

**ERISA Memorandum
on Form 5500 for 403(b) Plans**

April 2003



730 Third Avenue
New York, NY 10017-3206

Benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) are required to file Annual Return/Reports (Form 5500). This Memorandum provides suggestions for filing the Annual Return/Reports for institutions using TIAA-CREF annuities under their Section 403(b) retirement and tax-deferred annuity (TDA) plans for plan years that began on January 1, 2002 or later.

Use the instructions in this memorandum if ...

You have a retirement plan or tax-deferred annuity plan, using TIAA-CREF annuities, that meets the requirements of Section **403(b)(1)** of the Internal Revenue Code.

For other types of plans ...

If your plan is a qualified plan under Section 401(a) or 403(a) of the Internal Revenue Code, or a welfare benefit plan, our suggested responses in this Memorandum will not be appropriate. There are other ERISA memoranda for these plans.

Don't use the instructions in this memorandum if ...

You have a 403(b) plan that is exempt from the reporting and disclosure requirements of Title I of ERISA because:

- Your plan is a governmental plan (that is, a plan “established or maintained for its employees by the ... government of any state or political subdivision thereof, or by any agency or instrumentality of the foregoing”) or an exempt church plan,

OR
- Your TDA contracts are not considered to be part of a plan maintained by the employer. To qualify for this exemption your plan should meet the criteria described in Department of Labor regulation 2510.3-2(f):
 - participation is completely voluntary;
 - several companies’ annuities or custodial accounts are made available;
 - employer involvement is limited to administering salary reduction agreements; the annuity companies are permitted to publicize their products to employees; information about the available products is gathered and summarized; the number of available companies is limited so that employees are given a reasonable choice;
 - all rights under the contracts are enforceable only by the participant, not the employer;
 - the employer is not compensated for performing administrative duties (other than reimbursement of actual expenses).

Don't Forget...

- You have to file separate Forms 5500 for each retirement or TDA plan by the last day of the seventh month following the close of the plan year.
- You should keep copies of the completed Annual Return/Report on file for review by any participant on request.
- For this year you file the completed Form 5500 with the Department of Labor ("DOL") Pension and Welfare Benefits Administration ("PWBA") as specified in the Form 5500 Instructions, Page 5 under "Where To File." The revised Form 5500 is in two versions: a version that is completed on a computer (and which can be electronically filed or filed by mail or private delivery service); and a version that can be completed by hand or typewriter (which can *only* be filed by mail or private delivery service). The computer version will require special software that is obtained from a service provider working with the DOL. See the DOL's web page at www.efast.dol.gov for details. The handwritten or typewritten version will require forms obtained directly from the DOL; call 1 800 829-3676 for these forms. These hand- or typewritten forms are machine-readable and photocopies of them will not be accepted.

Specific guidelines for completing the forms begin on page 4.

The suggested guidelines and information in this Memorandum represent TIAA-CREF's interpretations of Department of Labor regulations and instructions for completion of Annual Return/Report forms. We suggest that you seek the advice of legal counsel regarding the applicability of particular ERISA filing requirements to a specific benefit plan, or items on the Annual Return/Report forms. TIAA-CREF's Institutional Consultants will be glad to be of assistance by working with you and your legal counsel.

Sample Cover Letter to Form 5500

The following letter provides suggested wording for you to use when filing Form 5500.

Date

[PWBA
PO Box 7043
Lawrence, KS 66044-7043]

or

[PWBA/NCS
Attn: EFAST
3833 Greenway Drive
Lawrence, KS 66046-1290]

To Whom It May Concern:

Attached is the Annual Return/Report for {insert name of your plan} for the 2002 plan year. I have completed Form 5500 for this purpose.

This plan is a 403(b) tax-sheltered annuity plan. According to the instructions to Form 5500, plans that file for an annuity arrangement under Code Section 403(b) are not required to complete all items. I have completed the required items and have left the remaining items blank.

If you have any questions concerning the information on this report, please contact me.

Sincerely,

Plan Administrator

FORM 5500

The instructions to the Form 5500 state (on page 8) that plans exclusively using a tax-deferred annuity arrangement under Code Section 403(b) need only complete Part I and Part II, lines 1 through 5, and 8 (enter pension feature code 2L, 2M, or both). The sample letter on page 3 mentions this partial exemption from filing requirements.

According to the Form 5500 Instructions, on page 9, the administrator of a plan exclusively using a tax-deferred annuity arrangement under Code Section 403(b) is not required to engage an independent qualified public accountant, attach an accountant's opinion to the Form 5500, or attach any schedules to the Form 5500.

Part I Annual Report Identification Information

If the plan has a plan year other than the calendar year or if the plan year is less than 12 months, enter the beginning and ending dates of the plan year in the spaces provided at the beginning of the form.

Item A.

- (1) – (4) Check (2) A single-employer plan.

Item B.

- (1) – (4) Do not check any boxes unless this Form 5500 is the first or final one filed for the plan, an amended Form 5500, or a Form 5500 for a period of fewer than 12 months.

Item C.

Do not check box unless your plan is collectively bargained.

Item D.

Do not check box unless you are filing under an extension of time to file this Form 5500. See the Form 5500 instructions, at page 4, for more details.

Part II Basic Plan Information

Item 1.

- a Enter the name of the plan. For example “ABC Institution Defined Contribution Retirement Plan.”
- b Enter the three-digit number that you have assigned to your plan for reporting. This number should be included in the plan's Summary Plan Description.
- c Enter the date on which the plan first became effective.

Item 2.

- 2a Enter the name and address of your institution.
- 2b Enter the Employer Identification Number (EIN) assigned to your institution by the Internal Revenue Service (IRS). This number is also used on the W-2 forms that are filed by your institution with the IRS.

- 2c Enter your institution's telephone number. The number listed should be someone who can handle an inquiry from the DOL or IRS.
- 2d Enter the applicable Business Activity Code from pages 59-61 of the Form 5500 Instructions. The code for "**Educational Services**" is 611000.
- Signature The plan administrator should sign and date the form on both lines or, if no plan administrator has been named, the individual at the institution who is authorized to complete and submit the Form 5500 should sign and date the form.

Item 3.

- 3a Enter the title and address of the individual at your institution who has been designated as the plan administrator. If the plan administrator is the institution, enter "Same."
- 3b Enter the EIN assigned to your plan administrator. If the IRS has not assigned an EIN to the plan administrator, you should apply for one on Form SS-4, available at most IRS and Social Security Administration offices. (According to the instructions accompanying Form 5500, if an employee of the sponsoring employer is designated as the plan administrator in the plan document, an EIN must be obtained for the plan administrator for reporting purposes. The institution's EIN cannot be used.) If the institution is the plan administrator, enter "Same."
- 3c Enter the telephone number of the plan administrator or, if no plan administrator has been named, leave this blank.

Item 4a, b and c.

Make an entry only if there has been a change in the name and/or EIN of your institution since filing the previous year's Form 5500: in (a) give the name and in (b) the EIN as they existed prior to the change and also provide in (c) the plan number.

Item 5.

This section is optional. It is suggested that you leave it blank unless you use a paid preparer to prepare the Form 5500.

Item 6.

Leave this section blank.

Item 7.

Leave this section blank.

Item 8.

Check box a "Pension benefits." Do not check box b and/or box c.

You should enter code "2L," which is the code for "Code Section 403(b)(1) arrangements" and, if your plan is also funded with mutual funds, code "2M," which is the code for "Code Section 403(b)(7) accounts."

YOU DO NOT HAVE TO ANSWER ANY OTHER QUESTIONS AND YOU NEED NOT PROVIDE ANY OF THE SCHEDULES.



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*Managing money for people
with other things to think about.SM*