

Board Meeting
March 10, 2010

APPROVE AMENDMENT OF 403(b) PLAN DOCUMENT TO CLARIFY CERTAIN
DISTRIBUTION, INVESTMENT ADVISOR FEE, AND SOCIAL SECURITY
ALTERNATIVE PLAN PROVISIONS

Action: Approve Amendment of 403(b) Plan Document to Clarify Certain
Distribution, Investment Advisor Fee, and Social Security Alternative Plan
Provisions

Funding: No New Funding Required

University Human Resources recommends for approval an amendment of the plan document for the University of Illinois Supplemental 403(b) Retirement Plan (Plan) to clarify that rollover contributions may be distributed at any time subject to the terms of the individual agreements; clarify that fees charged by an investment advisor for advisory services relating to the participant's Plan account balance may be paid by the participant from his or her Plan account balance; and provide that the Plan is not intended to be a qualified replacement plan within the meaning of Section 218 of the Social Security Act.

The Plan is a defined contribution plan intended to have tax favored status under Section 403(b) of the Internal Revenue Code of 1986, as amended (Code). Section 1.403(b)-3(b)(3) of the Treasury Regulations provides that the Plan document must contain all material terms and conditions for eligibility, benefits, applicable limitations,

the contracts available under the Plan, and the time and form under which benefit distributions would be made.

Pursuant to Sections 402(c) and 403(b)(8) of the Code and Section 3.05 of the Plan document, a participant may contribute to the Plan eligible rollover distributions from eligible retirement plans. Pursuant to Section 1.403(b)-6i of the Treasury Regulations, amounts attributable to rollover contributions are not subject to the distribution restrictions otherwise applicable to the Plan and thus may be distributed at any time.

TIAA-CREF and Fidelity Investments are the sole approved vendors under the Plan. Fidelity Investments has historically allowed fees charged by an investment advisor for advisory services relating to the participant's Plan account balance to be paid by the participant from his or her Plan account balance at Fidelity Investments. TIAA-CREF has recently instituted a company policy to mirror Fidelity's policy regarding payment of investment advisor fees. Thus, Plan participants may direct TIAA-CREF and Fidelity to pay from his or her Plan account balance investment advisor fees charged by an investment advisor for advisory services relating to the participant's Plan account balance.

As an instrumentality of the State of Illinois, eligible employees of the University participate in the State Universities Retirement System (SURS) on a mandatory basis in lieu of being covered under the Old-Age portion of the Old-Age, Survivors and Disability Insurance (OASDI) part of the Federal Insurance Contribution Acts (FICA). An employee is not eligible to participate in SURS if he or she:

- Is a student regularly attending classes at a college or university that participates in SURS and is employed on a part-time, temporary basis at the University;
- Was employed under the Comprehensive Employment Training Act on or after July 1, 1979;
- Holds a J-1 or F-1 visa and has not yet established residency status; or
- Is currently receiving a retirement annuity from SURS.

In accordance with Section 3121(b)(7)(F) of the Code and the regulations there under, the University withholds FICA tax from an employee's compensation if that employee is not covered by SURS. However, pursuant to a University personnel policy dated October 27, 1992 (Policy), a non-SURS covered employee may choose to participate in the Plan or the State of Illinois Deferred Compensation Plan (457 Plan), in lieu of being covered by Social Security. Currently, 22 non-SURS covered employees have elected to participate in the Plan in lieu of being covered by Social Security.

In order for a non-SURS covered employee to be able to elect to participate in the Plan in lieu of being covered by Social Security, the Plan would need to be deemed a qualified replacement plan within the meaning of Section 218 of the Social Security Act that qualifies as a public retirement system (PRS) within the meaning of section 3121(b)(7)(F) of the Code. A qualified replacement plan is a plan that is intended to provide a retirement benefit to each eligible employee that is comparable to the benefit provided under the Old-Age portion of the OASDI part of FICA.

Participation in the Plan is completely voluntary. If an employee elects to participate, the employee may elect to contribute from \$200 up to the maximum amount

permitted under Section 402(g) of the Code to the Plan on an annual basis. An employee may at any time revise his or her participation election, including increase, decrease, or terminate the amount of his or her elective deferrals, on a prospective basis each payroll period. The University does not make any contributions to the Plan. As such, the Plan is not designed or intended to provide retirement benefits to participants that are comparable to the benefits provided under the Old-Age portion of the OASDI part of FICA.

To ensure compliance with the mandate under Section 1.403(b)-3(b)(3) of the Treasury Regulations that the Plan document contain all material terms and conditions and to clarify that the Plan is not designed or intended to be a qualified replacement plan within the meaning of Section 218 of the Social Security Act, it is recommended that the Board of Trustees approve and adopt the attached Amendment Number One to the Plan document.

The Board action recommended in this item complies in all material respects with applicable State and federal laws, University of Illinois *Statutes*, *The General Rules Concerning University Organization and Procedure*, and Board of Trustees policies and directives.

The Vice President/Chief Financial Officer and Comptroller concurs.

The President recommends approval.