Office of the Superintendent of Financial Institutions Canada

November 25, 1992
Rev. 1 July/93

Guidelines to administrators for plan terminations

Defined contribution plans

Section 29 of the Pension Benefits Standards Act, 1985 (PBSA) covers the full and partial termination of pension plans. The section establishes special rules for vesting, continuation of service, disbursement of funds, information to members and reports to the Superintendent of Financial Institutions. The Office looks very closely at terminations, because after the plan has been wound up, it is at best very difficult to correct inequities or misinterpretations of the law.

The Office issues these guidelines to inform the pension industry of our current policy, our interpretation of the PBSA and our standards for termination reports. They have been written to cover most plans terminating in normal circumstances. However, the provisions of the plan text or trust agreement may impose on the employer obligations to members that these guidelines do not cover. The Office may occasionally require documentation not mentioned here.

Unless they indicate an exception, these instructions apply to partial as well as full plan terminations. No funds related to the termination of the plan may be disbursed until the termination report has been approved.

1. Notice of Termination
2. Contributions
3. Filing of required documents
4. Information to members
5. Preparing the Termination Report
6. Winding up

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1. Notice of termination

The plan administrator must notify the Superintendent at least 60 days before the termination.

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2. Contributions

The employer must remit to the pension fund holder all outstanding employee contributions and all employer contributions required by the terms of the plan or the Act to the date of termination.

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3. Filing of required documents

When a plan is terminated the administrator must file with the Office a termination report and an executed plan amendment, board resolution or a letter from the employer indicating that the plan has terminated. If the entire plan is terminated, the employer must submit an Annual Information Return as at the date of the plan termination. The employer must also submit the annual filing fee, prorated for the number of months since the last annual information return. The documents must be filed with the Superintendent within 60 days of the termination.

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4. Information to members

No more than 30 days after the termination the administrator must provide each plan member, plan member's spouse and former member with a termination statement that includes all the relevant information prescribed by Section 23(3) of the Pension Benefit Standards Regulations, 1985 (PBSR). If the plan holds assets in excess of those required for allocations according to the plan text, the member's termination statement must explain how they will be used.

Options

Members are entitled to the options described in Section 26 of the PBSA:

i) a cash refund if benefits are not locked in;

ii) transfer of pension benefit credit to another pension plan;

iii) transfer of pension benefit credit to an RRSP of the type prescribed in the PBSR; or

iv) an immediate or deferred life annuity.

After they receive their termination statements, members must be given at least 90 days to choose their options.

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5. Preparation of the termination report

The termination report should include:

- The reason for the termination
- The effective date
- Confirmation that contributions due have been remitted
- Confirmation that all benefits are vested
- The market value of plan assets as of the date of termination
- the total value of plan liabilities at the date of termination
- the nature of the benefits to be provided (e.g., annuities purchased for pensioners, confirmation of portability for locked-in members, treatment of deferred vested members, etc.)
- a description of how the plan will use any assets in excess of the amounts required for allocations prescribed by the plan text
- confirmation that there is no continuing pension plan for the plan members, or if there is, the registration number of the continuing plan and the jurisdiction in which it is registered.

The Superintendent may request additional information necessary to verify the accuracy of calculations.

Conflict with Revenue Canada Rules

Revenue Canada has recently introduced rules to limit amounts that may be transferred between registered plans without incurring taxation. These rules do not override the terms of the plan. Unless the plan text has always had a very general restriction on benefits to amounts that may be transferred without incurring taxation, the new Revenue Canada rules may mean that termination will result in taxable income for some members. The Office is developing policies to handle conflicts between the PBSA and Revenue Canada taxation rules; plan administrators should ask our office about them if Revenue Canada rules appear to be in conflict with plan provisions.

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6. Winding up

Winding up, the process of distributing the assets of the plan, begins as soon as the termination report has been approved.

When the entire plan is terminated, all plan assets must be disbursed. Active members may elect how they wish their benefits to be paid, subject to locking-in requirements. Annuities must be purchased for pensioners, and the employer must decide how to provide for the benefit entitlements for members and former members who cannot be located, and for former members not entitled to portability. Payment to the last group may be through the purchase of deferred annuities, or possibly locked-in RRSPs.

A defined contribution plan that is partially terminated retains assets for members who remain with the plan.

Delayed Winding up

Under special circumstances, the Superintendent will consent to a delay in winding up the pension plan. The administrator must apply for this consent, stating why the delay is required and when the administrator would prefer to liquidate the plan.

The Superintendent will not permit a delay simply because the administrator would like to manage pension funds. Some reasons for delay applicable to a defined contribution plan that may be accepted are:

> a) to avoid a sale of assets under conditions that are extraordinarily unfavourable, when the administrator can demonstrate that more favourable terms are very likely if winding up is delayed. An example would be a term investment contract that imposed penalties for termination before maturity very much in excess of normal adjustment for market interest rates.
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> b) to settle the issue of ownership of assets in excess of liabilities, or
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> c) to complete funding of a deficit that arose on conversion of a defined benefit plan with an unfunded liability.

The delay must normally be short. The Superintendent may withdraw consent to a delay and may also require a revised termination report for a delayed winding up.