/28 and it will go to those that have annuitized in CREF Money Market, taken income, or are active in-plan. It will be similar to the approach they took in 2016-2017. It will be an email notification and for those that have opted out of email it will mailed.

<u>Alternative Options: Mandatory Plan</u>

TIAA Mandatory Plan
Traditional (10 year lock-up)
TIAA Stable Value
CREF Money Market

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One constraint in the Mandatory Plan (because of its Individual Contracts structure) is that it "must" offer the CREF MM fund. Thus in the mandatory plan, participants must make the election to move balances in the event they want to avoid the potential negative yield on CREF Money Market – and the CREF MM will still need to be offered as an option.

That said, Participants in the Mandatory Plan can move those proceeds to any of the other options in the plan – including, but not limited to, the "other" fixed income options in the Mandatory Plan: Traditional (10 year lock-up) or the TIAA Stable Value fund. One technicality is that while they can move money into the Stable Value fund at-will, there will be a restriction ("equity wash rule") on then moving "out" of the Stable Value fund and into options deemed to be competing options to the Stable Value fund. Those options in the Mandatory Plan would include the CREF Money Market, TIAA Real Estate Fund, or short-term bond fund with a maturity of 3-yrs or less. The equity wash provision is meant to deter participants from moving from the stable value fund and into a competing option which could negatively impact the remaining stable value fund shareholders. The equity wash provision requires the stable value shareholder to invest in a non-competing investment option for a period of 90 days before investing in the competing option.

Although the RPC could add a second money market fund to the Mandatory Plan, given the duplication in the asset class as well as the other options available to KBOR participants, we would recommend against adding a second money market alternative.

Voluntary Plan (Existing)

TIAA Voluntary Plan
TIAA Traditional (liquid)
TIAA-CREF Money Market
CREF Money Market

In the current Voluntary Plan, Participants can elect to move into either the TIAA-CREF Money Market Fund or the Traditional (liquid) annuity. Lump-sum withdrawals and transfers are available from TIAA Traditional without any restrictions or charges. However, if they transfer out of TIAA Traditional and transfer back into it within 120 days, the amount up to the original transfer will be credited with the same interest rates that would have applied if the transfer out had not taken place.

Given the liquid nature of the TIAA Traditional as well as having the TIAA—CREF Money Market fund also available to plan participants, it is our recommendation that no additional lineup changes be made to the existing Voluntary Plan at this time. However, it will be important that TIAA communicate to

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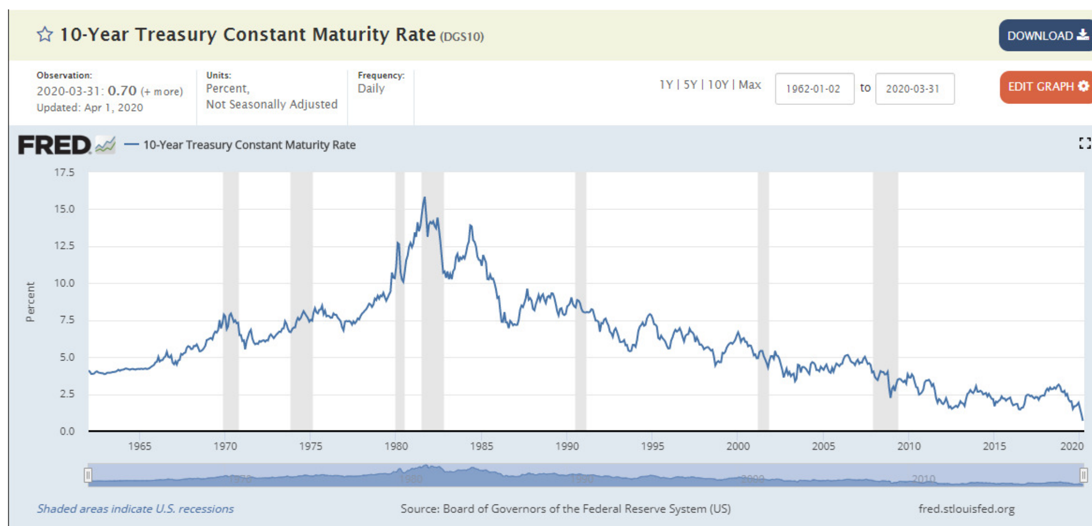
participants in the CREF Money Market Account about the current situation and the options available to them.

Voluntary Plan (Approved)

TIAA Voluntary Plan
TIAA Traditional (liquid)
TIAA-CREF Money Market
~~CREF Money Market~~

Given the recent developments (and at the encouragement of TIAA itself) ACG recommends that RPC reconsider the decision to add the CREF Money Market Account to the Employer Controlled Voluntary Plan as of January 1, 2021 and instead add the TIAA-CREF Money Market fund to the new lineup. Deferrals that were being sent to either the CREF Money Market Account and TIAA-CREF Money Market Fund in the individual contracts will be directed on January 1, 2021 to the TIAA-CREF Money Market Account.

Voya Fixed Account Rate Reset



Finally, as the previous chart shows, the ten-year Treasury rate has hit historic lows. As you can imagine, maturing bonds are being re-invested at much lower rates. This is the exact same dilemma facing the money market managers described previously. In this low rate environment, many fixed account managers have reduced their current crediting rate. On April 1, Voya reduced the crediting rate on their Fixed Account in the Mandatory Plan by 0.20% (or 20 basis points) from 2.00% to 1.80%. They continue

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to honor their 3.00% floor rate in the old participant controlled KBOR Voluntary Plan by crediting participants at this 3.00% rate. As a reminder in the proposed employer controlled Voluntary Plan the guaranteed minimum floor rate remains at 1.00%.

Sincerely,

Bradley E. Tollander, CFA
Senior Investment Consultant
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Act on New CARES Act Coronavirus Provisions

Summary and Staff Recommendation

A new federal law enacted in response to the coronavirus disease 2019 (COVID-19) creates a new in-service distribution called the coronavirus-related distribution. It also alters loan requirements for qualifying individuals to increase loan limits and extend repayment terms. Both are short-term solutions that expire within the year. They are designed to ease access to retirement funds if a participant is suffering financially because of COVID-19.

The Board has delegated authority to the Retirement Plan Committee (RPC) to amend the Mandatory and/or Voluntary Plan to adopt these CARES Act provisions. Advanced Capital Group (ACG) recommends that the RPC adopt the coronavirus-related distributions for both the Mandatory and Voluntary Retirement Plans. But ACG recommends that the RPC adopt the loan provisions for the Voluntary Plan only because loans are not currently permitted for the Mandatory Plan. If any of these provisions are adopted, codification of the adopted amendments to the Plans will be required later.

Background

The Kansas Board of Regents is required by K.S.A. 74-4925 to offer a 403(b) compliant retirement plan for eligible faculty and staff; this plan is generally called the Mandatory Retirement Plan. The Board is also permitted by K.S.A. 74-4925b to offer a supplemental 403(b) compliant retirement plan to which eligible faculty and staff may voluntarily contribute; this plan is generally called the Voluntary Retirement Plan. These Plans are both administered pursuant to written plan documents.

The Board created the Retirement Plan Committee (RPC) as a co-fiduciary for the Mandatory and Voluntary Retirement Plans. Through the RPC Charter, the Board has delegated to the RPC responsibility for approving and adopting Plan documents and material amendments and modifications subject to any further approval requirements of the Board.[1] The Board has not adopted any further approval requirements, so the RPC has authority to decide whether to amend the Plan documents.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was recently enacted to loosen restrictions on distributions and loans for employees impacted by COVID-19. These provisions are optional, and the RPC will need to decide whether to offer a new kind of in-service distribution called a coronavirus-related distribution and/or to adopt the new loan provisions. If adopted for the Mandatory and/or Voluntary Plans, Plan document amendments will be required. However, the law gives government plans until January 1, 2024, to make those amendments. For now, the RPC's action is sufficient to adopt the provisions, and it would be communicated to the Plans' recordkeepers to implement as soon as practicable. Any motion to adopt these changes should state that these amendments take effect on the effective date or as soon as administratively practical thereafter.

Changes to required minimum distributions (RMDs) that require no RPC action are also summarized.

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[1] RPC Charter, p. 3.

A. CARES Act Eligibility and Certification Requirements

Under the CARES Act's coronavirus-related distribution and loan provisions, the individual must be a "qualified individual" under the Act, meaning the individual:

- is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention, or

- has a spouse or dependent diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention, or

- experiences adverse financial consequences as a result of (i) being quarantined, furloughed or laid off or having work hours reduced due to COVID-19, (ii) being unable to work due to lack of child care due to COVID-19, (iii) being unable to work due to closing or reducing hours of a business owned or operated by the individual due to COVID-19, or (iv) other factors as determined by the Secretary of the Treasury.

These definitions, particularly the third category, cast a wide net for who would be deemed a qualified individual to receive the distribution and/or benefit from the loan provisions. As plan administrator, the Board may rely on an employee's certification that one of the above conditions is satisfied. This means the Board is not required to obtain documentation that, *e.g.*, an individual was diagnosed with COVID-19. Instead, the participant will self-certify that they meet one of those conditions.

However, if either of these provisions are adopted the Board would be responsible for ensuring that the aggregate monetary limits for distributions and/or loans have not been exceeded by the participant with respect to all employer-sponsored retirement plans. Here, the employer is the State of Kansas, so it includes the Board's Mandatory and Voluntary Plans and the KPERS 457 Plan.

B. CARES Act Coronavirus-Related Distributions

Under the current Mandatory Plan Document, in-service distributions are prohibited unless it is under a phased retirement agreement, and a participant that takes a non-permitted distribution is subject to a 10% penalty.[2] But the Voluntary Plan permits some in-service distributions. For example, the Voluntary Plan permits hardship withdrawals of pre-tax and Roth contributions consistent with the safe harbor rules.[3] Notably, one of the qualifying financial needs for a hardship withdrawal is expenses for, or necessary to, obtaining medical care for the participant, his or her spouse, primary beneficiary, children or any dependents. A hardship withdrawal is also permitted when a FEMA disaster has been declared, and Kansas was declared a major disaster area by FEMA from January 20, 2020, and continuing as of the date this memo was written.[4] But there are several limitations on these hardship withdrawals, including that they are not to exceed the amount of the

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[2] Mandatory Plan Document, Art. IX, § 9.06.
[3] Mandatory Plan Document, Art. X, § 9.05; For information on the FEMA disaster declaration, see https://www.fema.gov/disaster/4504 (last visited on April 9, 2020).
[4] Mandatory Plan Document, Amendment Three, § 9.05;

financial need and are only permitted if the participant has obtained all other distributions under the employer's plans.[5]

The CARES Act creates a new kind of in-service distribution called a coronavirus-related distribution, which is available to qualified individuals as defined above.[6] These coronavirus-related distributions have fewer restrictions than the Voluntary Plan's hardship withdrawal rules. The coronavirus-related distribution does not limit the distribution to the amount of financial need. A qualified individual can receive the lesser of $100,000 or 100% of a participant's vested balance. But this is a short-term solution to a financial exigency created by COVID-19 because it will no longer be available after December 31, 2020.

The following rules also apply to coronavirus-related distributions:

- It is not treated as an eligible rollover distribution;
- Mandatory withholding does not apply;
- A 402(f) special tax notice is not required;
- A 10% withholding will apply unless the participant elects out of withholding;
- Unless the participant elects otherwise, a coronavirus-related distribution will be included in the participant's gross income ratably over three years beginning with the year of the distribution.

A participant may repay the coronavirus-related distribution in one or more contributions to any eligible retirement plan to which a rollover contribution has been made within three years of the distribution. That repayment will be treated as a direct rollover for tax purposes made within 60 days of the distribution.

A widely distributed bulletin from the Ice Miller law firm also explains that:

> "Regardless of whether or not a retirement plan is amended to permit coronavirus-related distributions, the 10% early distribution penalty tax will not apply to a distribution that otherwise qualifies as a coronavirus-related distribution. For example, assume a participant is laid off at age 45 due to COVID-19 and takes a $10,000 distribution from the retirement plan due to his severance from employment. Normally, he would have to pay a 10% early distribution penalty tax on the distribution. Under the CARES Act, however, even though the distribution is taken due to the participant's severance from employment, since it meets the definition of a coronavirus related distribution, the distribution will be exempt from the 10% early distribution penalty tax. The same result will hold true for a distribution made under a retirement plan's hardship withdrawal provisions to a qualified individual."[7]

[5] Mandatory Plan Document, Amendment Three, § 9.05.
[6] CARES Act, Title II, Subtitle B, § 2202(a).
[7] Ice Miller, Accessing Retirement Plan Funds Under CARES Act and Existing Law, March 27, 2020.

The available data suggests that participants are more likely to take a coronavirus-related distribution than a loan under these circumstances. As of April 7, 2020, TIAA had 4,455 CARES related transactions across all the Plans it serves, 60% of those transactions suspended loan payments, 39% of those transactions were coronavirus-related distributions, and only 1% of those transactions were CARES Act loans.

Recommendation on Coronavirus-Related Distributions:

The Voluntary and Mandatory Plans are analyzed separately, and a separate motion for each Plan is required.

Voluntary Plan – ACG recommends that the RPC amend the Voluntary Plan document to permit coronavirus-related distributions because these distributions are an emergency measure unique to the COVID-19 pandemic that will statutorily expire on December 31, 2020. Thus, there is no lingering administrative effect on a plan after December 31st. These distribution provisions are also likely to be more widely adopted by plan sponsors than the loan provisions, according to feedback from multiple recordkeepers.

The Voluntary Plan is also a supplemental retirement plan comprised entirely of the participant's elective deferrals. Permitting coronavirus-related distributions would not be a large departure from current Voluntary Plan rules. It already permits eligible hardship withdrawals that would also be covered by the coronavirus-related distribution provisions, except that the CARES Act imposes less restrictions on the distributions.

But Board staff and ACG recommend the RPC limit the companies that are permitted to offer these distributions to the six companies that are currently approved for new enrollments and the seven frozen companies.[8] And those companies must be capable of properly administering the provisions in conjunction with the Board's third-party administrator, PlanWithEase, including obtaining the participant's certification that the participant: (1) is a qualified individual as defined by the CARES Act; and (2) has not exceeded the $100,000 limit across all employer-sponsored retirement plans.

There are several companies that used to participate in the Voluntary Plan but were deselected as of December 31, 2008.[9] ACG and Board staff do not recommend permitting coronavirus-related distributions for these deselected companies because those companies do not utilize PlanWithEase. The administrative burden of satisfying the Board's duty to ensure the monetary limits are not exceeded across all employer-sponsored plans is too high if these companies are included. And we are not legally required to include the deselected companies.

Mandatory Plan – ACG recommends that the RPC move to adopt the CARES Act coronavirus-related distributions for the Mandatory Retirement Plan. Traditionally, the Mandatory

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[8] The approved companies are: TIAA, Voya, Valic, Ameriprise Financial Services, Inc., Security Benefit, and Waddell & Reed Financial Services. The seven frozen companies are: American Century Investments, Lincoln Investment Planning, Inc., Lincoln Life, Lincoln National Life Insurance Co., Modern Woodmen of America, Reliastar Life Insurance Co., and Thrivent Financial for Lutherans.

[9] See https://www.kansasregents.org/about/regents_retirement_plans/listing_of_approved_voluntary_plan_providers, Sections III and IV for a list of those companies.

Plan has not allowed in-service distributions, except for those under phased retirement agreements. But ACG's rationale is that the number of participants and average account balances are much larger in the Mandatory Plan than the Voluntary Plan. The Mandatory Plan is a much more substantial source of emergency funds for participants who self-certify that they meet the definition of a qualified individual. As previously explained, the coronavirus-related distribution is an emergency distribution and access will expire on December 31, 2020. Finally, if the initial data holds, participants are much more likely to rely upon a distribution than a loan. So, ACG recommends that the Mandatory Plan allow coronavirus-related distributions.

But it is worth noting that the Mandatory Retirement Plan is the main retirement vehicle for many participants, so the risk of retirement leakage is more severe. Distribution of retirement savings, prior to normal retirement age, can seriously impact a participant's financial security and ability to retire. This is exacerbated by the impact the coronavirus has had on the stock market. Plus, the Mandatory Plan includes both employee and employer contributions. Because of the short time frame and administrative burden, we have been advised not to limit the distributions to employee contributions only.

C. CARES Act Coronavirus-Related Loan Provisions

Under the current Mandatory Plan Document, loans are not permitted.[10] For the Voluntary Plan, loans are permitted from the participant's pre-tax and Roth contributions.[11] The Voluntary Plan loans adopt the federal rules that the loans cannot exceed the lesser of $50,000 reduced by the greater of: (1) the outstanding balance on any loan from the participant or (2) the highest outstanding balance on loans to the participant during the one-year period ending on the day before the loan is approved. Alternatively, the loan cannot exceed 50% of the participant's vested account balance.[12] Under Code Section 72(f), the loan term is limited to 5 years, except for home loans, and requires level repayments.

For a qualified individual, the CARES Act increases the maximum loan amount for new loans from $50,000 to $100,000 and would permit loans up to the greater of $100,000 or 100% of the present value. But this increase is only available for loans taken out until September 23, 2020.[13] This is an even shorter timeline than the coronavirus-related distributions, which are available until the end of the year. If the participant already has a loan, the new loan amount is reduced by the pre-existing loan amount. The increased loan amounts are an optional provision in the CARES Act, so the RPC will need to vote to authorize it for one or both Plans.

The Cares Act also allows qualified individuals to delay loan repayments for up to one year, although interest continues to accrue. This applies to pre-existing loans if loan payments are due between March 27, 2020 and December 31, 2020. This provision is mandatory, and the RPC does not need to take action in order for qualified individuals to utilize it.[14]

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[10] Mandatory Plan Document, Art. X.
[11] Voluntary Plan Document, Art. X, § 10.01.
[12] Voluntary Plan Document, Art. 10, § 10.03.
[13] Increased loan limits available only for 180 days after enactment.
[14] Ice Miller, Accessing Retirement Plan Funds under the CARES Act and Existing Law, March 27, 2020.

Recommendation on CARES Act Loan Provisions:

Voluntary Plan – ACG recommends that the RPC move to adopt the increased loan limits for the Voluntary Retirement Plan. There is a strong argument for adopting these provisions for the Voluntary Plan because loans are already permitted, it is a supplemental plan, and it is comprised entirely of the participant's elective deferrals. But, like the coronavirus-related distributions, this should only be permitted for the six companies approved for new enrollments and the seven frozen companies. And, only if those companies can properly administer the loans in conjunction with PlanWithEase and obtain the participant's certification that the participant: (1) is a qualified individual as defined by the CARES Act; and (2) has not exceeded the maximum loan amounts. The remaining deselected companies should not be permitted to offer these increased loan amounts. The administrative burden of satisfying the Board's duty to ensure the monetary limits are not exceeded across all employer-sponsored plans is too high if these companies are included.

Mandatory Plan – ACG does not recommend adding a loan option and permitting these increased loan amounts for the Mandatory Retirement Plan. Since loans are not currently permitted in the Mandatory Plan, it is more administratively challenging to begin offering it for the limited timeframe available. As stated above, the data shows that participants are much more likely to take the distributions than to take a loan, so the administrative responsibilities are high even though low utilization is anticipated.

D. CARES Act Waiver of Required Minimum Distributions (RMDs)

The CARES Act also eliminated required minimum distributions for a short period of time. This change occurs by operation of law and does not require action by the RPC. However, the RPC should be aware of it, and a Plan amendment will be sought to memorialize this short-term change.

Typically, participants must take RMDs beginning at age 70.5, or 72 if born after June 30, 1949. The distribution amount is based on the account balance at the end of the prior year, *i.e.*, before the market declined because of COVID-19. In 2009, Congress waived these RMDs during the financial crisis.[15] And the Board amended the Mandatory and Voluntary Plan Documents to reflect those changes in the federal law.[16]

The CARES Act also waives RMDs for 403(b) plans for any RMD required to be paid in 2020 and to 2019 RMDs that are required to be made by April 1, 2020. The five-year distribution period that applies to certain beneficiaries will be determined without consideration of the 2020 calendar year.

TIAA is continuing to pay RMDs unless the participant asks that they cease. Voya has decided to cease paying RMDs unless the participant asks for the distribution. At this stage, we are not aware of what the remaining active/frozen companies for the Mandatory and Voluntary Plans are doing regarding RMDs.

[15] See the Worker, Retiree, and Employer Recovery Act of 2008.

[16] Mandatory Plan Document, Amendment No. 1; Voluntary Plan Document, Amendment No. 1.