

KANSAS BOARD OF REGENTS
Retirement Plan Committee
March 16, 2021

AGENDA

Kansas Board of Regents
Retirement Plan Committee
March 16, 2021, at 12:30 p.m.

1. Approve: Minutes from September 8, 2020
2. Retirement plan contributions correction issue – Natalie Yoza
3. ACG semi-annual report through 12/31/20 – Brad Tollander
4. RFP for Legal Services – Natalie Yoza
5. Report on various items – Natalie Yoza
 - A. Voya’s Voluntary Plan self-directed brokerage account
 - B. Planwithease complaint
 - C. CARES Act (COVID-related) distributions
6. TIAA and Voya – joint branding effort
7. Good of the Order
8. Next meeting September xx, 2021

KANSAS BOARD OF REGENTS
Retirement Plan Committee (RPC)
MINUTES
September 8, 2020

Regent Bangerter called the September 8, 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	Debbie Amershek, PSU
Mike Barnett, FHSU	Dipak Ghosh, ESU
Dr. Rick Lecompte, WSU	President Steve Scott, PSU
Stacey Snakenberg, KUMC	Madi Vannaman, KBOR

Participating from Advanced Capital Group (ACG), were consultants Brad Tollander and Justin Dorsey. Also participating, from TIAA: Nicolette Dixon, Senior Relationship Manager; Katie Skorupski, Senior Relationship Manager; Kendra Kamesch, Senior Manager Communications Consultant; Tom Carmody, Managing Director for Sales, and Ray Bellucci, Senior Managing Director and Institutional Retirement Regional General Manager; from Voya: John O'Brien, Regional Vice President; Cindy Delfelder, Client Relations; and Scott Darcy, Communications Consultant; from the Board Office: Natalie Yoza, Associate General Counsel, and Elaine Frisbie, Vice President Administration and Finance; and from KUMC, Kim Barksdale. Diane Goddard, KU, and Jay Stephens, KSU, were not able to attend because of scheduling conflicts.

Minutes

President Scott moved, and Mike Barnett seconded, to approve the minutes from the April 16, 2020 meeting. The motion was approved unanimously.

Introduction of new RPC member

Since 1997, Debbie Amershek has been the Assistant Director of Human Resource Services at Pittsburg State University. She began at PSU in 1984 in an administrative support staff position in the President's Office. She earned a Bachelor of Arts degree from PSU with a major in history and minor in accounting. Debbie's current duties include administration of the retirement plans (KBOR and KPERS), administration of other benefit programs, and administration of university employment actions such as hiring, terminations, position reclassifications and disciplinary actions.

ACG semi-annual report through 6/30/20 – Brad Tollander

Brad Tollander reviewed the ACG semi-annual report, recapping the markets and economy through the second quarter of 2020.

ACG also reviewed outstanding items from the Spring 2020 RPC meeting:

1. ACG reviewed the six-month progress of the two funds currently on the Watch List for the Mandatory Retirement Plan. Both funds were placed on the list at the Spring 2019 RPC meeting:
 - a. TIAA-CREF Large-Cap Value Institutional fund- Despite some underperformance during the first half of 2020, near-term performance results have improved under the new manager. ACG prefers to see meaningful improvement in the fund's long-term relative performance results and management team stability before it recommends that the RPC remove the fund from the Watch List. ACG will evaluate this fund again at the Spring 2021 RPC Meeting.

- b. TIAA-CREF Mid-Cap Value Institutional fund– ACG recommends that this fund remain on the Watch List due to an additional management change. ACG will evaluate again at the Spring 2021 RPC Meeting.

No additional recommendations were made by ACG for new Watch List funds for either the TIAA or the Voya Mandatory Plan fund lineups.

Topical Legal update

Justin Dorsey provided a topical legal review of 403(b) litigation and noted that he is not aware of any public entities that have been sued to date. Justin Dorsey stated that cybersecurity is an area that should be monitored as the question is whether a plan sponsor could be held liable because of a cybersecurity breach and it is an unsettled question that has been percolating over the years. ACG will get with both TIAA and Voya to confirm the procedures in place and reimbursement provisions.

Justin Dorsey stated that a Chubb & Groom article [“The War on Retirement Plan Fees: Is Anyone Safe?”](#) provides a good recap of the state of litigation in retirement plans today, with an interesting perspective from a large insurance company that co-authored the document.

Justin Dorsey addressed two additional items. Private equity funds, which are not applicable to governmental plans, because the only permissible investments for 403(b) plans are custodial accounts that invest in mutual fund shares and/or annuity contracts. Also, the Biden administration’s proposal regarding defined contribution plans that would have different benefits for higher and lower earners with a 20.5% ceiling for tax deduction. For the highest tax bracket today, 37%, the deferral amount would be capped at 20.5%. For the lowest tax bracket today, which is close to 12%, participants would be provided a credit through a federal contribution up to the 20.5% cap. This proposal would drive the higher earners to utilize Roth accounts which, under the proposal is okay, because taxes are paid before the Roth contribution is made.

Mandatory and Voluntary Retirement Plan Amendments

Natalie Yoza reviewed information about the amendments for the Board of Regent’s Mandatory and Voluntary Plan Documents, to capture decisions made by the RPC at its April 2020 meeting. The Plan amendments achieve the following three objectives: (1) reflect the Retirement Plan Committee’s (RPC) decision to permit certain approved recordkeepers to offer Coronavirus-Related Distributions as authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act); (2) incorporate a change to the Required Minimum Distribution rules that was mandated by federal law; and (3) amend the Voluntary Plan’s approved vendor list effective January 2021 to reflect the consolidation of recordkeepers. The Ice Miller law firm drafted the Plan amendments. The Board has delegated to the RPC, through the RPC Charter, the authority to amend Plan documents.

Rick Lecompte moved, and President Scott seconded, that the RPC approve the written Plan documents to include the Mandatory Plan Amendment Three and the Voluntary Plan Amendment Four. The motion was approved unanimously.

KBOR Regulation Update

Natalie Yoza provided an update about the regulation revocation for the Board’s Voluntary 403(b) Retirement Plan, K.A.R. 88-10-1 *et seq.* (Article 10) and K.A.R. 88-11-1 *et seq.* (Article 11). The regulations were not updated in 2005 despite a major revision to the governing statutes, K.S.A. 74-

4925 and K.S.A. 74-4925(b). In 2009, the federal law governing 403(b) plans changed to require a written plan document, and the Board has since been operating its Voluntary Retirement Plan pursuant to the authorizing state statute, federal law, and the written Plan Document. Because of these changes, the regulations have fallen out of use despite remaining on the books.

Following procedures established by State law, the process to revoke these regulations has been completed. The Legislative Joint Committee on Administrative Rules and Regulations (JCARR), submitted comments expressing its appreciation for the revocation of unnecessary rules and regulations. Board staff have completed all required steps. At their September meeting, the proposed recommendation to revoke these regulations will be presented to the Board of Regents.

National Association of Government Defined Contribution Administrators (NAGDCA) Update

Natalie Yoza provided an update about NAGDCA which the RPC authorized joining last year. The experience, to date, has not been as beneficial as hoped. Elaine Frisbie and Natalie Yoza spoke with Executive Director about resources available for public entities. NAGDCA is primarily driven by their annual conference which will be online this year, and we are waiting on more information about the offerings. The Executive Director's vision is for a more active organization in the future, so we will watch to see what happens. Natalie Yoza does not recommend renewing the membership at this time and will review the online conference pricing and resources and continue to look for other ways to network with other public plans so we can review and benchmark.

Voluntary Retirement Plan - KBOR plan communication strategy – TIAA and Voya

Kendra Kamesch shared information created jointly by TIAA and Voya to create a custom KBOR Retirement Program brand and to communicate information about the Plans. Scott Darcy, Voya's Communication Consultant, confirmed the custom branding approach is one that Voya is excited to participate in for KBOR participants and agrees that each provider utilizing approved brand guidelines for their communications will provide a more consistent look and feel to participants.

Regent Bangerter stated that he was impressed with the information shared as it is on target and a great way to brand the Plan for the KBOR system and it is absolutely the direction we need to go. Dr. Lecompte expressed his appreciation for the enthusiasm around this concept as he has heard discussions during the pandemic that remind him how few participate in the Voluntary Plan, which can provide additional funds at retirement. Creating excitement around the Voluntary Plan is critical to ensure faculty and staff are aware of the Plans. President Scott echoed those sentiments stating that the Retirement Plans are one of the most important benefits offered to employees, and universities are all going to be faced with more retirements as the pandemic impacts workforce members differently. Efforts to retain and attract employees will be challenging, and this is a wonderful benefit about which to provide information. Many faculty and staff do not understand the level of expertise that goes into managing and administering the retirement program and the extraordinary benefit it provides. Stacey Snakenberg stated that it will be important to publicize the one-on-one meeting opportunities available as many are still unaware. A blend of the concepts (heritage and teamwork) will be designed by TIAA and Voya.

Employee engagement outcomes – TIAA and Voya

Nicolette Dixon, TIAA, and Cindy Delfelder and Scott Darcy, Voya, provided information about employee engagement activities in calendar year 2019 and how each company has responded in the COVID-19 environment to connect with participants.

Upcoming changes - TIAA

Ray Bellucci informed the RPC about upcoming changes necessitated because of TIAA's decision to move KBOR and other clients within the state of Kansas to the Heartland territory. Katie Skorupski was introduced as KBOR's new relationship manager as Nicolette Dixon transitions off the team in the spring of 2021.

Ray Bellucci will be leading the western region and all services performed by TIAA will report up to him: relationship managers, field consultants, client services managers and wealth management advisors. This change should be transparent to participants and will allow for more comprehensive reporting on how employees are served.

Tom Carmody, who is retiring, shared how it has been a distinct honor and privilege to serve KBOR over the last several years. As he will enjoy spending time with his children, and soon to be five grandchildren, while he is in the Florida panhandle he invited RPC members travelling in the area to contact him as he would love to catch up. Regent Bangerter thanked Tom stating it was a real pleasure getting to know him and reminisced about the great trip TIAA made to Dodge City. The RPC expressed their appreciation for the assistance and guidance Tom has provided throughout the years and wished him well in the next chapters of his life's journey.

Madi Vannaman shared that she had discussions with Ray Bellucci about retaining Nicolette Dixon on the KBOR team because of the immense value she provides with her knowledge, experience, and responsiveness. When it became apparent the decision would not be changed, Madi asked Ray, on behalf of the RPC, to share info with his hierarchy that although we understand and accept this TIAA business decision, we are disappointed to lose the services of Nicolette as she provided immense value and many contributions as a strong advocate for our Plan during the years of our association. Expressions of thankfulness were extended to Nicolette as she will be missed.

Good of the Order

Although Diane Goddard was not able to participate in the meeting, it was shared that she will be retiring later this year. TIAA and Voya, on behalf of the RPC, sent some delicious Colorado Toffee to Diane, to express our appreciation for her contributions, insight and perspectives while serving on this Committee.

Next RPC meeting:

The next regular RPC meeting will be scheduled for March 2021 TBD.

Act on Seeking a Request for Proposals (RFP) for Legal Services

Summary and Staff Recommendation

Board staff recommend asking the State's Procurement Office to issue a Request for Proposals (RFP) for retirement plan legal services. Several issues have arisen that demonstrate having a contract with legal counsel would be advantageous because State procurement laws make it challenging to hire counsel quickly each time an issue arises. The Retirement Plan Committee would need to approve issuing the RFP and the statement of work. The Retirement Plan Committee (RPC) would then form a subcommittee—the Procurement Negotiating Committee (PNC)—and one RPC member would serve as a named representative with the State's Procurement Office. Once bids are received, the PNC would make a recommendation to the RPC for approval.

Background

The Kansas Board of Regents 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 the responsibility for retaining independent outside experts, as needed, to assist in the development and monitoring of the overall investment program.

Historically, the RPC has retained legal counsel to assist with several legal issues including questions related to fiduciary duty and drafting Plan amendments. State procurement laws must be followed to hire counsel. If the project is limited in scope and will cost less than \$5,000 the Board can exercise its discretionary authority to hire counsel quickly. But this can only be used for small projects once a year. The process for hiring counsel after that discretionary authority is exhausted or for larger projects is much more time consuming.

By issuing an RFP and having legal counsel under contract, counsel can be contacted on an as needed basis and timely legal advice can be obtained. Because our contract with ACG ends in 2023, staff recommends seeking a three-year contract for legal services ending June 30, 2024, which would avoid bidding both services in the same year. A proposed statement of work and outline of the RFP process is included below.

The Proposed Statement of Work

The Kansas Board of Regents is statutorily charged with administering two 403(b) retirement plans. The Board established the Retirement Plan Committee as a co-fiduciary for the Plans and delegated some of its oversight responsibilities to the Committee. The Board has also hired an investment consultant that is a co-fiduciary for the Plans. The investment consultant reviews Plan investments and advises the Committee and Board on investment matters. The Board now seeks to retain a law firm to provide specialized legal advice for both plans. The scope of desired services is described below. It is intended as a general guide and not as a complete list of all aspects of the services to be performed or of all tasks necessary to complete the work.

1. Advise the Board, Committee, and Board staff on compliance with applicable laws, including tax laws, securities laws, and fiduciary requirements to properly administer the Plans.

2. Recommend amendments to statutes, regulations, policies, and procedures to maintain compliance with legal duties and responsibilities.
3. Advise the Board, Committee, and Board staff concerning contracting matters, including but not limited to contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
4. Negotiate, draft and review contracts, including but not limited to contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
5. Provide ongoing support and updating of the 403(b) Plan documents.
6. Advise the Board, Committee, and Board staff concerning correcting Plan errors, including preparing and filing requests for correction with the Internal Revenue Service.

The RFP Process

To begin the RFP process, the RPC would need to establish a subcommittee to serve as the PNC. One PNC member will be a named representative with the Procurement Office along with one member of Board staff. All PNC members will need to sign a non-disclosure agreement. Board staff will submit the RFP specifications and a list of potential vendors.

It takes roughly a month to get the RFP posted, questions from vendors, and responses submitted. If issued after the RPC meeting, bids would close around the end of April at the latest. The PNC would have up to 30 days to review the technical responses. After the PNC submits a technical review, the Procurement Office provides the cost proposals. The PNC would make a recommendation to the RPC and the contract can be negotiated. Once the final selection is made, the Procurement Office finalizes the contract for signature. The goal would be to have a virtual RPC meeting at the end of May to review the PNC's recommendation.

Receive Report on New Voluntary Plan Contracts, Including Stalled Negotiations with Ameritrade for a Self-Directed Brokerage Account for Voya Participants

Summary

The Kansas Board of Regent's Record Keeping Services Agreement with TIAA was amended to implement the new terms approved by the Retirement Plan Committee and Board. A new Voluntary Plan contract with Voya was also executed. While the TIAA self-directed brokerage account will continue to be available, negotiations have stalled with TD Ameritrade to provide the self-directed brokerage account for Voya participants. If there is a change, Board staff will again pursue a self-directed brokerage account for Voya participants in the Voluntary Plan.

Beginning with the first pay period in January, contributions to the Voluntary Plan were directed to the new contracts with TIAA and Voya.

In March 2020, the Retirement Plan Committee (RPC) recommended that the Board enter new Voluntary Plan contracts with TIAA and Voya as part of its project to consolidate vendors, increasing its fiduciary oversight. The Board approved the new contracts in April 2020, and the contracts were executed at the end of 2020 allowing the participants' transition to the new contracts beginning with the first pay period in January 2021.

The new contracts included a number of benefits for participants, including reduced Plan pricing. For the TIAA contract, the new terms included a reduction in the Mandatory and Voluntary Plan pricing from .06% to .055%. And Voya reduced its pricing on the Voluntary Plan from .50% wrap plus a .75% revenue share to .12%.

The intent was to maintain the self-directed brokerage account with TIAA and to add a self-directed brokerage account for Voya participants. However, negotiations stalled with Voya's subcontractor, TD Ameritrade, because Ameritrade would not accept the Kansas Department of Administration's DA-146a (Rev. 07-19) addendum, which contains the standard terms required by the State including language that agencies will not agree to indemnify any contractor or third party for any acts or omissions. If these circumstances change, a self-directed brokerage account will again be pursued for Voya participants.

The self-directed brokerage account continues to be available for TIAA participants. There are 17 accounts with a total balance of \$829,259. Three accounts belong to participants who are no longer employed, and six of those accounts contain less than \$100. This means there is low utilization, but the option continues to be available.

Receive Final Distribution Numbers for Coronavirus-Related Distributions (CRDs) from the Board's 403(b) Plans

Summary

In April 2020, the Retirement Plan Committee authorized Coronavirus-Related Distributions (CRDs) from the Board's Mandatory and Voluntary 403(b) Plans as permitted by the newly enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CRDs were designed to be short-term solutions easing restrictions on distributions from the Plans for qualified individuals. The CARES Act provisions permitting the CRDs expired at the end of 2020. The Plan Documents were amended, and this matter has been completed.

As summarized below, there were 675 CRDs taken and about 30% of those CRDs were for participants with more than one request. The total amount distributed was \$13,995,471, and 97% (around 13,581,000) of those distributions were from the Mandatory Plan.

Coronavirus-Related Distributions (CRDs) from KBOR 403(b) Plans				
	675	CRDs		
	197	participants with more than 1 request (same or multiple companies)		
	Mandatory Plan	Voluntary Plan	Both Plans	% of Total
Distribution Totals	\$ 13,581,288.35	\$ 414,182.86	\$ 13,995,471.21	
% of Total	97%	3%		
Companies				
VALIC		1	1	0.1%
Waddell & Reed		2	2	0.3%
SBG	3	1	4	0.6%
LF	7		7	1.0%
Voya	226	13	239	35.4%
TIAA	405	17	422	62.5%
	641	34	675	
Age ranges	24 - 83	27 - 65		
Average Age	43.53	44.72	43.59	
Distributions by Month				
Apr	30	3	33	5%
May	73	4	77	11%
Jun	57	0	57	8%
Jul	82	3	85	13%
Aug	85	8	93	14%
Sep	52	3	55	8%
Oct	60	2	62	9%
Nov	70	3	73	11%
Dec	132	8	140	21%
	641	34	675	

Distributions by University				
ESU	14	0	14	2%
FHSU	14	1	15	2%
KSU	130	7	137	20%
KU	213	12	225	33%
KUMC	115	6	121	18%
PSU	26	1	27	4%
WSU	129	7	136	20%
	641	34	675	