



FINANCIAL SERVICES  
FOR THE GREATER GOOD

Teachers Insurance and Annuity Association of America  
College Retirement Equities Fund  
730 Third Avenue  
New York, NY 10017-3206  
212 490-9000 800 842-2733

Peter A. Weinberg  
Senior Counsel  
Tel: (212) 916-5938  
Fax: (212) 818-1670  
[pweinberg@tiaa-cref.org](mailto:pweinberg@tiaa-cref.org)

**Via Electronic Submission**

Office of Regulations and Interpretations  
Employee Benefits Security Administration (EBSA)  
Room N-5669  
U.S. Department of Labor  
200 Constitution Avenue, NW.,  
Washington, D.C. 20210

Attn: Revision of Form 5500  
(RIN 1210—AB06)

September 19, 2006

Dear Sir or Madam:

We are writing to comment on the proposed revisions to the annual report, Form 5500, published in the Federal Register on July 21, 2006 (71 Fed. Reg. No. 140, July 21, 2006 pages 41616-41407).

Teachers Insurance and Annuity Association of America (TIAA) is a non-profit legal reserve life insurance company that provides fixed dollar and variable retirement annuities. Its companion organization, College Retirement Equities Fund (CREF), is a non-profit corporation registered as an investment company under the Investment Company Act of 1940, that issues variable retirement annuities. The annuities issued by TIAA-CREF are used as funding vehicles for retirement plans maintained by colleges, universities, independent schools and other non-profit research and educational organizations, as well as state governmental entities throughout the United States. The majority of these operate under IRC section 403(b). Currently, TIAA-CREF provides retirement products for over 3.2 million participants at over 15,000 organizations. As of June 2006, TIAA-CREF had more than 380 billion dollars in assets under management.

In its proposal, the Department of Labor ("DOL") is seeking to introduce a major change in the way in which Form 5500 reporting is to be done on behalf of 403(b) plans, changes that will have serious, negative implications for the administration and maintenance of 403(b) plans. The proposal appears to be predicated on the view that 403(b) plans are the equivalent of qualified plans and should have to provide financial reports in the same way. This is a significant change in view that we do not share. In fact, the purpose, design, and nature of the employers that use 403(b) plans are substantially different from those of qualified plans, differences that have been reflected for decades in both DOL and IRS regulations. We are requesting that the DOL continue to recognize those differences in its reporting requirements and maintain the current regime for 403(b) plans.

RECEIVED  
OFFICE OF REGULATIONS  
AND INTERPRETATIONS  
2006 SEP 19 AM 10:14

Section 403(b) plans, and the institutions that sponsor them, are not the same as the private sector plans designed for for-profit employers. 403(b)s are designed to be different because tax-exempt charitable institutions are different from private for-profit employers. Tax-exempt institutions cannot easily assume new expenses, have overburdened administrative staffs, and the organizations themselves gain no tax advantage when they contribute to retirement plans (*i.e.*, because they are already tax-exempt, retirement plan contributions are not deductible). Such institutions, therefore, have neither the tax incentives that make it worthwhile for them to maintain plans that must adhere to complex reporting requirements nor the administrative capacity to devote to the task. This was true when the DOL originally established its simplified reporting requirements for 403(b) plans, and it remains true today.

The DOL now proposes that these tax-exempt employers can and should take on the expensive administrative burden of complying with the Form 5500 financial reporting requirements applicable to the private sector. The reasons given for this are that the DOL thinks that the IRS views all types of plans as more similar than they were in the past. DOL also asserts that the IRS has found Code violations in 403(b) plans. In addition, the DOL has now, it says, detected a high percentage of Title I violations in its own 403(b) plan investigations.

Regardless of the validity of the IRS's views regarding the similarity of 403(b) plans and qualified plans (and we would argue that their views are not supported by the evidence), the IRS's perspective on this point is not relevant to the establishment of DOL's reporting requirements. In addition, the IRS's compliance concerns are different than the concerns of DOL. For example, the DOL's regulatory requirements have nothing to do with alleged Code violations and such alleged violations should not drive DOL reporting requirements. With respect to the DOL's own 403(b) plan investigations, it is unclear to us exactly what pattern of violations has been uncovered or how increased Form 5500 reporting and its attendant burdens will solve the problem. In the preamble, the DOL cites the problem of delinquent plan contributions. But delinquent plan contributions would not come to the attention of the DOL through Form 5500 financial reporting in any event. Moreover, it has been TIAA-CREF's experience that delinquent contributions to plans is not a widespread or even a common problem among 403(b) plans. The DOL should consider that it is only asked to investigate a plan when there may be a problem with that plan, and therefore its view of the current state of 403(b) plan compliance may be distorted. There must, we would think, be less expensive and more effective ways for the DOL to address plan contribution violations than this radically pervasive proposed 5500 reporting change.

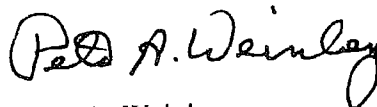
Form 5500 financial reporting is not cheap. While we do not have exact figures, it is our understanding that plan audits can be very expensive even for relatively small plans. Nor would these audits be expected to show very much since ERISA covered 403(b) plans are funded solely with annuity contracts and mutual funds. The DOL also underestimates the time it will take employees of the institutions to assemble the financial data, a task made more difficult when there are multiple vendors who do not coordinate with one another, as is typical in 403(b) plans. This increased burden of assembling the information will apply even when the institution can use the short-form (though the burdensome audit requirement will be avoided). Again, while we do not have exact figures we estimate that the burdens of assembling this information will be quite expensive depending upon the size of the plan, and well in excess of what the DOL says it will be. We hope to be able to supply the DOL with more specific information on auditing and other Form 5500 related costs at a later date.

In order to provide the relief afforded under ERISA section 110 and DOL Regulation section 2520.105-44 for 403(b) plans, the DOL had to conclude that the use of an alternate method of complying was consistent with the purposes of Title I and provided adequate reporting to the DOL and adequate disclosure to plan participants and beneficiaries. It also had to conclude that the additional expense of an audit and preparation of financial statements would increase the costs to the plan or impose unreasonable burdens on the plan and would be adverse to the interests of plan participants in the aggregate. By promulgating its regulations, the DOL must have reached those conclusions.

Nothing has changed since the DOL came to these conclusions except for the DOL's new attitude towards 403(b) plans. Participants will be harmed because every dollar spent on complying with unnecessary regulations is one less dollar available for plan benefits. The public will be harmed because money that a tax-exempt charitable institution spends to comply with unnecessary and burdensome regulation is money diverted from that organization's charitable purposes. Our experience has been that there are very few serious Title I non-compliance problems in 403(b) plans and that these plans provide near universal coverage and generous retirement benefits. 403(b)s are a real success story and the DOL should not be looking to increase their costs. The DOL has failed to make a convincing case for radically increasing the costs and burdens on every tax-exempt plan in the country and without making that case the 5500 reporting rules that have always governed these plans should not be changed.

We would very much like to meet with you on this issue to discuss this matter more fully, and we will contact you to see if we can arrange a time that we can meet.

Very truly yours,

A handwritten signature in black ink that reads "Peter A. Weinberg". The signature is written in a cursive style with a large, stylized "P" and "W".

Peter A. Weinberg