Office of the Superintendent
of Financial Institutions Canada

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des institutions financières Canada

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August 1997

PBSA Update

Issue No. 15

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

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1. Legislation Changes

On March 6, 1997, legislation was introduced to enhance the supervision of federally regulated pension plans under the PBSA. However, with the federal election, the amendment initiative (Bill C-85) did not receive a second reading.

OSFI is committed to the pension supervisory philosophies discussed in the 1996 White Paper entitled Enhancing the Supervision of Pension Plans Under the *Pension Benefits Standards Act, 1985*, and will be recommending that the legislative changes included in Bill-C85 be re-introduced.

2. Supervisory Guide and Best Practices Papers for Federally Regulated Pension Plans

As undertaken in the July 1996 White Paper, a Supervisory Guide to Federally Regulated Pension Plans is being prepared to promote awareness and transparency of the supervisory activities OSFI may take in various plan situations. The document will outline the supervisory process applied to federally regulated pension plans. The guide will describe the risk and compliance related issues that OSFI considers in its supervision of pension plans and will reflect the shared supervisory responsibility of OSFI and plan administrators, advisors and professionals. You will be notified when the guide is available.

We are also drafting best practices papers on pension plan governance, investments, and disclosure.

The drafts will be circulated to industry for comments before their planned release.

A Derivatives Best Practices guideline was sent recently to all federally regulated pension plans. The guideline outlines factors the Superintendent expects federally regulated pension plans to consider when incorporating derivative instruments into their investment and risk management policies. Plan administrators were asked to share the guideline with their third party managers. The document is available on the Internet by connecting to OSFI's web site at http//www.osfi-bsif.gc.ca or may be obtained by contacting Stéphane Dupel at (613) 990-7655 or by fax at (613) 952-8219.

3. Harmonization Initiatives

OSFI is participating in several harmonization initiatives to simplify the regulatory process. Over the past several months, we have met with other government departments involved with pension legislation and with our provincial counterparts to discuss better ways to co-ordinate our services. OSFI consults with other interested parties, including plan administrators and professional associations, before acting on these initiatives.

As a first initiative, OSFI is developing a standardized annual information return (AIR) that will meet the needs of all regulatory agencies, including that of Revenue Canada and Statistics Canada. This return is being designed to meet electronic filing specifications so that eventually plan administrators will be able to file their documents electronically. We are also introducing a standardized financial statement form. The form will be part of the AIR and, initially, will be used for OSFI filings on an optional basis beginning with the plan year ending December 31, 1997. The form will become part of the mandatory filing as of July 1, 1998. Other provincial jurisdictions may decide to adopt the standardized form for their own purposes.

4. Review of Plan Amendments

As mentioned in Issue No. 14 of *PBSA Update*, we are currently streamlining our regulatory process – in particular our review of documents to ensure compliance with our legislation. Plan administrators are required to file with OSFI any amendment which is made to the plan. In the past, following receipt of an amendment, a pension analyst would review the amendment for compliance with the PBSA and would inform the administrator of any areas of non-compliance. If the amendment was found to be acceptable, the analyst would confirm in writing to the originator of the amendment that the plan as amended continued to comply with the standards for registration.

The PBSA does not require OSFI to inform plan administrators (or the originator of a plan amendment) that the amendment complies with the legislation unless the amendment reduces the pension benefit or pension benefit credit of any member or former member. This is to advise that we will no longer confirm compliance with the legislation unless the Superintendent approves an amendment that reduces benefits. Plan administrators are accountable for plan amendments and should ensure that the proposed amendment conforms with the legislation. We will continue to contact administrators when our review indicates a problem with the amendment. For further reference please refer to section 10 of the PBSA.

5. Opting Out of a PBSA Regulated Pension Plan

We have received a number of enquiries regarding the minimum standards under the PBSA for plans that wish to offer active plan members the option to cease participation in the plan.

The PBSA does not prevent a plan from allowing members to opt out. Also, it does not prevent a plan from defining the voluntary opting-out as cessation of membership. Subsection 2(2) of the PBSA specifies circumstances under which “cessation of membership” occurs, whether the plan so specifies or not. In addition, a plan may provide for cessation of membership in circumstances other than outlined in 2(2), entitling the member to vesting and portability rights (sections 17 and 26 of the PBSA).

On the other hand, a plan text may specify that opting out does not mean cessation of membership but rather an interruption in benefit accruals. In this case, membership service for vesting purposes would continue and conditions for resuming benefit accruals should be specified.

Once sections 14 and 15 of the PBSA have been satisfied on the initial entry to the plan, the PBSA does not require the plan to provide for continuous re-entry after the member has voluntarily ceased membership and there is no obligation on the plan administrator to allow the member to join the plan again during his/her continuous employment with the employer. Plans may provide for more generous re-entry options if they wish.

While the PBSA allows for opting out of a pension plan, the plan text, as well as member booklets, must clearly specify what opting out of the plan means to the plan member. Loss of rights and entitlements after voluntarily ceasing membership must be clearly explained to all members.

6. "Included Employment" and Completing the Annual Information Return

Section 7 of the Annual Information Return (AIR) requires plan administrators to report by jurisdiction the number of plan members who are in included employment. This is what determines whether or not a plan should be registered under the Act or supervised by OSFI on behalf of a provincial pension regulator.

The jurisdiction of the PBSA extends to any pension plan that covers employees employed in included employment. The determination of whether a particular employee is employed in included employment depends on the nature of the activities of the employer except in regards to employees working in the Yukon and the Northwest Territories, in which case the PBSA applies to all plans on the basis of the location of employment.

Generally, it is only when a plan includes participating employers whose main activities are not included employment that less than 100 per cent of a plan's membership is in included employment.

The Instructions for completing the AIR define what types of employment are considered to be included employment. Activities that are only ancillary or incidental to the main activities of the employer are disregarded. For example, an employee hired to pilot the executive jet of a department store is not an included employment employee, even though air transportation is included employment.

The Instructions also explain what information we require to be inserted in column (4) of section 7 of the return. To date, we are finding that the information being provided in this column is, in many cases, either incomplete or incorrect. We ask plan administrators to pay particular attention to the completion of this section. If plan administrators require additional assistance, please contact OSFI.

7. Life Income Funds (LIFs) – No Minimum Age

We have received several enquiries regarding the availability of the LIF option to former pension plan members and their spouses, many of which have dealt with the minimum age at which this option becomes available.

We remind our readers that transfers of locked-in pension entitlements to federal Life Income Funds can be made, in accordance with the PBSA and Regulations, irrespective of the age of former members, or their spouses.

8. Required Filings for Real Estate, Resource, and Investment Corporations

We wish to remind plan administrators that the filing requirements for real estate, resource, and investment corporations under the Pension Benefits Standards Regulations, 1985 were revised when the Regulations were amended in June 1993. Presently, administrators who, directly or indirectly, invest in the securities of a real estate, resource, or investment corporation on behalf of a plan to which are attached more than 30 percent of the votes that may be cast to elect the directors of the corporation, must file an undertaking with the Superintendent. The undertaking will state that while those securities are held by the plan, the corporation will file with the Superintendent, at such intervals or times as the Superintendent directs:

- copies of the annual financial statements of the corporation;
- copies of the audited financial statements of the corporation in respect of fiscal years ending after December 31, 1994;
- a list clearly identifying the assets of the corporation and the market value of each asset;
- a list of the names of the officers, directors and shareholders of the corporation; and
- a certificate stating; that the corporation is complying with its undertaking.

Therefore, once an undertaking has been filed with the Superintendent covering investments in any of these corporations, there is no requirement to submit the filings listed above on an annual basis, unless a plan administrator has been directed by the Superintendent to do so. For further reference, please refer to sections 12, 13, and 14 of Schedule III of the Regulations.

9. The PSSA and Portability Options

Note to Financial Institutions: Recently, the *Public Service Superannuation Act* (PSSA) was amended to provide for portability of pension benefit credits on termination of employment. The PSSA adopted the Pension Benefits Standards Regulations, 1985 with respect to the types of vehicles into which the benefits may be transferred.

OSFI has been receiving many calls from financial institutions regarding these vehicles into which former members of the PSSA want to transfer money, including questions about locking-in. We would like to emphasize that OSFI does not regulate the PSSA nor the government employees who participate in that plan. Therefore, we ask that questions regarding the transfer of benefits of PSSA members be directed to the Human Resources staff at the department from which the member terminated.

10. Locating Beneficiaries for Unclaimed Amounts

A similar item to this appeared in Issue No. 5 of *PBSA Update*. It included information on how to access the services available through the federal government to locate beneficiaries. Those services have since been reorganized and we would ask you to note the following information.

Human Resources Development Canada offers a search service to private companies, as well as to government, and humanitarian organizations, to help locate persons who have entitlements to a deferred pension which has not been claimed. The service, known as the National Search Unit, will try to locate individuals by using the Old Age Security (OAS) and Canada Pension Plan (CPP) databases. There is a fee for each individual search of $21.40, including GST. For more information please contact the National Search Unit at (613) 957-3960.

Comments?

OSFI welcomes readers' comments on any matter covered in *PBSA Update* or related to OSFI's supervision of pension plans. If you have any suggestions that you think would improve communication between OSFI and the pension industry or on other matters about the legislation, please write to:

PBSA Update
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You may fax the Pension Benefits Standards Division at (613) 990-7394 or e-mail us at penben@osfi-bsif.gc.ca.