

**ERISA Memorandum  
on Summary Annual Reports  
for 403(b) Plans**

**April 2005**



**Benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) are required to distribute Summary Annual Reports to plan participants. This Memorandum reviews the Summary Annual Report requirements and the attachments provide suggested wording for Summary Annual Reports.**

**Plans for Which Summary Annual Reports Must Be Distributed\***

The following are the plans using TIAA-CREF products for which Summary Annual Reports must be distributed:

1. All retirement plans (except unfunded or insured plans for a select group of management or highly compensated employees).
2. All tax-deferred annuity (TDA) plans except those exempt from the reporting and disclosure requirements of Title I of ERISA as described in U.S. Department of Labor (DOL) Reg. Section 2510.3-2(f).

*\*Plans "established or maintained for its employees by...the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing" are excluded from this and other requirements of ERISA. Plans that are considered church plans are also exempt.*

**When the Summary Annual Report Must Be Distributed**

You must generally distribute Summary Annual Reports to plan participants by the last day of the ninth month following the end of the plan year (September 30, 2005, for plan years ending December 31, 2004). Plans that have an extension of time to file the Annual Return/Report Form 5500 from the Internal Revenue Service (IRS) must provide the Summary Annual Report within two months after the extension ends.

**Who Must Receive the Summary Annual Report**

In general, ERISA and DOL regulations require that you provide the Summary Annual Report to the same categories of "participants" and "beneficiaries" you provide a Summary Plan Description.

For retirement and tax-deferred annuity plans you must provide the Summary Annual Report to each employee enrolled as a participant in the plan, and to each employee eligible to participate but not presently enrolled.

You do not have to provide a Summary Annual Report to an individual who has terminated participation in the institution's TIAA-CREF individual annuity retirement or TDA plan and who is no longer eligible to participate, or to his or her beneficiaries. The one exception: any terminated participants for whom all annuity premiums due under the plan's provisions have not been paid at the time you distribute the Summary Annual Report. Unpaid premiums represent earned retirement benefits that are not fully protected by annuity contracts. Consequently, you must send copies of the Summary Annual Report to these individuals.

In addition, you must provide a Summary Annual Report to former employees of institutions with supplemental retirement benefit arrangements, or other types of retirement plans (except unfunded plans for a select group of management or highly compensated employees) under which the participant or beneficiary must look to the institution or plan administrator for future benefits. Under such plans, if the participant is deceased and benefits are payable to a beneficiary, you should provide a Summary Annual Report to the beneficiary.

### **How the Summary Annual Report Should Be Distributed**

The DOL regulations (29 CFR 2520.104b-1) say the plan administrator “shall use measures reasonably calculated to ensure actual receipt of the material” and must use “...a method or methods of delivery likely to result in full distribution” for the Summary Annual Report and other reports, statements or documents which must be furnished to participants and beneficiaries. The regulations further indicate that personal delivery or use of the U.S. mails would be acceptable. It would seem that use of campus mail service would also generally meet the requirements. However, random distribution (for example, making material available in a faculty lounge) would not be acceptable.

You can send materials through U.S. mails by first-, second- or third-class mail. However, if you use second- or third-class mail it’s acceptable “only if return and forwarding postage is guaranteed and address correction is requested.” If material is returned with an address correction, you must send it again by first-class mail or personally deliver it.

DOL regulations further state that, “it is also acceptable to furnish such material as a special insert in a periodical distributed to employees such as a union newspaper or a company publication if the distribution list for the periodical is comprehensive and up to date and a prominent notice on the front page of the periodical advises readers that the issue contains an insert with important information about rights under the plan and the Act which should be read and retained for future reference. If some participants and beneficiaries are not on the mailing list, a periodical must be used in conjunction with other methods of distribution such that the methods taken together are reasonably calculated to ensure receipt.”

### **Contents of the Summary Annual Report for Plans Filing the Annual Return/Report Form 5500**

DOL regulations (29 CFR 2520.104b-10) require that plan administrators distributing Summary Annual Reports follow specific formats and use specific wording provided in the regulations when inserting applicable information. Although the regulations provide specific formats and wording, and do not permit any modification of the required wording to be used, they also state that:

- (1) Any portion of the forms which is not applicable to the plan to which the summary report relates, or which would require information which is not required to be reported on the annual report (Form 5500) of that plan, may be omitted.
- (2) Where the plan administrator determines that additional explanations of any information furnished pursuant to (the regulations) is necessary to fairly summarize the annual report, such explanation shall be set forth following the completed form required and shall be headed, “Additional Explanation.”

Most of the wording in the required format is not applicable to retirement and tax-deferred annuity plans using TIAA-CREF annuities and mutual funds, and thus may be omitted. Attachment #1 to this Memorandum reflects TIAA-CREF’s understanding of the required formats and wording that must be used for the Summary Annual Reports for retirement and tax-deferred annuity plans using TIAA-CREF annuities for which the Annual Return/Report Form 5500 was filed.

## **Summary Annual Report Requirements for Plans With Fewer Than 100 Participants Filing Form 5500**

Small plans are currently required to file the standard Form 5500 every year. According to DOL regulations (29 CFR 2520.104b-10), small plans have two options for satisfying the requirements to distribute a Summary Annual Report.

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### **Option I.**

Under this option you must notify participants and beneficiaries (see pages 2 and 3) that a copy of the Form 5500 is available and will be provided to them free-of-charge upon written request.

No language was set forth in the regulations for the Notice. However, the regulations require the Notice to state:

in lieu of a Summary Annual Report, a copy of the Form 5500 will be provided free-of-charge upon written request; and

the name and address of the administrator to whom requests for the Form 5500 should be directed.

It is our understanding that Attachment #2 provides a Notice that meets the requirements of the regulations. You should review it with your legal counsel before adopting the suggested Notice for use at your institution. You may distribute the Notice to plan participants or beneficiaries or you may post it at “worksite locations ... in a manner reasonably calculated to ensure disclosure to plan participants.” For participants or beneficiaries who could not reasonably be expected to visit the worksite locations, you must provide a copy of the Notice as described on page 3 of this Memorandum. You must post the Notice for a minimum of 30 days beginning any time within nine months after the close of the plan year. If a participant or beneficiary requests a copy of Form 5500 in writing, you must furnish it free-of-charge within 30 days following receipt of the request and it must be accompanied by a Notice of “Disclosure of Plan Information Under ERISA.” The language to be used for this Notice was set forth in the regulations and is provided in Attachment #3.

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### **Option II.**

Under this option, you must provide participants and beneficiaries (see pages 2 and 3) with a copy of the Form 5500 and the “Disclosure of Plan Information Under ERISA” Notice. The language to be used for the Notice was set forth by the regulations and is provided in Attachment #3. Under Option II you must provide the Form 5500 and the Disclosure Notice to participants and beneficiaries by the end of nine months following the end of the plan year. If you received an extension of time in which to file your Annual Return/Report (Form 5500), the Summary Annual Report is due two months after the extension period expires.

**Availability of the Summary Annual Report**

You should retain the Summary Annual Reports for all plans subject to these requirements of ERISA (retirement, TDA, and welfare plans) in the institution's files for a minimum of six years. These must also be available for review to plan participants and beneficiaries upon request in the office of the plan administrator. In addition, you must provide copies of the Summary Annual Reports to participants and beneficiaries within 30 days of a written request. A charge may be made for additional copies requested after the initial distribution has been made for any plan year. Although not required by ERISA or its supporting regulations, we recommend that you maintain a list of all individuals to whom you provide the Summary Annual Report.

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The information in this Memorandum represents TIAA-CREF's interpretation of the U.S. Department of Labor and Internal Revenue Service regulations and requirements. We suggest that you seek the advice of legal counsel if questions exist concerning the applicability of particular ERISA requirements to a specific plan. TIAA-CREF will, of course, be glad to be of assistance by working with you and your legal counsel.

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## **ATTACHMENT #1**

### **FOR TIAA-CREF RETIREMENT AND TAX-DEFERRED ANNUITY PLANS FILING ANNUAL RETURN/REPORT FORM 5500**

The following paragraphs provide suggested wording for Summary Annual Reports for institutions filing Annual Return/Report Form 5500 for retirement plans using TIAA-CREF contracts (i.e., generally those under which contributions, expressed as a percentage of salary and fully and immediately vested in plan participants, are applied to individual TIAA-CREF annuities owned by participants) and for those TIAA-CREF tax-deferred annuity plans for which Summary Annual Reports are required (see page 1 of attached Memorandum). The suggested wording reflects TIAA-CREF's interpretations of DOL requirements, which mandate a specific format and wording for Summary Annual Reports. Because of these DOL mandates, plan administrators who want to change the recommended wording should first obtain the advice of legal counsel.

Summary Annual Report for (enter name of plan used to complete Item a of Part II of Form 5500).

This is a summary of the annual report for (enter name of plan and Employer Identification Number (EIN) of institution – item 2b of Part II of Form 5500) for (beginning and ending dates of plan year covered, e.g., January 1, 2004, through December 31, 2004). The annual report has been filed with the Department of Labor, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

#### **Basic Financial Statement**

Benefits under the plan are provided by individually owned (enter the words fully vested if all of your plan's contracts are fully vested) annuity or mutual fund contracts issued by Teachers Insurance and Annuity Association and College Retirement Equities Fund.

Note: The recommended wording is intended only for those plans under which benefits are provided solely under TIAA-CREF annuity or mutual fund contracts. If any benefits are provided other than through the TIAA-CREF annuity contract (for example, paid directly to the individual by the institution) additions or modifications to the recommended wording will be required.

## **Your Right to Additional Information**

You have the right to receive a copy of the full annual report or any part thereof, including insurance information, on request. To obtain a copy of the full annual report, or any part thereof, write or call the office of (enter title, business address and telephone number of the individual from whom copies of the annual report may be obtained). — (Use the next sentence only if a charge will be made for copies of the annual report.) The charge to cover copying costs will be \$\_\_\_ for the full annual report, or \$\_\_\_ per page for any part thereof. You also have the legally protected right to examine the annual report at the main office of the plan (insert address where annual report may be examined) and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the U.S. Department of Labor should be addressed to:

Public Disclosure Room, N-1513  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

## **Additional Explanation**

If you want to provide additional material explaining information included in the annual report, you may include it only in this section. If you are not providing additional material, you should delete this section.

**ATTACHMENT #2****DISCLOSURE OF PLAN INFORMATION UNDER ERISA FOR TIAA-CREF  
RETIREMENT AND TAX-DEFERRED ANNUITY PLANS**

The Employee Retirement Income Security Act of 1974 (ERISA) requires that we provide you annually with information — known as a Summary Annual Report — on the financial information filed with the Internal Revenue Service and the U.S. Department of Labor for the (enter name of plan used to complete Item a of Part II of Form 5500) in which you are a participant, eligible to participate, or a beneficiary. As permitted by U.S. Department of Labor regulations, in lieu of a Summary Annual Report, a copy of the Annual Return/Report filed on behalf of the plan will be furnished to you, free-of-charge, upon receipt of a written request.

A copy of the Form 5500 and the “Disclosure of Plan Information Under ERISA” Notice will be sent to you within 30 days of your request. Please submit your written request to (name and address of administrator to whom requests should be submitted).

**ATTACHMENT #3**  
**DISCLOSURE OF PLAN INFORMATION UNDER ERISA**

Attached is a copy of the most recent Return/Report (Form 5500) for the employee benefit plan of which you are a participant, or eligible to participate, or a beneficiary, (enter name of plan used to complete Item a of Part II of Form 5500). The Return/Report contains information about the plan and has been filed with the Internal Revenue Service under the Employee Retirement Income Security Act of 1974 (ERISA).

This copy of Form 5500 is being furnished to you in compliance with U.S. Department of Labor regulations which require it to be furnished free-of-charge either automatically or upon written request in lieu of the Summary Annual Report for plan years for which the plan has filed Form 5500.

You also have the right to receive from the plan administrator (see item 1a or 2a on Form 5500), on request, a copy of the Schedule A (Insurance Information) if one was filed with the attached Form 5500. (Use the next sentence only if there will be a charge for copies of the Schedule A.) — The charge to cover copying costs will be \$\_\_\_\_\_ for this Schedule or \$\_\_\_\_\_ per page for any part thereof.

You also have the legally protected right to examine these documents at the main office of the plan administrator (insert address of plan which normally should be the same address which appeared on item 1a or 2a on Form 5500) and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs.

Requests to the U.S. Department of Labor should be addressed to:

Public Disclosure Room, N5638  
Pension and Welfare Benefit Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210.



