

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Cynthia Richards-Donald and Michelle)	
DePrima, individually and on behalf of a class)	
of all other persons similarly situated, and on)	
behalf of the Teachers Insurance and Annuity)	
Association of America Code Section 401(k))	
Plan and the Teachers Insurance and Annuity)	
Association of America Retirement Plan,)	Civ. A. No. 15-cv-08040-PKC
)	
Plaintiffs,)	
)	
vs.)	
)	
Teachers Insurance and Annuity Association)	
of America and TIAA Plan Investment)	
Review Committee,)	
)	
Defendants.)	

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

You are receiving this notice because the records maintained by Teachers Insurance and Annuity Association of America, which is a defendant in the above-captioned federal lawsuit, indicate that you are or have been a participant in either the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan or the Teachers Insurance and Annuity Association of America Retirement Plan (the “Plans”), at some time during the period October 14, 2009 through April 30, 2017. As such, your rights may be affected by a proposed class action settlement of this lawsuit (the “Settlement”). **Please read the following information carefully to find out what the lawsuit is about, what the terms of the proposed settlement are, what rights you have to object to the proposed settlement agreement if you disagree with its terms, and what deadlines apply to the right to object to the proposed settlement.**

What this Lawsuit is About

A class action lawsuit was filed on October 13, 2015, and is being brought on behalf of participants in the Plans during the period October 14, 2009 to April 30, 2017 (the “Class”), as well as the Plans themselves. Cynthia Richards-Donald and Michelle DePrima (referred to as “Plaintiffs” or “Class Representatives”) are the named plaintiffs and the representatives on behalf of all members of the Class in the lawsuit. Plaintiffs have sued Teachers Insurance and Annuity Association of America (“TIAA”) and the TIAA Plan Investment Review Committee (the “Committee”), in addition to individuals Otha “Skip” Spriggs, Dermot O’Brien, Pamela Atkins, Sue Collins, William Riegel, Josh Shamansky, Robert Weinman, Jayesh Bhansali, David Dunne, Phil Goff, Edward Moslander, Phillip Rollock, Elizabeth Gibson, Harry Klaristenfeld, Angela Kyle, and Martin Snow (together with TIAA and the Committee, “Defendants”). The individual defendants have been dismissed from the lawsuit without prejudice, but are part of the proposed Settlement and associated releases. The lawsuit involves claims that Defendants violated the federal Employee Retirement Income Security Act of 1974 (“ERISA”) with respect to the selection and oversight of investment options in the Plans, the recordkeeping services provided to the Plans, and the fees associated with the Plans’ investments and services. Defendants deny the allegations and claims, and believe that they acted in the best interests of Plan participants.

Plaintiffs claim that Defendants breached their fiduciary duties under ERISA when they (a) caused the Plans to offer exclusively proprietary investment options managed by TIAA or an affiliate, resulting in “total plan costs” higher than those of comparable plans; (b) selected an affiliate as recordkeeper of the Plans, which charged fees higher than those for other plans; (c) failed to prudently evaluate Plan investment options; and (d) engaged in prohibited transactions under ERISA by receiving excessive fees. The lawsuit seeks damages based upon the alleged payment by participants of excessive fees for the investments included in the Plans and the recordkeeping services provided to the Plans.

Defendants deny these allegations and instead argue (a) the investment options selected for the Plans were reasonable in that they included a variety of fixed and variable annuities that offer participants lifetime income opportunities; (b) the Plans offered an appropriate investment mix for participants, across different asset classes, risk profiles, fee structures, and outcome opportunities; (c) the fees charged by the investment options in the Plans, including the fixed and variable annuities, were reasonable and often lower than the fees charged by TIAA’s competitors for similar products; (d) the investment options in the Plans provided participants with strong performance; and, (e) TIAA met the Prohibited Transaction Exemption requirements to offer its own products as investment options for the Plans.

In addition, Defendants argue that the Committee monitored the Plans’ investment options for the benefit of TIAA’s current and former employees, and that the recordkeeping fees charged to Plan participants were reasonable based on the nature and quality of the services provided by TIAA. Defendants also deny engaging in any prohibited transactions under ERISA.

The Terms of the Settlement

To avoid the time, cost and distraction of a lawsuit, Plaintiffs and Defendants have agreed to a settlement that involves both monetary payments to participants of the Plans and changes in the investment options and fees of the Plans and a review of recordkeeping fees and services provided by TIAA. The settlement includes no admissions of liability and there are no admissions of the validity of any claim or defense. These and other terms of the Settlement are set forth in the Class Action Settlement Agreement, dated May 8, 2017 (“Settlement Agreement”), which is available at www.tiaaerisasettlement.com, and is summarized below.

1. **The Scope of the Classes Covered by the Settlement.** The Settlement Agreement proposes a class action settlement that would cover and be binding on the following individuals (the “Settlement Class”):

All participants in the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan and/or Teachers Insurance and Annuity Association of America Retirement Plan from October 14, 2009 to April 30, 2017. Excluded from the Class are Defendants and current and former members of the Committee, including their beneficiaries.

Whether a person meets this definition or not will be based on the Plans’ records. You have received this notice because, based upon those records, you are believed to be a member of the Settlement Class.

2. **The Payment and Allocation of a Settlement Fund.** As part of the Settlement, TIAA has agreed to make a payment of \$5 million (the “Settlement Fund”) for the benefit of the Settlement Class. This sum, after the deduction of reasonable amounts to be approved by the Court for a Service Award to Plaintiffs and Attorneys’ Fees and Expenses, Administration Costs, and Taxes and Tax-Related Costs,¹ will be distributed to members of the Settlement Class on a pro rata basis, based upon their average account balances during the period of October 14, 2009 through April 30, 2017, except that any member of the Settlement Class with a pro rata amount of less than \$10 shall receive no distribution. The Plan of

¹ All capitalized terms not defined in this Notice shall be construed consistent with the definition provided in the Settlement Agreement.

Allocation is attached to this Notice as Appendix A. Members of the Settlement Class eligible for a Settlement share will receive a check from the Settlement Administrator. Pursuant to the terms of the Settlement Agreement, the Settlement Administrator has obtained plan records and calculates and pays your award, if any. Consequently, all inquiries related to such distributions should be addressed solely to the Settlement Administrator, at the addresses listed below.

Class Counsel intends to select an Independent Fiduciary to provide such authorization as may be required by Prohibited Transaction Exemption 2003-39 (or other applicable class or statutory exemptions) in order for the Plans to agree to settlement and a release of all claims. All costs reasonably borne by the Independent Fiduciary, including the reasonable fees of the independent fiduciary for its service, shall be borne by the Qualified Settlement Fund.

3. Non-Monetary Relief: In addition to the monetary payment, Defendants agreed to implement the following changes to the Plans, subject to any changes in applicable law:

(A) TIAA agreed to add at least ten (10) non-proprietary investment options to the Plans. Five (5) of these non-proprietary investment options will have investment management fees of 15 basis points or less. TIAA agreed to request the least-expensive share class available to the Plans for these ten non-proprietary investment options. In the event that the fund family for the non-proprietary fund pays revenue sharing, TIAA agreed to credit the revenue sharing payments to the Plans. The effect of these changes to the Plans is a potential reduction of investment expenses to the Class.

(B) TIAA has created a brokerage window to permit participants in the Plans to invest in a broader range of mutual funds, including non-proprietary funds.

(C) Members of the Committee currently receive no bonuses or other compensation as a result of Plan investments in TIAA proprietary investment options. TIAA agreed that it would not modify this practice in the future.

(D) TIAA agreed to retain an independent consultant to the Committee to advise the Committee on the performance of investment options in the Plans and their investment costs relative to the appropriate peer group. The Committee agreed to request the independent consultant to provide assessments on new investment options in the Plans, including the non-proprietary investment options discussed in (3.A), above

(E) TIAA agreed to retain an independent consultant on a one-time basis to review the Plans' recordkeeping fees for potential cost efficiencies in light of the types and quality of services that TIAA provides. The report will be provided to TIAA on a confidential basis and TIAA will provide a declaration to a neutral mediator stating (i) that the review has been completed, (ii) that TIAA has considered its recommendations, and (iii) whether TIAA is planning to make any changes to its recordkeeping systems as a result of information identified by the consultant. Upon completion of this undertaking, the neutral mediator will provide Class Counsel with a letter stating that TIAA has performed its obligations under this provision. TIAA is under no obligation to disclose or share the confidential report with Class Counsel, the Class, or any other persons or parties.

(F) TIAA agreed to review and enhance its investor education program for Plan participants with respect to Plan investment options and the fees associated with those options. In the context of investor education enhancements, TIAA will enhance its investor educational program based upon its reasonable judgment of what is in the best interest of Plan participants and in accordance with the terms of the Plans. TIAA retains sole discretion to modify its investor education content for its workforce at any time and without notice to or consent from Class Counsel.

Defendants shall complete the implementation of the Non-Monetary Relief by December 31, 2017. Defendants shall file a notice with the Court within 30 days of implementing the Non-Monetary Relief attesting that they have implemented the Non-Monetary Relief.

4. The Class-Wide Release of Claims. In exchange for payment of the Settlement Payment by TIAA and the changes in the Plans' operations as required by the Settlement Agreement (see paragraph above entitled Non-Monetary Relief), all members of the Settlement Class and the Plans will release any claims they have related to the lawsuit or that arose out of the conduct alleged in any Complaint filed in the lawsuit regarding the Plans' investment options, investment performance and service providers, and will be prohibited from bringing or pursuing any other lawsuits or actions based upon such claims. A significant portion of the benefits of the Settlement consists of Non-Monetary Relief. For this reason, Members of the Settlement Class will release claims, whether or not they receive a cash distribution from the Qualified Settlement Fund. Members of the Settlement Class further covenant not to sue Defendants with respect to any of the subjects for which changes are being made to the operation of the Plans (the "Covenant"). This Covenant not to sue expires at the end of the calendar year occurring six years after the judgment in this case becomes final. The Releases and the Covenant are set forth in full in the Settlement Agreement, which can be viewed online at www.tiaaerisasettlement.com, or requested from Class Counsel.

The Settlement Approval Process

The Court has granted preliminary approval of the proposed Settlement, and has approved this notice to the Settlement Class. The Settlement will not take effect, however, until it receives final approval from the Court. The Court will hold a Fairness Hearing at 2:00 p.m. on October 20, 2017, which will take place at The United States District Court for the Southern District of New York, located at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312. The date and location of the Fairness Hearing is subject to change by order of the Court, which will appear on the Court's docket for these cases.

The Opportunity to Object to the Settlement

Prior to the Fairness Hearing, members of the Settlement Class will have the opportunity to object to approval of the Settlement. Members of the Settlement Class can object to the terms of the Settlement Agreement and give reasons why they think the Court should not approve it. To object, you must send your objection to the Court, at The Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, and to the Parties at the following addresses:

To Class Counsel:

Gregory Y. Porter Mark G. Boyko BAILEY & GLASSER LLP 1054 31 st Street, NW Suite 230 Washington, DC 20007

To Defendants' Counsel:

Lori A. Martin WILMERHALE LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007
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Objections must be filed with the Court Clerk on or before September 5, 2017. Objections filed after that date will not be considered. Any member of the Settlement Class failing to submit a timely objection will be deemed to have waived any objection they might have, and any untimely objection will be barred absent an order from the Court. Objections must include: (1) the case name and number; (2) your full name, current address, telephone number and signature; (3) a statement that you are a member of the Settlement Class and an explanation of the basis upon which you claim to be a member of the Settlement Class; (4) all grounds for the objection, accompanied by any legal support known to you or your counsel; (5) a statement as to whether you or your counsel intends to personally appear and/or testify at the Fairness Hearing; and (6) a list of any persons you or your counsel may call to testify at the Fairness Hearing in support of your objection.

Anyone who files and serves a timely written objection in accordance with the instructions above may also appear at the Fairness Hearing either in person or through qualified counsel retained at his or her own expense. Those persons or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth: (1) the name, address, and telephone number of the member of the Settlement Class, and (2) if applicable, the name, address, and telephone number of that member of the Settlement Class's attorney, on Class Counsel and Defendants' counsel (at the addresses set out above) and file it with the Court Clerk by no later than September 5, 2017. Anyone who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the member of the Settlement Class or the counsel for the member of the Settlement Class.

The Court will consider objections in deciding whether to grant final approval. Objectors are not required to attend the Fairness Hearing, but if you intend to appear you must state your intention to do so in the manner described above. Members of the Settlement Class who do not comply with these procedures, or who miss the deadline to file an objection, lose the opportunity to have their objection considered by the Court or to appeal from any order or judgment entered by the Court regarding the Settlement.

Attorneys' Fees and Case Contribution Award for Named Plaintiffs

In granting preliminary approval of the proposed Settlement, the Court appointed the Plaintiffs' lawyers to serve as "Class Counsel" for the Settlement Class. The attorneys for the Settlement Class are as follows:

Gregory Y. Porter
Mark G. Boyko
BAILEY & GLASSER LLP
1054 31st Street, NW
Suite 230
Washington, DC 20007

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of the expenses they incurred in prosecuting the case, reasonable attorneys' fees, and a Case Contribution Award not to exceed \$5,000 for the Named Plaintiffs and Class Representatives. Class Counsel intend to seek attorneys' fees and expenses not to exceed \$1,666,667.00. The motion and supporting papers will be filed on or before June 26, 2017. After that date, you may review the motion and supporting papers at www.tiaaerisasettlement.com. Any attorneys' fees, expenses, and Service Award approved by the Court, in addition to the fee for the independent fiduciary and the expenses incurred by the Settlement Administrator in sending this notice and administering the Settlement, will be paid from the Qualified Settlement Fund.

Getting More Information

You can visit the website at www.tiaaerisasettlement.com, where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this notice and other relevant pleadings and documents. If there are any changes to these deadlines, the date of the Final Approval Hearing, or Settlement Agreement, those changes will be posted to the Settlement Website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the website, you may also contact 1-844-454-4158 for more information. Please do not contact the Court to get additional information.

Dated: June 20, 2017

By Order of the United States District Court
District Judge P. Kevin Castel

Appendix A

Plan of Allocation:

- I. The amounts due each Class Member shall be calculated by the Settlement administrator pursuant to the Plan of Allocation as follows:
 - a. The *Settlement Administrator* shall obtain from the *Company* the account balances for each *Class Member* as of the end of each quarter of the class period.
 - b. The *Settlement Administrator* shall obtain, in writing, instructions from *Class Counsel*, on the *Distributable Amount*.
 - c. The *Apportionment* shall be determined by calculating for all *Participants* their average quarter-ending account balance over the entire class period and assigning each participant a pro rata proportion of the *Distributable Amount*.
 - d. *Class members* who are entitled to a distribution of less than \$10.00 will not receive a distribution. Class members' awards for former plan participants who could not be located by reasonable means, and Class members' awards falling below \$10.00, will be progressively returned to the *Distributable Amount* and re-allocated until the lowest participating Class member award is \$10.00. This modified award shall be known as the Class Member's *Entitlement Amount*.
 - e. The Settlement Administrator shall utilize the calculations required to be performed herein for making the required distributions of the *Entitlement Amount*, less any required withholdings or tax penalties, to each *Class Member*. In the event that the Settlement Administrator determines that the *Plan of Allocation* would otherwise require payments exceeding the *Distributable Amount*, the *Settlement Administrator* is authorized to make such changes as are necessary to the *Plan of Allocation* such that said totals do not exceed the *Distributable Amount*.
 - f. If the *Settlement Administrator* concludes that it is impracticable to implement any provision of the *Plan of Allocation*, it shall be authorized to make such changes to the methodology as are necessary to implement as closely as possible the terms of the *Settlement Agreement*, so long as the total amount of all un-voided checks to be written by the *Settlement Administrator* does not—without written agreement of the *Company* and *Class Counsel*—exceed the *Distributable Amount*.