

# ADMINISTRATIVE MEMORANDUM

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**SUBJECT** Repurchase of annuity contracts under the  
Optional Retirement Program

**NUMBER** 216

**DATE** April 2, 1985

This Administrative Memorandum is intended to provide you the guidance concerning repurchase of annuity contracts under the Optional Retirement Program (ORP) that has been generated in response to recent institutional inquiries to this office. This guidance addresses what portions of the employee's ORP annuity contract with TIAA-CREF must be repurchased when statutorily identified events occur and when the repurchase must take place.

## Program requirements

G.S. 135-5.1(b)(5) provides that if an ORP participant having less than five years' ORP coverage leaves employment with the ORP participating institution and either retires or begins work for an employer not having a retirement program with the same company that had provided the ORP coverage (i.e., TIAA-CREF), then the ORP participant's ORP contract "shall, on his request, be repurchased and the value of the accumulation attributable to the participating institution's contribution shall be refunded to the participating institution and forthwith paid by it to the Retirement System and credited to the pension accumulation fund." Pursuant to this requirement a "Notice of Election of Optional Retirement Program" was drawn tracking the quoted statutory language so that the employee electing ORP participation contractually accepted repurchase of the State's contributions if the described employment events took place. This Notice (Form ORP-1/15M 2-72) was provided for use among all the constituent institutions. Concurrently, a form letter was drawn for use by the retiring or withdrawing ORP participant to initiate repurchase by TIAA-CREF for the State of the institution's contributions and payment to the former participant of the participant's contributions.

## Retention with TIAA-CREF of the participant's contributions

While G.S. 135-5.1(b)(5) calls for ORP contract repurchase in the specified circumstances, the statute refers specifically to consequent disposition of employer contributions but not employee contributions. And, in fact, the employee's contributions are his under the TIAA-CREF contract. Consequently, there is no practical reason why the participant cannot limit his request for repurchase to the State's contributions. Indeed, TIAA-CREF is willing to retain the contents of the participant's ORP account in that account so long as those contents are at least \$2,000 (the floor acceptable to TIAA-CREF for continued administration of the individual account). This office, then, has advised that an ORP participant

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required to seek repurchase pursuant to G.S. 135-5.1(b)(5) may request repurchase of only the State's contributions and may request that TIAA-CREF retain his contributions as an annuity contract account for his benefit. [Note. Consistent with language of the ORP statute and with prior understandings in this office, the word "contributions" is taken to mean dollars contributed to an ORP account plus (or minus) the investment experience of those dollars. Therefore, the "institution's contributions" and the "participant's contributions" represent proportions and not necessarily set dollar amounts.]

Time sequence for repurchase

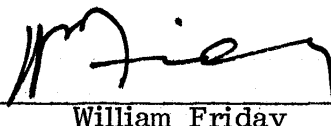
G.S. 135-5.1(b)(5) states that in the specified circumstances the participant's contract "shall, on his request, be repurchased." While it might be argued that request by the participant must precede repurchase, it is clear that indefinite delay of the participant to make such a request renders the statutory requirement meaningless. Consequently, it is the understanding of this office that repurchase in the prescribed circumstances is not optional and that the statutory language merely tenders the participant the courtesy of determining the precise date on which action to repurchase is initiated but that indefinite delay should cause the institution to precipitate involuntary repurchase; that is to say, the participant required by G.S. 135-5.1(b)(5) to seek repurchase of his TIAA-CREF account has a "reasonable time" in which to do so, and this reasonable time is to be fit into the larger framework of the statute (requiring repurchase) and Form ORP-1 (by which the participant contractually agreed to seek repurchase after the occasion of specified events).

Requesting repurchase

In 1972 a form letter was drawn and cleared for use by ORP participants who were leaving University employment with less than five years ORP coverage and without the prospect of employment having continued retirement program benefits with TIAA-CREF. This form has now been revised to accommodate the substance of the guidance set forth above. As a result, there are now two repurchase form letters, one for those ORP participants seeking total repurchase of their TIAA-CREF contracts and one for those seeking partial repurchase (that is, refund of the institution's contributions and retention of the participant's contributions). These two new form letters (Total Repurchase Form 4-85 and Partial Repurchase Form 4-85), together, supersede the 1972 form letter. Copies of the new letters are attached to this Administrative Memorandum.

Use of this memorandum

This Administrative Memorandum has the approval of the Attorney General, the State Retirement Office, and TIAA-CREF. Please give it appropriate distribution and immediate application at your institution. Questions concerning this Administrative Memorandum may be addressed to Mr. David Edwards of this office.



William Friday

Attachments

Total Repurchase Form 4-85

Date \_\_\_\_\_

Teachers Insurance and Annuity Association  
College Retirement Equities Fund  
730 Third Avenue  
New York, New York 10017

Re: Retirement Annuity Contract No. (TIAA) \_\_\_\_\_  
Retirement Unit-Annuity Certificate No. (CREF) \_\_\_\_\_

Gentlemen:

I am leaving the employ of \_\_\_\_\_  
(Name of Institution)

with less than five years' coverage under the North Carolina Optional Retirement Program and either (1) retiring or (2) commencing employment with an employer that does not have a regular retirement program with your Company. In accordance with North Carolina General Statutes Section 135-5.1(b)(5) I hereby request that my above-numbered contract(s) be repurchased and that the refund of monies attributable to prior contributions thereto, less applicable charges, be distributed pro rata as follows:

- (1) the institution's portion to be refunded to the institution for transmittal to the North Carolina Teachers' and State Employees' Retirement System. Upon such repurchase of my above-numbered contract(s), I hereby renounce forever any and all of my claim or right to the institution's contributions.
- (2) my portion to be paid to me.

I understand that in making the specified dispositions, TIAA-CREF will treat those contributions "picked up" and paid for me by the institution, pursuant to Internal Revenue Code Section 414(h), as my contributions.

Sincerely,

\_\_\_\_\_ (SEAL)

Date \_\_\_\_\_

Teachers Insurance and Annuity Association  
College Retirement Equities Fund  
730 Third Avenue  
New York, New York 10017

Re: Retirement Annuity Contract No. (TIAA) \_\_\_\_\_  
Retirement Unit-Annuity Certificate No. (CREF) \_\_\_\_\_

Gentlemen:

I am leaving the employ of \_\_\_\_\_  
(Name of Institution)

with less than five years' coverage under the North Carolina Optional Retirement Program and either (1) retiring or (2) commencing employment with an employer that does not have a regular retirement program with your Company. In accordance with North Carolina General Statutes Section 135-5.1(b)(5) I hereby request repurchase of my above-numbered contract(s) to the extent of prior contributions thereto by the institution, adjusted for investment experience of such contributions and for applicable charges. I hereby request disposition of the repurchased and the retained portions of my above-numbered contract(s) as follows:

- (1) the institution's portion to be refunded to the institution for transmittal to the North Carolina Teachers' and State Employees' Retirement System. Upon the repurchase of my above-numbered contract(s), I hereby renounce forever any and all of my claim or right to the institution's contributions.
- (2) my portion to be retained in the above-numbered contract account(s).

I understand that in making the specified dispositions, TIAA-CREF will treat those contributions "picked up" and paid for me by the institution, pursuant to Internal Revenue Code Section 414(h), as my contributions.

Sincerely,

\_\_\_\_\_  
(SEAL)