



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ACT SA of 1933
SECTION § 5
RULE _____
PUBLIC
AVAILABILITY MAY 01, 1996

May 1, 1996

Steven B. Boehm
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: TIAA Real Estate Account

Dear Mr. Boehm:

Enclosed is our response to your letter of March 22, 1996.
In any future correspondence on this matter, please refer to our
Reference No. IP-4-96.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Nash".

Susan Nash
Assistant Director
Office of Insurance Products

Enclosure

Sutherland, Asbill & Brennan

TEL: (202) 383-0100
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WASHINGTON, D.C. 20004-2404

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STEVEN B. BOEHM

DIRECT LINE: (202) 383-0176

March 22, 1996

1933 ACT/FORM S-1

Heidi Stam, Esq.
Associate Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, NW
Stop 10-6
Washington, D.C. 20549

Re: **TIAA Real Estate Account**
File No. 33-92990

Dear Ms. Stam:

We are writing on behalf of the Teachers Insurance and Annuity Association of America ("TIAA") to request the Staff of the Division of Investment Management ("Division" or "Staff") to advise us that it will not recommend that the Securities and Exchange Commission ("Commission") take any enforcement action if TIAA omits from the prospectus for the TIAA Real Estate Account (the "Real Estate Account" or "Account") full TIAA financial statements, and instead provides certain summary financial information for TIAA in the prospectus, with full TIAA financial information included in Part II of the Account's registration statement on Form S-1 and available upon request. TIAA's proposed approach is consistent with the Commission's recent initiatives promoting prospectus simplification, and would provide purchasers and prospective purchasers with a more useful disclosure document without compromising the goal of investor protection.

As we have discussed with the Staff, TIAA desires to take the approach described in this letter in connection with the post-effective amendment to its registration statement that it intends to have declared effective on April 15, 1996, or shortly thereafter. Accordingly, expedited consideration of this letter is requested.

The Real Estate Account and TIAA

The Real Estate Account is a segregated asset account of TIAA which was established on February 22, 1995, as a separate account under New York State Insurance Law. The Account serves as a funding vehicle for certain variable annuity contracts

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issued by TIAA. As a part of TIAA, the Real Estate Account is subject to regulation by the State of New York Insurance Department and the insurance departments of certain other jurisdictions in which the contracts are offered. The Account functions in a manner similar to the manner in which traditional registered variable annuity separate accounts operate, except that instead of investing in securities, it invests primarily in real estate and related assets. Accordingly, it is neither registered as an investment company nor subject to regulation under the Investment Company Act of 1940, as amended (the "1940 Act"), and its securities are registered under the Securities Act of 1933 (the "1933 Act") on Form S-1.

All services for the Real Estate Account are provided at cost (subject to an annual limit of 2.50% of the Account's net assets per year) by TIAA and TIAA-CREF Individual and Institutional Services, Inc., a non-profit subsidiary of TIAA which distributes the variable annuity contracts funded by the Account. Thus, subject to the annual expense limitation, increases in costs for services provided to the Real Estate Account are passed on to contract owners.

TIAA is a nonprofit stock life insurance company organized under the laws of New York State. It was founded on March 4, 1918, by the Carnegie Foundation for the Advancement of Teaching. TIAA offers both traditional annuities, which guarantee principal and a specified interest rate while providing the opportunity for additional dividends, and variable annuities, whose return depends upon the performance of certain specified investments. TIAA also offers life, long-term disability, and long-term care insurance.

TIAA is the companion organization of the College Retirement Equities Fund ("CREF"), a nonprofit membership corporation established in New York State in 1952, whose operation is limited to the issuing and funding of variable annuity contracts. Together, TIAA and CREF form the principal retirement system for the nation's education and research communities and the largest retirement system in the U.S., based on assets under management. Currently, TIAA-CREF serves approximately 1.8 million people at about 5,800 institutions. As of December 31, 1995, TIAA's assets were approximately \$80 billion; the combined assets for TIAA and CREF totalled approximately \$160.6 billion (although CREF does not stand behind TIAA's guarantees).

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Form S-1

For most practical purposes, the Real Estate Account operates like a separate account that invests primarily in securities. Those separate accounts, as investment companies, ordinarily are registered on Form N-3 (if they are organized as management companies) or Form N-4 (if they are organized as unit investment trusts). Forms N-3 and N-4 consist of a prospectus (Part A), a statement of additional information ("SAI") (Part B), and a Part C containing "other information." Financial information for the insurance company sponsoring the separate account is required to be included in the SAI and must be made available promptly upon written or oral request.

Since, as a technical matter, separate accounts that invest primarily in real estate, like the Real Estate Account, are not "investment companies" within the meaning of the 1940 Act, they are not eligible to rely on Form N-3 or Form N-4 for registration of the interests therein under the 1933 Act. Accordingly, interests in real estate separate accounts have been registered on Form S-1, the registration form under the 1933 Act for securities of all registrants for which no other form is authorized or prescribed. Form S-1 consists of two parts: Part I is the prospectus, which constitutes the disclosure document for the securities being offered, and Part II contains certain additional information not required to be included in the prospectus. Item 11 of Part I requires that certain financial information, in effect including financial information about the insurance company sponsoring a separate account registered on that form, be included in the prospectus. Unlike its Form N-3 and Form N-4 counterparts, Form S-1 does not provide a registrant that is an insurance company separate account with the option of making certain information required in a disclosure document, including financial information, available only upon request.

Discussion

There is no meaningful basis on which to distinguish the need for full and fair disclosure with respect to purchasers or prospective purchasers of variable annuities funded primarily by securities investments from purchasers or prospective purchasers of variable annuities funded primarily by real estate. TIAA believes that the fact that the Real Estate Account is not a registered investment company, and thus is not eligible to use Form N-3 or Form N-4, does not require the conclusion that purchasers of variable annuity contracts funded by the Account have a need for significantly more financial information in the prospectus than purchasers or prospective purchasers of variable annuity contracts registered on either of those forms. An

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understanding of each of these products requires information on the underlying investments as well as the operation of the annuity contract. The relationship of the insurance company as a regulated entity, guarantor of certain features of the product, and, in many cases, provider of initial capital is, ordinarily, analogous in both the securities and real estate investment scenarios.

TIAA believes that, consistent with the approach provided by the registration forms for insurance company separate accounts that are considered investment companies, the prospectus for the Real Estate Account need not include full insurance company (*i.e.*, TIAA) financial statements in order to provide purchasers and prospective purchasers with the information necessary for them to make an informed investment decision with respect to that Account. Rather, TIAA believes that the investor protection concerns of the 1933 Act would be met under the following scenario: (1) a concise summary of TIAA's audited financial information would be included in the prospectus in the form of condensed financial statements and supplemental textual information in substantially the format set forth on the Attachment hereto; (2) the required full TIAA financial statements would be set forth in Part II of the registration statement; and (3) an undertaking to provide full TIAA financial statements promptly upon written or oral request would be included in Part II, and would be described in the prospectus. All required financial information for the Real Estate Account would continue to be included in the prospectus.

Under TIAA's proposed approach, investors would be able to determine in a meaningful way whether TIAA can meet its obligations under its guarantees relating to mortality and expense risk and liquidity with respect to the variable annuity contracts, while avoiding unnecessary costs and burdens. As noted above, TIAA currently has assets of over \$80 billion. If it were to include the financial statements ordinarily required for an insurance company in connection with the guarantees it assumes under variable contracts, thirty (30) pages would have to be added to the prospectus. Given the number of persons currently participating in retirement programs funded at least in part by TIAA or its companion organization CREF -- currently over 1.8 million -- and TIAA-CREF's desire to distribute prospectuses for new products to a large number of its participants, the very significant additional printing costs and administrative efforts for an issuer, all of the services for which are provided at cost, becomes clear. Moreover, inclusion of full TIAA financial statements in the prospectus would not yield any meaningful benefits to investors.

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Indeed, TIAA's approach would provide more financial information about the insurance company than is ordinarily provided in prospectuses on Forms N-3 and N-4, which, as noted earlier, permit all insurance company financial statements to be included in the statement of additional information. Moreover, by including the full financial statements in Part II of the registration statement, the information included therein would become subject to Section 11 of the 1933 Act to the same extent as if they were included in the prospectus. This would place them in a position analogous to the position in which financial statements of separate accounts registered as investment companies are placed.

The Commission recently has undertaken a number of initiatives which promote the simplification of disclosure. The development of profile and simplified prospectuses and proposals to streamline financial disclosure in connection with acquisitions reflect the growing recognition of the benefits of concise and understandable disclosure documents. In publishing for comment proposals to streamline the financial information currently required to be delivered to investors in connection with the proxy rules (Release No. IC-21166 (June 27, 1995)), the Commission noted:

This initiative responds to concerns that the growing complexity and volume of financial information, particularly that required in notes to financial statements, render the annual report less readable and useful to the general shareholder body. Proponents of annual reports simplification believe that streamlined annual reports would allow registrants both to communicate more effectively with shareholders in the annual report by being able to highlight key financial items and to reduce the cost of preparing and delivering the annual report.

Though the foregoing is directed to the reporting of financial information in annual reports, the concerns expressed apply equally to the Real Estate Account's 1933 Act reporting obligations. Consistent with the spirit of the Commission's initiatives, TIAA's proposed approach on financial disclosure strikes an appropriate balance between the need for investor protection and the movement toward disclosure simplification and readability. In this instance, TIAA is not seeking to reduce the required disclosure with respect to the Real Estate Account, the principal focus of the prospectus. Rather, it is simply seeking to make the financial information about TIAA in the prospectus concise, though meaningful, while significantly reducing printing costs and administrative efforts for an issuer all of the services for which are provided at cost. And, as noted above,

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the complete financial information will be included in Part II of the registration statement and will be made available promptly to purchasers and prospective purchasers upon request.

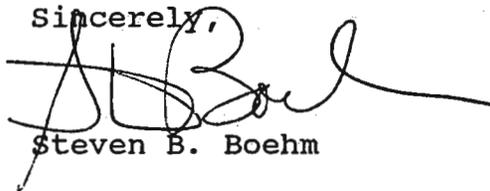
Conclusion

In view of the foregoing, TIAA respectfully requests that you advise us that the Staff will not recommend that the Commission take any enforcement action if TIAA omits from the prospectus for the Real Estate Account the full TIAA financial statements required by Form S-1 and instead provides summary financial information for TIAA in the prospectus with full TIAA financial information included in Part II of the Account's registration statement and available upon request, as described above.

* * *

If you have any questions or require any additional information, please call the undersigned at 202/383-0176.

Sincerely,



Steven B. Boehm

Attachment

cc: Mr. Lawrence A. Friend/Division of Investment Management
Susan Nash, Esq./Division of Investment Management
Peter C. Clapman, Esq./TIAA-CREF

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

Condensed Unaudited Financial Statements

(Condensed unaudited financial statements have been derived from audited financial statements which are available upon request.)

A Condensed Balance Sheets
of December 31

(In thousands)

ASSETS	1995	1994
Bonds		
Mortgages		
Real estate		
Stocks		
Other long-term investments		
Cash and short-term investments		
Investment income due and accrued		
Separate Account assets		
Other assets		
Total Assets		
LIABILITIES	1995	1994
Policy and contract reserves		
Dividends declared for the following year		
Asset Valuation Reserve		
Interest Maintenance Reserve		
Separate Account liabilities		
Other liabilities		
Total Liabilities		
TOTAL & CONTINGENCY RESERVES		
Contingency reserves:		
For group life insurance		
For investment losses, annuity and insurance mortality, and other risks		
Total contingency reserves		
Total Capital and Contingency Reserves		
Total Liabilities, Capital and Contingency Reserves		

TIAA Condensed Statements of Operations and
Changes in Contingency Reserves for the Years
Ended December 31

(In thousands)

INCOME	1995	1994
Insurance and annuity premiums and deposits		
Transfers from CREF, net		
Annuity dividend additions		
Net investment income		
Supplementary contract considerations		
Total Income		
DISTRIBUTION OF INCOME		
Policy and contract benefits		
Dividends		
Increase in policy and contract reserves		
Operating expenses		
Net transfers to separate accounts		
Federal income taxes		
Other, net		
Increase in contingency reserves		
Total Distribution of Income		
CHANGES IN CONTINGENCY RESERVES		
From operations		
Net realized capital loss on investments		
Net unrealized capital gain (loss) on investments		
Transfer to Interest Maintenance Reserve		
Transfers from (to) the Asset Valuation Reserve:		
Required formula contribution		
Net capital losses absorbed		
Voluntary contribution		
Increase in nonadmitted assets other than investments		
Change in valuation basis of policy reserves		
Other, net		
Net Change in Contingency Reserves		
Contingency reserves at beginning of year		
Contingency Reserves at End of Year		

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

Supplemental Information to Condensed Financial Statements

Valuation of Investments: Bonds and short-term investments (debt securities with maturities of one year or less at the time of acquisition) not in default are generally stated at amortized cost; medium to highest quality preferred stocks at cost; common stocks at market value; and all other bond, short-term and preferred stock investments at the lower of cost or market value. Mortgages are stated at amortized cost, and directly-owned real estate at depreciated cost (net of encumbrances). Investments in wholly-owned real estate subsidiaries, in real estate limited partnerships and in securities limited partnerships are stated at TIAA's equity in the net assets of the underlying entities. Policy loans are stated at outstanding principal amounts. All investments are stated net of any permanent impairments, which are determined on an individual asset basis. Depreciation is generally computed over a 40 year period on the constant yield method for properties acquired prior to 1991, and on the straight-line method for properties acquired thereafter.

Additional Information:

	<u>1995</u>	<u>1994</u>
As a percentage of total bond investments:		
Below investment grade bonds		
As a percentage of total mortgage investments:		
Below investment grade mortgage loans		
Total mortgage investments in California		
Total mortgage investments in office buildings		
Total mortgage investments in shopping centers		
As a percentage of total real estate investments:		
Total real estate investments in Minnesota		
Total real estate investments in California		
Total real estate investments in office buildings		

Asset Swap and Interest Rate Swap Contracts: TIAA enters into asset swap and interest rate swap contracts with counterparties. TIAA is exposed to the risk of default of such counterparties, although TIAA does not anticipate non-performance by the counterparties. At December 31, 1995 and 1994, TIAA had interest rate swap contracts with commercial banks related to \$ and \$, respectively, par value of variable interest rate notes, and asset swap contracts outstanding related to \$ and \$ respectively, of investments denominated in foreign currencies.

PUBLIC

MAY 0 1 1996

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

Our Reference No. IP-4-96
TIAA Real Estate Account

By letter dated March 22, 1996, you request assurance that the staff would not recommend enforcement action to the Commission if the Teachers Insurance and Annuity Association of America ("TIAA") omits from the prospectus for the TIAA Real Estate Account (the "Account") full financial statements for TIAA, and instead provides summary financial information for TIAA in the prospectus. Full financial statements for TIAA would be included in Part II of the Account's registration statement on Form S-1. The financial information included in Part II would be available promptly upon request.

TIAA and the Account

You state that TIAA is a nonprofit stock life insurance company organized under the laws of New York. TIAA offers both traditional annuities, which guarantee principal and a specified interest rate while providing the opportunity for additional dividends, and variable annuities, whose return depends upon the performance of specified investments. TIAA also offers life, long-term disability, and long-term care insurance.

You note that TIAA is the companion organization of the College Retirement Equities Fund ("CREF"), a nonprofit membership corporation established under New York law. CREF issues and funds certain variable annuity contracts. Together, TIAA and CREF form the principal retirement system for the nation's education and research communities, serving approximately 1.8 million people at about 5,800 institutions. As of December 31, 1995, TIAA's assets were approximately \$80 billion; the combined assets for TIAA and CREF totalled approximately \$160.6 billion.^{1/}

The Account, established by TIAA on February 22, 1995, as a separate account under New York insurance law, funds certain variable annuity contracts issued by TIAA (the "Contracts"). You represent that the Account functions similarly to a traditional registered variable annuity separate account, except that the Account invests primarily in real estate and related assets instead of securities. For this reason, the Account is neither registered with the Commission as an investment company nor subject to regulation under the Investment Company Act of 1940 (the "1940 Act"). The securities issued by the Account are registered with the Commission under the Securities Act of 1933 (the "1933 Act") on Form S-1.^{2/}

^{1/} CREF does not stand behind TIAA's guarantees.

^{2/} Registration statements on Form S-1 for insurance company separate accounts investing in real estate are reviewed by the Commission's Division of Investment Management because of their similarity to registration statements for separate accounts that are registered as investment companies.

Use of Form S-1 by the Account

You state that the operation of the Account is similar to that of an insurance company separate account that invests primarily in securities. Separate accounts investing primarily in securities are typically registered under the 1933 and 1940 Acts either on Form N-3 (management investment companies) or Form N-4 (unit investment trusts). Both Forms N-3 and N-4 consist of three parts: Part A containing the prospectus; Part B containing the statement of additional information (the "SAI"); and Part C containing the other information not included in Parts A or B. Financial information for the separate account's sponsoring insurance company is required to be in the SAI and must be made available promptly upon request.

The Account, as a separate account investing primarily in real estate, is not an investment company within the meaning of the 1940 Act, and it therefore may not use Form N-3 or N-4 for registration of interests in the Account under the 1933 Act. Interests in the Account, and in other real estate separate accounts, are registered with the Commission on Form S-1. Form S-1 consists of two parts: Part I containing the prospectus; and Part II containing certain additional information not required to be included in the prospectus. Item 11 of Part I requires that certain financial information, in effect including financial information regarding the separate account's sponsoring insurance company, be included in the prospectus. In contrast to Forms N-3 and N-4, Form S-1 does not provide an insurance company separate account with the option of making certain information required in the disclosure form, including financial information of the insurance company, available only upon request.

TIAA's Discussion

TIAA believes that investors in the Contracts do not have a need for significantly more financial information in the prospectus than do investors in variable annuity contracts registered on either Form N-3 or N-4. You note that the insurance company's role as a regulated entity, a guarantor of certain features of the product, and, frequently, a provider of initial capital is ordinarily analogous whether the insurance company separate account invests in securities or in real estate. On that basis, TIAA believes that the investor protection concerns of the 1933 Act would be met by including a concise summary of TIAA's audited financial information in the prospectus.

You state that your proposal would provide more financial information about the insurance company than is ordinarily provided in prospectuses on Forms N-3 and N-4, both of which permit placement of all insurance company financial statements in the SAI. Additionally, you note that by including the full financial statements in Part II of Form S-1, the information included in the financial statements will be subject to Section 11 of the 1933 Act to the same extent as if the financial statements were included in the prospectus.

You state that the proposal discussed in your letter will permit investors to make an informed decision as to whether TIAA can meet its obligations under guarantees relating to mortality and expense risk and liquidity. You further state that your proposal will avoid unnecessary costs and burdens. You state that if the full financial statements of TIAA were included in the Account's prospectus, the prospectus would be increased by thirty pages. You note that there are over 1.8 million participants in retirement programs funded at least in part by TIAA or CREF and that TIAA-CREF desires to distribute prospectuses for new products to a large number of its participants. You believe that the inclusion of TIAA's full financial statements in the Account's prospectus would not yield meaningful benefits to investors above those provided by the summary financial information, and therefore conclude that the proposal will justifiably avoid significant additional printing expenses and increased administrative efforts.

Finally, you believe that your proposal is consistent with the Commission's efforts to improve the readability of prospectuses. You argue that TIAA's proposed approach strikes an appropriate balance between the need for investor protection, on the one hand, and disclosure simplification and readability, on the other. You state that TIAA is not seeking to reduce the required disclosure with respect to the Account, but is simply seeking to make the financial information about TIAA in the prospectus concise and meaningful while significantly reducing printing costs and administrative efforts.

* * *

Recently, the Commission and the staff have undertaken significant efforts to encourage registrants to improve the readability of prospectuses. We recognize as a general matter that streamlining disclosure documents for products such as the Contracts may contribute to increasing the readability of these documents.

The Division of Investment Management may permit the omission of required financial statements or the substitution of appropriate financial statements where the omission or substitution is consistent with the protection of investors.^{3/} We would, therefore, not recommend enforcement action to the Commission if TIAA omits from the Account's prospectus full financial statements for TIAA, provided that TIAA follows the other procedures outlined in your letter. Our conclusion is based in particular on your representations that:

- (1) the required full financial statements of TIAA will be set forth in Part II of the Account's registration statement on Form S-1;

^{3/} 17 C.F.R. §§ 210.3-13, 200.30-5(b), & 200.30-1(a)(6)(i).

- (2) an undertaking to provide the full financial statements of TIAA promptly upon written or oral request will be included in Part II of the Account's Form S-1, and this undertaking will be described in the prospectus for the Account; and
- (3) a concise summary of TIAA's audited financial information will be included in the Account's prospectus in the form of condensed financial statements and supplemental textual information.^{4/}

Together, these representations should help to ensure that investors in the Account have access in the prospectus to summary financial information about TIAA; that, upon request, investors in the Account will have prompt access to the full financial statements of TIAA; and that liability under the 1933 Act will attach with respect to TIAA's full financial statements.

Because this response is based on the facts and representations set forth in your letter, you should note that different facts or representations may require a different conclusion.


Barbara J. Whisler
Senior Counsel

^{4/} Your letter indicates that the summary financial information will be in substantially the format set forth in an attachment to the letter. We note that our response to your letter should not be construed as providing no-action assurance with respect to any particular presentation of summary financial information, including the format set forth in your letter.