

**March 6, 1998**

## **Disclosure of information to pension plan members and former members**

This guideline summarizes and interprets the minimum disclosure requirements contained in the *Pension Benefits Standards Act, 1985 (PBSA)* and its regulations. It also provides additional guidance to plan administrators to ensure that members and former members receive adequate and appropriate information concerning their pension plan. The recommendations are based on best practices demonstrated by the industry.

Bill S-3, which was tabled in Parliament on September 30, 1997 and has not been passed at this time, contains proposed legislative changes which may affect requirements outlined in this guideline. These changes are noted in the text.

The pension plan administrator has considerable latitude with respect to information disclosure to members. Disclosure strategies are affected by such factors as the type of plan and the number of plan members. When deciding what type of information to provide to plan members, former members, and other beneficiaries, administrators should be mindful that the benefits provided by private pension plans are an important element of retirement planning. To facilitate this planning, it is important that pension plan administrators provide explicit information to plan members including, but not limited to, their benefit entitlement and matters that have an impact on the security of that benefit. Administrators should also be mindful of their fiduciary responsibilities and the standard of care required by *PBSA* subsections 8(3) and 8(4).

Disclosure topics included in this guideline are discussed under the following headings:

	<b>Page</b>
1. General plan information	3
2. Plan-specific annual information	7
3. Member-specific annual information	8
4. Plan amendments	10
5. Plan investments	12
6. Plan expenses	14
7. Departure information	16

Under the *PBSA* and its regulations, plan members, former members and other beneficiaries of pension plans have various rights to receive and to examine information. This guideline summarizes the above disclosure topics under the following headings:

***i) LEGISLATIVE REQUIREMENTS:***

***Right to receive:***

→ summarizes minimum legislative disclosure requirements for information provided directly to plan members, former members and their spouses pursuant to *PBSA* paragraph 28(1)(a), (b) and (d) and regulations. Interpretations of these requirements are also provided.

***Right to examine:\****

→ summarizes minimum legislative disclosure requirements for documents and information that the administrator must make available for examination by plan members (or a representative) and their spouses (or a representative) pursuant to *PBSA* paragraph 28(1)(c) and regulations. Interpretations of these requirements are also provided.

***\* S-3 NOTE:***

***The proposed legislative changes in Bill S-3 require that former members and other persons entitled to benefits under the plan also have the right to examine documents and information.***

***ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE***

→ summarizes some additional information that should be disclosed. This section is not intended to be an exhaustive list but is intended to assist the administrator in identifying the type of information that would be useful to members.

In preparing this guideline, the following four principles were observed. Disclosure should be:

- ▶ timely;
- ▶ useful;
- ▶ easily understood; and
- ▶ cost effective.

The administrator should refer to these principles for guidance in identifying the appropriate information to be provided to members, former members and other beneficiaries.

**1. GENERAL PLAN INFORMATION**

**i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

***Right to receive:***

Within six months of the establishment of a pension plan or when new employees are hired, the plan administrator must provide each employee who is eligible to join the plan and that person's spouse with a written explanation of the provisions of the plan.<sup>PBSA</sup>  
<sup>28(1)(a)(i)</sup> Most pension plans provide a standardized information booklet containing the required information.

While the *PBSA* and its regulations do not provide a detailed list of information that must be provided with respect to plan provisions, OSFI interprets the *PBSA* to require that a description of the following items be distributed in writing:

- i) Contribution Formula:**
    - as specified in the plan text, with examples.
  - ii) Benefits:**
    - clearly state who has the right to amend benefits;
    - describe all benefits payable at retirement, death, termination, plan wind-up, etc., with examples and describe the conditions for consent benefits;
    - explain requirements for receiving benefits (e.g., minimum service or age for special benefits);
    - fully describe the effects on a member's pension if an early retirement option is taken; and
    - fully describe the pensionable age.
  - iii) Options/Deadlines:**
    - specify options available;
    - describe how to apply, whom to apply, where to get more information, etc.;
    - specify deadlines for applications, and any consequences of not meeting them; and
    - explain the waiver of post-retirement death benefits by the spouse -- specifically explain what it means to the spouse and the member.\*
- \* S-3 NOTE:**  
***The proposed legislative changes in Bill S-3 provide that pre-retirement death benefits can be surrendered by the spouse in favour of a designated beneficiary. If this proposal is passed, this option should be described in the plan information.***
- iv) Non-assignment/Commutation:**
    - specify that the benefits are non-assignable except for splitting of pension credits on divorce, separation or annulment;
    - describe non-commutation of locked-in benefits with exceptions if available under the plan (e.g., shortened life expectancy and small benefits); and
  - v) Vesting/Locking in:**
    - state clearly the vesting and locking-in provisions of the plan; and
    - explain what these concepts mean to the individual member and spouse and their benefits.
  - vi) Interest:**
    - state how interest is determined, risks associated with the method of determination, when and how it is applied on contributions and on the member's total account -- Note: this must be stated for contributory plans and plans with additional voluntary contributions.
  - vii) Members' Rights:**
    - specify rights to information, including the right to see and copy the full plan text, annual and financial information, etc.;
    - explain how and when a request for information is possible;
    - describe rights for establishing a pension council and for representation; and
    - list a contact for requesting additional information.

The written description of plan provisions must provide more than an estimate of benefits that would be paid assuming that the plan continues indefinitely under favourable economic conditions. For example, OSFI recommends that disclosure also include:

- ▶ a statement that investment returns and changes in number of plan members can affect plan funding;

- ▶ a statement that the plan can terminate and an explanation of what could happen if, at plan termination, there were
  - insufficient assets in the plan to cover the benefits owing or;
  - surplus assets in the plan; and
- ▶ a statement that past and future benefits may be changed and an explanation of who can initiate the changes.

As defined contribution (DC) plans (and plans with both defined benefit and defined contribution characteristics) provide pension benefits to their members based on a combination of contributions and earnings that accumulate on contributions made to the plan, OSFI recommends that the administrator clearly explain that the investment risk is borne by the plan members.

The information is to be given to the plan member or the eligible employee at their place of employment or mailed to their residence or the residence of that person's spouse. <sup>Reg. 22</sup>

***Right to examine:***

The following general plan information must be made available by the administrator for review by plan members and their spouses:

- ▶ a copy of the plan <sup>PBSA 10(1)(a)</sup>; and
- ▶ a copy of every document filed with OSFI that creates or supports<sup>1</sup> the plan or the pension fund <sup>PBSA 10(1)(a)</sup>.

***S-3 NOTE:***

***The proposed legislative changes in Bill S-3 require that a declaration signed by the administrator indicating that the plan complies with the Act and the regulations also be filed with the Superintendent. Therefore, that declaration would have to be made available for examination.***

**ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

***Plans where members make the investment decisions:***

In many DC plans and some plans that have both defined benefit and defined contribution characteristics, employees direct the investment of their own and sometimes the employer contributions. Employees choose investments from a list provided by the employer, monitor the investments and make changes as they see fit.

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<sup>1</sup> Examples of documents that may create or support the plan or the pension fund include, but are not limited to: union contracts, trust documents and insurance contracts.

For members to accumulate sufficient assets for retirement, they need to appreciate the value of the DC benefit and have some basis for making decisions. The effects of risk versus return should be clearly communicated to plan members. It is recommended that the pension plan administrator design a communication plan for their members to ensure that the members understand basic investment strategies.

*It is recommended that the administrator encourage members of plans where members make the investment decisions, to seek the advice of an independent financial planner in this regard. If any expense is incurred in obtaining this advice, then members should be clearly advised that the expense is their responsibility.*

In order for employees to make appropriate investment choices, administrators should provide adequate information and disclosure through the use of general background information and ongoing communication. A two-part disclosure practice, as described below, is recommended for plans where the members make the investment decisions:

- 1) The creation of an enrollment package containing:
  - an explanation of the plan including amount contributed, tax implications, permitted frequency of transactions and changes, reporting, risks and responsibilities of the employer and employees;
  - background educational material on investments including the impact of compounding, the fundamental long-term risk and return relationships of different asset classes, the impact of different asset mixes on long-term risk and return expectations, the benefits of diversification of securities, asset classes, and the benefits of tax deferral;
  - detailed investment options including each fund's objectives, how the assets are invested, the risks and the manager's name; and
  - risk tolerance assessment guidelines and strategies to help members decide their own risk tolerance.
  
- 2) Ongoing communication should be provided to ensure that members are aware of the performance of their investment options and adequately versed to make changes to their investment options.

## **2. PLAN-SPECIFIC ANNUAL INFORMATION**

### **i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

#### ***Right to receive:***

There is no legislated requirement for administrators to distribute plan-specific information annually other than the member-specific information outlined in Section 3.

#### ***Right to examine:***

The following information with respect to plan-specific annual information must be made available by the administrator for review by plan members and their spouses:

- ▶ a copy of the annual information forms filed with the Superintendent <sup>PBSA 12(1)(a)</sup>;
- ▶ information regarding the extent, if any, to which inflation adjustments or other adjustments have been provided voluntarily by the employer or pursuant to collective agreement <sup>PBSA 12(1)(b)</sup>;
- ▶ information regarding the source of funds used to make any adjustments for inflation <sup>PBSA 12(2)(a)</sup>;
- ▶ information regarding the application of gains from the pension fund <sup>PBSA 12(2)(b)</sup>;
- ▶ a copy of the actuarial reports <sup>PBSA 12(3)</sup>;
- ▶ a copy of the financial statements <sup>PBSA 12(3)</sup>; and
- ▶ a list of plan assets, where specifically required by the Superintendent <sup>Reg. 15(1)</sup>.

### **ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

Certain of the above information available to members would be appropriate for distribution to members to ensure that they have adequate information concerning the financial condition of their plan. Other than specific investment information (discussed in Section 5) additional information should be provided to members as follows:

- ▶ name and address of the plan administrator; and
- ▶ contact person (or title of position or department) with address and telephone number for enquiries.

### **3. MEMBER-SPECIFIC ANNUAL INFORMATION**

#### **i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

##### ***Right to receive:***

Within six months of the plan's year end, administrators must distribute a written annual statement to the members of the plan and their spouses <sup>PBSA 28(1)(b)</sup>. The following information is required:

- ▶ dollar value of the total accumulated contributions made under the plan by/for the member <sup>PBSA 28(1)(b)(ii)</sup>;
- ▶ the name of the member <sup>Reg. 23(1)(a)</sup>;
- ▶ the period to which the statement applies <sup>Reg. 23(1)(b)</sup>;
- ▶ the date of birth of the member <sup>Reg. 23(1)(c)</sup>;
- ▶ the period that has been credited to the member for calculating the pension benefit of the member <sup>Reg. 23(1)(d)</sup>;
- ▶ the date on which the member attains pensionable age <sup>Reg. 23(1)(e)</sup>;
- ▶ the date on which the member is first entitled to an early retirement pension benefit <sup>Reg. 23(1)(f)</sup>;
- ▶ the name of the member's spouse as listed in the administrator's records <sup>Reg. 23(1)(g)</sup>;
- ▶ the name of any person in the administrator's records designated as the beneficiary of the pension benefit <sup>Reg. 23(1)(h)</sup>;
- ▶ the additional voluntary contributions of the member made for the plan year and the accumulated additional voluntary contributions at year end <sup>Reg. 23(1)(i)</sup>;
- ▶ the required contributions of the member made for the year and the accumulated required contributions of the member as at year end <sup>Reg. 23(1)(j)</sup>;
- ▶ the amount of any funds transferred to the plan in respect of the member and the benefit under the plan attributable to that amount or the length of service credited to the plan member in respect of that amount <sup>Reg. 23(1)(l)</sup>;
- ▶ where applicable, the interest rate(s) credited to the contributions of the plan member for the year <sup>Reg. 23(1)(n)</sup>; and
- ▶ the benefit payable on the death of the plan member and the extent to which that benefit would be reduced by a payment under a group life insurance plan <sup>Reg. 23(1)(o)</sup>.

##### **Defined Contribution (DC) Plans only:**

- ▶ the contributions of the employer in respect of the member made for the year and the accumulated contributions of the employer in respect of the member as at the plan year end <sup>Reg. 23(1)(k)</sup>.



**Defined Benefit (DB) Plans only:**

- ▶ the pension plan benefits to which the member is entitled under the plan at year end <sup>PBSA 28(1)(b)(i) and Reg. 23(1)(m)</sup>, and
- ▶ the funded ratio <sup>PBSA 28(1)(b)(iii)</sup>.

**S-3 NOTE:**

*The proposed legislative changes in Bill S-3 require that the prescribed ratio be disclosed or, if there is no prescribed ratio, the funded ratio. Pending the passing of this legislation, regulations are being proposed which would define the "prescribed ratio" as the "solvency ratio."*

***Right to examine:***

There is no legislated member-specific annual information that must be made available for member inspection other than the information that they themselves receive as outlined above.

**ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

***Notice of right to access:***

To increase awareness of the right for members and their spouses to examine relevant plan information, it is recommended that the annual statement provided to members and their spouses include a notice that pursuant to paragraph 28(1)(c) of the Act, all members and their spouses may, once in each year of operation of the plan, either personally or by an agent authorized in writing, examine the documents that must be filed by the administrator with the Superintendent under paragraphs 10(1)(a) or 10(1)(b) or section 12 or any regulations made under paragraph 39(i), and any other prescribed information, at the Canadian head office of the administrator or at such other place as is agreed to by the administrator and the person making the request.

*Instead of referring to sections of the PBSA and the regulations, for ease of understanding, the notice should itemize all information available for examination. Where a fee is charged for copying the information, the fee should also be disclosed.*

***Funded ratio:***

While current legislation requires administrators to disclose the funded ratio in the written annual statement to members and their spouses, it is recommended that a definition and interpretation of the funded ratio also be provided.

#### **4. PLAN AMENDMENTS**

##### **i) LEGISLATIVE DISCLOSURE REQUIREMENT**

###### ***Right to receive:***

Within six months of the effective date of an amendment, the plan administrator must provide each member and each employee who is eligible to join the plan, and that person's spouse a written explanation of any applicable<sup>2</sup> plan amendments. <sup>PBSA 28(1)(a)(i)</sup>. Amendments may be timed so that the information can be provided as part of the member annual statement.

The information is to be given to the plan member or the eligible employee at the place of employment or mailed to their residence or the residence of that person's spouse. <sup>Reg. 22</sup>

###### ***Right to examine:***

Plan members and their spouses have the right to examine a copy of any amendment <sup>PBSA 10(1)(b)</sup>.

###### **S-3 NOTE:**

***The proposed legislative changes in Bill S-3 require that a declaration signed by the administrator indicating that the amendment complies with the Act and the regulations also be filed with the Superintendent. Therefore, that declaration would have to be made available for examination.***

##### **ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

###### ***Effect of an amendment on the solvency ratio of the plan:***

The administrator should disclose the revised solvency ratio to the plan members along with the legislatively required written explanation of the amendment. (As an actuarial valuation is required whenever a plan amendment affects the cost structure of the plan, no additional actuarial costs should be incurred for this disclosure.) The definition and interpretation of the solvency ratio should be disclosed. Where the solvency ratio is greater than or equal to one, it is sufficient to indicate that the pension plan is "meets minimum required solvency criteria." If the solvency ratio is less than one, the administrator should describe the measures the administrator has set up to bring the solvency ratio to one.

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<sup>2</sup>

An applicable amendment is interpreted as **all** plan amendments. While an amendment may not directly affect the benefit of a particular class of member (e.g., a non-executive member) it may affect the total plan fund and is, therefore, deemed to be applicable for disclosure.

***Reduction of future benefits:***

While not legislatively required under the *PBSA*, OSFI recommends that, where possible, the plan administrator provide prior notification when amendments are being considered that:

- ▶ would result in a reduction of pension benefits accruing after the effective date of the amendments; or
- ▶ may have an adverse effect on the future rights of members or former members (e.g., required minimum employer contributions).

Each member and former member of the pension plan should receive notification at least 45 days in advance of the effective date of such an amendment.

## **5. PLAN INVESTMENTS**

### **i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

#### ***Right to receive:***

There is no legislated requirement for administrators to distribute information with respect to specific plan investments except as required by the plan.

#### ***Right to examine:***

The information on the plan's investment portfolio that must be made available by the administrator for review by plan members and their spouses is limited to a list of plan assets where specifically required by the Superintendent <sup>Reg 15(1)</sup>.

### **ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

It is recommended that a written statement of investment policies and procedures in respect of the plan's portfolio of investments be made available for review to members and former members (and their spouses) upon request.

The plan administrator should receive a written report from the investment manager(s) containing a discussion and analysis of the operations of the investment fund and an investment summary. The type of information that would be included in this discussion and analysis relates to the written statement of investment policies and procedures. This, and any other reports provided to the administrator by the investment manager(s), should also be made available.

By making these reports available, the recipients have an opportunity to gain an understanding of the objectives and performance of their pension plan assets, should they so desire. This information would be particularly relevant to DC plan members but may also be of interest to DB plan members. To this end, the following items are suggested for disclosure:

- (1) a discussion of how the pension fund composition relates to its disclosed investment objectives, whether the policies are being followed, and an explanation of why any deviation from the objectives exists;
- (2) information regarding portfolio management strategies, who is managing the pension fund, their investment strategy and any changes in strategy, the performance of the pension fund in relation to any performance goals that have been set for the portfolio manager, the risk profile of the fund and variances from it;

- (3) comparison of the pension fund's performance with relevant benchmarks and an explanation why the benchmarks chosen are appropriate;
- (4) an analysis of the impact of economic performance, interest and exchange rates on plan performance as well as a discussion of trends, commitments and events that are expected to affect future performance;
- (5) a comparative analysis of the year-end composition of the pension fund and changes in fund mix from year to year -- perhaps on a geographic basis if relevant and by type of investment;
- (6) information about any principal broker or investment advisor including name, address and firm;
- (7) illiquid assets held by the fund; and
- (8) if the fund invests in derivatives, a discussion of the strategy used. The discussion should be aimed at explaining how derivatives are used to accomplish the stated investment policy and objectives of the fund.

## **6. PLAN EXPENSES**

### **i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

#### ***Right to receive:***

Administrators are not required to distribute information with respect to plan expenses except as required by the plan text.

#### ***Right to examine:***

Members are entitled to review a copy of the most recent financial statements <sup>PBSA 12(3)</sup>.

### **ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

The amount of expenses charged to a plan can have a substantial impact on the solvency of the pension fund. *PBSA* subsection 8(4) requires that plan administrators "exercise the degree of care that a person of ordinary prudence would exercise in dealing with the property of another person." Trustees have a fiduciary duty to account for the use of all plan funds.

Administrators of pension plans should have adequate controls in place to ensure that expenses charged to the pension fund are reasonable and appropriate and comply with the requirements of *PBSA* subsection 8(4). Examples of expenses that would be considered unreasonable would include, but would not be limited to, unjustified travel expenses, the purchase of capital equipment that is not used primarily for the administration of the pension plan, charitable or political donations and the use of pension funds for union, company or corporate business.

As financial statements often only disclose total or broad categories of expenses, a detailed statement of expenses should be made available for examination to members, former members, and other beneficiaries as well as:

- (1) a summary of the relevant provisions of the pension plan that govern what expenses may be charged to the pension fund and how they relate to the actual amount charged to the fund;
- (2) discussion and analysis of expenses with the significant components of expenses being highlighted and compared to the previous year with an analysis of changes;
- (3) a discussion of related party<sup>3</sup> transactions. The discussion should include the following:

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<sup>3</sup> A related party of a pension plan is defined in Schedule III of the regulations.

- (a) a description of the relationship between the transacting parties;
- (b) a description of the transaction(s);
- (c) the recorded amount of the transactions classified by category;
- (d) a description of contractual obligations between the related parties; and
- (e) contingencies involving related parties.

## **7. DEPARTURE INFORMATION**

### **i) LEGISLATIVE DISCLOSURE REQUIREMENTS**

#### ***Right to receive:***

Where a member of the plan retires from the plan, ceases to be a member of the plan or dies, or where the plan or part of the plan is terminated, the administrator has 30 days to provide the member and the member's spouse with:

- ▶ a written statement showing the member's benefits payable <sup>PBSA 28(1)(d)</sup>; and
- ▶ the detailed reporting forms required by regulations:
  - for retiring members, *Schedule IV, Form 1*;
  - where the plan has terminated and the member is entitled to a deferred pension benefit, *Schedule IV, Form 2*;
  - when a person ceases to be a member of the plan and is not entitled to a deferred pension benefits, *Schedule IV, Form 3*;
  - when a member dies, *Schedule IV, Form 4*.

#### ***Right to examine:***

Administrators are not required to make any additional information available with respect to departure information.

### **ii) RECOMMENDED SUPPLEMENTAL DISCLOSURE**

It is recommended that the following additional information be provided upon departure:

- ▶ name and address of the plan administrator;
- ▶ contact person (or title of position or the department) with address and telephone number for members to make enquiries with respect to the plan; and
- ▶ a change of address form.

At the time of departure, a member or beneficiary may have a substantial sum of money to invest. *It is recommended that the administrator encourage them to seek the advice of an independent financial planner upon receipt of his/her departure information. The administrator should not provide the references.*

**- END -**