PUBLIC

JUL 2 2 1993

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. IP-6-93
CREF Real Estate Account

Your letters of June 26, 1991 and December 18, 1990, as supplemented by your letter of October 15, 1992 and discussions with the staff on October 16, 1992 and August 14, 1991, request assurance that we would not recommend enforcement action to the Commission against the College Retirement Equities Fund ("CREF") 1/ if CREF establishes a portfolio that invests primarily in real property (the "RE Account") without registering the portfolio under the Investment Company Act of 1940 (the "Investment Company Act"). 2/ As explained in your letters, the RE Account will be part of the CREF corporate entity and will be managed by CREF's Board of Trustees. You intend, however, to provide for the legal segregation of the assets held in the RE Account from the assets held in CREF's other portfolios. 3/

For a variety of reasons, you propose establishing the RE Account as an unregistered portfolio under CREF rather than as

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1/ CREF is a nonprofit membership corporation subject to the Not-For-Profit Corporation Law of New York State. It was established by a special act of the New York State Legislature and was formed for the purpose of providing retirement benefits for the employees of certain nonprofit organizations. CREF is registered under the Investment Company Act as an open-end diversified management investment company.

2/ Your request to establish an unregistered real estate portfolio raised a number of fundamental concerns regarding investment company regulation which you addressed over a period of two years. As you offered new and additional arguments for your position, we attempted to incorporate these arguments in our continuing analysis of the issues over this period. Understandably, this has been a lengthy process.

3/ At our October 15, 1992 meeting, the staff expressed its concern that assets held in CREF's existing accounts may be subject to the claims of the RE Account's unsecured creditors. In response, you proposed amending CREF's Charter and Constitution to reflect the addition of the following sentence:

> With respect to the establishment of a fund which invests primarily in real property or direct or indirect interests therein, including without limitation, income-producing real estate, participating and non-participating mortgage loans and real property sale-leaseback transactions (the "Real Estate Account"), the corporation may provide in the applicable agreements that income and both unrealized gains or losses from the Real Estate Account's assets will be credited to or charged against the Real Estate Account without regard to the income, gains and losses of the corporation's other funds.

part of the Teachers Insurance and Annuity Association of America ("TIAA") 4/ or as an independent legal entity. Among other things, you assert that establishing the RE Account as part of TIAA would significantly increase the level of mortality and expense risk charges participants in the RE Account must pay. You further explain that the alternative of creating a separate investment company would require the RE Account to have its own tax exempt status under the Internal Revenue Code, a procedure you assert is time consuming and very costly.

We are unable to assure you that we would not recommend enforcement action to the Commission if CREF proceeds as proposed. We are not persuaded by your arguments that a registered investment company, consistent with the Investment Company Act and the rules thereunder, may create a real estate investment portfolio. You have offered no precedent to support this argument nor considered whether it would be appropriate for any other registered investment company to establish an unregistered investment portfolio. In addition, your arguments concerning the administrative and financial costs of establishing the RE Account, either as a separate legal entity or as a separate account of TIAA, do not justify the relief you request.

We are also not convinced that CREF may insulate the RE Account from its investment company operations to the same extent insurance companies insulate their separate accounts under state law. The amendments you propose to CREF's Charter and Constitution do not provide us with enough assurance that CREF's existing accounts will not be chargeable with liabilities arising from the RE Account.

The Commission and the staff in the past have considered CREF's unique structure and history in connection with CREF's requests for relief from the Investment Company Act. In those situations, however, failure to grant the requested relief would have been inimical to CREF's established operations and the interests of contract owners. CREF's proposal to establish an unregistered real estate portfolio, in our view, does not present the same concerns.

Thomas E. Bisset

Thomas E. Bisset
Senior Attorney
Office of Insurance Products

4/ TIAA is a companion organization of CREF. Like CREF, TIAA offers fixed annuity contracts and insurance benefits to employees of certain nonprofit organizations.

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

ACT 1934
SECTION 3(a)
RULE
PUBLIC AVAILABILITY 07-22-93

July 22, 1993

Steven B. Boehm, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Re: CREF Real Estate Account

Enclosed is our response to your letters of October 15, 1992, June 26, 1991 and December 18, 1990. By incorporating our answer into the enclosed photocopies of your letters, we avoid having to recite or summarize the facts involved.

In any future correspondence on this matter, please refer to our Reference No. IP-6-93.

Sincerely,

Wendell M. Faria
Deputy Chief
Office of Insurance Products

Enclosure

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PAUL J. MASON
DIRECT LINE: (202) 383-0147

October 15, 1992

BY MESSENGER

Clifford E. Kirsch, Esquire
Assistant Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: College Retirement Equities Fund -- Proposed Real Estate Account

Dear Mr. Kirsch:

As we discussed, this letter provides some background as to the no-action letter request of the College Retirement Equities Fund concerning the addition of an investment portfolio that invests primarily in real property (the "RE Account" or "Account"). As you will recall, CREF is seeking to establish and operate the Account outside the definition of an investment company in Section 3 of the Investment Company Act of 1940 (the "1940 Act") and to not treat the Account as being part of its regulated investment company operations. As you know, there are practical reasons why a real estate fund cannot operate subject to the 1940 Act and to the best of our knowledge, there are no such funds that do.

On December 18, 1990, we initially submitted a no-action letter request on behalf of CREF in connection with its proposed implementation of the RE Account. In its letter of February 27, 1991, the Staff responded by outlining certain preliminary concerns and questions it had about the operation of the proposed Account. We, in turn, responded to the specific comments in that letter in a letter dated June 26, 1991.

On August 14, 1991, Charles Stamm and Peter Clapman of CREF, and Steve Boehm and I, met with you, Heidi Stam, Barry Miller and Tom Bisset to further discuss the proposed RE Account. At that time, it was acknowledged that the issues being raised were novel, and that even the indirect precedent in the area was not particularly relevant. We explained that CREF was choosing this unique approach (rather than, for example, utilizing a

separate account of TIAA) to enable CREF to pursue its policy of providing benefits at the lowest cost possible. We pointed out that under the RE Account approach, CREF could provide this investment alternative with a level of aggregate fees that was lower than virtually anyone else's in the industry. It was explained further that if a TIAA separate account approach were utilized, TIAA would be required under New York insurance law to impose a mortality expense risk-type charge, which necessarily would be more costly to participants than CREF's current approach based on actual mortality experience, and does not involve additional mortality charges against assets during either the accumulation or the annuity phase. We also briefly explained that CREF carefully studied other possible structures and found each to be inappropriate for one material reason or another.

At our earlier meeting, the Staff expressed concern about the issue of the insulation that participants in CREF's investment company accounts would have vis-a-vis the RE Account even if it were not deemed part of CREF's investment company operation. You indicated that the Staff needed some level of assurance that insulation existed similar to that provided under separate account statutes. We indicated at that time that CREF believed that an opinion of counsel could be obtained from a major New York law firm to the effect that changes to certain of CREF's governing documents, appropriately worded, together with action by the New York State Insurance Department (the "Department"), would have that effect.

After some discussion, you indicated that if action were taken with respect to this issue by the Department, and such an opinion could be obtained, the Staff would be in a position to more favorably consider our request for relief.

Subsequent to that meeting, CREF commenced a dialogue with the Department concerning the proposed RE Account. Ultimately, officials of the Department approved amendments to CREF's charter and constitution that would provide for insulation between the Account and the rest of CREF's investment portfolios. CREF could implement the appropriate changes to those governing documents, but of course will not do so pending the outcome of this request for relief.

Following its discussions with the Department, CREF sought the opinion letter discussed at our August meeting. On October 5, 1992, that letter was issued by the New York City office of the law firm of Rogers & Wells. After reciting the relevant facts and other considerations, that letter concludes that:

> [O]nce the [charter and constitution] Amendments become effective, if (A) CREF files a statement of operations* for the Real Estate Account with the Insurance Department which is approved by the Insurance Department and is not inconsistent with the exclusive allocation of income, gains and losses on the Real Estate Account's assets to the Real Estate Account and (B) the contract with the participants in the Real Estate Account so provides, then (i) income, gains and losses from the Real Estate Account's assets will be credited to or charged against the Real Estate Account without regard to the income, gains and losses of CREF's other investment accounts and (ii) the assets in CREF's other investment accounts should not be liable for losses incurred by participants in the Real Estate Fund.
>
> (* We would note that the Department, as part of the process of considering these amendments, went through the issues that are involved in connection with the statement of operations and was satisfied that CREF would meet the Department's standards.)

We believe that the foregoing developments are responsive to the concerns raised by the Staff on the "insulation" issue. We look forward to discussing this issue further at our meeting on Friday.

Sincerely,

Paul J. Mason

cc: Peter C. Clapman, Esq.
Steven B. Boehm, Esq.

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STEVEN B. BOEHM
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October 16, 1992

October 16 1992

BY MESSENGER

Clifford E. Kirsch, Esquire
Assistant Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: College Retirement Equities Fund ("CREF")

Dear Mr. Kirsch:

Pursuant to your request at our meeting this morning, enclosed is a copy of the opinion letter issued by the law firm of Rogers & Wells in connection with CREF's proposed Real Estate Account.

Please let us know if you require any additional information.

Sincerely,

Steven B. Boehm

Enclosure

cc: Peter C. Clapman, Esq.
Paul J. Mason, Esq.

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October 5, 1992

BY HAND

Peter C. Clapman, Esq.
Senior Vice President and
Chief Counsel, Investments
College Retirement Equities Fund
730 Third Avenue
New York, New York 10017

Re: College Retirement Equities Fund -
Real Estate Account

Dear Peter:

The College Retirement Equities Fund ("CREF") anticipates establishing and operating a new investment fund that would invest primarily in real property (the "Real Estate Account"). You have requested our advice concerning the allocation of income, gains and losses to the Real Estate Account. You have also requested our advice as to whether the assets in CREF's other investment accounts would be liable for losses incurred by participants in the Real Estate Account. Subject to the conditions described herein, it is our opinion that similar to the treatment accorded to separate accounts of New York life insurance companies (i) income, gains and losses from the Real Estate Account's assets will be credited to or charged against the Real Estate Account without regard to the income, gains and losses of CREF's other investment accounts and (ii) the assets in CREF's other investment accounts should not be liable for losses incurred by participants in the Real Estate Account.

CREF was incorporated in 1952 under a special enactment of the New York State Legislature. Chapter 124 of the Laws of New York of 1952 (the "CREF Act"). The CREF Act established the Charter (the "Charter") of CREF, and provided for the adoption of a Constitution (the "Constitution") and By-laws for the regulation

of the affairs of CREF. CREF is a Type B Corporation under the New York Not-For-Profit Corporation Law ("NPCL") and has elected pursuant to Section 103(a) of the NPCL to have the NPCL apply to it in all respects.

Under the CREF Act, as amended, CREF is subject to certain Articles and Sections (Articles 1, 3, 25 and 74, and Sections 1212, 1217, 1411 and 4230) of the New York Insurance Law (the "Insurance Law"), to the extent not inconsistent with the Charter, but is exempt from most provisions of the Insurance Law. Under the current statutory scheme, CREF is therefore not an "insurer" for most purposes of the Insurance Law. CREF is, however, authorized under Section 8 of its Charter and Article VI, Section 3 of its Constitution to establish funds with investment objectives and limitations as described in such funds' statements of operations filed with, and approved by, the Insurance Department.

CREF is registered with the Securities and Exchange Commission (the "SEC") as an open-end investment company under the Investment Company Act of 1940, as amended (the "1940 Act"), and operates as a series fund offering investment options including a Stock Account, a Bond Market Account, a Money Market Account, a Social Choice Account and a Global Equities Account (the "Existing Accounts"). Although the Existing Accounts are subject to the 1940 Act and applicable SEC regulations, we understand that it would be impracticable for CREF to offer its Real Estate Account as a part of this series fund because of valuation and redemption requirements under the 1940 Act. The Real Estate Account, however, would be subject to registration under the Securities Act of 1933 (requiring that the offering to participants be through a prospectus) and the reporting requirements of the Securities Exchange Act of 1934 (governing periodic financial reporting to account participants).

Currently, Section 8 of the Charter and Article VI, Section 3 of the Constitution permit CREF to establish funds with investment objectives and limitations as described in a statement of operations filed with, and approved by, the Insurance Department. CREF has proposed amendments (the "Amendments") to these Sections of the Charter and Constitution to the New York Insurance Department by addition of the following sentence:

> With respect to the establishment of a fund which invests primarily in real property or direct or indirect interests therein, including without limitation, income-producing real estate, participating and non-participating mortgage loans and real property sale-leaseback transactions (the "Real Estate

> Account"), the corporation may provide in the applicable agreements that income and both realized and unrealized gains or losses from the Real Estate Account's assets will be credited to or charged against the Real Estate Account without regard to the income, gains and losses of the corporation's other funds.

Thus, under the Charter and Constitution if so amended, CREF would be expressly authorized to establish the Real Estate Account. However, the Real Estate Account can only be established after a statement of operations has been filed with, and approved by, the Insurance Department. The investment objectives and limitations for the Real Estate Account will be those set forth in such statement of operations. Moreover, if so provided in the agreements with participants relating to the Real Estate Account, the income, gains and losses from the Real Estate Account's assets are to be only credited to or charged against the Real Estate Account. The text of the proposed amendments requires that if the agreement with the participant so provides, losses from the Real Estate Account will be charged against the Real Estate Account and its assets. This prohibits such losses from the Real Estate Account from being used to reduce income from the Existing Accounts (such losses being charged to the Real Estate Account "without regard to the income, gains and losses of [CREF's] other funds."). Similarly, because losses arising from costs, expenses or liabilities relating to the Real Estate Account assets can only be charged against the Real Estate Account, such losses cannot be charged against the assets of the Existing Accounts.

Section 6 of the Charter makes Article 74, "Rehabilitation, Liquidation, Conservation and Dissolution of Insurers", as amended, applicable to CREF "to the extent...not inconsistent with the provisions of [the CREF Act]." The CREF Act constitutes the Charter. Therefore, the provisions of the proposed Charter amendment would supersede any inconsistent provision of Article 74 relating to the payment of liabilities of CREF. For example, the provisions of the proposed Charter amendment restricting the charges of losses from Real Estate Account assets to the Real Estate Account would supersede the provisions of Section 7435 relating to priority of distribution of claims from the estate of a life insurance company in a rehabilitation, liquidation, conservation or dissolution proceeding.

It is also clear that the Insurance Department understands that the proposed Amendments restrict Real Estate Account losses to the assets of the Real Estate Account. In your letter, dated September 13, 1991, to Mr. Terence Lennon requesting approval of the proposed Amendments, you clearly stated that the Real Estate Account was intended to "operate as a distinct vehicle

and not have any effect on the investment experience of other accounts within the CREF 'series' that operate under the 1940 Act" and that such amendment was designed to "expressly provide for the intended insulation of the Real Estate Account from the 'series' accounts." With this understanding, and after reviewing and discussing the proposed Amendments and their effects on the relationships between the various CREF accounts, the Insurance Department has found the proposed Amendments to be unobjectionable (the language typically used by the New York Insurance Department prior to its approval of CREF Charter and Constitution amendments).

Thus, once the Amendments become effective, if (A) CREF files a statement of operations for the Real Estate Account with the Insurance Department which is approved by the Insurance Department and is not inconsistent with the exclusive allocation of income, gains and losses on the Real Estate Account's assets to the Real Estate Account and (B) the contract with the participants in the Real Estate Account so provides, then (i) income, gains and losses from the Real Estate Account's assets will be credited to or charged against the Real Estate Account without regard to the income, gains and losses of CREF's other investment accounts and (ii) the assets in CREF's other investment accounts should not be liable for losses incurred by participants in the Real Estate Fund.

Sincerely,

Rogers & Wells

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STEVEN B. BOEHM
DIRECT LINE: (202) 383-0176

June 26, 1991

Thomas E. Bisset, Esquire
Office of Insurance Products
and Legal Compliance
Division of Investment Management
Securities and Exchange Commission
Room 10183
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: College Retirement Equities Fund
Real Estate Account

Dear Mr. Bisset:

This letter responds to your letter of February 27, 1991, which set forth certain concerns and questions regarding the no-action letter request of the College Retirement Equities Fund ("CREF") concerning the addition of an investment portfolio that invests primarily in real property (the "RE Account" or "Account"). As you will recall, CREF is seeking to establish and operate the account outside the definition of an investment company in Section 3 of the Investment Company Act of 1940 (the "1940 Act") and to not treat the account as being part of its regulated investment company operations. By this letter, we also request the opportunity to meet with you and further discuss the issues you raised and our responses to them.

The items below correspond to your specific comments.

1. Relationship of RE Account to Other CREF Accounts. As the Staff is aware, CREF is unique in a number of respects. It issues variable annuities, but it is a free-standing entity and not a separate account of an insurance company. In addition, since it is not an insurance company, it cannot create "separate accounts" within the meaning of New York insurance law. Also, it is not regulated by the New York Business Corporation Law, but rather is subject to that state's Not-For-Profit Corporation Law (the "NFPCL"). That law generally does not contemplate an investment-company type of operation like CREF's, nor the issuance of a number of classes or series of stock. (Indeed, that law is designed to regulate membership corporations, a common form of organization for nonprofit entities, and does not contemplate the issuance of any class of stock.)

Accordingly, there are no relevant "state law provisions that control CREF's ability to establish the RE Account as a separate series." CREF believes, however, that it can establish and operate the RE Account so that: (1) income and both realized and unrealized gains or losses from the RE Account's assets will be credited to or charged against the Account without regard to the income, gains and losses of the other CREF accounts; and (2) the other CREF accounts should be protected from claims asserted by creditors of the RE Account. CREF will seek to achieve this result as follows:

First, CREF will seek to amend its charter to indicate that, from a corporate structural standpoint, the other CREF accounts will be insulated from the investment activities of, and any claims that might be raised against, the RE Account. To be effective, the charter amendment must be approved by the New York State Insurance Department. If and when the required approval is received, CREF will obtain an opinion of counsel to the effect that the charter amendment and action by the Insurance Department should have the effect of insulating the RE Account vis-a-vis the other CREF accounts to the same extent as separate accounts of an insurance company generally are insulated vis-a-vis the insurance company by statute.

2. Section 18(f) Issues. As discussed in the no-action letter request, CREF believes that, consistent with the approach taken by the Third Circuit in Prudential Ins. Co. v. Securities and Exchange Commission, 326 F.2d 383, 387 (3rd Cir. 1963), a non-investment company can be carved out of an investment company if the functional attributes of the structure do not subvert the policies and provisions of the 1940 Act. That approach necessarily requires that the RE Account not be considered part of CREF's investment company operation. Under that approach, then, CREF qua regulated investment company should not be viewed as issuing a class of stock representing interests in assets (i.e., the RE Account) that are not afforded the protections of the 1940 Act. Stated differently, the RE Account

would not be another class or series of an investment company, but would represent another part of CREF's business, just as an insurance company's general account would not be viewed as another series of any registered separate account the insurance company might maintain.

3. Comparison with Unregistered Real Estate Separate Accounts. Like interests in unregistered real estate separate accounts offered by life insurance companies ("Separate Accounts"), interests in the RE Account will be subject to registration under the Securities Act of 1933 (the "1933 Act"). Also, CREF, with respect to the RE Account, will be subject to the periodic reporting requirements of the Securities Exchange Act of 1934.

If the relief sought in the no-action letter is granted, the RE Account would not be subject to regulation under the 1940 Act. Likewise, Separate Accounts generally are not subject to those requirements of the 1940 Act.

Separate Accounts, as part of an insurance company, are subject to supervision and regulation by state insurance regulatory authorities. The RE Account, like the rest of CREF's operation, would be subject to regulation by the New York State Insurance Department, as well as by the insurance regulatory authorities of certain other states and jurisdictions.

The RE Account would also be subject to two layers of regulation affecting CREF which generally are not applicable to

Separate Accounts. First, its operation would have to be consistent with the requirements of the NFPCL. Second, it could not operate in a manner that was inconsistent with CREF's tax-exempt status under federal income tax law.

4. Disclosure Concerning Status of RE Account. CREF does not believe, as your comment suggests, that its status as a registered investment company with respect to its existing four accounts justifies a presumption that investors in the RE Account will be misled with respect to the applicability of the protections of the 1940 Act. Indeed, CREF is in virtually the same position in this regard as any unregistered real estate separate account of an insurance company that also offers interests in registered separate accounts.

CREF believes that the disclosure it intends to include in the registration statement covering interests in the RE Account will make clear that participants allocating amounts to the Account are not afforded the protections extended to the other CREF accounts under the 1940 Act. Specifically, CREF currently proposes to include a number of references in the prospectus to the fact that, unlike the other accounts, the RE Account is not subject to the 1940 Act. In addition, specific reference will be made to the fact that participants will have no voting rights with respect to interests in the Account. Given this disclosure, which the Staff will, of course, have an opportunity to review, CREF believes that the risk of a recipient

of the RE Account prospectus being misled as to its regulatory status is low. Obviously, CREF cannot guarantee that every participant will read the prospectus. The 1933 Act does not, however, impose that requirement on an issuer.

5. Feasibility of Separate Investment Company. The establishment of a CREF real estate account as a separate investment company was, in fact, considered by CREF before a determination to follow the proposed approach was made. However, the separate company approach raises two significant administrative and legal concerns which would make it impractical for CREF participants. First, and perhaps most significant, is the fact that a separate entity would have to have its own tax-exempt status recognized by the Internal Revenue Service. While CREF believes that it could ultimately obtain a tax exemption for such a separate real estate entity, the process can be, and often is, time consuming.

Second, CREF has a unique organizational history (i.e., it was formed by a special act of the New York State Legislature in 1952, prior to the existence of variable annuity regulation). The fact that there is now a long-standing body of state regulation governing issuers of variable annuities raises questions as to the appropriate form such a separate entity should take. Reliance on CREF's existing structure by simply adding a new real estate portfolio eliminates these concerns.

6. ERISA Fiduciary Issues. In our letter of December 18, 1990, we noted that the RE Account would be operating according to applicable standards and requirements of ERISA. We believe that discussion remains relevant. However, in connection with the development of more firm specifications for the Account, CREF recently has reevaluated the status of the Account under ERISA. It is now CREF's expectation that, at least during the early years following the establishment of the RE Account, it will satisfy the conditions of a so-called "real estate operating company" ("REOC") within the meaning of 29 C.F.R. §2510.3-101(e) of the Department of Labor's regulations defining "plan assets" for purposes of ERISA. To the extent (and for the time period) that the RE Account constitutes a REOC, it will not be considered to hold "plan assets," and therefore neither the RE Account nor the CREF Board of Trustees would be considered to be ERISA fiduciaries.

To the extent (and for such time as) the RE Account does not qualify as a REOC, however, it is CREF's expectation that the RE Account would be considered to hold "plan assets," so that:

(a) the CREF Board of Trustees (if exercising discretionary management or control over the assets in the RE Account), and

(b) any compensated investment adviser or manager of the RE Account

would be considered to be plan fiduciaries of the ERISA plans investing in the Account.

As we discussed in the no-action letter request, persons who are plan fiduciaries are subject to the fiduciary duty provisions of ERISA, including the requirements that they act prudently and solely in the interest of plan participants and beneficiaries. Further, a fiduciary is prohibited from causing a plan to engage in transactions with parties in interest with respect to that plan in the absence of an applicable administrative or statutory exemption.

Even though the RE Account would not be subject to ERISA during such time as it constitutes a REOC, CREF would be willing to undertake that the RE Account will be operated by CREF (and any compensated investment adviser or manager of the RE Account) in a manner consistent with the general fiduciary standards set forth in Section 404(a)(1) (A), (B) and (C) of ERISA. In other words, the RE Account would be managed solely in the interest of the participants and beneficiaries of the Account, and -

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries, and

(ii) defraying reasonable expenses of administering the plans participating in the RE Account;

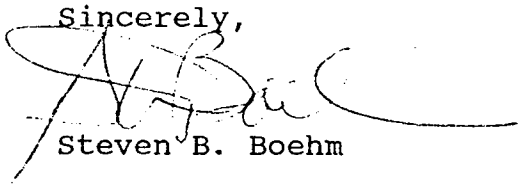
(B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(C) by diversifying the investments of the RE Account so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. 1/

* * *

As mentioned earlier, we would appreciate the opportunity to meet with you and further discuss this matter. If you have any questions or require any additional information, please call the undersigned at (202) 383-0176.

Sincerely,



Steven B. Boehm

cc: Clifford Kirsch, Esquire
Peter C. Clapman, Esquire (TIAA-CREF)
Paul J. Mason, Esquire (SA&B)

1/ The "solely in the interest" and "exclusive purpose" standards would effectively preclude self-dealing, while the prudence and diversification standards would require professional fiduciary investment management for the RE Account. As to diversification, CREF would indicate to each potential investor in the RE Account that the Account is only one reasonable component of his or her pension plan's diversification strategy, and would suggest to institutions that no plan's assets should be invested wholly in the Account.

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December 18, 1990

1940 Act Section 3(a)

VIA MESSENGER

Heidi Stam, Esquire
Special Counsel
Office of Insurance Products
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450 Fifth Street, N.W.
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Re: College Retirement Equities Fund -- Real Estate Account

Dear Ms. Stam:

We are writing on behalf of the College Retirement Equities Fund ("CREF") to request that the staff of the Division of Investment Management (the "Division") advise us that it will not recommend that the Securities and Exchange Commission ("Commission") take any enforcement action under the Investment Company Act of 1940 (the "Act") or the Securities Act of 1933 (the "1933 Act") if CREF establishes and operates an investment portfolio that invests primarily in real property (the "RE Account") in a manner, as described below, so as to place the RE Account outside the definition of an investment company in Section 3 of the Act, and does not treat the RE Account as part of its regulated investment company operations.