

PBSA Update

Issue No. 22

Fall 2001



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)

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Note to our Stakeholders

We had hoped to issue *Update 22* in the early spring of this year, but unfortunately ran into some delays. We had planned to include an insert containing a copy of OSFI's Instruction Guide for Refund of Surplus along with an Application for Refund of Surplus. However, we felt that it would be more efficient and less costly to refer interested readers to our Web site. If you would like a hard copy of the Surplus Instruction Guide and the Application and/or a copy of the relevant amendments to the *Pension Benefits Standards Act, 1985* (PBSA) and the Pension Benefits Standards Regulations (Regulations), please contact Kathleen Hunter at (613) 990-8124.

This edition of *Update* covers a number of topics, as outlined below:

Section I contains a progress report on the supervision of pension plans.

As many readers will recall, we devoted the Summer 2000 edition of *Update* to plan governance and self-assessment issues. We had asked plan administrators to complete and return to OSFI a benchmark governance self-assessment survey that asked six questions. The results of this survey can be found in Section II.

Section III contains a variety of items, including some notes on refund of surplus requirements and electronic filing by diskette.

Items of interest:

OSFI has informed all stakeholders that Nicholas Le Pan has been named the new Superintendent of Financial Institutions. Mr. Le Pan has been with OSFI since 1995; he had been Deputy Superintendent since May 2000.



We are also pleased to announce that Diana Nedvidek joined the Private Pension Plans Division (PPPD) in February 2001 as Director. Ms. Nedvidek is a graduate of the University of Western Ontario and is a member of the Society of Actuaries. She has extensive experience in the insurance industry, both in Canada and abroad where she has worked as an actuarial consultant.



In early October, OSFI posted to its Web site a letter captioned "Securities Settlement in a T+1 Environment." The letter explains that both Canada and the US have undertaken an initiative to shorten the period for settlement of securities trades from the current three business days (T+3) to a next business day (T+1) timeframe. The letter also explains that although the target date for implementation is June 2004, all entities involved in any aspect of investing, securities trading and securities settlement should be preparing for this event now.

As pictures are always popular, we have included photos of PPPD staff members who did not make it into the Winter 2000 edition of *Update*.

I Supervision of the *Pension Benefits Standards Act, 1985* in 2000-2001



Dianne Séguin,
Administrative Coordinator

Over the past year, OSFI took a leading role in promoting pension plan governance. (See Section II for more discussion on this subject.)

OSFI's on-site examination program has been fully integrated with the regular review process, which has enhanced the efficiency and the effectiveness of the regulatory program. Although the selection of most plans for on-site examination is based on the risk to beneficiaries, some plans are randomly selected.

Because of the changing economic environment, the PPPD has had to spend considerable time on what are referred to as "special situations," of which there were 200 in recent months. The special situations included plan mergers and spin-offs as a result of sales of businesses (particularly high in the telecommunications industry), plan conversions, and follow-up on non-remittance of contributions. Refunds of surplus, which are also considered special situations, were not counted in the total because the Superintendent did not have the authority to approve such requests until the Regulations had passed. With the passing of the Regulations, we expect that the number of "special

situations" will increase.

In addition to our regulatory responsibilities, our staff has had to keep abreast of the innovative pension benefit proposals being submitted by administrators in response to the demands of an increasingly knowledgeable membership. High profile issues, such as ownership of surplus, can result in write-in campaigns and requests for the Superintendent's intervention in matters that are beyond the mandate of the PBSA.

Status of Amendments to the Legislation

The *Office of the Superintendent of Financial Institutions Act* and the PBSA were amended in 1998. The amendments clarified OSFI's role in supervising pension plans by emphasizing the importance of monitoring plan solvency and promoting policies that help to identify and control risk. One of the major changes supports plan governance by placing more emphasis on the responsibilities of plan administrators. Others include the additional supervisory power given to the Superintendent and greater accessibility to pension plan surplus.

OSFI has been working on several amendments to the Regulations, all of them in support of amendments to the PBSA. These amendments include:

Minimum Funding Regulations

A Consultation Paper on Minimum Funding Requirements for defined benefit plans was sent to the pension industry and the provincial regulators in July 2000. The major issues raised in the paper were: a prescribed solvency level for void amendments, whereby a plan amendment that increased benefits would be void if it caused the solvency ratio of the plan to fall below 90%; a three-year (as opposed to the current five-year) amortization period for funding solvency deficiencies; and a requirement that the employer fully fund a plan at termination.

OSFI has considered all stakeholder comments and will discuss a prescribed solvency level for void amendments and a three-year amortization period with the Canadian Association of Pension Supervisory Authorities (CAPSA's) funding committee, of which we are a member. CAPSA is developing a model law for pension legislation in Canada that will include minimum funding standards. In the meantime, OSFI has drafted amendments to the Regulations which include full funding on plan wind-up as well as some minor amendments which will be posted on the OSFI Web site in December 2001 for a period of at least 30 days for public consultation.

We will not be proceeding in the foreseeable future with regulations dealing with a priority of benefit payments on plan termination. Although this was one of the proposals in the consultation paper, the industry's comments indicated that views on the subject differ. In addition, OSFI understands that there is an inherent unfairness in imposing priorities. OSFI would rather encourage plan administrators to examine their own plan priorities and ensure that their plan documents are clear. If the provisions do not reflect the wishes or the understanding of the administrator and the beneficiaries, amendments may be made to reflect the plan's intent. In the absence of priorities, should a plan terminate in an unfunded position, benefit payments, including those to pensioners, must be made on a pro rata basis. Plan beneficiaries should be informed of the terms of the plan regarding priority payments on plan termination.

Disclosure Regulations

Enhanced disclosure will require plan administrators to provide the solvency ratio of the plan on the annual statement to members. If the solvency ratio is less than one, the administrator must explain the steps that will be taken to bring the plan to a fully funded status. Enhanced disclosure will also require that some documents, not regularly filed with OSFI, be made available to all beneficiaries, including the statement of investment policies and procedures (SIP&P).

The package on disclosure regulations includes a provision for a simplified pension plan that will be similar to those in Quebec and Manitoba. Simplified pension plans are intended for small employers, and must be of the defined contribution type.

This package of amendments was pre-published in the *Canada Gazette* in November 2001.

Surplus Regulations

Amendments to the PBSA that addressed refund of surplus became effective on April 1, 1999. Regulations that set out the procedures associated with a refund of surplus request by an employer were passed on June 14, 2001, and were published in the *Canada Gazette* on July 4, 2001.

The amended Regulations provide relief to an employer that may not have entitlement to a plan surplus by permitting the participation of plan beneficiaries in any surplus refund proposal. The amendments are procedural and must be followed before the Superintendent will consent to a refund of surplus.

Same-Sex Common Law Partnership

In addition to the changes to the PBSA and Regulations, the *Modernization of Benefits and Obligations Act* amended the PBSA, effective July 31, 2000, to provide recognition of same-sex common law partnerships. The amendments affect survivor benefits and the splitting of benefits on the breakdown of a common-law relationship.



Claudia Mai, Senior Supervisor

For the Future

OSFI is proposing to draft regulations to cover exemption from the locking-in requirements for:

- pension funds held in RRSPs and LIFs;
- pension benefits of expatriates and non-residents of Canada and their survivors, who have permanently left Canada;
- small amounts, to be specified; and
- a cash payment of the excess, where a transfer value to any approved vehicle exceeds the maximum permitted under the *Income Tax Act*.

We are also studying alternatives to applying all of the requirements of the PBSA to Designated and Individual Executive Pension Plans and Retirement Compensation Arrangements.

II Report on Plan Governance and Self-Assessment Survey

As we explained in the last issue of *Update*, a Joint Task Force, comprising the Association of Canadian Pension Management (ACPM), the Pension Investment Association of Canada (PIAC) and OSFI, developed a set of governance principles/best practices and a self-assessment reporting framework that focused on high-level issues such as accountabilities, controls and performance measures. The goal was to raise the level of understanding of plan administrators with respect to accountability for decisions and actions that affect their pension plans.

As an industry best practice, the Joint Task Force on Pension Plan Governance and Self-Assessment recommended that pension plan administrators conduct assessments on the governance of their pension plans and report to interested plan stakeholders on the findings and action plans to correct deficiencies. The aim of the Task Force was to propose a cost-effective self-assessment and reporting regime that would be flexible and applicable to all pension plans.

The Joint Task Force concentrated on the six principles of governance that apply to all types of pension plans. These principles address all aspects of the benefit promise: plan administration, funding and investments. Although there may be several ways to implement them, the basic principles are essential to achieving effective governance. *Update 21* explains the governance principles in detail.

Self-Assessment Survey

OSFI was limited in how we could determine whether the governance message had reached our pension plan administrators and, if it had, whether they were voluntarily practicing good governance and self-assessment. A benchmark survey appeared to be a reasonable solution. The survey was included in the last edition of *Update* and had to be filed by fall 2000. Having established a benchmark for plan governance and self-assessment, OSFI will survey plan administrators again in a year or two to determine the progress that has been made. At that time, we will report the results to the Senate Standing Committee on Banking, Trade and Commerce. OSFI hopes to report that voluntary compliance with the governance principles is at a high level and that regulations to ensure compliance are unnecessary.

Results of the Benchmark Survey

The survey asked six questions:

1. Are you familiar with OSFI's governance guideline?
2. Are you familiar with the Recommendations on Pension Plan Governance Self-Assessment, issued by OSFI, ACPM and PIAC?
3. Have you ever conducted a self-assessment on the governance of your pension plan?
4. Have you informed the plan members that an assessment was done?
5. Have you informed the plan members of the results of the assessment?
6. If you have never done a self-assessment on the governance of your pension plan, do you intend to do one during the next two years?

Response Rate

Only half of the surveys were returned by the October 31, 2000, deadline. A further 25% arrived by December 31, 2000. OSFI believes these response rates are somewhat disappointing and may indicate a lack of good governance on the part of administrators that did not respond on time. Eventually 94% of plan administrators complied with our request. Those that did not respond have been noted on our Risk Assessment System.



Stephen Reid, Senior Supervisor

Data Reliability

The responses indicate that some of the data are not as reliable as we had hoped. For example, one large organization with which we have considerable contact claimed never to have heard of OSFI's governance guideline. In some cases, we received more than one completed survey from the same employer and discovered that the two or more responses were different. Notwithstanding these problems, OSFI does have a benchmark against which to evaluate the second survey.

Results of Benchmark Survey on Plan Governance and Self-Assessment

Type of Plan	Number of Plans	% of Surveys Received	Of Those Received, Numbers Responding Yes			Of Those Who Self-Assessed, Numbers Responding Yes	
			Q1	Q2	Q3	Q4	Q5
DB	312	85%	88%	82%	29%	24%	23%
DC	226	78%	66%	57%	14%	36%	28%
Combination	55	92%	88%	80%	31%	25%	19%
NCDB	26	92%	91%	83%	33%	63%	50%
Total*	619	83%	81%	74%	25%	29%	25%
Assets over \$100,000,000	71	94%	96%	93%	55%	16%	16%
Members over 1,000	71	94%	94%	90%	48%	15%	15%

* Due to the special governance issues associated with pension plans for native organizations, statistics related to these plans were not included in the table.

With respect to Question 6, of the 75% that indicated that they had never conducted a self-assessment, 79% stated that they would conduct one within the next two years.

III Other Items

Electronic Filing by Diskette

Banks and federally regulated insurance companies file their annual reports electronically. Soon, federally regulated pension plans will follow suit. The change, which is expected in a year or two, will benefit both OSFI and the pension industry by way of faster input and, we hope, improved data integrity.

We are developing and will be implementing diskette filing for the following forms:

- Annual Information Return (OSFI 49E and 49F)
- Financial Statements and General Interrogatories (OSFI 60E and 60F)
- Actuarial Information Summary (T11200)
- Application for Registration of a Pension Plan (OSFI 48)
- Declaration of Compliance (OSFI 520)
- Addendum to the Declaration of Compliance (OSFI 521)

We expect to have the diskette filing specifications developed by the end of March 2002, at which time OSFI will provide them to plan administrators and other interested parties.

Plan administrators are expected to be able to file electronically on a voluntary basis for year-ends 2002 through 2004, after which time diskette filing will be mandatory. We will keep our stakeholders informed of all electronic filing developments. Questions regarding electronic filing may be directed to Jasia Footit, Database Applications Analyst at (613) 990-7866 or jfootit@osfi-bsif.gc.ca

Reciprocal Agreements with British Columbia and New Brunswick

As many of you are aware, the Minister of Finance has signed a Reciprocal Agreement with his provincial counterparts in British Columbia and New Brunswick. These agreements are similar to those that OSFI has with other provinces and provide for OSFI to regulate, on behalf of a province, members in federally registered plans who fall under provincial jurisdiction. The agreements also give the provinces the power to regulate included employees on behalf of OSFI.

We expect to complete a reciprocal agreement between the federal government and Newfoundland in the very near future.

Ontario - Unlocking for Hardship

The *Pension Benefits Act* of Ontario (PBA) and the PBSA both permit a member who terminates employment to transfer the accrued benefit to a locked-in RRSP. However, only the PBA permits access to the funds if the former member is suffering financial hardship. Former members, whose benefits were regulated by the PBSA, do not have access to any part of their locked-in RRSP until they purchase an annuity or a LIF. Unfortunately, the Financial Services Commission of Ontario (FSCO) has inadvertently approved the unlocking of benefits that had been covered by the PBSA.

It would be helpful to members who are about to transfer their pension benefit credits from their plan to understand their options. If the member is in included employment (i.e., their benefit is subject to the PBSA), plan administrators should explain that the money may not be unlocked for financial hardship. This message is particularly important if the plan member resides in Ontario.

Reminder to Plan Sponsors

Plan administrators have a duty to inform OSFI of any changes that affect the pension plan, such as the plan name and/or address, the administrator, the custodian, the participating employers, and the new plan sponsor resulting from a sale of business. Although OSFI must be informed of a change in custodian, its consent is not required.

If annuities are purchased to immunize liabilities in an on-going plan, the plan sponsor remains responsible for those liabilities and is expected to report them in the actuarial report and the notes to the financial statements.

Where contributions and/or benefits are integrated with CPP/QPP, administrators have a duty to explain the formulae to plan members, especially if the plan offers a level income option at retirement.



Gordon Mosher, Senior Supervisor

Refund of Surplus Requirements

This item includes a brief explanation of the Surplus Instruction Guide, which can be found on the OSFI Web site. The Instruction Guide does not attempt to address every circumstance that plan administrators will encounter when contemplating a request for a refund of surplus. If questions remain after reading the Instruction Guide, plan administrators are advised to contact OSFI prior to making an application for a refund of surplus.

Although it is not a requirement that OSFI review the notices that must be given to plan members, we may request a copy of the notices or require that they be reissued if they are incomplete. By providing a draft notice to OSFI, plan administrators will reduce the chances of having to issue an amended notice.

The 30-day timeframe provided in paragraph 16(2)(c) of the Regulations is the minimum number of consecutive days a plan administrator must wait before the Superintendent makes his decision. OSFI would grant a reasonable extension if beneficiaries notify the Superintendent that they have had insufficient time to comment on the proposed application for a refund of surplus. An extension would not unduly delay a decision on a refund, as the Superintendent would not likely be in a position to deal with a request within 30 days.

The PBSA and Regulations now provide for and/or require surplus refund disputes to be resolved through arbitration. A one-year time limit for employers and beneficiaries to choose an arbitrator is prescribed in subsection 16.2(2) of the Regulations. We expect any administrator who is heading for arbitration, either by choice or requirement, to contact OSFI.

When former members cannot be found, newspaper publication of notices may assist in locating beneficiaries as per section 16.1 of the Regulations.

Some plans were terminated many years ago and have not been fully wound up. As a result, they are still registered under the PBSA. Given that many of these plans have a surplus, OSFI believes that the best interests of plan beneficiaries would be served by expediting the full wind-up of these plans and distributing the surplus in accordance with the Regulations. OSFI is willing to offer assistance with any unusual situations.

Cash Payments to Plan Beneficiaries

In accordance with the PBSA and the Regulations, plan administrators are not expected to inform OSFI of cash payments for normal, every-day activities. These include: refunds of contributions to unvested members (PBSA 20); payments of small amounts (PBSA 18(2)(c)); payments for benefits above the CCRA maximum (Regulations 28.3) unlocking for shortened life expectancy (PBSA 18(2)(b) and Regulations 2(2)); payments to a spouse (PBSA 25) or payments to non-residents (Regulations 28.4).

However, whether or not an employer is entitled to surplus, if a plan administrator intends to distribute cash from the pension plan to any or all classes of beneficiaries for any reason other than those noted above, the administrator must inform OSFI. Such distributions to beneficiaries may be tantamount to a refund of surplus and/or may be a breach of fiduciary responsibility.

OSFI would like to thank those who reviewed the Surplus Instruction Guide. Although we could not incorporate all of the suggestions, we did include many and we have a better understanding of the issues that will likely be raised by plan administrators seeking a refund of surplus.

For additional information, please contact Nancy Begg-Durkee at (613) 991-9382 or nbegg@osfi-bsif.gc.ca

OSFI Web site

The OSFI Web site contains a number of pension-related documents.

- The PBSA, the Regulations and Directives;
- Required pension forms;
- Pension guidelines;
- Issues of *Update*; and
- Other pension documents.

New Additions

Pension Guide

A pension guide for members of federally regulated pension plans has been posted. We adopted most of the information from the Financial Services Commission of Ontario guide and wish to acknowledge FSCO's assistance. Hard copies of the pension guide are not available.

Investment Guideline

The Investment Policy Guideline has been posted. It outlines factors that OSFI expects plan administrators to consider when establishing, implementing and monitoring their SIP&P. It is meant to serve as a guide to assist plan administrators to develop investment policies suitable to their pension plan.

Conversion Paper

The Guideline for the Conversion of Defined Benefit Plans to Defined Contribution has been posted. This guideline explains the requirements for converting a plan from a defined benefit to a defined contribution arrangement, and is an updated and more comprehensive version of the conversion guideline that OSFI issued in April 1992.

Surplus Instruction Guide and Application for a Refund of Surplus

The surplus Instruction Guide has been prepared for the convenience of reference for those who wish to apply for a refund of surplus. The Application for a Refund of Surplus is the official document that is to be used when an application is made.

Securities Settlement in a T+1 Environment

The letter outlines the shortened period for the settlement of securities trades from the current three business days (T+3) to a next business day (T+1). This will be of interest to plan administrators and their investment specialists.

If you wish to discuss content, guidelines, policies or other issues that have been covered in this or any previous editions of *Update*, please contact Nancy Hrischenko at (613) 990-8032 or nhrisch@osfi-bsif.gc.ca