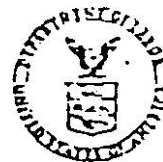


U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216



SEP 30 1977

OPINION 77-77 A

Mr. David E. Watts
Dewey, Ballantine, Bushby,
Palmer & Hood
140 Broadway
New York, N.Y. 10005

205
206(a)

Dear Mr. Watts:

This is in response to your letter of September 8, 1976 requesting an advisory opinion of the Department of Labor with respect to the applicability of provisions of sections 205 and 206(a) of the Employee Retirement Income Security Act of 1974 (ERISA) to certain contracts, as proposed to be amended pursuant to the draft endorsement dated July 8, 1977 furnished with your July 11, 1977 letter, issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (TIAA - CREF).

This letter constitutes an advisory opinion and is issued pursuant to ERISA Proc. 76-1 having the effect described in section 10 thereof. The opinion is based on the annuity contracts and endorsements, submitted in support of the request, as well as your letters of December 17, 1976, February 4, 7, 10 and 16, 1977, June 20 and July 8, 1977.

For plan years beginning on or after January 1, 1976 and before January 1, 1978, a period subsequent to the effective dates of sections 205 and 206(a) of ERISA but prior to the proposed effective date of the draft contract amendment described above, plans funded with contracts issued by TIAA - CREF were not in compliance with the requirements of sections 205 and 206(a). However, the Department does not contemplate taking any action against TIAA - CREF or against plans funded with contracts issued by TIAA - CREF for violations of sections 205 and 206(a) of the Act which occur before January 1, 1978 because such

2

contracts did not comply with the requirements of these sections in light of certain facts and representations in your letters, particularly that (a) the Internal Revenue Service has set January 1, 1978 as the deadline for the joint and survivor annuity provisions to be applicable to some or all of the accumulation under contracts of the type issued by TIAA - CREF (see IR - 1857, July 8, 1977), and that the proposed amendment will be effective by such date, and (b) the TIAA - CREF contract is owned by the employee covered under the contract and, as you represent, such owner has complete control over the contracts and can commence or defer income payments at termination of employment or at any other date thereafter not later than age 71. In this latter regard, you have stated that, in effect, the owner makes an election with respect to receipt of income payments on a day-to-day basis, and it does not appear that any participant would be injured by the failure to meet the requirements of section 206(a) of the Act.

Of course, this determination with respect to action by the Department does not affect the right of any participant or beneficiary of a plan funded by a contract issued by TIAA - CREF to enforce compliance with sections 205 and 206(a) of ERISA.

If amended in accordance with the draft endorsement dated July 8, 1977, the annuity contracts submitted by TIAA - CREF in support of its September 8, 1976 request for advisory opinions, if purchased by employee pension benefit plans, will fulfill the requirements of sections 205 and 206(a) as of the effective date of the endorsement, which you have stated will be January 1, 1978.

Sincerely,

Fred W. Stuckwisch
Director, Office of Regulatory
Standards and Exceptions