

STATE OF NEW YORK

2679--A

2023-2024 Regular Sessions

IN SENATE

January 24, 2023

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT in relation to authorizing and empowering CREF to combine with TIAA, with TIAA continuing in existence as the surviving entity following such combination and with CREF ceasing to be a corporate entity; and to repeal chapter 124 of the laws of 1952, relating to incorporating the college retirement equities fund for the benefit of the teaching profession

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Chapter 124 of the laws of 1952, relating to incorporating
2 the college retirement equities fund for the benefit of the teaching
3 profession, is REPEALED.
- 4 § 2. Definitions. For purposes of this act the following terms shall
5 have the following meanings:
- 6 (a) "Attorney General" shall mean the attorney general of the State of
7 New York;
- 8 (b) "CREF" shall mean the College Retirement Equities Fund, formed
9 pursuant to chapter 124 of the laws of 1952 as a companion organization
10 to TIAA for the issuance of variable annuity contracts;
- 11 (c) "CREF Board of Governors" shall mean the individuals designated as
12 governors of CREF, pursuant to chapter 124 of the laws of 1952, who are
13 the sole members of CREF;
- 14 (d) "CREF Board of Trustees" shall mean, collectively, the trustees of
15 CREF as appointed in accordance with applicable law and the organiza-
16 tional documents of CREF;
- 17 (e) "Plan of Combination" shall mean, collectively, the agreement and
18 plan of combination of TIAA and CREF adopted and approved in accordance
19 with the provisions of this act to effectuate the combination;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (f) "Superintendent" shall mean the superintendent of the New York
2 state department of financial services;

3 (g) "TIAA" shall mean the Teachers Insurance and Annuity Association
4 of America, an insurance company formed pursuant to the laws of New
5 York;

6 (h) "TIAA Board of Governors" shall mean the corporation formed pursu-
7 ant to chapter 880 of the laws of 1937, which is the sole owner of the
8 issued and outstanding stock of TIAA;

9 (i) "TIAA Board of Trustees" shall mean, collectively, the trustees of
10 TIAA as appointed in accordance with applicable law and the organiza-
11 tional documents of TIAA; and

12 (j) "TIAA Separate Account" shall mean the separate account of TIAA
13 created in connection with the Plan of Combination.

14 § 3. (a) Subject to the provisions of this act and the terms set
15 forth in the Plan of Combination, CREF is hereby authorized and
16 empowered to combine with TIAA, with TIAA continuing in existence as the
17 surviving entity following such combination and with CREF ceasing to be
18 a corporate entity. TIAA shall continue to be an insurance company
19 established pursuant to the insurance law of the State of New York,
20 operating without profit to TIAA or its stockholders. The TIAA Separate
21 Account shall be subject to the insurance law of the State of New York,
22 and shall also operate without profit to itself, TIAA, or TIAA's stock-
23 holders. Notwithstanding the foregoing, neither the combination nor any
24 transactions contemplated by the Plan of Combination shall cause TIAA,
25 as the surviving entity, or the TIAA Separate Account, to be or become
26 subject to the not-for-profit corporation law. The TIAA Board of Gover-
27 nors shall remain subject to the not-for-profit corporation law.

28 (b) Such combination shall be deemed a merger under the laws of the
29 state of New York, including any laws applicable to insurance companies
30 or not-for-profit corporations.

31 (c) The following procedures shall apply with respect to the review
32 and approval of the Plan of Combination:

33 (1) The Plan of Combination shall contain the proposed terms of the
34 combination, including any allocation of anticipated tax benefits of the
35 combination, and, to the extent applicable to the combination, informa-
36 tion which would be included in a plan of merger pursuant to paragraph
37 (a) of section 902 of the not-for-profit corporation law.

38 (2) Prior to adopting the Plan of Combination, the TIAA Board of Trus-
39 tees and the CREF Board of Trustees shall each make an independent
40 determination that the proposed combination is fair, reasonable and in
41 their respective corporation's best interest.

42 (3) The TIAA Board of Trustees and the CREF Board of Trustees, upon
43 approving the Plan of Combination, shall submit such Plan of Combination
44 to a stockholder or member vote, as follows:

45 (i) In the case of CREF, the Plan of Combination shall be approved by
46 the vote of two-thirds of the individual governors of the CREF Board of
47 Governors, as the members of CREF, in accordance with the procedures set
48 forth in section 903 of the not-for-profit corporation law;

49 (ii) In the case of TIAA, the Plan of Combination shall be approved by
50 the TIAA Board of Governors, as the sole stockholder of TIAA, by the
51 vote of two-thirds of the individual governors of the TIAA Board of
52 Governors; and

53 (iii) Notice of the meeting at which the vote on the Plan of Combina-
54 tion will take place shall be provided to each individual governor of
55 the CREF Board of Governors and to the TIAA Board of Governors, as sole

1 stockholder of TIAA. A copy of the Plan of Combination shall accompany
2 such notice.

3 (4) Upon obtaining the respective approvals of the members of CREF and
4 the sole stockholder of TIAA, the Plan of Combination shall be submitted
5 to the Superintendent, for review and approval in accordance with the
6 procedures set forth in section 7105 of the insurance law of the state
7 of New York.

8 (5) Following the receipt of the approval of the Superintendent, TIAA
9 and CREF shall submit to the Attorney General the following documents:

10 (i) a certified copy of the adopted Plan of Combination with the
11 approval of the Superintendent endorsed thereon;

12 (ii) an affidavit from a duly authorized officer of each of TIAA and
13 CREF certifying that all necessary board approvals to adopt the Plan of
14 Combination have been obtained, which shall include a statement affirm-
15 ing (A) that the Plan of Combination was approved at a meeting of the
16 Board of Trustees duly called and held by the vote required under the
17 applicable corporation's charter, by-laws or other governing instrument,
18 (B) the number of trustees present at such meeting, (C) the total number
19 of trustees on the board, (D) the requirements for quorum, and (E) the
20 final vote count for and against adoption of the Plan of Combination at
21 such meeting. A copy of the resolution approving the Plan of Combination
22 shall be attached as an exhibit to the affidavit;

23 (iii) an affidavit from a duly authorized officer of each of TIAA and
24 CREF certifying that all necessary stockholder or member approvals have
25 been obtained, including (A) in the case of CREF, a statement that the
26 Plan of Combination has been approved by the vote of not less than two-
27 thirds of the individual governors of the CREF Board of Governors, as
28 the members of CREF, together with a copy of the resolution of the
29 members approving the Plan of Combination; (B) in the case of TIAA, a
30 statement that the Plan of Combination has been approved by the TIAA
31 Board of Governors, as the sole stockholder of TIAA, by a vote of not
32 less than two-thirds of the individual governors, together with a copy
33 of the stockholder resolution approving the Plan of Combination; and (C)
34 in the case of each of TIAA and CREF, a statement whether any votes
35 against adoption of the resolution approving the Plan of Combination
36 were cast at the meeting at which each such resolution was adopted;

37 (iv) copies of the charters, by-laws and any other governing instru-
38 ments, including amendments, for each of TIAA and CREF; and

39 (v) a statement that neither TIAA nor CREF, respectively, has any
40 charitable funds or other charitable assets, whether restricted or unre-
41 stricted, that will be required to be returned, transferred or conveyed
42 to any third party by reason of the combination.

43 (d) If it shall appear, to the satisfaction of the Attorney General,
44 that (i) the terms and conditions of the combination are fair and
45 reasonable to CREF (as the non-surviving corporation) and to the annui-
46 tants, certificate-holders and participants of both TIAA and CREF, and
47 (ii) the procedural requirements set forth in this section have been
48 satisfied, the Attorney General shall approve the Plan of Combination.
49 Thereafter, once all other required regulatory approvals to effectuate
50 the combination have been obtained, TIAA shall file a certified copy of
51 the Plan of Combination, with the approvals of the Superintendent and
52 the Attorney General affixed thereto, in the office of the clerk of the
53 county of New York. Upon the completion of such filing, the combination
54 shall become effective.

55 § 4. (a) At the effective time of and pursuant to the Plan of Combina-
56 tion, all assets and liabilities of CREF including causes of action and

1 defenses thereto, shall vest by operation of law in TIAA, and all vari-
2 able annuity contracts and certificates issued by CREF and in force at
3 the effective time of the combination, shall be and become TIAA variable
4 annuity contracts and certificates as of the effective time of the
5 combination; provided, however, that at the effective time of the combi-
6 nation: (i) without further act or deed, the assets and liabilities of
7 CREF relating to the outstanding variable annuity contracts and certif-
8 icates of CREF shall immediately be assets and liabilities of and allo-
9 cated to the TIAA Separate Account without such assets becoming general
10 account assets of TIAA; and (ii) each investment account of CREF imme-
11 diately prior to the combination shall comprise an investment sub-ac-
12 count of the TIAA Separate Account, with the assets and liabilities of
13 each such investment account vesting immediately and directly in that
14 investment sub-account.

15 (b) At the effective time, TIAA shall assume the obligations of all
16 CREF contracts and certificates, and all holders of CREF contracts and
17 certificates shall be notified of the combination.

18 (c) At all times the assets of the TIAA Separate Account, and of each
19 investment sub-account, shall be segregated from the assets of the
20 general account of TIAA and any other TIAA separate account and invest-
21 ment sub-account. That portion of the assets of the TIAA Separate
22 Account, and of each investment sub-account, not exceeding the reserves
23 and other contract liabilities with respect to the TIAA Separate Account
24 and each investment sub-account, shall not be chargeable with liabil-
25 ities arising out of any other business of TIAA. The income, gains and
26 losses, whether or not realized, from assets allocated to the TIAA Sepa-
27 rate Account, and each investment sub-account, shall be credited to or
28 charged against the TIAA Separate Account and each investment sub-ac-
29 count without regard to other income, gains or losses of TIAA.

30 (d) Any tax benefits realized as a result of the Plan of Combination
31 shall be utilized for the financial benefit of TIAA and TIAA Separate
32 Account participants and shall not be used to determine, pay or increase
33 the amount of compensation paid to officers, trustees, or employees.

34 § 5. This act shall take effect immediately; provided, however, that
35 section one of this act shall take effect at the effective time of the
36 combination of TIAA and CREF pursuant to this act; and provided further,
37 that the superintendent of the New York state department of financial
38 services shall notify the legislative bill drafting commission upon the
39 occurrence of such effective time in order that the commission may main-
40 tain an accurate and timely database of the official text of the laws of
41 the State of New York in furtherance of effectuating the provisions of
42 section 44 of the legislative law and section 70-b of the public offi-
43 cers law.