STATE OF NEW YORK

2679--B

Cal. No. 1180

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 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laws of 1952, relating to incorporating College Retirement Equities Fund for the benefit of the teaching profession, is REPEALED.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) "Attorney General" shall mean the attorney general of the State of New York;

(b) "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;

(c) "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;

(d) "CREF Board of Trustees" shall mean, collectively, the trustees of CREF as appointed in accordance with applicable law and the organizational documents of CREF;

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

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

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

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

(h) "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;

(i) "TIAA Board of Trustees" shall mean, collectively, the trustees of TIAA as appointed in accordance with applicable law and the organizational documents of TIAA; and

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

§ 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 insurance law of the State of New York, operating without profit to TIAA or its stockholders. The TIAA Separate Account shall be subject to the insurance law of the State of New York, and shall also operate without profit to itself, TIAA, or TIAA's stockholders. Notwithstanding the foregoing, neither the combination nor any transactions contemplated by the Plan of Combination shall cause TIAA, as the surviving entity, or the TIAA Separate Account, to be or become subject 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.

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

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

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

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

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

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

(iii) Notice of the meeting at which the vote on the Plan of Combination will take place shall be provided to each individual governor of the CREF Board of Governors and to the TIAA Board of Governors, as sole stockholder of TIAA. A copy of the Plan of Combination shall accompany such notice.

(4) Following the receipt of the approval of the members of CREF and the sole stockholder of TIAA, TIAA and CREF shall submit to the Attorney General the following documents:

(i) a certified copy of the adopted Plan of Combination;

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

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

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

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

(d) If it shall appear, to the satisfaction of the Attorney General, that (i) the terms and conditions of the combination are fair and reasonable to CREF (as the non-surviving corporation) and to the annuitants, certificate-holders and participants of both TIAA and CREF, and (ii) the procedural requirements set forth in subdivision (c) of this section have been satisfied, the Attorney General shall approve the Plan of Combination.

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

(f) Thereafter, once all other required regulatory approvals to effectuate the combination have been obtained, TIAA shall file a certified copy of the Plan of Combination, with the approvals of the Superintendent and the Attorney General affixed thereto, in the office of the

clerk of the county of New York. Upon the completion of 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 all 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.

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

§ 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 effective 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.