STATE OF NEW YORK

8126

IN SENATE

January 25, 2022

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

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:

Section 1. Chapter 124 of the laws of 1952, relating to incorporating the college retirement equities fund for the benefit of the teaching profession, is REPEALED.

§ 2. Definitions. For purposes of this act the following terms shall have the following meanings:

(a) "CREF" shall mean the College Retirement Equities Fund, formed pursuant to chapter 124 of the laws of 1952 as a companion organization to TIAA for the issuance of variable annuity contracts;

(b) "CREF Board of Governors" shall mean the individuals designated as governors of CREF, pursuant to chapter 124 of the laws of 1952, who are the sole members of CREF;

(c) "Plan of Combination" shall mean the agreement and plan of combination of TIAA and CREF adopted and approved in accordance with the provisions of this act;

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

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

(f) "TIAA Board of Governors" shall mean the corporation formed pursuant to chapter 880 of the laws of 1937, which is the sole owner of the issued and outstanding stock of TIAA; and

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

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

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§ 3. (a) Subject to the provisions of this act and the terms set forth in the Plan of Combination, CREF is hereby authorized and empowered 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. TIAA shall continue to be an insurance company established pursuant to the laws of the state of New York. The TIAA Separate Account shall be subject to the insurance laws of the state of New York, and neither the combination nor any transactions contemplated by the Plan of Combination shall subject TIAA, as the surviving entity, or the TIAA Separate Account, to the not-for-profit corporation law. The TIAA Board of Governors shall remain subject to the not-for-profit corporation law.

(b) Such combination shall be deemed a merger under the laws of the state of New York, including any laws applicable to insurance companies or not-for-profit corporations, and shall be approved by not less than two-thirds of the individual governors of the CREF Board of Governors as the sole members of CREF, and not less than two-thirds of the individual members of the TIAA Board of Governors as the sole shareholder of TIAA. Thereafter, the Plan of Combination shall be submitted to the Superintendent for approval. Following the receipt of all necessary corporate and regulatory approvals, including authorization by the TIAA and CREF Boards of Governors and TIAA and CREF boards of trustees, a certified copy of the Plan of Combination with the approval of the Superintendent endorsed thereon shall be filed in the office of the clerk of New York County, and upon such filing the combination shall become effective.

§ 4. (a) At the effective time of and pursuant to the Plan of Combination, all assets and liabilities of CREF including causes of action and defenses thereto, shall vest by operation of law in TIAA, and all variable annuity contracts and certificates issued by CREF and in force at the effective time of the combination, shall be and become TIAA variable annuity contracts and certificates as of the effective time of the combination; provided, however, that at the effective time of the combination (i) without further act or deed, the assets and liabilities of CREF relating to the outstanding variable annuity contracts and certificates of CREF shall immediately be assets and liabilities of and allocated to the TIAA Separate Account without such assets becoming general account assets of TIAA; and (ii) each investment account of CREF immediately prior to the combination shall comprise an investment sub-account of the TIAA Separate Account, with the assets and liabilities of each such investment account vesting immediately and directly in that investment sub-account.

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

(c) At all times, the assets of the TIAA Separate Account, and of each investment sub-account, shall be segregated from the assets of the general account of TIAA and any other TIAA separate account and investment sub-account. That portion of the assets of the TIAA Separate Account, and of each investment sub-account, not exceeding the reserves and other contract liabilities with respect to the TIAA Separate Account and each investment sub-account, shall not be chargeable with liabilities arising out of any other business of TIAA. The income, gains and losses, whether or not realized, from assets allocated to the TIAA Separate Account, and each investment sub-account, shall be credited to or charged against the TIAA Separate Account and each investment sub-account without regard to other income, gains or losses of TIAA.

§ 5. This act shall take effect immediately, provided, however, that section one of this act shall take effect at the effective time of the combination of TIAA and CREF pursuant to this act, and provided further, that the Superintendent of the New York state department of financial services shall notify the legislative bill drafting commission upon the occurrence of such effective time in order that the commission may maintain an accurate and timely database of the official text of the laws of the State of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.