PUBLIC PENSION OVERSIGHT BOARD

Minutes of the 7th Meeting
of the 2022 Interim

September 27, 2022

Call to Order and Roll Call

The 7th meeting of the Public Pension Oversight Board was held on Tuesday, September 27, 2022, at 3:00 PM, in Room 154 of the Capitol Annex. Representative James Tipton, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative James Tipton, Co-Chair; Senators Christian McDaniel, Gerald A. Neal, Michael J. Nemes, Damon Thayer, and Mike Wilson; Representatives Jim DuPlessis, Ken Fleming, Derrick Graham, Jerry T. Miller, Jason Petrie, Phillip Pratt, Russell Webber, and Buddy Wheatley; Mike Harmon, Victor Maddox, and Sharon Mattingly.

Guests: Chris Biddle, Executive Director, Kentucky Public Employees Deferred Compensation Authority, and Christina Stephenson, Nationwide Retirement Plans; Rebecca Adkins, Deputy Executive Director, Erin Surratt, Executive Director, Office of Benefits, and Carrie Bass, Staff Attorney Supervisor, Kentucky Public Pensions Authority; and Beau Barnes, Deputy Executive Secretary and General Counsel, Teachers' Retirement System.

LRC Staff: Brad Gross, Jennifer Black Hans, and Angela Rhodes

Approval of Minutes

Representative DuPlessis moved that the minutes of the August 22, 2022 meeting be approved. Representative Webber seconded the motion, and the minutes were approved without objection.

Deferred Compensation Authority Update

Chris Biddle, Executive Director, Kentucky Public Employees Deferred Compensation Authority (KDC), began his presentation with a brief overview. KDC offers 457(b) Pre-Tax/Roth, 401(k) Pre-Tax/Roth, and IRA Pre-Tax/Roth plans, and member benefits that include investment flexibility, lower taxes, best-in-class fees, virtual or in-person access, free financial planning, and beyond retirement benefits. He stated that KDC has $3.3 billion in assets.

Mr. Biddle discussed the impact of auto-enrollment as passed by the legislature. Since July 2019, the Commonwealth has auto-enrolled 10,938 employees with an average of 287 per month. Unique among its peer group, KDC has maintained a 94 percent retention rate of all auto-enrollees. As of September 2022 there are 80,512 participants in KDC, making it a growing plan.

Mr. Biddle stated that the minimum deferral for an auto-enrollee is $30 per month, but as of the close of September 2022, the average deferral is $48.60. The total assets for the auto-enroll pool are approaching $8 million.

Christina Stephenson, Certified Financial Planner with Nationwide Retirement Plans, discussed the free KDC financial planning service. The goal is to help participants answer the fundamental question: Will I have enough money in retirement to do things I want to do? The consultant meets with each participant to review the analysis and address other financial topics, including short- and long-term goals; saving for emergencies, college, and healthcare; identifying retirement income resources; and addressing potential gaps between retirement needs and resources. Participants receive an electronic version of their financial plan along with annual and as-needed follow-up.

Ms. Stephenson discussed the 2022 demographics. She stated that KDC financial planning is providing services to 54 percent females, 46 percent males, with an average age of 52. The average participant income is $77,000, average household income is $111,775, with average KDC holdings of $169,500. The participant feedback has been overwhelmingly positive.

In response to a question from Senator Higdon, Mr. Biddle stated that the financial planning service has had close to 1,000 participants in total between the pilot and live program, which started this year. In response to a follow-up question, Mr. Biddle stated that some of the other award-winning efforts KDC has made include: redoing their line-up of funds, during which KDC picked up about $5 million in savings; removing duplicate funds and less than 1 percent funds; and providing webinars through Nationwide that are attended at a higher rate than any other employee plan in its peer group.

In response to a question from Representative Pratt, Mr. Biddle stated KDC only does business in Kentucky with no employer match with the Commonwealth, but some school systems can and have done an employer match. In response to a follow-up question, Mr. Biddle stated that KDC does inform their members closer to retirement age to invest in funds with less risk.

In response to a question from Representative Wheatley, Mr. Biddle stated that there is no prohibition from doing business with another deferred compensation entity.

In response to a question from Representative Tipton, Mr. Biddle stated that $48.60 is the average deduction for members of KDC, which is 62 percent above the minimum. In response to a follow-up question, Mr. Biddle stated that the 94 percent retention rate is superior to other states with similar plan options.

House Bill 8 Reporting & Retiree Health Update – Kentucky Public Pensions Authority

Rebecca Adkins, Deputy Executive Director, Kentucky Public Pensions Authority (KPPA), began her presentation discussing the process, requirements, and results of HB 8 reporting by certain quasi-governmental employers participating in the Kentucky Employees Retirement System (KERS), which constitute 102 agencies. KRS 61.5991 requires local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers or any other agency that is eligible to voluntarily cease participation in KERS to report specific data to KPPA at the end of each fiscal year.

The timeline for HB 8 reporting consists of four dates. April 15th is the deadline for Form 6756 (incorporated by administrative regulation) and any required documentation to be submitted to KPPA for non-contributing employees. June 30th is the deadline for Form 6756 and any required documentation for employees hired after the form deadline (April 16-June 30). By August 29th, KPPA sends to the Office of the State Budget Director (OSBD) and the Legislative Research Commission (LRC) the list of non-contributing employees/contract employees as specified by statute. Finally, September 30th is the last date for KPPA to notify employers of the determination regarding the contract employees that were submitted for review.

Ms. Adkins discussed the reporting requirements of HB 8. Employers must submit Form 6756 along with a copy of each contract, and any other documentation that explains the services provided by each person serving as an independent contractor, leased employee (through a staffing company), or via any other similar arrangement. The exclusions are: any contracts entered into prior to January 1, 2021; contracts for professional services that have not historically been provided by employees of the employer; and non-core services provided by independent contractors.

Ms. Adkins discussed the incentives to report. She stated that KRS 61.5991(6) expresses the intent of the General Assembly to provide subsidies towards retirement costs only to those employers who have a percentage of employees reported to the system that is equal to or greater than: 60 percent for any subsidies in fiscal years occurring on or after July 1, 2022 to June 30, 2024; and 80 percent for any subsidies provided in fiscal years occurring on or after July 1, 2024.

Ms. Adkins discussed the actions taken by KPPA once the reported data is received. KPPA's legal team reviews the persons that were not reported as participating in KERS and applies the IRS Common Law Factors to determine their participation status under KRS 61.510-61.675. Of the 3,246 non-participating contractors/employees reported by 89 employers, 1,479 or 45.5 percent were determined to meet the criteria to require participation in KERS. The KPPA compiles the data and provides a summary to the LRC and the OSBD.

Ms. Adkins noted that KRS 61.5991 also requires KPPA to audit the agencies. The Kentucky Retirement Systems board of trustees approved KPPA staff to complete an audit of one large and one small agency by February 1, 2023. In doing so, KPPA staff will use the audited agencies as a metric to set a percentage of audits to be completed by August 15, 2023.

Ms. Adkins discussed the listing of data that is provided to LRC and OSBD along with the results: 87 percent of employers submitted the Form 6756 and required documentation; there were no instances of fraud/falsification; an average of 85 percent of employees are being reported; and 13 employers did not report. Regarding the question of subsidies, which is for the General Assembly to consider, 79 of the 89 agencies reporting (89 percent) were at 60 percent or more of employees reported to the system and 67 of the 89 (75 percent) were at 80 percent or more of employees reported to the system.

In response to a question from Representative DuPlessis regarding the 13 employers that failed report, Ms. Adkins confirmed that two agencies had known reasons (they are inactive and involved in litigation with KPPA) but she did not know the reason for the other 11 agencies. KPPA communicated the reporting requirements in multiple emails, through its employer self-service portal, and via its newsletter to the heads of agencies. The audit process may reveal the underlying issues for the failure to report. In response to a follow-up question, Ms. Adkins stated that it is the discretion of LRC to apply penalties.

In response to a question from Representative Tipton, Ms. Adkins named the 13 agencies that did not report. Representative Tipton commented that KRS 61.5991 states that agencies may lose their subsidy for not reporting.

In response to a question from Senator McDaniel, Carrie Bass, Staff Attorney Supervisor, KPPA, stated the IRS Common Law Factors applied to determine participation primarily address the amount of control an organization exerts over an employee or a person providing services under a contract.

Erin Surratt, Executive Director, Office of Benefits, KPPA, presented a retiree health update. She discussed the non-Medicare eligible health insurance coverage through the Kentucky Employees Health Plan (KEHP) and the Medicare eligible health insurance coverage provided by Humana. She noted that a new group that is now being offered KEHP coverage are members impacted by the Medicare Secondary Payer Act. Prior to the passage of HB 297 in 2022, KPPA did not have a plan that could pay as primary insurance to Medicare when a retiree who was over 65 returned to work with a participating employer. A recent court ruling required KPPA to offer a plan effective October 1, 2022.

Ms. Surratt discussed the board-established single monthly contribution rates for the last five years. For the KEHP LivingWell PPO, the single rate has increased from $729.34 in 2019 to $833.64 in 2022. The Humana Medicare Advantage Premium single rate has remained flat at $252.51 since 2017.

Ms. Surratt discussed the cost impacts of retiree health insurance in the past, present, and future. In its recent past, through its contract with Humana, KPPA received gain share payments in 2017, 2019, and 2020 in the amounts of $7.5 million, $12.6 million, and $18.6 million, respectively, and received an additional $30.2 million in COVID-19 premium credits in 2020. The establishment of the 1 percent non-refundable member health insurance contribution for members who began participation on or after September 1, 2008, has contributed to increased funding levels, including the receipt of $27.6 million into the insurance trust in 2021. For fiscal years 2022 and 2023, Ms. Surratt stated that there will be a meaningful liability gain on the Medicare eligible plans due to favorable premiums and claims experience. The non-Medicare eligible plans will see a loss due to the 7.9 percent increase in premiums, which is higher than the 6.3 percent trend for 2023. Some possible future impacts are: the federal Inflation Reduction Act, the cost impacts of which are unknown at this time; and SB 209 passed during the 2022 Regular Session, which added an additional $5 per month in health subsidies for certain retirees upon reaching certain career thresholds, and, effective January 1, 2023, dollar contribution reimbursements for retirees who do not take health insurance through KPPA.

Ms. Surratt provided a chart showing the 2021 insurance funded ratio levels for all plans.

In response to a question from Representative Tipton, Ms. Surratt stated that she would have to check with their actuary, but believes that KPPA will see an impact from high rates of inflation in the future. In response to a follow-up, Ms. Surratt confirmed that the Teachers' Retirement System (TRS) and KPPA have separate Medicare eligible health plans, but do have dialogue between the two systems and health care directors about best practices, pilot programs, etc.

Representative Tipton announced to the members that KPPA recently released a report on previous investment activities performed by Calcaterra Pollack, LLC. A link to the report was emailed to the members, and the report is posted on the KPPA's website – http://kyret.ky.gov.

In response to a question from Representative DuPlessis in regards to one of the agencies KPPA had listed as non-compliant with HB 8 reporting, Ms. Adkins confirmed that the list indicated that KPPA had not received the report. Representative DuPlessis stated he contacted an agency in his district who is not reporting and they informed him they had submitted their data in March. Ms. Adkins responded she would have someone check for the report or what may have happened. In response to a follow-up question from Representative DuPlessis regarding what constitutes compliant with the reporting requirements of HB 8, KPPA legal staff stated that submission of the required report in this first year was considered being compliant but certainly this may change as audits of agencies in the future are completed by KPPA staff.

Retiree Health Update – Teachers' Retirement System

Beau Barnes, Deputy Executive Secretary and General Counsel, TRS, began his presentation discussing the two health plans offered through TRS. The Kentucky Employee's Health Plan (KEHP) is offered to those retirees under age 65, which is the same health plan used by active teachers and state employees. The Medicare Eligible Health Plan (MEHP) is for those retirees age 65 and over and is provided exclusively for TRS retirees who are Medicare eligible. He noted that, under the inviolable contract, Kentucky law guarantees retired teachers access to group coverage, but the details of that coverage, including costs, subsidy, and level of coverage, can change.

Mr. Barnes discussed the TRS board approved maximum rates for the 2023 premiums: the KEHP premium is $767.56 per member per month, and the MEHP is $217 per member per month. Mr. Barnes provided a chart showing that MEHP premiums have held relatively constant over a 20 year period (2002-2023), with rates over the last few years being slightly less.

Mr. Barnes provided a breakdown of the MEHP prescription plan's 2021 retiree health care monthly cost per member. Specifically, shared responsibility (2010), federal subsidies, formulary rebates, drug purchasing discounts, and early adoption of Medicare programs have worked together to hold down premiums. However, none of these funding sources are guaranteed. Mr. Barnes provided a chart of the Medicare Part B premiums history showing annual cost impacts over 20 years, with the largest increase of 14.5 percent in 2022.

Mr. Barnes discussed shared responsibility and stated that, before the 2010 legislation, the Commonwealth was voluntarily paying almost the entire cost of retired teachers' health insurance. With the adoption of shared responsibility, retired teachers phased into paying towards their health care an amount equal to the Medicare Part B premium in addition to the healthcare option they choose. Active teachers phased into paying an additional 3 percent out of their pay towards the health insurance trust to help prefund this benefit. Finally, school districts phased into an additional 3 percent of payroll towards the health insurance trust. All of which helped grow the TRS health insurance funded status from 7.5 percent in 2010 to 60 percent in 2021.

Mr. Barnes discussed personalized health plan programs for TRS retirees, including "Know Your Rx Coalition," which provides free counseling with live pharmacists, and the "Personalized Medicine" program that uses voluntary DNA testing to inform retirees which drugs and dosages work or do not work for them due to their genetic makeup. The Journal of Personalized Medicine has peer-reviewed initial results from TRS' program, which has resulted in a $37 million savings in direct medical charges over 32 months; 66 percent of participants had genetic risks detected in a currently prescribed medication; 14.9 percent reduction in inpatient visits; 6.8 percent reduction in emergency room visits; $218 savings a month per member; and an investment return of about 1,422 percent.

Senator McDaniel commented that the best pill to take is the one that never has to be taken. Anything that can be done would be well served if people engaged in prevention at an early age. The health system as a whole would do well to engage in wellness and lifestyle changes to try to avoid ending up on medications.

In response to a question from Representative Tipton, Mr. Barnes stated that TRS does check their rates against the medical inflation rates each year.

In response to a question from Representative Graham, Mr. Barnes stated that about 41,000 out 60,000 teachers and retired teachers participate in the health insurance plan. He stated that less than 1/3 of members do not participate in the health insurance plan.

With no further business, the meeting was adjourned.