



September 1995

PBSA Update

Issue No. 12

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

Contents

1. Office Consolidation of the Regulations
2. Amendments to the *Pension Benefits Standards Act, 1985*
3. Amendments to the Pension Benefits Standards Regulations, 1985
4. Annual filings for Plans That Have Solvency Ratios Less Than One
5. Clarification re Non-residency Provision (Subsection 28.4 (1)) of the Regulations
6. Clarification re Section 6 of the Regulations
7. Locking-in of Small Benefits
8. Meetings With Individual Plan Administrators
9. Member Terminations – Money Purchase Plans

1. Office Consolidation of the Regulations

OSFI has prepared an office consolidation of the Pension Benefits Standards Regulations, 1985 (Regulations) which include all amendments to April 4, 1995. If you would like to receive a copy of this unofficial document, please write or fax us your request – see attached request form.

2. Amendments to the Pension Benefits Standards Act, 1985

As a result of the recent federal budget, the PBSA has been amended to permit transfers of credits from pension plans to life income funds (LIFs). It is expected that the Regulations will be amended later this year to accommodate the LIF. Until then, moneys may not be transferred into LIFs.

3. Amendments to the Pension Benefits Standards Regulations, 1985

... recently approved

- Safekeeping of assets – an amendment to section 6, dealing with the holding of assets by financial institutions (described in some detail in Issue No. 11 of *PBSA Update*), was approved on February 14, 1995.

The amendment clarifies the authority under which financial institutions can hold assets in a nominee name with the Canadian Depository for Securities and clarifies the authority of financial institutions to hold investments or assets as custodians of pension funds (see also Clarification re Section 6 of the Regulations below).

Pension committees – an amendment to the Regulations requiring that, when a pension committee is established, the plan administrator inform active plan members of the names of members elected to the committee, was approved on April 4, 1995.

Refund of surplus to employer – also approved on April 4, 1995 was an amendment requiring that active plan members, retired members and others entitled to pension benefits under the plan be notified that they may write to the Superintendent of Financial Institutions commenting on the proposed refund and that the Superintendent will notify those persons if consent is being given to the refund.

In addition, some minor housekeeping changes were approved on April 4.

... for the future

The following additional changes to the Regulations are currently being discussed:

- CIA valuation standards – requiring that the valuation report filed with OSFI when a plan applies for registration under the PBSA complies with the May 1, 1994 standards developed by the Canadian Institute of Actuaries. Currently, the Regulations refer to the June 1981 standards.
- Solvency funding rules – accelerating the funding of solvency deficiencies for most pension plans to three years, rather than the current five, and excluding from solvency assets special payments payable more than three years after the valuation. The amendment will also require immediate funding of new solvency deficiencies created by improvements to plans that have a solvency ratio less than one. OSFI has consulted its actuarial advisory committee and administrators of several plans that would be affected by the change, and is considering their comments.

- Small pension plans – exempting certain small pension plans from some of the standards for registration under the PBSA, as mentioned in Issue No. 11 of *PBSA Update*.

4. Annual Filing for Plans That Have Solvency Ratios Less Than One

OSFI has traditionally required defined benefit pension plans to file actuarial reports at least once every three years, and whenever they adopt an amendment that affects the cost of benefits. Our recent experience with several poorly funded plans has convinced us that triennial filing is not always enough. Therefore, pursuant to subsection 12(3) of the PBSA, the Superintendent has decided to require more frequent reports from plans that have solvency ratios less than one.

Under these new filing rules, any plan that reports a solvency ratio less than one as at a valuation date must file a valuation report as at the same date a year later. As in triennial valuation reports, annual reports must be submitted to OSFI within six months of the valuation date. The plan must continue to file once a year until it files a report that shows that the solvency ratio is one. Then the plan may resume reporting every three years.

This new filing requirement is effective immediately subject to the following transitional rules. All plans whose most recent actuarial report filed with OSFI showed a solvency ratio less than one should file a valuation report as of the next anniversary of this last report after December 31, 1995. For example, a plan that filed a report as at March 31, 1994 showing a solvency ratio less than one should file another valuation as of March 31, 1996. A plan whose most recent filed report as at October 31, 1994 revealed a solvency ratio less than one shall file a report as at October 31, 1996 at the latest. However, if the last report filed with OSFI was as at February 28, 1995, the next valuation report must be as at a date no later than February 28, 1996.

These special rules do not override the requirement for all plans to file valuation reports as at the date of plan amendments that alter the cost of benefits provided under the plan.

5. Clarification re Non-residency Provision (Subsection 28.4(1)) of the Regulations

The purpose of this provision is to permit pension plans to allow former members who become permanent non residents of Canada to unlock pension benefits and pension benefit credits. This unlocking is therefore not a right of a former member.

Administrators should include this provision in their plan texts if they wish to offer it. If the plan provides for it then any benefits previously locked-in may be unlocked following the two years of non-residency. OSFI is considering an amendment to the Regulations to allow locked-in RRSPs to contain this provision in their contract. Unlocking of benefits already transferred to a locked-in RRSP is not permitted at this time.

6. Clarification re Section 6(1) of the Regulations

Section 6 of the Regulations provides, in part, that “moneys of the pension fund are to be invested in accordance with Schedule III and invested in a name that clearly indicates that the investment is held in trust for the plan...or in accordance with a custodial or trust agreement...” (subparagraph 6(1)(b)(ii)). The purpose of this subparagraph is to provide an additional method of holding and investing pension funds while still ensuring the safety of the pension fund moneys invested.

We have received several inquiries on the application of section 6 when funds are invested in an unallocated fund of a life insurance company. Section 6 does not preclude a plan from investing in the unallocated fund of a life insurance company, since the pension funds are considered to have been used to purchase or invest in a “contract” from a life insurance company on behalf of the plan, provided the contract entered into is in the name of the pension fund or clearly indicates that the contract is held in trust for the plan. The applicable provision for such an investment is subparagraph 6(1)(b)(i). The contract itself is the form of investment being purchased by the plan.

7. Locking-in of Small Benefits

In the course of on-site examinations of pension plans, our examiners have found that this requirement of the PBSA is not being applied consistently. In determining whether or not the annual pension benefit is sufficiently small that it may be cashed out, as provided for in paragraph 18(2)(c) of the PBSA, any increase in the pension benefit resulting from the application of subsection 21(2) of the PBSA must be considered.

Subsection 21(2) provides that excess contributions with interest be applied to increase the pension benefit to the member. Because the increase is part of the deferred or immediate pension benefit, it is locked-in pursuant to section 18 of the PBSA.

8. Meetings With Individual Plan Administrators

Last fall, coincident with the regular meetings of CAPSA held in Vancouver, senior officials of OSFI met the administrators of a few multi-employer pension plans on the West Coast. The meetings were held at the request of OSFI and were intended primarily to open a channel of communication on a subject of interest to a limited but important group of plan administrators. Multi-employer plans were chosen because they present to their administrators and to OSFI unique and interesting challenges. The meetings were held on a plan by plan basis to allow specific references to individual plan circumstances and frank exchanges of views between OSFI and plan administrators.

The purpose of the meetings was to share with these plans the experiences, and particularly the difficult ones, that other such plans have been going through in recent years, to find out whether they anticipated similar difficulties for their own plans and, if they were, how they intended to manage them. The meetings also provided an opportunity to discuss alternative regulatory approaches to the funding of these plans.

A number of multi-employer pension plans under the PBSA are currently facing challenges in complying with the regulatory funding standards. The causes of the problems vary and in some instances can be difficult for administrators and regulators to foresee. OSFI believes that communicating these experiences may be helpful to other plans that might face similar circumstances in the future. First, it will alert some plan administrators to possible future risks for their plans and help them deal with the problems if they occur. Second, it will allow OSFI to better understand how some plans have been able to deal successfully with the risks that have brought other plans in a state of crisis and eventually share these experiences with the rest of the pension industry. Third, it will give OSFI a better idea of what is ahead in terms of future difficult cases. Fourth, it will help OSFI elaborate better funding standards for these plans and provide an opportunity to discuss them.

OSFI intends to continue to hold meetings from time to time with plan administrators. Although multi-employer pension plans will continue to be the focus in the immediate future, other plans, for example, those with low solvency ratios or plans with very mature liabilities, may be included. If you have suggestions you wish to offer in respect of this initiative, OSFI will be pleased to hear them.

9. Member Terminations – Money Purchase Plans

We have recently received a number of enquiries regarding a plan administrator's responsibility for the money purchase accounts of members who have terminated before reaching early retirement age, and who are entitled to a vested and locked-in benefit but have not exercised the portability options offered to them. It appears that many plan sponsors and their insurance companies are looking for default options to use when the member has not made a selection.

The method of providing plan benefits, including default options, should be set out in the plan.

Section 17 of the PBSA specifies that the member must be provided a deferred pension under the terms of the plan. This can be done by maintaining the terminated member's account until the former member's retirement. In this situation, the termination statement should clearly specify in what type of account(s) the moneys will be invested, and how the member can access the account.

As an alternative, the sponsor may provide the member's entitlement through a purchase of a deferred annuity. When this course of action is used as the default option, the sponsor must note that the member's entitlements under the plan also include early retirement option, joint and survivor form of pension if the member has a spouse when the pension commences (whether or not he/she has a spouse at termination) and availability of credit splitting on divorce, separation or annulment. All of these, and possible other plan features, have to be reflected in the deferred annuity.

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 communications between OSFI and the pension industry or on other matters about the legislation, please write to:

PBSA Update
Pension Benefits Division
Office of the Superintendent of Financial Institutions
255 Albert Street
Ottawa, Ontario
K1A 0H2

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

Request for a copy of Office Consolidation of the Pension Benefits Standards Regulations, 1985

Date:

TO: *PBSA Update*
Pension Benefits Division
Office of the Superintendent of Financial Institutions
255 Albert Street
Ottawa, Ontario
K1A 0H2

FAX # (613) 990-7394.

Please mail a copy of the April 4, 1995 unofficial Office Consolidation of the Pension Benefits Standards Regulations, 1985, to:

Name:

Address: