

September 30, 1976

Dear :

This is in reply to your letter requesting a determination whether the Retirement Policy for Faculty and Staff of [School] is exempt from the funding requirements of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) pursuant to section 301(a)(3). The program covers all faculty and staff members who enter the payroll under 60 years of age. For the first three years of employment the employee contributes five percent of his salary which is deposited in a joint savings account (employee and school). An equal amount contributed by the school is deposited in a second savings account which is under the complete custody of the school. After three years the proceeds of both accounts are used as a down payment on a T.I.A.A.-C.R.E.F. Annuity. For the next seven years both the employee and the school each contribute five percent of his salary. After that the school's contribution is increased to ten percent. I am sorry we could not reply sooner.

Section 301(a)(3) of the ERISA exempts a plan from the funding requirements if it is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees. Since funds are accumulated in a savings account and premium payments are paid to T.I.A.A.-C.R.E.F. to provide the retirement benefits, the Retirement Policy for Faculty and Staff of [School] is not "unfunded" and therefore, is not eligible for the exemption granted in section 301(a)(3).

Sincerely,