

Changes to the Mandatory 403(b) Retirement Plan Document, and Introduction to the new Voluntary 403(b) Retirement Plan Document

Background

The Kansas Board of Regents oversees two 403(b) retirement plans for its faculty and eligible staff at the six state universities and the Board Office: the Mandatory Retirement Plan and the Voluntary Retirement Plan.

In 2007, the IRS issued new 403(b) regulations, the first comprehensive 403(b) regulations since 1964. These new regulations apply to all 403(b) plans, and are generally effective January 1, 2009. The regulations require Plan Sponsors, such as KBOR, to have a higher level of involvement with and responsibility for their 403(b) plans than ever before. One requirement included in the regulations is that the Plan Sponsor must maintain a plan document for the 403(b) plan, and certain information must be included in the document. The Regents' Retirement Plan Committee (RPC), working with our consultants, has developed two Plan Documents to meet the new requirements. The Plan Documents set forth all the terms of the Mandatory and Voluntary Retirement Plans, establishing the rights and responsibilities of employees participating in the Plans.

The new 403(b) regulations also require the Plan Sponsor to more closely monitor certain activities. KBOR, as Plan Sponsor, has selected ING's planwithease.com[®] as the third party administrator for 403(b) compliance. Although some administrative duties will be delegated to planwithease.com, KBOR retains ultimate responsibility for the 403(b) Plans.

Mandatory Retirement Plan

In 1962, the Kansas Legislature authorized the Board to establish a Mandatory 403(b) Retirement Plan to provide retirement benefits for faculty and unclassified employees at the state universities and Board Office. Under the Mandatory Plan, eligible employees currently are required to contribute 5.5% of their compensation towards their retirement, which is matched by an 8.5% employer contribution. Employees choose how to invest their retirement funds with one of two Investment Providers that have been selected by the Board: ING and TIAA-CREF.

The Mandatory Plan Document was originally approved in March 2006. In light of the final IRS 403(b) regulations, and at the request of the RPC, the Mandatory Retirement Plan document has been extensively reviewed and revised by the Ice Miller Law Firm. Additional review was performed by Deloitte Consulting, the current retirement consultant to the Board. The Board of Regents approved the Mandatory Retirement Plan document at their November 2008 meeting.

Summary of the Mandatory Retirement Plan Document Major Changes

Major changes to the Mandatory Retirement Plan Document from the original March 2006 version are highlighted below:

- Eliminate the Loan Provision in the Mandatory Plan. While actively employed, the only participants who can take a loan are those with a Phased Retirement contract. As this feature of the Mandatory Plan has not been utilized, such Phased Retirees can access up to 99% of their Mandatory Plan annuity funds, and at age 59 ½ can access up to 99% of their custodial account funds, the decision has been made to eliminate this feature.

- Authorize distribution of funds when the participant terminates employment from KBOR system (state universities and Board Office), even if going to another non-KBOR state job. The final IRS 403(b) regulations permit distribution when the participant leaves employment with an employer qualified to offer a 403(b) plan. Because only KBOR state universities and the Board Office are qualified to offer a 403(b) plan, when an employee leaves KBOR employment and goes to work for the State of Kansas, the regulations permit distribution from the 403(b) plan.
- Stop authorizing distribution of funds when the participant takes a KBOR student or temporary position and is no longer eligible to participate in the 403(b) plan. This situation arises very infrequently, but can lead to abuse and thus non-compliance with the IRS 403(b) regulations.
- Remove the provision permitting an employee to take a leave of absence to serve in the Executive branch of State government while continuing to participate in the KBOR Mandatory Retirement plan. The final IRS 403(b) regulations do not allow employees to participate in the KBOR 403(b) plans if they are not providing a service to an "educational institution" (i.e. KBOR state university or the KBOR Office) and are not receiving compensation from an "educational institution."

Voluntary Retirement Plan

In 1974, the Kansas Legislature authorized the Board to establish a Voluntary 403(b) Retirement Plan to provide employees an opportunity to supplement their retirement income. All benefits-eligible employees at the state universities and Board office, including KPERS participants, can utilize the Voluntary Retirement Plan which accepts employee pre-tax contributions, but does not include employer contributions. Employees may select one of the approved investment providers under the Voluntary 403(b) Retirement Plan to receive their ongoing contributions, may change the contribution amount at anytime during the year, and may change to a different approved investment provider once a calendar year.

Changes to the operation of the Voluntary Retirement Plan as now reflected in the new Voluntary Retirement Plan Document

In light of the final IRS 403(b) regulations, a Voluntary Retirement Plan Document was drafted by Ice Miller, and was reviewed by Deloitte Consulting and the RPC. The Board of Regents approved the Voluntary Retirement Plan document at their November 2008 meeting.

KBOR has received notification that many companies are leaving the 403(b) business because of the additional requirements imposed by the 403(b) regulations, or they cannot agree to provide the required electronic sharing of data needed to facilitate compliance with the regulations. Those companies will no longer be approved under the KBOR Voluntary 403(b) Plan. These non-approved companies will not transmit plan data to planwithease.com. Because planwithease.com will not have the data needed to ensure compliance with the 403(b) regulations, additional restrictions are necessary for funds remaining with a non-approved company if a participant, while actively employed, wants to take a loan or make a hardship withdrawal. The Voluntary Plan Document incorporates these restrictions, which will NOT be applied to actively employed participants with funds with approved companies:

- accumulations can remain with the non-approved companies
- accumulations can be moved from a non-approved company only to a KBOR approved 403(b) company (contract exchange)
- distributions based on separation from service from the state universities/Board office, age 59 ½ or older, QDROs or disability status will be permitted
- loans and hardship withdrawals are prohibited under the KBOR plan document, but will be permitted if the participant's individual contract explicitly provided for those types of distributions and the non-approved company agrees to share requisite information with KBOR and the state universities.

When the participant separates from service, turns age 59 ½ or older, submits a QDRO or attains disability status, access to funds is permitted, and the participant should contact the non-approved company directly to obtain the necessary distribution paperwork. The state university or Board Office employing the participant at the time of the event will respond to the non-approved company's inquiry that the participant has separated from service or meets other criteria to access plan accumulations.

If a contract exchange is desired, the participant should contact the non-approved company directly to obtain the necessary paperwork. The state university or Board Office employing the participant will respond to the non-approved company's inquiry and authorize a contract exchange to one of the KBOR approved companies.

For loans and hardship withdrawals, when the provisions of the KBOR Voluntary Plan Document have been met by a non-approved company, the state university employing the participant will coordinate with the Board Office to respond to the non-approved company's inquiry and authorize access to plan accumulations.