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[redacted]

October 31, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters, File Number S7-18-16

Dear Mr. Fields:

Teacher's Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to comment on the Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters, File Number S7-18-16, issued by the Securities and Exchange Commission (the "SEC" or "Commission") on August 25, 2016. In these comments, we urge the Commission to review and improve disclosure requirements so that all compensation awarded for performance in a given fiscal year is reported in that year, regardless of when the award is granted.

Background on TIAA

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our nearly century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants we serve and to provide financial products that meet their needs. To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. Today, TIAA manages more than $915 billion in assets, and our investment model and long-term approach aim to benefit the 5 million retirement plan participants we serve across more than 16,000 institutions.[1]

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1 Asset amounts provided are as of September 30, 2016.

Our engagement around compensation disclosure

As stewards of our participants' investments, it is critical that we have visibility into the compensation practices of the companies in which we invest in order to make informed investment decisions. We carefully examine the compensation disclosures of the companies in which we invest, or are considering investing, to determine how their pay practices may impact their value and performance.

We believe that accuracy and transparency in executive compensation disclosures add value to our portfolio on behalf of our participants – and provide the potential to deliver competitive performance. Moreover, a lack of investor visibility into companies' compensation practices may result in companies offering pay packages that incentivize undesirable behavior and unacceptable levels of risk-taking. It is therefore essential that compensation disclosure requirements be designed to produce accurate, reliable, and consistent data from reporting companies.

While TIAA is not a public company subject to SEC compensation disclosure rules, we have, where practicable, instituted the same principles and practices we promote for the public companies in which TIAA invests. For instance, the Human Resources Committee of the TIAA Board of Trustees voluntarily publishes a disclosure of compensation decisions for the Company's Chief Executive Officer, Chief Financial Officer, and the next three most highly compensated executives.

Our support for the Commission's efforts

We commend the Commission for seeking comments on Subpart 400 of Regulation S-K, including the compensation disclosure requirements in Subpart 402 of Regulation S-K (Executive Compensation). Specifically, the Commission has asked for input which "can include comments on existing requirements in [Subpart 400] as well as on potential disclosure issues that commenters believe [Subpart 400] should address."[2]

Below, we offer comments in response to the Instructions to Subpart 402(c)(2)(iii) and (iv) and 402(n)(2)(iii) and(iv) (the "Subpart 402 Instructions"), which direct reporting companies to provide information in the Summary Compensation Table ("SCT") about an executive's salary and bonus earned "in a given fiscal year." Our comments focus primarily on the timing of compensation disclosure. Under the Subpart 402 Instructions, for a given fiscal year, reporting companies often include in the SCT equity grants made in the first quarter of that year, even if such grants are in recognition of the previous year's performance.

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[2] SEC Release No. 33-10198 (August 25, 2016) at 5.

This misalignment in company disclosures of the year *in which* an award is granted with the year *for which* the award is granted causes confusion for investors, service providers, the media, and others who rely on timely and accurate compensation data. We urge the Commission to correct this misalignment by amending the Subpart 402 Instructions to require that a reporting company's SCT include all compensation awarded for performance in the given fiscal year – even if such awards are granted in a subsequent fiscal year and/or subject to ongoing vesting requirements.

<u>Aligning compensation disclosure with performance year</u>

In the interest of investors receiving timely, accurate compensation disclosures from reporting companies, we urge the Commission to require compensation for an executive's performance in a given fiscal year to be disclosed in the reporting company's SCT for that year.

Currently, equity grants made in the first quarter of a given fiscal year in recognition of the previous year's performance are often included in the SCT for the year *in which* the equity grants are made, rather than the year *for which* the grants are made. As a result, compensation awards may be disclosed more than 12 months after they are awarded – for example, an equity grant made in February 2016 as a reward for an executive's 2015 performance may not be disclosed until the reporting company issues its 2017 proxy. As such, the current rules create a significant reporting gap that investors may find misleading.

This misalignment in compensation disclosure is problematic for several reasons:

First, it causes investors and other market participants to align compensation disclosed in the SCT for a given fiscal year with a company's total shareholder return ("TSR") for the previous one-, three-, and five-year periods ending in that fiscal year – when, in reality, any compensation awarded for performance should be aligned with the TSR periods ending in the year the performance occurred.

Second, in an effort to prevent this misalignment, some reporting companies include alternative SCTs in their Compensation Discussion & Analysis to identify all compensation awarded for the given fiscal year, even if the awards will not be granted until the next year. While this voluntary additional disclosure is helpful to investors, the fact that it is not mandated means that compensation disclosure remains inconsistent across reporting companies – and investors are forced to devote additional resources to determine whether a company's disclosure includes an alternative SCT that identifies awards for performance in the given fiscal year.

Finally, delaying disclosure of an award for more than 12 months can be problematic for investors voting on "Say-on-Pay" ("SOP") proposals. Most SOP proposals ultimately gain the support of investors. But these proposals often get low levels of support when there is a misalignment between executive pay and a company's TSR performance. If investors perceive that a company's TSR is underperforming relative to the company's peers and executive compensation does not decline accordingly, in the absence of any alternative explanation for the mismatch, the company may fail to receive majority support for its SOP.

Waiting more than 12 months to disclose certain compensation data also forces investors to vote on SOP proposals on the basis of incomplete and outdated information. For example, if in response to poor performance in 2015 a company changes its practices for its February 2016 equity grant, those changes will not necessarily be disclosed to investors until the 2017 proxy. Rather, investors who are asked to vote on a SOP proposal in April 2016 will do so based on their understanding of the company's 2015 equity grant practices – and thus may vote against the SOP proposal on the basis of outdated information.

Accordingly, we respectfully urge the Commission to amend the Subpart 402 Instructions to require that compensation for an executive's performance in a given fiscal year be disclosed in the reporting company's SCT for that year.

<u>Conclusion</u>

We commend the Commission for reviewing and improving the disclosure requirements in Subpart 400 of Regulation S-K. We would welcome the opportunity to engage further.

Sincerely yours,

Derek B. Dorn