PBSA Update

Fall • 1998

PBSA Update is issued by the Private Pension Plans Division, Office of the Superintendent of Financial Institutions (OSFI). OSFI administers the *Pension Benefits Standards Act, 1985* (*PBSA*)

Issue No 18

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PBSA Update

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Note to our Stakeholders

A Special Edition of *PBSA Update*, Issue 17, which explained the requirements of the recently amended *Pension Benefits Standards Act (PBSA)*, was sent out just a few weeks ago. This edition (Number 18) is the regular bi-annual edition of *PBSA* Update and contains items of general interest, a Declaration of Compliance, a Certificate of Year 2000 Readiness and an up-to-date index of topics that have been covered in *PBSA Update* since we started the newsletter in August 1988. This is our 10th Anniversary Edition.

We are pleased to advise that the *PBSA*, as amended by Bill S-3, became effective on October 1, 1998, with the exception of the definition of "surplus" in subsection 2(1) and section 9.2, which also deals with surplus.

The name of our division has changed to the Private Pension Plans Division (PPPD) to differentiate us from the Chief Actuary for Canada who heads the Public Pension Plans Division at OSFI. The latter is responsible for providing actuarial services to other government departments for CPP, OAS and various federal public service pension plans. Mail addressed to us using our old name, the Pension Benefits Standards Act Division, will continue to reach us. The title of our analysts has changed to supervisor in keeping with other OSFI job titles. Our new name better reflects the type of work we do.

I. Year 2000 Readiness Certificate

1. Year 2000 Readiness Certificate

PBSA Update 14, which was issued in January 1997, contained a reminder to plan sponsors for the need to review, test and make the needed corrections for their information processing systems to ensure Year 2000 Readiness. *Update* 16, issued in March 1998, addressed the subject again. OSFI has developed a guideline entitled *The Year 2000 Project - Best Practices for Federally Regulated Financial Institutions* which is available on the OSFI web site. Those who wish to receive a copy of the guideline may send a fax to (613) 952-8219 or an e-mail to pub@osfi-bsif.gc.ca.

The financial institutions regulated by OSFI must respond to a questionnaire similar to the checklist enclosed, and file their responses with OSFI. Since pensions share some, but not all of the risks of financial institutions, we decided that the checklist should serve as a reminder to plan administrators and others of their obligations regarding Year 2000 Readiness.

The checklist was developed with the large, complex plans in mind and not all points will apply to all plans. Plan sponsors, consultants, pension fund custodians and other third-party administrators are asked to read it. Where relevant questions cannot be answered with a "yes", steps must be taken to ensure the safety of pension-related data at Year 2000. Although the checklist does not have to be returned to OSFI, responses to the questions should be made available to our on-site examiners.

Rather than have plan sponsors respond to specific questions, we are requesting that a Certificate of Readiness be signed by the plan administrator or a designate. The Certificate of Readiness is enclosed.

Pension plans that meet all of the following criteria are exempted from filing the certificate:

Continued on page 2

ENCLOSURES:

- List of Topics Covered in PBSA Update, Issues 1 to 18
- Declaration of Compliance
- Year 2000 Readiness Certificate and Checklist

Canada

Continued from front page

- The pension plan is a single employer plan, and
- the pension plan is exclusively a defined contribution (money purchase) plan, and
- all contributions are deposited directly with and all pension funds are held and managed by an insurance company or trust company regulated by the OSFI.

Section 34 of the *PBSA* gives the Superintendent the authority to request information related to a pension plan. Failure to file may invoke subsections 11(1) and (2) of the amended *PBSA* which permits the Superintendent to issue a Direction of Compliance (DOC) to a plan administrator, employer, or any person connected with a plan regarding conduct contrary to safe and sound financial or business practices, and for breaches of the terms of the plan or the *PBSA*.

Certificates of Readiness are to be filed before December 31, 1998.

II General Policies

2. Changes in CPP\QPP and the Effect on Contribution and Benefit Calculations

In December 1997, the federal government enacted Bill C-2, amending the *Canada Pension Plan Act* (*CPPA*). Among the changes were a gradual increase in both employee and employer contribution rates to reach 4.95 per cent of eligible earnings by 2003. In addition, the definition of "Maximum Pensionable Earnings Average" under the *CPPA* will vary as follows, effective January 1, 1998:

(1) Before 1998 or if date of birth of the contributor is before January 1, 1933:

Average of the YMPE for the current year and the two previous years

(2) During 1998 and if date of birth of the contributor is after December 31, 1932:

Average of the YMPE for the current year and the three previous years

3) After 1998 and if date of birth of the contributor is after December 31, 1932:

Average of the YMPE for the current year and the four previous years

The same changes were made to the *Québec Pension Plan Act* (*QPPA*) , except that the new definition of "Maximum Pensionable Earnings Average" was effective from July 1, 1998.

Since there are many different ways that a pension plan can define an integration offset or threshold in contribution and benefit formulas, plan administrators should be aware of the recent changes to the *CPPA* and *QPPA* and of the possible implications of these changes for their pension plans. Some plans may require administrative changes, computer system modifications, or changes to the plan text that should be implemented in unison with the *CPPA/QPPA* changes. We remind administrators that the *PBSA* does not permit an amendment to a plan which reduces, or has the effect of reducing, benefits accrued prior to the amendment date.

Correction

We would like to correct two errors which were made in the Special Edition of *Update 17* and apologize for any inconvenience.

Under the section Proposed Changes to the Regulations, subheading Surplus, the second paragraph should read as follows: "Where an employer shows clear entitlement to the surplus of an active plan, the surplus that may be refunded cannot be greater than the amount by which the surplus exceeds the greater of (a) two times the contribution of the employer to the normal cost of the plan, and (b) 25 per cent of the liabilities of the plan, determined in accordance with the definition of solvency deficiency."

In the same section, under the heading Disclosure, we would like to clarify that while the proposed amendments to the *PBSR* entitle deferred vested and retired members to view documents pertaining to the pension plan, they do not entitle former members to an annual statement. Only active members and those on temporary lay-off must be given an annual statement as required by section 28 of the *PBSA*. The contents of the annual statement are prescribed in the *PBSR* and the proposed changes to the *PBSR*.

3. Registration of Pension Plans and the Declaration of Compliance

In accordance with subsections 10(1) and 10(2) of the *PBSA*, the Superintendent no longer has a duty to examine each document before issuing a Certificate of Registration. The onus is on the administrator of a pension plan to ensure that the pension plan documents comply with the legislation before submitting them for registration. The administrator must also include with their Application for Registration a declaration that the plan complies with the *PBSA* and *PBSR*. A sample of the Declaration of Compliance was introduced in the Special Edition of *Update*. As of October 1, 1998, OSFI requires that all applications for registration and all plan amendments be accompanied by the Declaration of Compliance. We have revised the draft version of this document and it is now two pages long.

Applications for registration require only the signed Declaration of Compliance. Amendments, resolutions or by-laws which amend terms of the plan text of a registered plan must be accompanied by the signed Declaration of Compliance along with responses to the questions in the Addendum to the Declaration. Amendments to supporting documents such as insurance contracts, trust agreements or employee booklets do not have to be accompanied by any part of the declaration.

Every plan filed for registration must provide for the use of surplus on both a going concern and termination basis. This will facilitate any distribution of surplus at a later date.

Pension plans submitted for registration after October 1, 1998 will be registered upon receipt of the appropriate documents.

OSFI has adopted the following policy for plans that applied for registration before October 1, 1998:

- plans that were reviewed for compliance will be registered upon receipt of the outstanding amendments as requested in a letter after the review;
- where administrators have submitted plans that have not been reviewed for compliance, the administrator may choose between:

(a) submitting the Declaration of Compliance which states that the plan is in compliance with the *PBSA* and *PBSR*, or

(b) electing to have the pension plan documents reviewed for compliance with the understanding that plan amendments will be made as required.

Please note that the Superintendent may refuse to register a plan if it does not comply with the *PBSA* and the *PBSR*, notwithstanding a Declaration by the administrator to the contrary.

DECLARATION OF COMPLIANCE

I, ____, DECLARE THAT:

1. I am a duly authorized signing officer of the employer or a member of a board of trustees or similar body or pension committee, that is the administrator of the (name of pension plan)

____

____,

hereinafter referred to as “the Plan”; and

2. the Plan, including all documents which create or support the Plan or the pension fund, complies with the *Pension Benefits Standards Act, 1985*, and the Regulations thereto,

or

the Plan as amended, including all documents which create or support the Plan or the pension fund, complies with the *Pension Benefits Standards Act, 1985*, and the Regulations thereto;

and I make this declaration conscientiously believing it to be true.

____
Date

______________________________ ______________________________
Signature of Declarant Title or Position

This Declaration form is to accompany any new plan text. This Declaration form along with the Pension Plan Amendment Information Form which forms the addendum is to accompany any plan amendment.

Addendum to Declaration of Compliance

Pension Plan Amendment Information Form

Name of Pension Plan: ***PBSA* Registration Number:** __________________

____

1. The effective date of the amendment:______/_____/_____
dd mm yy

2. The amendment number(s):____________________________

3. Indicate whether the amendment involves a change to the following:

3.1 ______ Contribution rates

3.2 ______ Benefit provisions

3.3 ______ Other terms and conditions of the plan

Briefly describe the nature of the amendment. Does it include such items as variable contribution rates, disability benefits paid from the plan, bridge benefits, flexible benefits, automatic indexation, priorities on termination, pensionable age, plan termination, conversion or merger, etc.?

____

4. Impact of the amendment on the plan:

4.1 Indicate the period of service affected by the amendment:

______ service from date of amendment ______ service prior to amendment ______ all service

If other, please explain: ____

4.2 Indicate to which members the amendment applies:

______ new entrants only ______ deferred vesteds ______ actives ______ retirees

If other, please explain ____

5. Does the plan as amended have the effect of reducing accrued pension benefits or pension benefit credits? (Yes/No)___

5.1 If "Yes", has approval by the Superintendent been obtained? (Yes/No) _____

6. For defined benefit plans, does the amendment result in a cost to the plan? (Yes/No) _______

6.1 If yes, cost is covered in:

_____ a previous valuation report; ______ a new valuation report;

If other, please explain:____

Effective date of relevant valuation report: ______/______/______
yy mm dd

7. Has notification been given to members? (Yes/No) _______

If "No", please explain:____

4. Application of the 50 Per Cent Rule to Past Service Benefits

The purpose of subsection 21(2) of the *PBSA* is to ensure that plan members will not carry more than 50 per cent of the cost of the promised defined benefit.

Subsection 21(2) stipulates that, in the case of a defined benefit plan, "if the aggregate of the member's contributions, *other than additional voluntary contributions* emphasis added made after December 31, 1986, together with interest...exceeds 50 per cent of the pension benefit credit in respect of the member's membership in the plan after December 31, 1986...the member's benefit shall be increased by the amount that can be produced by that excess."

Additional voluntary contributions (AVCs) are defined in the *PBSA* as optional employee contributions that do not give rise to an obligation on the employer to make additional contributions.

Where the past service benefit is a defined benefit promise to the member by the sponsor, it then becomes part of the promised benefit and therefore imposes an obligation on the sponsor. Subsection 21(2) is quite explicit that the 50 per cent rule must be applied to this type of buy-back.

On the other hand, a voluntary buy-back purchased through member contributions that do not give rise to a liability on the part of the plan sponsor is exempt from the application of the 50 per cent rule since the contributions qualify as AVCs.

As a third option, a plan might include a provision that clearly specifies that the past service benefit is subject to cost-sharing or some other arrangement contractually entered into by the member and sponsor. In such a case, the 50 per cent rule may be overridden if the terms of the contract are clear. All other provisions of the *PBSA* would continue to apply to such alternate funding arrangements.

The terms of the plan are the key factors in determining if the plan sponsor has a funding obligation with respect to a past service benefit offered to members. Plan provisions must clearly define the type of additional benefit being offered, the responsibility for the cost of the benefit and whether the 50 per cent rule applies.

Accurate and clear member disclosure is particularly critical with funding arrangements not subject to the 50 per cent rule as such arrangements require members to forego statutory rights under section 21(2). The plan sponsor bears the responsibility for ensuring the members are fully informed of the implications of entering into such agreements and separate financial statements for the purchase of past service benefits should be included in the members' annual statement.

5. Filing of Actuarial Reports

OSFI has had some problems with plans filing actuarial reports with an effective date earlier than that required under the *PBSA* when the submission date is many months after the effective date of the actuarial report. As a result, OSFI reserves the right to refuse reports that meet both of the following conditions:

(a) the actuarial report is not due, and

(b) the actuarial report is filed more than nine months after its effective date.

We would like to remind plan administrators that the effective date of financial statements and actuarial reports is to be at the plan year end unless OSFI has approved an alternative date.

We also remind plan administrators that an actuarial report is to be prepared as of the effective date of an amendment to a plan, where the amendment alters the cost of benefits provided under the plan unless the actuary has considered the costs of the amendment in the previous valuation.

A final reminder - actuarial reports must be prepared and filed annually if the prior report showed a solvency ratio less than one.

6. Selection of Plans for Examination

Subject to section 34 of the amended *PBSA*, the Superintendent may carry out inspections of books, records or other documents relating to pension plans or to any securities obligations or other investments in which pension fund assets are invested. We have always referred to these inspections as on-site examinations. The process for selecting plans for examination was discussed in Issues 1 and 4 of *PBSA Update* and some of the examiners' findings were given in Issue 5. However, many plans sponsors continue to have questions about the selection of their plan for on-site examination.

OSFI now examines between 40 and 50 pension plans each year. The first criterion for selection is risk. Plans at risk may include one or more of the following:

- a solvency ratio below 1
- a plan that negotiates contributions
- a high ratio of pensioner liabilities to liabilities of active members
- a lack of or late filings
- a large number of member complaints
- considerable business activity such as mergers, purchases, sales, etc
- media reports of business difficulties
- a lack of response to previous examination findings.

Very large plans, regardless of risk, are examined approximately every five years. As well, some plans are selected at random each year.

Most on-site examinations are done on defined benefit plans, as they are at greater risk of being unable to meet their obligations. However, money purchase plans that appear to have administrative problems, particularly with respect to remittance of contributions, are put in the same risk category as defined benefit plans. Large money purchase plans are selected for on-site examination on a fairly regular basis.

The on-site examination program is designed to enhance the supervisory role of OSFI and to improve communication and understanding between OSFI and plan sponsors and administrators.

III Notes of Interest

7. Reminder to Provide all Relevant Information

We have had a recent experience where two plans with an on-going relationship were merged and then converted to a money purchase plan. Neither administrator had informed us of the relationship between the plans and had we known, one supervisor could have handled the transactions in a much more efficient and expedient manner.

This is a reminder to plan administrators to inform OSFI of all ownership relationships or other associations involving plans. OSFI tries to ensure that related plans are assigned to the same supervisor for consistency, ease of communication with the administrator, and avoidance of duplication.

8. The Purchase of Annuities or LIFs from the Proceeds of a Locked-In RRSP

In Issues 13 and 15 of *PBSA Update* we explained that, in accordance with the *PBSR*, a former member of a pension plan could begin receiving a benefit from a Life Income Fund (LIF) at any age. The same rules apply to an annuity.

We receive many calls from former members of pension plans who have transferred their pension benefit credits to a locked-in RRSP. The questions are usually age-related and assume that a former member cannot purchase a LIF or an annuity with the proceeds of a locked-in RRSP until reaching the retirement date defined in the pension plan from which the benefit was transferred. Section 20 of the *PBSR*, which defines the vehicles to which the proceeds of an RRSP may be transferred, overrides the terms of a pension plan. In other words, under the *PBSR*, an RRSP may be collapsed for transfer to any of the eligible vehicles at any time.

9. Business Related Transactions and Approval of Pension Asset Transfers

When a company with a pension plan sells part of its business, purchases other enterprises, with or without pension plans, converts a plan from defined benefit to money purchase, closes its business or terminates its pension plan, OSFI gets involved. Our concern is to ensure that any change does not reduce of have the affect of reducing accrued benefits, that rights to surplus are honoured, that the treatment of all beneficiaries is fair, and that assets are protected when pension funds are transferred.

The time it takes OSFI to review and approve a valuation report and the subsequent distribution or transfer of assets for such events depends on the quantity, quality and timeliness of the information provided by the administrator. OSFI does not approve a specific business transaction such as a sale, merger or plan termination, which are decisions of the employer. Rather, OSFI's role is to ensure that pension plan beneficiaries involved in these business transactions are protected from undue loss.

To that end, when we are satisfied that proper safeguards are in place, OSFI approves the transfer of assets.

IV Administrative Matters

10. Results of Issue 16 Survey

We received 56 surveys out of a total of 2,200 which were mailed with Issue 16 of *PBSA Update*. There were 34 responses from plan sponsors, 17 from consultants, lawyers, actuaries and custodians and 5 from other parties.

Question	Yes	No	No response	Total
1. Are you satisfied with the level of communication provided by the Private Pension Plans Division?	52	2	2	56
2. Do you have access to the Internet?	37	19		56
3. *PBSA Annual Report* is on the Internet - Do you still want a paper-based copy?	31	25		56
4. *Update* is available on the Internet - Do you still want a copy?	52	4		56
5. Would you be interested in a regional meeting with the PPPD staff?	26	30		56
6. State city of preference in your region	Toronto 6; Montreal 4; Ottawa 3; Vancouver 4. One each for Québec City, Edmonton, Calgary, Regina, Saskatoon, Halifax, Winnipeg, St. Catharines			

Comments

Sixteen respondents made comments, six of whom advised that we develop a way to alert stakeholders when a new item goes on our Internet site. Two respondents requested more meetings by region; one thought that more information should be made available regarding the status of the amendments to the PBSA and one believed that correspondence should be sent to consultants rather than plan sponsors.

One of the respondents who was not satisfied with our service stated that it was sometimes difficult to get an answer to telephone calls. We take this comment seriously and our policy is to return telephone calls within 24 hours. If a supervisor cannot be reached, the caller should connect to the secretary, who will ensure that someone is available to assist the caller.

The only means available to inform stakeholders that new items have been added to our Internet site is our bi-annual editions of *PBSA Update*. Items are posted almost every month, some in draft form for short periods of time. We suggest that interested parties check our Internet site on a monthly basis. It is unlikely that regional meetings, other than the large plan sponsors meeting, will be held due to a lack of interest. If interest increases, OSFI will reconsider its position. We do sympathize with our readers with respect to lack of information on the status of amendments to the *PBSA*. Passage of the amending legislation took longer than expected. We hope that the Special Edition of *PBSA Update* helped make the amendments clear. With respect to other items, it is government policy that official documents be sent in both official languages and it is required by the *PBSA* that official plan correspondence, such as the Annual Information Return, be sent to the plan administrator, who can pass it on to a third party administrator if he or she wishes.

Responses to the Questions

Based on the responses we received regarding paper copies of the *PBSA Annual Report* and *PBSA Update*, we are changing our distribution policy. Going forward, the *PBSA Annual Report* will not be sent to everyone on our mailing list. It will be available on our Internet site and to anyone who requests a copy by fax (613) 952-8219 or by e-mail pub@osfi-bsif.gc.ca. We will continue to send copies of *PBSA Update* to our stakeholders.

11. Access to OSFI Internet Site (www.osfi-bsif.gc.ca)

To assist you with access to the OSFI home page, we offer the following review:

- When you have found the OSFI web page, scroll down until you are asked to select language of choice. After making a selection, you will find an Index of Topics.
- Scroll down the Index of Topics, and you will find the Private Pension Plans Division. When you have made this selection, you will find a series of categories for pension related documents.
- By selecting the desired category, you will find a listing of documents. To download a document onto your own computer, click on the document with your mouse while holding down “shift” key on your keyboard. This will take you to a standard save screen.
- You will note that some documents are marked Adobe Acrobat Reader and have a “.pdf” extension. To view these documents you must have Acrobat Reader installed on your computer.
- For a free copy of Adobe Acrobat Reader, proceed as follows:
  - click on the Download Adobe Acrobat Reader button which is located at the top of the page with the .pdf document.
  - follow the on-screen directions.

If you have any comments, questions, or concerns about the OSFI web site please contact us at (613) 990-8085 or penben@osfi-bsif.gc.ca.

12. Address for Obtaining Copies of PBSA and PBSR

In the past OSFI has provided paper copies of the *PBSA* and *PBSR* on request from plan administrators, fund custodians, brokers, consultants and plan members. As a result of an increasing number of requests, OSFI can no longer provide this service. You may obtain a copies of the legislation on OSFI’s Internet site or you can order copies of the legislation from:

Canada Communications Group,

Publishing Division

Ottawa, Ontario K1A 0S9

Phone: 1(800) 635-7943 Fax: 1(800) 565-7757

To speed up your request for the *PBSR* refer to reference number RE968.

13. Access to our Files

From time to time a plan administrator requests access to our files for information regarding the sponsor’s pension plan. This presents a problem, as all of OSFI’s files are confidential. We are obliged to protect information provided by plan members, and former administrators.

With the anticipated Regulations regarding the sharing of surplus, we expect an increase in requests to view documents. Although these requests will generally be denied, we are prepared to provide copies of plan documents if the request is specific. For example, if a plan administrator wishes to have a copy of a 1969 custodial agreement, we will provide the document and charge a nominal fee for the service. On the other hand, if an administrator asks for copies of all plan documents filed between certain dates, we will not accommodate the request. In the rarest of circumstances - if there has been a loss of pension records due to fire or some other disaster - we will permit access to our document files by the plan administrator.

14. Annual Fees for 1998-99

In the Special Edition of *PBSA Update*, Issue 17, we explained how fees are calculated. Pension plans are required to submit a fee with Applications for Registration and Annual Information Returns. In 1991, Regulations were adopted to implement full cost recovery of OSFI's *PBSA* supervisory program. The legislation required that any shortfall or excess in a year be considered in setting the basic fee rate for two years out. This has resulted in substantial annual increases or decreases in fees. New Regulations will be set to average shortfalls and excesses over a period of five years which will have the effect of smoothing the changes in fees.

Until the amendments to the *PBSA* become effective, the annual fees must be calculated using the old formula. For plans with a year-end between October 1, 1998 and September 30, 1999, the basic fee rate will increase by 50 per cent over the current year, to $12 per member for the first 1,000 members, and $6 per member for members in excess of 1,000. The minimum fee is being raised from $160 to $240, and the maximum from $80,000 to $120,000 per plan. These new rates reflect increased costs of delivering the program.

The rates have been published in the Canada Gazette.

15. List of Pension-Related Items on the OSFI Internet site

Pension Benefits Standards Act, 1985,
Pension Benefits Standards Regulations
Directives of the Superintendent pursuant to the *Pension Benefits Standards Act, 1985*
Amendments to the *Pension Benefits Standards Act, 1985*

PBSA Annual Report, 1996
PBSA Annual Report, 1997

Annual Information Return Form
Guide to Annual Information Return
Financial Statement Form
Guide to Financial Statement Return
Current Fee Schedule

Guideline on Securities Lending - Pensions Plans, February 1992
Guideline for Converting Plans from Defined Benefit to Defined Contribution, April 1992
Memorandum to Employers Seeking Consent for a Refund of Surplus, March 1993
Guideline for Plan Terminations: Defined Benefit Plans, July 1993
Guideline for Plan Terminations: Defined Contribution Plans, July 1993
Guideline for Federally Regulated Pension Plans - Derivatives Best Practices, May 1997
Supervisory Guide To Federally Regulated Pension Plans, September 1997
Instructions for the Preparation of Actuarial Reports, October 1997
Guideline - Disclosure Best Practices, March 1998
Guideline on Investments (Draft), April 1998
Guideline for Governance of Federally Regulated Pension Plans, May 1998
Paper on Risk-Based Supervision of Pension Plans (Draft), May 1998

PBSA Update 14 - January 1997
PBSA Update 15 - August 1997
PBSA Update 16 - Winter 1998
PBSA Update 17 - Special Edition, Summer 1998
PBSA Update 18 - Summer/Fall 1998
Next Issue of *PBSA Update* - Winter/Spring, 1999
Planned Topics Include:

- Policy on Flexible Benefits
- Filing Requirements for Shareholder and Related Party Plans
- General Satisfaction Survey
- Update on Guidelines for conversions, mergers, spin-offs, full and partial terminations