

WESLEYAN UNIVERSITY

Tax-Deferred Annuity Plan
for Employees of Wesleyan University

(Amended and Restated Effective
January 1, 1992)

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Article I Establishment of Plan

1.01 Establishment of Plan. The Board of Trustees of Wesleyan University (the "Board") amended and restated the Wesleyan University TIAA-CREF Tax-Deferred Annuity Plan as of January 1, 1992. The Plan was originally adopted on June 20, 1969. The new name for the amended and restated Plan is the Tax-Deferred Annuity Plan for Employees of Wesleyan University (the "Plan").

The Plan provides for elective pre-tax contributions by Participants pursuant to salary reduction agreements. Participation in the Plan is voluntary. The Plan is designed to satisfy the provisions of section 403(b) of the Internal Revenue Code and the exemption from ERISA under Department of Labor Regulation § 2510.3-2(f).

Article II Definitions

The words and phrases defined in this Article have the following meanings throughout this Plan document.

2.01 **Account.** The separate account(s) established for each Participant to which Plan Contributions and investment earnings are credited, and expense charges and distributions are deducted. A Participant's Account may be divided into subaccounts as determined by the University.

2.02 **Beneficiary.** The individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.

2.03 **Board.** The University's Board of Trustees.

2.04 **Break in Service.** A Plan Year in which a Participant has fewer than 500 Hours of Service.

2.05 **Code.** The Internal Revenue Code of 1986, as amended.

2.06 **Compensation.** The amount of total pay received by a Participant from the University which is includible in gross income for the most recent period (ending not later than the close of the taxable year) that may be counted as a year of service under Code section 403(b)(4) and any salary reduction contributions made by an employee to a plan described under Section 403(b) or Section 125 of the Code. In no event shall the Compensation taken into account under the Plan exceed the limits of Code section 401(a)(17). In determining the Compensation of a Participant for purposes of the limit under section 401(a)(17), the rules of Code section 414(q)(6) shall apply except that in applying such rules, the term family shall include only the Participant's spouse and lineal descendants of the Participant who have not attained age 19 before the close of the year.

2.07 **Date of Employment.** The first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the University.

2.08 **Elective Contributions.** Any employer contributions made to the Plan at the Participant's election pursuant to a salary reduction agreement.

2.09 **Eligible Employee.** Any employee of the University, subject to the following exceptions:

(a) Students performing services for the University who are enrolled and regularly attending classes there; and

(b) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the University which constitutes income from sources within the United States (within the meaning of Section 861(a)(3)); and

2.10 **ERISA.** The Employee Retirement Income Security Act of 1974, as amended.

2.11 **Funding Vehicles** The financial instruments issued for the purpose of funding accrued benefits under this Plan and

specifically approved by the University for use under this Plan in Article IV of this Plan document.

2.12 **Fund Sponsor.** An insurance, variable annuity, mutual fund, or retirement company that provides Funding Vehicles available to Participants under the Plan.

2.13 **Highly Compensated Employee.** An employee described in Code section 414(q).

2.14 **Normal Retirement Age.** The age set by the University as the customary age at retirement for a job class of employees covered by the Plan.

2.15 **Participant.** Any Eligible Employee of the University participating in this Plan in the manner provided in Article III.

2.16 **Plan.** The Tax-Deferred Annuity Plan for Employees of Wesleyan University.

2.17 **Plan Year.** January 1 through December 31.

2.18 **University.** Wesleyan University.

Article III Eligibility for Participation

3.01 **Eligibility.** An Eligible Employee shall be eligible to participate in the Plan as of his or her date of employment with the University.

3.02 **Enrollment in Plan.** To participate in this Plan:

(a) An Eligible Employee must complete the necessary enrollment form(s) and return them to the University. An employee who has been notified that he or she is eligible to

participate in the Plan but who fails to return the enrollment form(s) will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.

(b) An Eligible Employee who complies with the requirements of this Section 3.02 and becomes a Participant is entitled to the benefits of, and bound by, the terms and conditions in the Plan, as amended from time to time, and any Funding Vehicle(s) to which Plan

Contributions for the Participants have been applied.

3.03 Reemployment. An Eligible Employee who satisfied the participation requirements set forth in Section 3.01 will be immediately eligible to participate in the Plan upon reemployment.

3.04 Termination of Eligibility to Participate. A Participant will continue to be eligible to participate in the Plan until he or she ceases to be an Eligible Employee, or the Plan is terminated, whichever occurs first.

Article IV Plan Contributions

4.01 Contributions Made by Salary Reduction. Elective Contributions on behalf of electing Participants shall be made on a before-tax basis in accordance with Code section 403(b). The University shall forward the Elective Contributions to the Funding Vehicles as soon as practicable after the date they otherwise would have been paid to the Participants.

4.02 Limitations on Plan Contributions.

(a) Code Section 415 Limitations. Notwithstanding anything to the contrary contained in this Plan, the total annual additions as defined in Section 415 of the Code made on behalf of the Participant for any year will not exceed the limits imposed by Code section 415, as they may be adjusted from time to time. The limits of Code section 415 are herein incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for the purposes of section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, shall be determined by the University so as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is

under this Plan, the University will advise affected Participants of any additional limitation on their annual additions required by this paragraph.

(b) Limits on Elective Contributions. The amount of Elective Contributions for any taxable year under this Plan, and all other similar plans, contracts or arrangements, shall not exceed the dollar limit in effect under the Code. In the event that a Participant has made Elective Contributions in excess of such limit, he or she may designate Elective Contributions made during a taxable year to this Plan as Excess Elective Contributions by notifying the Plan Administrator on or before March 1 of the amount of the Excess Elective Contributions. Notwithstanding any other provision of the Plan, Excess Elective Contributions, adjusted to reflect any credited investment experience up to the date of distribution, will be distributed no later than April 15 to any Participant who designates Elective Contributions as Excess Elective Contributions for such taxable year.

(c) Exclusion Allowance Limitation. The amount of Plan Contributions is also subject to the limitations of Code section 403(b).

4.03 When Contributions Are Made. Contributions shall be made monthly to the

Funding Vehicles in accordance with the procedures established by the University and Funding Sponsor.

4.04 Leave of Absence. During a paid leave of absence or other sabbatical, Elective Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the University.

4.05 Allocation of Contributions. A Participant may allocate Elective Contributions made on his or her behalf to Funding Vehicles in any whole number percentages that equal 100%.

4.06 Limitations. Notwithstanding anything to the contrary contained in this Plan, the obligation of the University to permit

Elective Contributions is subject to the provisions relating to the amendment and termination of the Plan; provided that no amendment or termination will affect any Elective Contributions with respect to Compensation earned by the Participant prior to the date of amendment or termination.

4.07 No Reversion. Under no circumstances or conditions will any Plan Contributions of the University revert to, be paid to, or inure, directly or indirectly, to the benefit of the University. However, in the event that Elective Contributions are made by the University by mistake of fact, these amounts may be returned to the Participant within one year of the date that they were made.

Article V

Fund Sponsor/Funding Vehicles

5.01 Fund Sponsors/Funding Vehicles.

(a) Elective Contributions are invested in one or more of the Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles available to Participants as of the date of this document are as follows:

- (1) Fund Sponsor - Teachers Insurance and Annuity Association (TIAA).
Funding Vehicle: TIAA Retirement Annuity
- (2) Fund Sponsor - College Retirement Equities Fund (CREF).
Funding Vehicles: Stock Account Money Market Account Bond Market Fund Social Choice Fund Global Equities Fund

- (3) Fund Sponsor - Fidelity Investments Tax Exempt Services Company.

Funding Vehicle: Fidelity Family of Funds.

- (4) Fund Sponsor - Dreyfus Service Corporation.

Funding Vehicle: Dreyfus Third Century Fund.

(b) The University's current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles.

5.02 Fund Transfers. Fund transfers are permitted by the Plan provided they are permitted by the Funding Sponsor with which a Participant has invested his Account. Funding Sponsors may process transfer requests among the above Fund Sponsors and Funding Vehicles without seeking the University's approval or inquiring whether the

request meets any condition that the University may impose on such transfers. No other

transfer requests shall be allowed under the Plan.

Article VI Vesting

6.01 Elective Contributions. The Participant is always 100% vested in the

Elective Contributions that are made to the Plan.

Article VII Benefits

7.01 Retirement Benefits. The Participant is entitled to receive retirement benefits, under options set forth in the relevant Funding Vehicle(s).

(c) For purposes of this Plan, a financial hardship shall be an immediate and heavy financial need that cannot be satisfied from sources other than a Participant's Account in the Plan.

7.02 Form of Benefits. Benefits may be received under this Plan in any form the relevant Funding Vehicle(s) permit.

7.04 Survivor Benefits. Upon the death of the Participant and prior to the commencement of retirement benefit payments, the full current value of the Account(s) is payable under the options offered by the Fund Sponsor(s) to the Beneficiary or Beneficiaries named by the Participant. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code section 401(a)(9).

7.03 Distribution Restrictions on Elective Contributions.

(a) Neither the Plan nor any Funding Vehicle permitted under the Plan shall allow for distributions attributable to Elective Contributions before the Employee:

1. attains age 59^{1/2};
2. separates from service with the University;
3. dies;
4. becomes disabled (as defined in section 72(m)(7) of the Code);
5. suffers a financial hardship; or
6. any other event for which a distribution is permitted by the Code.

7.05 Application for Benefits. Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor(s). Benefits will be payable by the Fund Sponsor(s) upon receipt of a satisfactorily completed application for benefits and supporting documents, including waiver of spousal rights to retirement benefits and death benefits, if necessary. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary by the Fund Sponsor(s).

(b) If a Participant requests a distribution on account of a financial hardship, no income attributable to his Elective Contributions may be included in such distribution.

7.06 Minimum Distribution Requirements. All distributions under this Plan will be made pursuant to Code section 403(b)(10) in accordance with Prop. Reg.

§ 1.403(b)-2. The provisions of Prop. Reg. § 1.403(b)-2, as amended, shall override any distribution options in the Plan that are inconsistent with Code section 403(b)(10).

Article VIII Non-Alienation of Retirement Rights or Benefits

To the fullest extent permitted by law, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors, or legal process. No person will have the power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to

do so will be void and of no effect. However, this Plan will comply with any judgment, decree, or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under ERISA section 206(d)(3).

Article IX Administration

9.01 Plan Administrator. The University is the Administrator of this Plan, and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsor(s) selected by the Participant, and for performing other duties required for the operation of the Plan provided such duties do not exceed the limitations set forth in Department of Labor Reg. § 2510.3-2(f)(3).

as it finds necessary or advisable to assist it in carrying out its duties. The Fund Sponsor(s) shall establish a claim procedure providing for full and fair review of denied claims for benefits under the Plan. The University, by action of its Board, may designate a person or persons other than the University to carry out any of its powers, authority, or responsibilities. Any delegation shall be set forth in writing.

9.02 Authority of the University. The University has all the powers and authority expressly conferred upon it herein, and, to the extent it becomes necessary, has the sole discretion to interpret and construe the Plan, and to determine any disputes arising under it. In exercising these powers and authority, the University will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The University may employ attorneys, agents, and accountants

9.03 Action of the University. Any act authorized, permitted, or required to be taken by the University under the Plan, which has not been delegated in accordance with Section 9.02, may be taken by a majority of the members of the Board, either by vote at a meeting or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the University under the Plan will be in writing and signed by either

(i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the University in accordance with the provisions of Section 8.02. Any action taken by the University which is authorized, permitted, or required under the Plan and is in accordance with the Fund Sponsor(s)' contractual obligations is final and binding upon the University, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the University, subject to Section 9.02.

of incorporation, regulations, or by-laws of the University, under any provision of law, or under any other agreement, the University will satisfy any liability actually and reasonably incurred by any member or other person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement, in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by the member or other person or persons of any of the power, authority, responsibilities, or discretion of the University as provided under the Plan, or reasonably believed by the member or other person or persons to be provided thereunder, or any action taken by the member or other person or persons.

9.04 Indemnification. In addition to whatever rights of indemnification the members of the Board, or any other person or persons (other than the Fund Sponsor(s)) to whom any power, authority, or responsibility of the University is delegated pursuant to Section 9.02, may be entitled under the articles

9.05 Rights under Funding Vehicles. All rights under a Funding Vehicle are enforceable solely by the Participant, the Participant's beneficiary, or by an authorized representative of such employee or beneficiary.

Article X Amendment and Termination

10.01 Amendment and Termination. While it is expected that this Plan will continue indefinitely, the University reserves the right at any time to amend or terminate the Plan by resolution of its Board, except that:

the University any contributions previously made under this Plan.

(a) No amendment or termination shall be made which will operate to recapture for

(b) No amendment or termination shall deprive, take away, or alter any then accrued right of any Participant insofar as Elective Contributions previously made under the Plan are concerned.

Article XI Direct Rollovers

1 3E11.01 Right to Elect Direct Rollover. This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

11.02 Definitions.

(a) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

1. any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;
2. any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and

3. the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.)

(b) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(c) Distributee: A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Article XII Miscellaneous

12.01 **Plan Non-Contractual.**
Nothing contained in this Plan shall be construed as a commitment or agreement on

the part of any person to continue his or her employment with the University, and nothing

contained in this Plan shall be construed as a commitment on the part of the University to continue the employment or the rate of Compensation of any person for any period, and all employees of the University shall remain subject to discharge to the same extent as if the Plan had never been put into effect.

12.02 **Claims of Other Persons.** The provisions of the Plan shall in no event be construed as giving any Participant, or any other person, firm, or corporation, any legal or equitable right as against the University, its officers, employees, or directors, except the rights specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

12.03 **Merger, Consolidation, or Transfers of Plan Assets.** The Plan shall not be merged or consolidated with any other plan, unless, immediately after a merger or

consolidation, each Participant would receive a benefit under the Plan which is at least equal to the benefit he or she would have received immediately prior to a merger or consolidation (assuming in each instance that the Plan had then terminated).

12.04 **Incorporation by Reference.** The terms of the contracts between the Fund Sponsor(s) and the University and/or the Participants and any certificates issued to a Participant by the Fund Sponsor shall be a part of the Plan as if fully set forth in the Plan document, and the provisions of each are incorporated by reference into the Plan. If there is any inconsistency or ambiguity between the terms of the Plan and the terms of the contracts and/or certificates, the terms of the contracts/certificates shall control.

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