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ARIZONA CORPORATION COMMISSION

December 29, 2004

Mr. Steven Kittrell
McGuireWoods LLP
1050 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20036

RE: Emeriti Consortium for Retirement Health Solutions

A.R.S. § 44-1844(A)(14)

Dear Mr. Kittrell:

On the basis of the facts set forth in your letter of November 23, 2004, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. This letter does not address any sale of securities in connection with a non-VEBA trust.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the antifraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter containing the facts upon which this position is based.

Very truly yours,

MJN

MATTHEW J. NEUBERT
Director of Securities

MJN:kt
Attachment

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McGUIREWOODS

November 23, 2004

Corporation Commission
Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007

Ladies and Gentlemen:

On behalf of our client, the Emeriti Consortium for Retirement Health Solutions, a non-member, non-stock, not-for-profit corporation (the "Company"), we are respectfully seeking assurance that the Arizona Securities Division will not seek enforcement action if participation interests in the voluntary employee contribution trusts under the Plans (as further described herein and in the Appendix) are issued in the state without registration pursuant to section 44-1841 of the Arizona Revised Statutes (the "ARS").

Background

The Company has designed a Program to help colleges, universities, and other similar tax-exempt organizations (collectively "Colleges")[1] provide tax-advantaged retiree health benefits to current and former faculty, staff, administrators, and employees ("Participants"). For a description of the general design of the Program, we refer you to the Appendix attached to the end of this submission.

The Issue

The aspect of the Program that has resulted in this submission is the Plan participation interests in the employee-contribution trusts.[2]

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[1] All the Colleges are not-for-profit entities which are tax exempt under section 501(c)(3) or another section of the Internal Revenue Code of 1986, as amended (the "Code").

[2] The Company has submitted a no-action request to the staff of the Securities and Exchange Commission (the "Commission") seeking assurance that the staff will not recommend enforcement action to the Commission if the Plan participation interests are not registered as securities under the Securities Act of 1933 or Investment Company Act of 1940. We are currently working with the staff to finalize this relief.

If Arizona law would treat these Plan participation interests as securities, we believe that, for the reasons described below, the issuance and sale of the participation interests would be exempt transactions under Arizona law.

Section 44-1844.14 of the ARS provides that the requirements of sections 44-1841, 44-1842, 44-3321 and 44-3325 of the ARS do not apply to:

> The sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States internal revenue code.

We believe that the offering of participation interests in the Plans is within the intent of this exemption for the following reasons. First, the Plans offered under the Program meet the requirements of this exemption as being a "similar employee benefit plan." Second, the Plans meet the requirements for qualification under the Code.

First, the Plans are clearly employee benefit plans. Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") defines an "employee benefit plan" as an employee welfare benefit plan or an employee pension benefit plan. ERISA section 3(1) defines an "employee welfare benefit plan" as:

> Any plan, fund, or program ... established or maintained by an employer ... for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident ...

The Plans offer medical, surgical and hospital care and benefits and other sickness and accident benefits, and are therefore "employee benefit[s] plan[s]" under ERISA.

The Code does not currently contain a definition of "employee benefit plan."[3] Although not specifically defined in the Code, the term "employee benefit plan" is used in several Code sections and it clearly has the same meaning as under ERISA and in common usage.

For example, Code section 808(f)(8) is entitled "Subsection to apply to policies provided under employee benefit plans." That subsection refers to "a plan to

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[3] Prior to its repeal, Code section 89 defined a "statutory employee benefit plan" to include an "accident or health plan (within the meaning of section 105(e)." For purposes of Code section 105(e), an accident or health plan is "an arrangement for the payment of amounts to employees in the event of personal injuries or sickness." The Plans fit within this definition of accident or health plans and would have been an employee benefit plan for purposes of Code section 89 if it had not been repealed.

provide welfare benefits to employees (within the meaning of section 419(e)(2))." Code section 419(e)(2) broadly defines a "welfare benefit" as "any benefit other than a benefit with respect to which" the deduction limits of Code sections 83(h), 404, or 404A apply. The Plans would not be subject to any of the listed Code sections and are welfare benefits for purposes of Code Section 419(e)(2). Code section 419 clearly applies to medical plans as a type of welfare benefit plan.[4]

Second, the Plans are qualified under the Code. The trust that will hold the employee contributions and the related Plan will be tax-qualified under Code section 501(c)(9) as a Voluntary Employee Beneficiary Association ("VEBA"). The VEBA qualification requirements primarily arise in the regulations under Code section 501(c)(9) and in Code section 505. These statues and regulations provide an extensive set of qualification requirements that are similar to requirements for tax-qualified retirement plans under Code section 401.

The regulations under Code Section 501(c)(9) (the "VEBA Regulations") are extensive.[5] The VEBA Regulations provide comprehensive qualification requirements, including detailed standards for the following matters:

- The permissible membership of a VEBA.[6]
- The permissible benefits that may be provided through a VEBA. The benefits are limited to "life, sick, accident" and a small class of other permissible benefits.[7]
- Prohibitions on any of the net earnings of a VEBA inuring to the benefit of an individual other than through the payment of permissible benefits.[8]
- Recordkeeping requirements for all amounts contributed and benefits paid.[9]

Code section 505 contains a set of nondiscrimination requirements that apply to VEBAs. These nondiscrimination rules are modeled after the nondiscrimination requirements for tax-qualified retirement plans. Below is a chart showing the nondiscrimination requirements of Code section 505 and the comparable statutory provision for tax-qualified retirement plans.

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[4] Treas. Reg. Section 1.419A(f)(6)-1(f), Example 9.

[5] Treas. Reg. Section 1.501(c)(9)-1 through -8.

[6] Treas. Reg. Section 1.501(c)(9)-2.

[7] Treas. Reg. Section 1.501(c)(9)-3.

[8] Treas. Reg. Section 1.501(c)(9)-4.

[9] Treas. Reg. Section 1.501(c)(9)-5.

Requirement	VEBA Section	Retirement Plan Section
Each class of benefits must be provided to a classification of employees that is not discriminatory in favor of highly compensated individuals	505(b)(1)(A)	410(b)(2)[10]
Each class of benefits must not discriminate in favor of highly compensated individuals	505(b)(1)(B)	401(a)(4)
For testing nondiscrimination, certain employees may be excluded	505(b)(2)	410(a)(1) 410(b)(3)
A plan may not take into consideration compensation of an employee in excess of $200,000	505(b)(7)	401(a)(17)
The definition of a highly compensated individual	505(b)(5)	414(q)
The definition of compensation	505(b)(6)	414(s)

Code section 505(c) also requires that, to be a VEBA, an organization must notify the IRS and receive a favorable ruling. Therefore, all of the Plans will be affirmatively determined by the IRS to meet the qualification standards of the VEBA Regulations and Code section 505 as a matter of design. This is essentially the same process for determining tax qualification that is applied to tax-qualified retirement plans.

In sum, the Plans as VEBAs are subject to tax qualification standards that are very similar to the standards applicable to pension and profit sharing plans.

Request

Based on the foregoing, we are respectfully seeking assurance that the Arizona Securities Division will not seek enforcement action if participation interests in the voluntary employee contribution trusts under the Plans are issued in the state without registration pursuant to ARS section 44-1841.

In addition, for the same reasons discussed above, we do not believe that the characteristics of the transactions involved here ought to require the registration of (i) individuals who could be deemed "salesmen" under ARS section 44-1945 in respect to the Plan participation interests, or (ii) materials that could be deemed "advertising or sales literature" under ARS Rule 14-4-103 in respect to the Plan participation interests. Therefore, we are respectfully requesting relief with respect to these provisions as they relate to the Plan participation interests as well.

[10] See Treas. Reg. 1.410(b)-4.

On behalf of the Company, we certify that, to our knowledge: (i) the transaction described herein is not directly or indirectly the subject of any pending or final judicial, SRO or administrative proceeding; and (ii) has not been commenced. We also acknowledge on behalf of the Company that this request, together with any documents or information submitted and any response from the Division, is public information and may be released for publication, except as otherwise provided by law.

We would appreciate a response to this letter as soon as is practicable. If you have any questions or require any additional information, please contact David Pankey at (202) 857-1716 or me at (202) 857-1701. In the event hat you do not agree with any positions or analysis taken in this submission, we would appreciate the opportunity to discuss it with you before any written response is given.

Sincerely,

Steven Kittrell

Steven Kittrell

McGuireWoods LLP
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Washington, D.C. 20036

APPENDIX

General Design of the Program

The program described below (the "Program") is a tax-advantaged method of providing retiree health benefits to former faculty, staff, administrators and employees ("Participants") of colleges, universities, and other tax-exempt organizations (collectively "Colleges), all of which are not-for-profit entities which are tax exempt under Section 501(c)(3) or another section of the Internal Revenue Code of 1986 (the "Code").

Each College will adopt its own retiree medical plan (the "Plan") and two trusts based upon model documents. Each of the trusts will qualify under Code section 501(c)(9) as a voluntary employees' beneficiary association ("VEBA"). The model plan contains three intertwined components: (i) the Plan providing medical benefits for former employees and their spouses and dependents, (ii) a trust-based funding mechanism to receive plan contributions from sponsoring employers and participating employees, and (iii) an educational program to assist employees with integrated planning for post-age 65 health needs in retirement.

The Company

The Company will oversee the operation of the Program. The Company will provide the model documents, provide the educational program, and otherwise design, control and oversee the operation of the Program.

The Company is an Illinois non-member non-stock not-for-profit corporation. It is anticipated that the Company would have a small number of full time employees, a board of directors of distinguished individuals associated with higher education, and an advisory council primarily composed of representatives of Colleges which participate or may participate in the Program. Upon termination of the Company, any remaining assets of the Company are required to be distributed to one or more charitable organizations.[11]

The Company will function principally as a service provider to the Plans. The Company will retain outside vendors, including one or more insurers (the "Insurer") and a recordkeeper (the "Recordkeeper"), to provide the necessary administrative support to maintain the Program in compliance with the requirements of the Code and ERISA[12] for plans of this type, including investment management and satisfaction of the reporting and disclosure requirements of ERISA. The Insurer's coverage will be offered only in states in

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[11] As a non-profit organization, the Company must distribute all of its assets upon dissolution to another tax-exempt organization. To avoid any appearance of conflicts of interest, none of the Colleges which participate in the Program will be eligible to receive such a distribution.

[12] Employee Retirement Income Security Act of 1974, as amended.

which the Insurer has a certificate of authority and the coverage will be limited to insurance products for which regulatory approval has been received from a state.

The Company has chosen the investment vehicles from registered mutual funds offered by the Recordkeeper. (It is possible that at a later time the investment vehicles offered through the Program will be offered by an entity other than the Recordkeeper. However, all investment vehicles offered through the Program will be registered under the 33 Act and the 40 Act.)

The Company will be an ERISA fiduciary of the Plan for purposes of providing a model investment policy and selecting and monitoring the Insurer, the Recordkeeper, a COBRA[13] administrator, a company to provide group-term life insurance, and any other service providers.

Colleges may become members of the Company by entering into an agreement with the Company and adopting the model plan provided by the Company. The Company's operating expenses, along with other Program expenses, will be paid by enrollment fees and annual Program membership fees based on the number of employees covered by the Plans.

General Structure of the VEBAs

Each College will establish two VEBAs, one to receive and hold contributions made to the Program by the College, and the other to receive and hold contributions made by individual Participants. Each VEBA will be approved as tax-exempt by the Internal Revenue Service. As is described below, a College may also establish another non-VEBA trust to receive additional College contributions for the purpose of providing supplemental fully-insured medical benefits to certain tenured faculty and certain other employees under a separate plan.[14]

The College will make contributions to an employer-contribution VEBA trust to fund its portion of the College's Plan. Participating employees and former employees of each College may make voluntary after-tax contributions to an employee-contribution VEBA trust.[15] Each VEBA will maintain a separate account for the assets of each Participant.

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[13] Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

[14] Employees who are "key employees" under Code section 416 may be excluded from the employer-contribution VEBA. In general, a key employee is an officer earning more than $135,000 annually (adjusted for inflation).

[15] As currently contemplated, a College could, but would not be required to, provide for voluntary employee contributions as part of its plan. A College could not provide for voluntary employee contributions unless its Plan also provides for employer contributions and it has at least fifty eligible Participants. If voluntary employee contributions are permitted, it is possible that there would be Participants who would be eligible to make voluntary employee contributions, but are

Earnings and losses will accrue on the account balances within each VEBA. Each Plan and its associated VEBAs will be designed such that: (i) initial eligibility and continued participation is limited to employees and former employees (and their spouses and dependents only as beneficiaries of the employee) of the College; (ii) earnings on contributions to the VEBAs will not inure to the benefit of any individual or private shareholder except through payment of welfare benefits; and (iii) all funds in the VEBAs will be used only for retiree medical benefits (paid from the Participant's account in each VEBA), and potentially life insurance premiums (only in the employer-contribution VEBA).

Following the Participant's retirement, the balances in the individual accounts held for each Participant in a College's Plan will be available to pay for health insurance premiums and other qualifying medical expenses. A portion of each benefit payment (i.e., premium payments or reimbursement of qualifying medical expenses) will be drawn from each of the Participant's VEBA accounts on a pro rata basis based on total assets in each of the accounts. As explained below, any funds in an individual Participant's account in each VEBA not used for medical benefits will be forfeited.

Insurance and Administrative Arrangements

The Company intends to enter into agreements with the Insurer to insure the medical aspects of the Program and provide for medical claims administration; and with the Recordkeeper to provide trust, administrative, investment, and other services. Expenses incurred by the individual Plans will be paid directly to these and any other vendors. The health care benefits will be provided primarily through a post-age 65 group insurance policy integrating with and supplementing Medicare coverage. Coverage will vary from state to state based on regulatory requirements.

Participants will have two choices of how to receive health care. First, upon enrollment in Medicare on or after age 65, a Participant may make a one-time election to participate in the Insurer's insurance coverage which is being offered in the Participant's state, subject to availability. It is currently contemplated that this insurance will be provided through a policy issued to a trust maintained by the Insurer. Participants are not required to participate in the Insurer's coverage. Second, after retirement Participants may use the funds in their accounts to get reimbursement for other qualifying medical expenses, and to pay for premiums for health insurance coverage from vendors other than the Insurer.[16] The

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not eligible for employer contributions. It is anticipated that most Colleges would provide for voluntary employee contributions.

[16] Reimbursement of medical expenses (but not access to the Insurer's coverage) will be available before retirement only in the case of a terminal illness of a Participant or eligible beneficiary or if the Participant or eligible beneficiary incurs catastrophic uninsured medical expenses in excess of $15,000 in a year. For this purpose, expenses are incurred in respect to a

decision to participate in the insurance coverage offered by the Insurer does not preclude the Participant's use of funds in his or her accounts for reimbursement of qualifying medical expenses.

Individual Participants will be permitted to direct the investment of the funds held in their accounts among mutual funds available through the Program. It is currently contemplated that the fund choices initially will be nine life-cycle funds (mutual funds that are specifically designed for different retirement dates), an income fund, and a money market fund. The number and kind of funds available under the Plans may change before the Program's effective date and may vary over time, but each fund will be a registered mutual fund and all Plans will offer the same funds or a subset of the same funds.

After retirement, a Participant will also have the choice of purchasing one or more fixed annuity contracts to be held in the Participant's accounts in the VEBA. Such annuity contracts will pay a guaranteed stream of income into the Participant's accounts for the purpose of funding the health care benefits available under the College's Plan. It is currently contemplated that the annuities will be offered by an affiliate of the Recordkeeper.

Employer Contributions

Under each Plan, the College will make employer contributions to the employer-contribution VEBA trust. The amounts received will be allocated to individual accounts for Plan Participants. The Plans will require the Participant to direct the investment of employer contributions allocated to a Participant's account.

Based on actuarial projections, the Company anticipates that the account balance in the employer-contribution VEBA will be exhausted before the death of the Participant and his or her spouse or other covered dependents.[17] In some cases, such as premature death, however, a residual account balance may remain at the death of the last covered individual. All residual amounts will be retained in the employer-contribution VEBA in a single forfeiture account. The balance in the forfeiture account can be used to reduce future employer contributions, allocated among the accounts of other Participants in the VEBA, or used to pay life insurance premiums if the College has elected to provide an ancillary life insurance benefit in the employer-contribution VEBA.

"terminal illness" if they are incurred (A) within one year prior to the date of the individual's death; or (B) within one year prior to, or at any time following, the date of certification by the individual's physician that the individual has suffered an illness or injury expected to result in such individual's death within five (5) years of the date of certification. For administrative convenience, Participants who terminate employment before age 60 with a small aggregate balance in their accounts ($5000 or less) are also eligible for immediate reimbursement of medical expenses.

[17] Medical benefits will also be payable to the domestic partner of the Participant.

Voluntary Employee Contributions

Each College may structure its plan to permit employees to make voluntary contributions on an after-tax basis to a separate employee-contribution VEBA. Voluntary employee contributions will be fully vested. In certain circumstances, former employees may also make voluntary contributions into this VEBA.

The employee-contribution VEBA will have an account for each Participant. Participants will direct the investment of the amounts in this account. The Company has the authority under each College's Plan to impose annual and lifetime limits on employee contributions with the goal that the aggregate total of a Participant's employer and employee contributions does not exceed the actuarially projected cost of retiree medical insurance and out-of-pocket health care expenses. As in the case of employer-derived contributions, the actuarial projection is that this account will be expended during the lives of the Participant, his or her spouse and allowable dependents, so that no residual is likely to remain at death. Any actual remaining residual will be forfeited and reallocated to the accounts of other Participants in the employee-contribution VEBA.

The Fully Insured Plan and Fully Insured Trust

Each College will have the ability under the Program to establish a separate plan (the "Fully Insured Plan"). The Fully Insured Plan would be used only to provide fully insured medical benefits and not for the reimbursement of medical expenses. It is currently contemplated that the insurance coverage available under the Fully Insured Plan would be offered by the Insurer under the same policies as used for the Plans and would provide essentially the same coverage options and terms. It is possible that other terms or insurance provided by a different insurer might be available at a later time.

The College would specify which employees or categories of employees would be eligible to participate in the Fully Insured Plan. All employees are potentially eligible, but it is expected that a College would use the Fully Insured Plan to provide insured benefits to key employees, tenured faculty, and selected faculty and administrators. All employees eligible to participate in the Fully Insured Plan would also be eligible to participate in the employer-contribution VEBA and the employee-contribution VEBA under the Plan, except that a College may specify that key employees (see footnote 19 above) eligible to participate in the Fully Insured Plan are not eligible to participate in the employer-contribution VEBA under the Plan.

The College would establish one or more additional trusts (the "Fully Insured Trust") for the Fully Insured Plan. The Fully Insured Trust would be funded only by employer contributions and employees would not be permitted to make contributions into the Fully Insured Trust. It is contemplated that the Recordkeeper would initially serve as the trustee of the Fully Insured Trusts and would handle the recordkeeping as in the case of the VEBA trusts under the Plan. A Fully Insured trust is a trust in which the assets are dedicated to a designated use (payment of Fully Insured Plan expenses) but the assets remain subject to the creditors of the College. Fully Insured Trust assets would revert to the College if the College decides to terminate the Fully Insured Trust for any reason other than insolvency of the College.

Each Participant in the Fully Insured Plan would have a notional account in his or her name in the Fully Insured Trust with respect to employer contributions made for their benefit. Participants would direct the investment of funds held for them in the Fully Insured Trust in the same manner as the Plans. However, assets in the Fully Insured Trust remain the property of the College. If an employee is eligible under the Fully Insured Plan and has no balance in the VEBAs, the employee would be able to pay insurance premiums through ACH transfers but those payments would not become Fully Insured Trust assets.[18]

Participant Account Statements and Transaction Confirmations

Transaction confirmations for investments under all of the trusts will be distributed directly to Participants. Participants transacting through the internet and Participants who transact through a phone representative or the automated phone system will be mailed paper transaction confirmations. Account statements will be distributed to Participants once a year. Initially, every Participant will receive his or her statements through the mail. However, Participants can affirmatively elect to receive electronic statements in place of paper by consenting to electronic delivery of these documents. Participants will also have access to a website where current account information is available. Current account information can also be obtained by speaking to a phone operator or accessing an automated phone system.

Prospectuses, Prospectus Supplements, Annual Prospectus Updates, Semi-Annual and Annual Reports

Participants will be provided with the prospectus for each of the mutual funds offered under a Plan together with a summary plan description ("SPD"). Participants will also receive a mutual fund prospectus upon first allocating a portion of their account balance to a particular mutual fund. Participants can request a prospectus at any time by calling a phone representative. They will receive prospectus supplements, updated prospectuses, and mutual fund semi-annual and annual reports from the Recordkeeper for so long as they maintain their allocation in that fund. Participants can affirmatively elect to receive electronic versions of some of these documents in place of paper by consenting to electronic delivery. Participants will also have access to a website where current versions of some of these documents are available at any time. Participants can also request current copies of these documents by calling a

[18] The same ACH transfer mechanism applies to the Plans in similar circumstances.

phone representative. The Recordkeeper will pass through to Participants all proxy voting for the mutual funds.

The Summary Plan Description

Because the Plans will be subject to ERISA, each Participant will receive an SPD. There will be a separate SPD for the Fully Insured Plan. Under ERISA, the SPD is required to be updated annually for any significant change by means of a summary of material modifications. A new SPD is required every 5 years if there have been changes or every 10 years if there have not been changes.

The SPD for the Plan will contain information about eligibility and participation in the Plan, employer contributions and employee after-tax contributions, as well as the investment of accounts and the fees associated with an account and various other matters. The SPD for the Fully Insured Plan will be similar in terms of scope of coverage in so far as the Fully Insured Plan provides similar benefits. However, the SPD for the Fully Insured Plan will make it clear that employee contributions and reimbursement benefits are not permitted under the Fully Insured Plan.

The SPD for the Plan, the Consortium web site and other applicable documents will contain a legend to the effect that interests in the voluntary employee contribution trust have not been registered under the 33 Act.

Other Information

A Plan Participant will have the right to receive a copy of the Plan on request. A Fully Insured Plan Participant will have the right to receive a copy of the Fully Insured Plan on request.

Each Plan and Fully Insured Plan will file a Form 5500 annually with the IRS and DOL. Each Participant will receive a summary annual report that summarizes the financial information from the Form 5500. A Plan or Fully Insured Plan Participant will have the right to receive a copy of the Form 5500 on request.

Each VEBA trust will file a Form 990 annually with the IRS. Each Participant will have the right to receive a copy of the Form 990 on request.

After the death of a Participant, the same information will be available in the same manner to any beneficiary who is entitled to benefits under the Plan or the Fully Insured Plan.

ERISA Requirements

Each College's Plan and Fully Insured Plan will be an "employee welfare benefit plan" under ERISA, because it will be established and maintained by an employer (the College) for the purpose of providing medical benefits to former employees and their spouses and dependents. The Program and the Colleges' Plans and Fully Insured Plans must comply with the provisions of ERISA including those ERISA requirements pertaining to fiduciary obligations, reporting and disclosure. Certain ERISA obligations will be carried out by the Company through outside vendors, including ERISA's reporting, disclosure and investment policy requirements. However, ultimate responsibility for compliance with ERISA will remain with the Colleges.

Plans established by certain Colleges that are established or maintained by religious organizations may be exempt from ERISA and some provisions of the Code. The Program will provide each Plan and Fully Insured Plan with the same reports and disclosure that would be provided if ERISA applied. To participate in the Program, a College would be required to make an election that its Plan and Fully Insured Plan are subject to ERISA. Although the effect of such an election is unsettled, the Program intends to treat each Plan and Fully Insured Plan as if they are subject to ERISA, including the remedy provisions of ERISA.