

KANSAS BOARD OF REGENTS  
Retirement Plan Committee  
September 17, 2019

Curtis State Office Building  
1000 SW Jackson, Suite 520  
Topeka, KS 66612

## AGENDA

Kansas Board of Regents  
Retirement Plan Committee  
September 17, 2019 at 12:30 p.m.

1. Approve: Minutes from March 19, 2019 and June 13, 2019
2. Introductions
  - A. President Steve Scott, PSU, new RPC member representing the Council of Presidents
3. KBOR Voluntary Retirement Plan – Natalie Yoza
  - A. Hardship provision update
  - B. Regulation changes
  - C. Consolidation of Recordkeepers
    - i. Act on ACG’s Special Project contract
    - ii. Act on ACG’s Voluntary Plan Investment Consulting contract
4. Other Plan Documents Updates – Bernie Heffernon
  - A. Mandatory Retirement Plan
  - B. Investment Policy Statement
  - C. Vendor Management Document
5. ACG Investment Analysis – through 6/30/19
6. Good of the Order
7. Next meeting March xx, 2020

KANSAS BOARD OF REGENTS  
**Retirement Plan Committee (RPC)**  
MINUTES  
March 19, 2019

Regent Bangerter called the March 19, 2019, meeting of the Kansas Board of Regents Retirement Plan Committee to order at 12:30 p.m.

Members Participating:

Regent Shane Bangerter, Chair  
Dr. Dipak Ghosh, ESU  
Dr. Rick Lecompte, WSU  
Madi Vannaman, KBOR

President Allison Garrett, ESU  
Diane Goddard, KU  
Gary Leitnaker, KSU

RPC members Mike Barnett, FHSU; Michele Sexton, PSU, and Stacy Snakenberg, KUMC, participated by phone.

Also present were Brad Tollander and Bernie Heffernon, Advanced Capital Group consultants. From TIAA: Nicolette Dixon, Senior Relationship Manager; Maggie Dehn, Managing Director, Institutional Relationships; Tom Carmody, Managing Director, Retirement Plan Sales; Stephanie Mishak, Director, Financial Consulting and Ciaran Murphy, Senior Director, Investment Strategist. 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.

**Minutes**

The minutes from the September 18, 2018, meeting were approved unanimously.

**Executive Session**

At 12:40 p.m., President Garrett moved, followed by the second of Gary Leitnaker, to recess into executive session for 15 minutes to discuss matters deemed confidential in the attorney-client relationship. The subject of this executive session was to receive an update on plan responsibilities and the purpose was to protect the attorney-client privilege. Participating in the executive session were members of the RPC and Associate General Counsel Natalie Yoza. At 12:55 p.m., the meeting returned to open session.

**KBOR Document Review Update**

Natalie Yoza provided the RPC with an update about the Plan document review. An RPC sub-committee will meet this summer to continue work on the Plan documents for inclusion in the September RPC meeting agenda.

**Fiduciary Duty & the Kansas Tort Claims Act**

Natalie Yoza provided information related to the Committee members' fiduciary duties and the Kansas Tort Claims Act.

**Industry Trends Update – ACG**

Bernie Heffernon provided an update about higher education litigation, the cyber security questionnaire provided to TIAA and Voya, plan document review update. TIAA and Voya were subsequently requested to provide information about capturing participant data so that targeted information can be provided to enhance participation and outcomes and that topic will be covered in this summer's sub-committee meeting.

### **Recap of Markets and Economy**

Brad Tollander provided a recap of the markets and economy for 4<sup>th</sup> quarter 2018 into the 1<sup>st</sup> quarter 2019.

### **Outstanding Items from Last RPC meeting**

#### **Dimensional Target Date Retirement Funds**

The RPC had requested an evaluation of the DFA Target Date Retirement Income Fund at the September meeting and for ACG to provide feedback on whether they should be considered for possible inclusion in the Mandatory Plan. Due to the fund's limited history (inception in November 2015), ACG recommended that a full evaluation of the funds be made at the Spring RPC meeting.

ACG commented that DFA has an interesting concept that sets it apart from other target date fund competitors, but it is a potentially complicated concept that may prove difficult to explain to participants. Overview information about the fund, as well as its glide path and evaluation of the fund, were discussed.

Based on the limited track record, small asset base, and differing investment approach of the DFA Target Date Funds relative to the existing strategies offered by Voya and TIAA, ACG recommends that the DFA Target Date Retirement Income Funds not replace either of the existing target date funds. And, ACG advises against adding the DFA funds to the lineups as a complimentary target date suite to the existing target date funds.

#### **Underutilized Funds**

Several funds in both the TIAA and Voya fund line-up are not heavily utilized (participants and assets). The RPC requested that ACG review the underutilized funds, excluding the Amana funds from the review. ACG identified three funds in each of the TIAA and Voya line-ups that were underutilized:

##### *TIAA*

Wells Fargo Growth (815 participants, \$27.7M assets)

Royce Opportunity (579 participants, \$6.5M assets)

AB Small Cap Growth (921 participants, \$11.1 assets)

##### *Voya*

Vanguard Treasury Money Market (144 participants, \$3.6M assets)

Champlain Mid Cap (776 participants, \$10.2M assets)

American Beacon Small Cap Value (227 participants, \$1.5M assets)

ACG's recommendation is to keep the following: (TIAA) Royce Opportunity Fund, AB Small Cap Growth; (Voya) Champlain Mid Cap, American Beacon Small Cap Value. These funds are found in asset classes which are not commonly popular with plan participants, however they do offer diversification benefits when combined with other funds to create a portfolio. The removal of these funds would eliminate the sub-asset class category from the Plan and potentially lead to less efficient portfolios.

Discussion about the other funds is included in the retirement company Fund Menu Analysis below.

Underperforming funds

Brad Tollander reviewed the funds newly added to the Watch List, as of December 31, 2018: TIAA-CREF Large-Cap Value Instl, TIAA-CREF Mid-Cap Value Instl and Voya Small Cap Opportunities Port 1.

**TIAA Proposed Fund Menu Analysis**

*Add:* Core Plus Bond Fund to provide participants with access to high yield and emerging debt plus sectors. ACG agreed that the current plan options, the CREF Bond Market Fund, is a traditional intermediate investment grade bond fund which tracks closely with the Bloomberg Barclays Aggregate Index. Core Plus managers have wider latitude to invest outside of traditional fixed income sectors such as Treasuries, Agencies, Mortgages and investment grade corporates to add value. These less traditional sectors such as high yield and foreign debt can add different sources of return as well as improved diversification to a portfolio.

TIAA provided a number of options that ACG narrowed down to a manageable number by reviewing risk-adjusted performance, consistency of performance, fees and management team skill. ACG recommends adding the PGIM Total Return Bond R6 Fund (PTRQX) to the TIAA lineup for the following reasons:

- Solid consistency of returns
- Sound risk-adjusted results
- Long-tenured management team
- Reasonable fees
- Lower correlation of results

Gary Leitnaker asked about demand for the fund. Brad Tollander responded that he did not expect the fund to take off. New participants may look at it and choose it because of its returns over the CREF Bond Market Fund but TIAA indicates 47% of flows are going into target dated funds. Rick LeCompte stated that the addition provides diversification for bond funds and will be beneficial to have choice. It is a five star rated fund.

*Do not add:* International Fixed Income Fund. ACG does not recommend adding this fund because adding a core-plus bond strategy should reduce the need for either a foreign or high-yield bond fund.

*Add:* Small Cap Foreign Equity Fund for diversification benefits. Despite having four investment options covering the foreign equity category (TIAA-CREF International Index, American Funds EuroPacific Growth, CREF Global Equities and DFA Emerging Markets), the largest small cap exposure from any of the four funds is 2% (CREF Global Equities). TIAA provided a number of options and ACG narrowed the list to a manageable number by reviewing risk-adjusted performance, consistency of performance, fees and management team. ACG recommends adding the Pear Tree Polaris Foreign Value Small Cap R6 Fund (QUSRX) to the TIAA lineup for the following reasons:

- Only true actively managed fund evaluated
- Value-orientation missing from the foreign lineup
- Strong trailing performance results; 3-year, 5-year, 10-year
- Relatively small asset base at just over \$1 billion
- Long-tenured management team

*Add:* Mid Cap Blend Index Fund to offer a low-cost option other than an active Mid Cap fund. TIAA offers both domestic large cap and small cap indexes. Mid Cap is the only cap-range without a dedicated passive (index) option. Given some recent struggles with the TIAA Mid-Cap Value and Mid Cap Growth Funds, there is likely to be some outflows from them to a Mid-Cap index option. ACG recommends adding the Vanguard Mid Cap Index Adm Fund (VIMAX) to the TIAA fund lineup for the following reasons:

- Low cost at 5 basis points
- Low tracking error relative to the index
- Introduces further fund family diversification

*Remove:* Close the CREF Money Market Fund as participants have individual contracts so assets cannot be mapped. No new contributions would be allowed into the fund. TIAA offers three principal preservation offerings and this may be a source of confusion to participants: TIAA Traditional, TIAA Stable Value and TIAA Money Market. A 2017 MetLife survey showed that the number of defined contribution plans offering money market funds had decreased since the 2015 money market reform. The survey showed 36% of plans had both Stable Value and Money Market, 46% had Stable Value only, 16% had Money Market only and 2% had other. Due to liquidity restrictions on the TIAA Traditional, it's prudent to have a second principal preservation offering. The plan currently offers three options. ACG's recommendation is to close the CREF Money Market R3 for the following reasons:

- Due to the difference in the duration of the underlying portfolio, stable value funds generally yield approximately 1.00% more return annually over the market cycle relative to money market funds.
- The CREF Money Market fund is fully liquid to participant transfers and withdrawals.

*Do not remove:* Wells Fargo Growth Fund and map assets to CREF Growth Fund. The Wells Fargo Growth Fund went through a three-year period (2014 – 2016) of underperformance relative to the Russell 3000 Growth benchmark and average large cap growth peer group manager. This was followed by a top-decile 2017 return, a top-quartile 2018 return and top-decile 2019 YTD return through March 8. As a result of the recent strong returns, the fund's one, three, ten and fifteen-year results easily surpass the Russell 3000 Growth benchmark and place the fund in or near the top-quartile of its large growth peers during these periods. ACG recommends re-evaluating the fund in twelve months.

### **Voya Proposed Fund Menu Analysis**

*Add:* Core bond index fund – as a low-cost alternative to the Core Plus – PIMCO Total Return Fund. The Voya lineup does not currently offer a passively managed (index) option in the fixed income category. There are a growing number people that would prefer to have a low-cost investment alternative with the sole objective to provide a rate of return similar to that of a benchmark. Please note, there have been many articles over the past several years documenting the struggles of active managers trying to outperform their index counterparts. These have mainly been on the equity side. Active fixed income managers have generally underperformed their active manager counterparts on a longer-term basis. However, this hasn't dampened the enthusiasm for core fixed income index funds. Voya provided two options for consideration the Fidelity U.S. Bond Index priced at 3 basis points and the Vanguard Total Bond Market Index Admiral share class priced at 5 basis points. ACG's recommendation is to add the Fidelity U.S. Bond Index Fund (FXNAX) to the Voya fund lineup for the following reasons:

- Less expensive: 3 basis points vs. 5 basis points
- Similar low overall tracking
- Similar securities lending practices by both Vanguard and Fidelity
- Returns are similar, however over the past 32 rolling 5-year time periods (1-month shifts) the Fidelity U.S. Bond Fund has outperformed the Vanguard Total Bond Market Index Adm. in each of the 32 periods.

*Replace:* PIMCO Real Return Fund's total expense ratio increased from 0.46% to 0.88%. The Financial Industry Regulatory Authority (FINRA) issued new guidance in July that indicated that costs associated with interest expense and dividends on borrowed securities had to be included in a fund's annual report and prospectus net expense ratios. For the PIMCO Real Return Fund and other bond funds the cost associated with reverse-repos also needed to be reflected in the expense ratio. As a result, the Fund's expense ratio jumped by 42 basis points over night, despite no change in the fund's investment approach. ACG has had numerous discussions with PIMCO to see if they plan on altering their investment strategy to possibly reduce the current expense ratio and the answer thus far has been no. Unfortunately, perception is reality, and most investors will only see that the fund has nearly doubled its fee and won't ask why. Given this reality, ACG recommends replacing the Fund. Voya provided three options for consideration; the American Funds Inflation Linked Bond Fund (expense 0.36%), the DFA Inflation-Protected Securities (expense 0.12%) and the Fidelity Inflation-Protected Bond Index (Expense 0.05%). ACG recommends replacing the PIMCO Real Return with the American Funds Inflation Linked Bond R6 (RILFX) in the Voya fund lineup for the following reasons:

- Strongest trailing returns of the group
- Strongest three and five-year rolling returns
- Most favorable five-year risk-reward and up and down-market capture
- Strongest head-to-head rolling-period-of-time analysis

*Add:* Foreign Equity Index Fund as a low-cost alternative to the three actively managed foreign and global funds. Similar to ACG's comments in the core-bond index search, there are a growing number of investors that watched as higher-cost active managers struggled to outperform their low-cost index brethren on a consistent enough basis to justify their fees. The addition of a foreign index fund in the lineup will allow these participants the ability to get index like returns at a low price point. Voya provided two alternatives for consideration; the Fidelity International Index (expense = 5 bps.) which tracks the MSCI EAFE and the Vanguard Total International Stock Index – Adm. (expense = 11 bps) which tracks the FTSE Global All Cap ex US Index. ACG recommends adding the Vanguard Total International Stock Index – Adm. (VTIAX) to the Voya fund lineup for the following reasons:

- The decision came down to coverage and opportunity since a head-to-head comparison of the funds is difficult. Please note that both funds do a good job of tracking the performance of their underlying benchmarks.
- The Fidelity International Index is solely focused on developed market countries around the globe. Alternatively, the Vanguard Total International Stock Index fund invests in both developed and emerging markets around the world. Since it is a cap-weighted index as emerging (developing) countries continue to grow at a faster pace than developed countries, their representation within the index will continue to grow. ACG's recommendation is to cast as wide a net as possible from a diversification standpoint which means to select the Vanguard Total International Stock Index.

*Do not replace:* Vanguard Institutional Index with the lower cost Fidelity 500 Index, the Vanguard Mid-Cap Index with the lower cost Fidelity Mid Cap Index and Vanguard Small-Cap Index with the Fidelity Small Cap Index.

In the war of index price compression, Fidelity currently holds the upper hand. When reviewing Voya’s proposal, it’s easy to see the current price advantage Fidelity has:

	Fidelity Exp.	Vanguard Exp.	Diff. Large Cap
Index	0.015%	0.035%	0.02%
Mid Cap Index	0.025%	0.04%	0.015%
Small Cap Index	0.025%	0.04%	0.015%

Based on KBOR assets held in all three funds (\$66.24M) the potential cost savings is \$10,679. This equates to \$2.42 per participant based on the 4,394 participants currently invested in them. ACG’s objections for not moving forward with this proposal are fairly simple: Vanguard’s fees, although not the lowest, are very competitive and as a result are reasonable. What is hard to quantify is the possible participant disruption replacing the Vanguard funds would cause for the 4,393 participants using them.

*Do not remove:* Vanguard Treasury Money Market Fund – Map assets to Voya Fixed Plus III. Although ACG agrees in principle, given the proximity of the fund change (Voya Money Market to the Vanguard Treasury Money Market in July 2019), ACG’s recommendation is to have Voya bring a similar proposal to the RPC for consideration at the 2020 spring meeting. Voya offers two principal preservation offerings; Vanguard Treasury Money Market and Voya Fixed Plus III account. Currently there is a 90-day equity wash provision in place which prevents participants in the Voya Fixed Plus III account from going directly into the Vanguard Treasury Money Market fund. Some participants will try to game the system in periods of rising interest rates as money market funds are much quicker to adjust to rising rates than the longer-maturity fixed accounts. The elimination of the Vanguard Treasury Money Market fund will eliminate this restriction.

Rick LeCompte moved to approve all of Brad Tollander’s recommendations. Diane Goddard, seconded the motion and it was approved unanimously. The RPC’s recommendations will be presented to the Board of Regents at their April 2019 meeting.

**Next RPC meeting:**

The next regular RPC meeting will be scheduled for September 17, 2019, in the KBOR Board Room.



KANSAS BOARD OF REGENTS  
**Retirement Plan Committee (RPC)**  
MINUTES  
June 13, 2019

Regent Bangerter called the June 13, 2019, conference call of the Kansas Board of Regents Retirement Plan Committee to order at 1:00 p.m.

Members Participating:

Regent Shane Bangerter, Chair  
Gary Leitnaker, KSU  
Stacey Snakenberg, KUMC

Dr. Rick Lecompte, WSU  
Michele Sexton, PSU  
Madi Vannaman, KBOR

RPC members President Allison Garret, ESU; Mike Barnett, FHSU; Dr. Dipak Ghosh, ESU; and Diane Goddard, KU, were unable to participate. Also participating were Brad Tollander and Bernie Heffernon, Advanced Capital Group consultants; Natalie Yoza, Associate General Counsel, and Elaine Frisbie, Vice President Administration and Finance, from the KBOR Office.

**Update to TIAA Fund Line-up Change Approved by KBOR**

At its May 2019 meeting, the Board approved closure of the CREF Money Market Fund as participants have individual contracts so assets cannot be mapped, *i.e.*, transferred to another fund. No new contributions would be allowed into the fund. This change was recommended because TIAA offers three principal preservation offerings and this may be confusing to participants. The recommendation approved was to close the CREF Money Market R3 for the following reasons:

- Due to the difference in the duration of the underlying portfolio, stable value funds generally yield approximately 1.00% more return annually over the market cycle relative to money market funds.
- The CREF Money Market fund is fully liquid to participant transfers and withdrawals.

However, TIAA discovered after the May 2019 meeting that TIAA's contract with the Board prevents closure of this fund. It must be available for contributions and transfers.

Gary Leitnaker moved, and Rick LeCompte seconded, the motion to recommend to the Board of Regents that the TIAA Money Market fund not be closed. The motion passed and will be presented to the Board at its June meeting.

TIAA will work with Board staff and ACG on a customized campaign that will target individuals with 100% allocation to the Money Market to ensure they are aware of other options available to them under the Plan. ACG and Board staff also worked with TIAA to identify the other funds which the Board is contractually required to offer so this will not happen again.

**KBOR Voluntary Retirement Plan**

- a. Amendments are needed to the KBOR policy manual and the RPC Charter that allow the RPC to have same oversight over the Voluntary Plan that it has over the Mandatory Plan. Gary Leitnaker moved, and Rick LeCompte seconded, the motion to recommend to the Board to accept those changes to the Retirement Plan Committee Charter and the Board's policy manual. The motion passed and will be presented to the Board at its June meeting.
- b. Contingent upon the Board's adoption of those amendments, the RPC needs to determine how to move forward before the next meeting in September.

ACG submitted its review of the 2017 RFI for the Mandatory Plan. Bernie Heffernon provided information about that review and whether the RPC could leverage that RFI process and data to consider changes to the Voluntary Plan. ACG reviewed data and summaries from the prior consultant and, based on experiences in the market with pricing today and going through similar processes, recommends that rather than executing a full RFI for the Voluntary Plan that the 2017 RFI information be used to consolidate to the same two existing Mandatory Providers. The pricing would be in line from 2017 to 2019, as there has not been significant differences since then.

Gary Leitnaker asked about the RFI vendors and responses received. Bernie Heffernon responded that the RFI was provided to vendors that are top five providers in the higher education space: TIAA, Fidelity, Vanguard, Valic, and Voya and shortly behind them is Lincoln. Security Benefit Group is not a top provider in the higher education market but is in the K-12 market. The RFI was executed under the prior retirement plan consultant and the assumption is that Security Benefit Group may not have met the vendor asset size requirements or they were not included because of their lack of presence in the higher education market.

Bernie Heffernon stated that the ACG recommendation is made for various reasons including pricing, as they do not think KBOR will get improved pricing over what is in place today in the Mandatory Plan. From a fiduciary perspective, there will be benefit with oversight over the Voluntary Plan and ACG can negotiate price reductions with the two providers without significant plan distribution as 87% of the assets are with the mandatory providers and the number of participants who do not use those two companies in the Voluntary Plan are about 300. ACG recommends that new contributions would only be directed to the two providers although participants could keep plan assets with the inactivated Voluntary Plan providers.

Natalie Yoza stated that outside legal counsel advised that one option for how to evaluate potential vendors or recordkeepers for the Voluntary Plan is to use the information obtained during the 2017 RFI process for the Mandatory Plan's recordkeepers. Regarding the fiduciary duty, she stated the RPC must be able to articulate and document why the process is prudent. As long as the RPC's reasoning is sound, that should satisfy the fiduciary duty requirement. Because enough information from the 2017 RFI was retained and ACG was able to verify that market conditions have not changed significantly, relying on the previously issued RFI is a prudent process. That process will most likely result in the lowest expenses and utilizing the recommendation to retain TIAA and Voya will result in the least disruption to participants. Based on that reasoning, relying on the prior RFI should satisfy fiduciary duties. It is up to the RPC to determine whether this approach is the best approach; is the RPC comfortable with consolidation instead of an RFI to all of the current Voluntary Plan vendors? An additional aspect is the State procurement provisions and that will be addressed.

Bernie Heffernon stated that keeping all current vendors would be problematic. In the current litigation environment, it would help to decrease the number of vendors to match the Mandatory Plan to address fiduciary responsibilities and to provide simplicity to participants. There is a cost consideration with Voluntary Plan oversight; it would be cost prohibitive from a consulting perspective to have oversight over six providers, as that would be a significant undertaking, in addition to required documentation/contract work with legal firms. With a design that looks like the Mandatory Plan, consulting expenses should be reasonable and provide for revenue sharing from the two providers.

There was consensus with the RPC to move forward and Natalie Yoza will continue working on the procurement aspects.

DRAFT

# Act to Amend Voluntary Retirement Plan Document to Comply with IRS Hardship Withdrawal Rule Changes

## Summary and Staff Recommendation

*The Voluntary Retirement Plan's Plan Document permits participants to withdraw funds from their 403(b) account in the event of certain hardships. In 2018, the federal rules governing hardship withdrawals were relaxed. By January 1, 2020, the Voluntary Plan Document must be amended to remove a 6-month suspension of elective deferrals after a hardship withdrawal is taken. The Voluntary Plan Document could also be amended to expand the circumstances that qualify as a hardship. Based on advice received from outside legal counsel, Board staff recommend the RPC adopt the draft amendment to the Voluntary Plan Document effective January 1, 2020.*

## **Background**

The Board delegated to the Retirement Plan Committee (RPC) authority to “[a]pprove and adopt plan documents and material amendments and modifications (subject to any further approval requirements of the Board).”<sup>1</sup> The Board has not imposed any further approval requirements for amending plan documents, so the RPC has authority to amend the Voluntary Plan Document and report that action to the Board at a regular Board meeting. It is prudent to exercise that authority in this case because the principal change is mandated by federal law.

Ice Miller, the law firm that has historically drafted the Board’s retirement plan documents, drafted the attached proposed amendment to the Voluntary Plan Document. It amends two sections of the Document. It is the third amendment to the Voluntary Plan Document, and it would appear at the end of the current Plan Document because the changes are not incorporated into the original text.

Ice Miller will also draft a communication to Plan participants to notify them of the change.

## **Required Plan Document Changes Removing the 6-Month Suspension of Elective Deferrals**

Two sections of the Plan Document must be amended to address a change in federal law that eliminated a 6-month suspension on elective deferrals after a hardship withdrawal and a change eliminating a requirement that Plan participants utilize available loans first.

*Section 8.05. Former Vendors.* Under the current Plan Document, there are three specific information sharing requirements between the Board and former vendors. These provisions are required to establish that the annuity contract or custodial account complies with Code Section 403(b). One of those requirements must change.

Currently, the former vendor must notify the Board “of any hardship withdrawal if the withdrawal results in a six month suspension of the Participant’s right to make Elective Deferrals under the Plan.” This language is now obsolete because the participant is no longer subject to a 6-month

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<sup>1</sup> RPC Charter, p. 3.

suspension. In the draft amendment, the former vendor must notify the Board of any hardship withdrawal made on or before December 31, 2019.

*Section 9.05 Hardship Withdrawals.* This section addresses when a participant may receive a hardship withdrawal. Under federal law, these distributions are limited to instances when there is an “immediate and heavy” financial need, and the distribution must be limited to the amount necessary to satisfy the financial need.<sup>2</sup> The draft amendment removes language that “[n]o Elective Deferrals will be allowed under the Plan during the six month period beginning on the date the Participant receives a distribution on account of hardship” consistent with the change in federal law eliminating this suspension period.<sup>3</sup>

To fully implement this change, the RPC must also decide what to do with hardship requests made in 2019 that continue into 2020. For example, if a participant takes a hardship withdrawal November 1, 2019 the 6-month suspension will still be in effect after January 1, 2020. The RPC can: (1) continue the suspension as initially imposed; or (2) end all suspensions on January 1, 2020. Board staff recommend that all suspensions stop on January 1, 2020, to ease the administrative burden.

The RPC must also choose an effective date for when Plan participants are no longer required to utilize all nontaxable loans under the Board’s Retirement Plans before taking a hardship withdrawal. Board staff recommend the RPC adopt January 1, 2020 as the effective date for this change too.

### **Optional Changes to the Plan Document**

Section 9.05(b) of the draft amendment lists eight instances that will qualify as immediate and heavy financial needs. These are the same financial needs recognized under the current Plan Document, except there are two optional changes that would expand what qualifies as an immediate and heavy financial need. The RPC has discretion over whether to adopt the two additional changes and, if adopted, the effective date. Board staff recommend making the effective date January 1, 2020 for consistency.

Participants are permitted to use a hardship withdrawal for expenses to repair damage to their principal residence. Currently, the loss must exceed 10% of adjusted gross income. That 10% loss requirement can be removed with the following bolded language:

“expenses to repair damage to the Participant’s principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to Code section 165(h)(5) **and, effective \_\_\_\_\_, without regard to whether the loss exceeds 10% of adjusted gross income);”**

The entirety of (7) is also an optional addition to the list of financial needs that will be deemed immediate and heavy:

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<sup>2</sup> 26 C.F.R. §1.401(k)-1(d)(3)(iii).

<sup>3</sup> Voluntary Plan Document, Section 9.05(a).

“effective \_\_\_\_\_, expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster;”

### **Recommendations**

1. Adopt the Plan Document changes as drafted by Ice Miller.
2. Decide when to cease requiring the 6-month suspensions. Federal law requires that this change is implemented by January 1, 2020, but it could be implemented earlier. Staff recommend a January 1, 2020 effective date.
3. Decide when Plan participants are no longer required to take nontaxable loans before taking a hardship withdrawal. Staff recommend a January 1, 2020 effective date.
4. Decide whether to terminate suspensions already imposed on withdrawals taken before January 1, 2020. Staff recommend that the Board end all suspensions effective January 1, 2020.
5. Decide whether to expand the circumstances that qualify for a hardship withdrawal by adopting the bolded text in Section 9.05(b)(6) and adopting Section 9.05(b)(7). Staff do not have a preference because this decision is purely policy driven. But, if the optional amendments are adopted, staff recommend making that change effective January 1, 2020.

## Act on Proposal to Initiate Revocation of the Board's Outdated Retirement Plan Regulations

### Summary and Staff Recommendation

*The Board's regulations associated with the retirement plans have not been amended since 1985. Many of the regulations are no longer consistent with the retirement plan statutes or current practice and vernacular. Board staff recommends that the process to revoke the retirement regulations be initiated. The RPC's approval is required to begin that process. Later, new regulations will be submitted for review.*

The Board has two sets of retirement plan regulations, K.A.R. 88-10-1 *et seq.* (Article 10) and K.A.R. 88-11-1 *et seq.* (Article 11). Article 10 is authorized by and implements K.S.A. 74-4925. Article 11 is authorized by and implements K.S.A. 74-4925b. These statutes have been amended numerous times since the Board's regulations were last amended in 1985.

Today, K.S.A. 74-4925 is the primary Mandatory Retirement Plan statute. It requires that the Board sponsor and maintain the Mandatory Plan. K.S.A. 74-4925b is the primary Voluntary Retirement Plan statute because that statute authorizes the Board to maintain a 403(b) plan in which certain employees "may voluntarily request" participation.

But before 2005, K.S.A. 74-4925 defined the employees eligible to participate in the Mandatory Plan and it included a provision permitting those employees to make some voluntary contributions.<sup>1</sup> And K.S.A. 74-4925b permitted a Voluntary Plan for employees that were not covered by K.S.A. 74-4925.<sup>2</sup> When the statutes were amended in 2005 to change these eligibility provisions and the nature of the Plans, many of the regulations were rendered obsolete.

Other portions of the regulations are no longer relevant, or the regulations are duplicative of requirements in the Plan Documents. One regulation in each Article permits any life insurance company to participate in the Voluntary Plan if that company can meet 403(b) requirements and is authorized to do business in Kansas.<sup>3</sup> This language runs counter to the consolidation of Voluntary Plan recordkeepers.

Board staff has reviewed the regulations and recommends beginning the process of revoking both Articles. Long term, new regulations would be beneficial, but efficient administration of the retirement plans will continue without the regulations. Drafting new provisions on a clean slate will result in better regulations than attempting to carve relevant provisions from the current regulations.

The Rules and Regulations Filing Act, K.S.A. 77-415 *et seq.*, establishes the procedure required to revoke regulations. Internally, in part pursuant to a Joint Committee on Rules and Regulations directive, a Board committee typically authorizes Board staff to begin that process. The Board action to revoke occurs after the language has been finalized and the public hearing is held.

A copy of the Article 10 and Article 11 regulations is attached.

<sup>1</sup> See L. 2005, Ch. 196, sec. 7 (amending K.S.A. 74-4925).

<sup>2</sup> See L. 2005, Ch. 196, sec. 8 (amending K.S.A. 74-4925b).

<sup>3</sup> See K.A.R. 88-10-5; K.A.R. 88-11-6.

**K.A.R. 88-10-1**  
**88-10-1 Purchase of annuities; conditions.**

A program for the purchase of voluntary tax-sheltered annuities is hereby established for the members of the faculty and other eligible employees, as defined in [K.S.A. 74-4925\(1\)\(a\)](#), and any amendments thereto. The maximum amount to be contributed on behalf of each participating employee, including the contributions for employer-purchased annuities for the retirement plan described in [K.S.A. 74-4925\(1\)\(b\)](#) and [K.S.A. 74-4925\(1\)\(c\)](#), and any amendments thereto, shall be limited by the provisions of the internal revenue code of 1954 as amended. Such voluntary tax-sheltered annuities shall be purchased by the board of regents for those eligible employees who voluntarily reduce their salaries to provide the funds with which to purchase such annuities. The board of regents shall designate one or more basic retirement plan providers. The contributions dedicated to the plan as provided for in [K.S.A. 74-4925\(1\)\(b\)](#) and [K.S.A. 74-4925\(1\)\(c\)](#), and any amendments thereto, shall continue to be maintained for all present employees and all eligible new employees. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-2**  
**88-10-2 Same; contracts.**

The executive officer of the board of regents, or any person or persons designated by the executive officer, may execute contracts on behalf of the board of regents with companies offering plans meeting the requirements of [section 403\(b\) of the internal revenue code of 1954](#), as amended, and in effect on October 1, 1984. These contractual arrangements shall be only for the purpose of meeting such requirements as are needed by the companies and shall not be considered as an endorsement of any company. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-3**  
**88-10-3 Same; powers to financial officer.**

The chief financial officer of each state educational institution or the chief financial officer's designee may, on behalf of the board of regents, sign applications and other papers required to carry into effect the voluntary tax-sheltered annuity program. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-4**  
**88-10-4 Same; contracts.**

The voluntary tax-sheltered annuity program and annuities, contracts, and certificates associated with the voluntary tax-sheltered annuity program shall be separate from and in addition to the retirement program described in [K.S.A. 74-4925\(1\)\(b\)](#) and [K.S.A. 74-4925\(1\)\(c\)](#), and any amendments thereto. The voluntary tax-sheltered annuity contracts shall comply with [sections 401\(g\) and 403\(b\) of the internal revenue code of 1986](#) [26 U.S.C. § 401(g) and 403(b), as amended by [P.L. 99-514](#)]. No voluntary tax-sheltered plan shall be offered to any eligible employee until the company offering the plan has submitted verification to the executive officer of the board of regents or the executive officer's designee that: (a) the plan meets the requirements of [section 403\(b\) of the internal revenue code of 1986](#) [26 U.S.C. § 403(b), as amended by [P.L. 99-514](#)]; and (b) there are five employees contractually committed to participation in the company's voluntary tax-sheltered plan. Such contracts shall not provide any element of life insurance nor for premium waiver benefits. Authorized by and implementing [K.S.A. 1991 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993.

**K.A.R. 88-10-5**  
**88-10-5 Same; companies authorized to issue annuities.**

Companies authorized to issue the voluntary tax-sheltered annuities shall be Teachers Insurance and Annuity Association/College Retirement Equities Fund, any life insurance company authorized to do business in this state and any noninsurance company offering retirement plans that meet the requirements of [section 403\(b\) of the internal revenue code of 1954](#) as amended. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.



**K.A.R. 88-10-6**

**88-10-6 Same; names of agents soliciting business; limits.**

Each company engaged in the on-campus solicitation of voluntary tax-sheltered annuities shall file, in the office of the chief fiscal officer of each state educational institution, a list of the names of its agents who will solicit business. Not more than four agents shall be listed at each institution at any one time. Solicitation of this business by agents other than those so listed shall not be permitted. The list shall be accompanied by a statement, signed by a company officer, that the agents named are trained in the sale and service of tax-sheltered annuities. Each company or agent who does not comply with board or institutional policies regarding the solicitation of tax-sheltered annuity business shall be barred from further solicitation on campus. Authorized by [K.S.A. 1986 Supp. 74-4925](#); implementing [K.S.A. 1986 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988.

**K.A.R. 88-10-7**

**88-10-7 Same; responsibility of employees; exclusion allowance.**

Each participating employee shall be responsible for the selection of the company and the type of annuity contract to be purchased on the employee's behalf and for evaluation of the tax-sheltered status provided by the contract. The board of regents shall not assume responsibility for an employee's selection. Each company offering the annuity product shall provide for the fiscal offices a maximum exclusion allowance calculation for each employee desiring to participate in the tax sheltered annuity program. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-8**

**88-10-8 Same; salary reduction agreement form; termination of agreements.**

A uniform salary reduction agreement form shall be used at the state educational institutions to effect the salary reduction and annuity purchase requests of the participating employees. The agreement shall be made for a period of at least one year. However, the first agreement may be for the remaining portion of the tax year. The employee may terminate an existing agreement at any time with respect to amounts not yet earned, but the employee shall not make more than one agreement with the same employer during the tax year. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-9**

(Authorized by [K.S.A. 1974 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; revoked, T-85-31, Nov. 14, 1984; revoked May 1, 1985.)

**K.A.R. 88-10-10**

**88-10-10 Same; signed agreement and worksheet.**

An agreement to reduce salary and to purchase tax-deferred annuities and the appropriate worksheet shall be completed and signed by each participant in the voluntary tax-sheltered annuity program. Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-10-11**

**Reserved**

**K.A.R. 88-10-12**

**88-10-12 Same selection of companies by employee; limitations**

Each participating employee shall select no more than one company in addition to the basic retirement plan provider for the purchase of tax-sheltered annuities. The basic retirement plan provider may be the company selected for additional annuity purchase. (Authorized by [K.S.A. 1984 Supp. 74-4925](#); implementing [K.S.A. 1984 Supp. 74-4925](#); effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.)

**K.A.R. 88-11-1**  
**88-11-1 Program establishment; limitation; exception.**

A program for the purchase of voluntary tax-sheltered annuities is hereby established for any person employed by a state educational institution who is not described in [K.S.A. 74-4925\(1\)\(a\)](#), and any amendments thereto. The maximum amount to be contributed on behalf of each participating employee shall be as limited by the provisions of the internal revenue code of 1954 as amended. Such voluntary tax-sheltered annuities shall be purchased by the board of regents for those eligible employees who voluntarily reduce their salaries to provide the funds with which to purchase annuities. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-2**  
**88-11-2 Same; eligible employees.**

Any person who is employed half-time or more by the board of regents or a state educational institution, who is not employed on a temporary basis and who is not described in [K.S.A. 74-4925\(1\)\(a\)](#), and any amendments thereto, shall be eligible to participate in a program established under [K.A.R. 88-11-1](#). Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-3**  
**88-11-3 Same; contracts; execution.**

The executive officer of the board of regents, or any person or persons designated by the executive officer, may execute contracts on behalf of the board of regents with companies offering plans meeting the requirements of section (403)(b) of the internal revenue code of 1954 as amended. These contractual arrangements shall be only for the purpose of meeting such requirements as are needed by the companies and shall not be considered as an endorsement of any company. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-4**  
**88-11-4 Same; powers of financial officer.**

The chief financial officer of the state educational institution or the chief financial officer's designee may, on behalf of the board of regents, sign applications and other papers required to carry into effect the voluntary tax-sheltered annuity program. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-5**  
**88-11-5 Same; conditions and limitations on programs.**

The voluntary tax-sheltered annuity program and annuities, contracts and certificates associated with the voluntary tax-sheltered annuity program shall be separate from the basic retirement program described in [K.S.A. 74-4919](#), and any amendments thereto. The voluntary tax-sheltered annuity contracts shall comply with [sections 401 \(g\) and 403 \(b\) of the internal revenue code of 1986 \[26 U.S.C. §§ 401\(g\) and 403\(b\), as amended by P.L. 99-514\]](#). No voluntary tax-sheltered plan shall be offered to any eligible employee until the company offering the plan has submitted verification to the executive officer of the board of regents or the executive officer's designee that:

(a) the plan meets the requirements of [section 403\(b\) of the internal revenue code of 1986 \[26 U.S.C. § 403\(b\), as amended by P.L. 99-514\]](#); and (b) there are five employees contractually committed to participation in the company's voluntary tax-sheltered plan. Such contracts shall not provide any element of life insurance nor for premium waiver benefits. Authorized by and implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993.

**K.A.R. 88-11-6**  
**88-11-6 Same; companies authorized to issue annuities.**

Companies authorized to issue the voluntary tax-sheltered annuities shall be Teachers Insurance and Annuity

Association/College Retirement Equities Company, any life insurance company authorized to do business in Kansas and any noninsurance company offering retirement plans that meet the requirements of [section 403\(b\) of the internal revenue code of 1954](#) as amended. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-7**

**88-11-7 Same; filing names of soliciting agents; limits; statement of company.**

Each company engaged in the on-campus solicitation of voluntary tax-sheltered annuities shall file, in the office of the chief fiscal officer of each state educational institution, a list of the names of its agents who will solicit business. Not more than four agents shall be listed at each institution at any one time. Solicitation of this business by agents other than those so listed shall not be permitted. The list shall be accompanied by a statement, signed by a company officer, that the agents named are trained in the sale and service of tax-sheltered annuities. Each company or agent who does not comply with board or institutional policies regarding the solicitation of tax-sheltered annuity business shall be barred from further solicitation on campus. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988.

**K.A.R. 88-11-8**

**88-11-8 Same; employee responsibility; exclusion allowance.**

Each participating employee shall be responsible for the selection of the company and the type of annuity contract to be purchased on the employee's behalf and for evaluation of the tax-sheltered status provided by the contract. The board of regents shall not assume responsibility for an employee's selection. Each company offering the annuity product shall provide for the fiscal offices a maximum exclusion allowance calculation for each employee desiring to participate in the tax sheltered annuity program. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-9**

**88-11-9 Same; salary reduction and annuity purchase requests; forms; termination of agreements.**

A uniform salary reduction agreement form shall be used at the state education institutions to effect the salary reduction and annuity purchase requests of the participating employees. The agreement shall be made for a period of at least one year. However, the first agreement may be for the remaining portion of the tax year. The employee may terminate an existing agreement at any time with respect to amounts not yet earned, but the employee shall not make more than one agreement with the same employer during the tax year. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-10**

(Authorized by K.S.A. 1974 Supp. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; revoked, T-85-31, Nov. 14, 1984; revoked May 1, 1985.)

**K.A.R. 88-11-11**

**88-11-11 Same; signed agreement and worksheet.**

An agreement to reduce salary and to purchase tax-deferred annuities and the appropriate worksheet shall be completed and signed by each participant in the voluntary tax-sheltered annuity program. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**K.A.R. 88-11-12**

**88-11-12 Same; selection of one company.**

Each participating employee shall select no more than one company in addition to the basic retirement plan for the purchase of voluntary tax-sheltered annuities. Authorized by [K.S.A. 74-4925b](#); implementing [K.S.A. 74-4925b](#); effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985.

**AMENDMENT NUMBER THREE TO THE  
KANSAS BOARD OF REGENTS VOLUNTARY RETIREMENT PLAN**

THIS AMENDMENT THREE to the Kansas Board of Regents Voluntary Retirement Plan ("Voluntary Plan") is hereby adopted by the Kansas Board of Regents ("Board").

WHEREAS, the Voluntary Plan was amended and restated effective January 1, 2011; and

WHEREAS, the Board reserved the right to amend the Voluntary Plan in Article XIV of the Plan; and

WHEREAS, the Board now wishes to amend the Voluntary Plan in light of legislative and regulatory changes to the hardship rules.

NOW, THEREFORE, the Voluntary Plan is hereby amended effective on the dates set forth below:

1. Paragraph (1) of 8.05 of the Plan, regarding Former Vendors, is hereby amended to be and read as follows:

(1) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Account to which Contributions have been made by the Board, to satisfy Code Section 403(b), including the following: (i) the Administrator providing information as to whether the Participant's employment with his or her Employer is continuing, and notifying the vendor when the Participant has had a Severance from Employment (for purposes of the Plan benefit distribution restrictions); (ii) the vendor notifying the Administrator of any hardship withdrawal made on or before December 31, 2019; and (iii) the vendor providing information to the Administrator or other Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts or qualified employer plan benefits (to enable a vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the Plan's hardship withdrawal rules); and

2. Section 9.05 of the Plan, regarding hardship distributions, is hereby amended to be and read as follows:

### Section 9.05. Hardship Withdrawals.

(a) To the extent (i) a Vendor has been approved by the Administrator to allow hardship withdrawals under the Plan and (ii) a hardship withdrawal is permitted by the terms governing the applicable Individual Agreement, distribution of Elective Deferrals (excluding any earnings on such Elective Deferrals after December 31, 1988) may be made to a Participant in the event of hardship. A hardship withdrawal may only be made on account of an immediate and heavy financial need of the Participant and where the withdrawal is necessary to satisfy the immediate and heavy financial need. Participants may be charged a reasonable processing fee per hardship withdrawal.

(b) The following are the only financial needs considered immediate and heavy:

(1) expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) for the Participant, his or her spouse, primary Beneficiary, children, or any dependents (as defined in Code Section 152, and without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B));

(2) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition, related educational fees, and room and board expenses for up to the next twelve months of post-secondary education for the Participant, his or her spouse, primary Beneficiary, children, or dependents (as defined in Code Section 152, and without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of the principal residence of the Participant;

(5) payments for burial or funeral expenses for the Participant's deceased parent, spouse, primary Beneficiary, children, or dependents (as defined in Code Section 152, without regard to Code Section 152(d)(1)(B));

(6) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to Code section 165(h)(5) and, effective [REDACTED], without regard to whether the loss exceeds 10% of adjusted gross income); **[This change is optional. If KBOR would like to adopt this additional safe harbor, KBOR will need to determine its effective date.]**

(7) effective [REDACTED], expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and **[This change is optional. If KBOR would like to adopt this additional safe harbor, KBOR will need to determine its effective date.]**

(8) such other circumstances as the Commissioner of Internal Revenue determines constitute financial hardship under Code Section 401(k) or the Treasury Regulations thereunder.

(c) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) the distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) the Participant has obtained all distributions, other than hardship distributions and, for distributions on or before [REDACTED], all nontaxable loans under all plans maintained by the Employer (except to the extent such actions would be counterproductive to alleviating the financial need);

(3) for distributions on or before [REDACTED], all plans maintained by the Employer provide that the Participant's elective deferrals (and after-tax employee contributions) will be suspended for six months after the receipt of the hardship distribution; **[This change is mandatory January 1, 2020. How would you like to treat hardship requests made in 2019 where the suspension goes into 2020? For example, if a participant takes a hardship distribution November 1, 2019, KBOR could continue the suspension for the 6 month period, or could stop all suspensions January 1, 2020. On or after January 1, 2020, no suspensions are permitted.]**

(4) for distributions made on or after January 1, 2020, the Participant represents in writing that he or she has insufficient cash or other liquid assets to satisfy the need; and

(5) the Participant has met any such additional or alternative requirements as may be prescribed in Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E) or subsequent promulgations.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Administrator or the Vendor. Hardship withdrawals shall also be subject to any hardship procedures issued by the Administrator, which shall be communicated to the Vendors to the extent applicable.

(e) The Administrator shall take such steps as may be appropriate to collect information from Vendors and/or Former Vendors, and to transmit any information to any Vendor or Former Vendor, to coordinate the limitations on hardship withdrawals. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Article XII of the Plan.

(f) Hardship distributions are not permitted from the Funding Vehicles held by Former Vendors unless contractually provided under the Funding Vehicle and the Former Vendor enters into an agreement to share information with the Administrator in accordance with Revenue Procedure 2007-71.

3. In all other respects, the Voluntary Plan shall be and remain unchanged.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**KANSAS BOARD OF REGENTS**

By: \_\_\_\_\_  
Shane Bangerter  
Chair of the Board

By: \_\_\_\_\_  
Blake Flanders  
President and Chief Executive Officer of the Board

## **Kansas Board of Regents Mandatory Retirement Plan**

### **Vendor Management Document**

**Approved by the Board of Regents April 19, 2007**

**Amended and Restated September 19, 2019**

#### **Contents**

Background Information

Calendar for the Retirement Plan Committee (RPC)

Protocol for Proposed Changes to the Mandatory Retirement Plan

#### **Background Information**

- The Board acknowledges that current Investment Providers to the Kansas Board of Regents Mandatory Retirement Plan may wish to modify (add/replace/delete) funds currently offered to participants as part of the Plan.
- The Board has delegated the responsibility of overseeing this process to the Retirement Plan Committee (RPC) to ensure that any proposed fund has been adequately reviewed against performance objectives specified in the Investment Policy Statement as well as meeting other required guidelines.
- Investment Providers considering changes to the investment lineup in the Mandatory Retirement Plan will abide by the following guidelines.

#### **Retirement Plan Committee Calendar**

Jan-Feb: Preparation for Semi-annual Investment Review

March: Full RPC Meeting, Investment Review

April-May: Follow-up from Semi-annual meeting, Communication Campaign initiated by providers for fund changes.

June-July-Aug: Plan Investment Changes effective July 1, Preparation for Semi-Annual Investment Review

September: Full RPC meeting, Investment Review

October-November-December: Open



The Retirement Plan Committee will meet semi-annually (or more often, as circumstances arise that warrant more frequent meetings).

During the semi-annual meetings the Retirement Plan Committee will review the fund performance of both ING and TIAA-CREF

#### TIAA and Voya

—These meetings will typically be held in March (covering performance through 12/31) and September (covering performance through 6/30)

—Plan asset balances for both Lincoln National and Security Benefit will be evaluated as part of the semi-annual review.

For the time period of January 1 –January 15 of each calendar year, the current investment providers will have the opportunity to recommend additional funds for possible inclusion into the KBOR Mandatory Retirement Plan.

Proposed funds receiving Board approval will be added to the Plan effective July 1

#### **RPC Standing Semi-Annual Investment Agenda**

- Approval of minutes from prior meeting
- Semi-annual investment monitoring review
  - Monitoring against established quantitative and qualitative performance criteria as outlined in the Board’s Investment Policy Statement
  - Review of investment management fees
- Review of periodic reports related to the Mandatory Retirement Plan
  - Owner of report(s) presents summary and decision points to the RPC
  - Reports provided to the RPC in advance to improve efficiency of meetings
  - Periodic reports include plan administration reports, legislative updates, etc.
- Other relevant topics –Recent marketplace trends in investments for retirement plans

#### **Investment Provider Reporting**

##### **January**

- 4<sup>th</sup> quarter performance reports provided by TIAA-CREF and ING

#### TIAA and Voya

- Plan asset information report supplied Lincoln National and Security Benefit

## **February**

- Preparation of investment management report completed by external investment advisor  
Investment Consultant (for consistency purposes as stated in March below)

## **March**

- Semi-Annual investment review report delivered by investment consultant
- TIAA-CREF and ING proposed fund evaluation report delivered  
TIAA and Voya

## **April**

- 1<sup>st</sup> quarter performance reports provided by TIAA-CREF and ING  
TIAA and Voya

## **May-June**

## **July**

- 2<sup>nd</sup> quarter performance reports provided by TIAA-CREF and ING  
TIAA and Voya

- Plan asset information report supplied Lincoln National and Security Benefit

## **August**

- Preparation of investment management report completed by external investment advisor

## **September**

- Semi-Annual investment review report delivered by investment consultant

## **October**

- 3<sup>rd</sup> quarter performance reports provided by TIAA-CREF and ING  
TIAA and Voya

## **Proposed Fund Change Protocol –Guidelines**

- The formal review process for proposed investment changes will take place once per year. –The RPC reserves the right to make an exception for extraordinary events such as funds coming under investigation, funds being closed and liquidated, or other such unforeseen events.
- The window to propose changes to the investment lineup will occur between January 1 - January 15 of each calendar year.

–Investment Providers should contact the RPC in care of the Board’s Legal Counsel in writing to express their intentions of possible investment changes. Written information should be sent to 1000 SW Jackson Street, Suite 520, Topeka, KS, 66612-1368.

- The RPC, working with the help of an outside investment consultant, shall evaluate the merits of each proposed lineup change.

- The Investment Provider will be expected to include an underlying rationale for each proposed investment lineup change.

- Investment Providers shall also be expected to provide the following information to the RPC about each proposed fund:

- Fund name and Ticker

- Expense ratio

- Revenue sharing arrangements back to the provider

- Quarterly return history for the past 10 years

- Fund Manager and tenure and Investment philosophy

- Total number of holdings

- Current cash position

- Style appropriate benchmark and peer group

- Top 10 holdings

- Sector breakout for equity funds or credit quality breakout for fixed income

- Turnover ratio

- P/E, P/B for equity funds, Average credit quality and duration for bond funds

- Each proposed investment option shall be evaluated against the following Investment Policy Statement Criteria:

- Manager’s adherence to their stated investment objectives and style

- Above median peer group performance over cumulative (3 and 5 year periods) and rolling 3-year periods

- Above market benchmark performance over cumulative (3 and 5 year periods) and rolling 3-year periods (1)

- Value added and risk statistics, including:

- Sharpe Ratio

- Alpha

- Beta
- Standard deviation
- Downside risk

(1) Passively managed fund will not exceed the performance of the index, they are however expected to perform within a reasonable tolerance of the benchmark.

**Proposed Fund Change Protocol –Guidelines**

–Qualitative Factors such as:

- Assets under management
  - Manager tenure
  - Organizational structure and stability
  - Investment management process
- Management expenses relative to comparable portfolios

**Proposed Fund Change Protocol –Guidelines**

•Funds meeting the performance standards specified in the Mandatory Retirement Plan’s Investment Policy Statement will be evaluated on a more subjective basis by the RPC.

•The subjective evaluation will include among other things:

- Does the fund make sense for a retirement program?
- Do other retirement plans offer a similar fund to their participants?
- Is the fund filling a gap in the current investment lineup?
- Have participants been requesting access to either the specified fund, or the sub-asset class it will be filling in the current investment lineup?
- What is the likelihood that participants will utilize the investment?
- Will the fund overlap with any existing investment options?

If so, can a participant reasonably distinguish between the competing investment strategies?

–What is the likelihood that less sophisticated participants may chase performance results of the proposed fund?

•Funds receiving RPC approval will be submitted to the Board for final approval –The Investment Provider will be notified by late May of the Board’s decision

- The Investment Provider will work closely with KBOR to develop a communication campaign of the upcoming fund lineup changes
- The new investment option will be added to the KBOR Mandatory Retirement Plan effective July 1

#### **Plan Vendor Benchmarking Guidelines**

The RPC, as a best practice, will require a periodic plan vendor(s) benchmarking review.

As a guideline, a formal benchmarking review process will occur every 4 years and issue an RFI/RFP every 8 years. The RPC reserves the right to make an exception for extraordinary events such as regulatory changes, vendor consolidation and/or ownership change, plan design enhancements, or other such unforeseen events.