

Modernization of the Unclaimed Pension Balances Regime

CFP Comments

The Canadian Federation of Pensioners (CFP) is pleased to provide its views in response to the Department of Finance's consultation paper entitled "Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework" (the consultation paper) which was initiated on June 22, 2018. CFP and its many member organizations advocate for the security of defined benefit pension plans in Canada. CFP's member organizations represent the pension interests of over 250,000 active and retired pension plan members.

Accordingly, the following comments address issues raised in Part 2 of the consultation paper, which:

"introduces proposals for an unclaimed pension balances framework which would be set out in the *Pension Benefits Standards Act, 1985* (PBSA) and its regulations. The framework would bring into operation the existing PBSA provisions that allow administrators of federally regulated plans to transfer the assets related to the pension benefit credits of persons who cannot be located to a designated entity under certain conditions. Individuals would be able to search for and claim their funds from the designated entity."

The consultation paper states that:

"[a]n 'unclaimed pension balance' arises when a pension benefit is supposed to be paid under the terms of a plan or legislation, but the person entitled to the benefit has not claimed it. Situations where unclaimed pension balances may arise include the termination of a plan, or the *Income Tax Act* requirement that retirement income from a registered pension plan begin no later than the end of the year in which the beneficiary turns 71."

CFP's primary comment is that while the consultation paper addresses the needs of Plan Administrators of terminated plans, it was recommended that processes to deal with unlocatable plan members of ongoing plans would be dealt with later. CFP strongly recommends that consideration should be given to providing a registry similar to the Ontario Model, as described in the Consultation Paper, to make it easier for the owners of unclaimed pension balances to contact ongoing plans in search of their funds due to the number of mergers and name changes in various Canadian companies in recent years. This issue will be addressed throughout this response.

In what follows, the CFP provides its responses to the specific proposals and questions contained in the consultation paper for the unclaimed pension balances framework.

Proposal 1: Designated Entity (Consultation Paper # 2.1)

“The designated entity would act as the custodian and administrator of unclaimed pension balances. The entity being considered is the Bank of Canada ...

Proposed Approach

It is proposed that the Bank of Canada be the designated entity for the unclaimed pension balances framework. The Minister of Finance, with the approval of the Governor in Council, would designate the Bank of Canada as the entity. Unclaimed pension balances would be listed in the Bank’s public online registry of unclaimed balances. To fully capitalize on the Bank’s existing infrastructure and experience, and for consistency, proposals for the unclaimed pension balances framework presented in this paper, where reasonable, have been aligned with the framework for unclaimed balances.”

CFP Response

CFP agrees with the proposal that the Bank of Canada should be the Designated Entity to act as the custodian and administrator of unclaimed pension balances. CFP proposes that the Department of Finance work with the Bank of Canada to promptly develop and maintain a registry, similar to the Ontario model, for unclaimed balances of ongoing pension plans.

Proposal 2: Application to Terminated versus Ongoing Plans (Consultation Paper 2.2)

“As per the existing PBSA provisions, the unclaimed pension balances framework is optional for federally regulated pension plans, however the regulations would specify that the framework is only available to terminated plans ...

Proposed Approach

It is proposed that the PBSR be amended to make the federal unclaimed pension balances framework available to terminated pension plans only. Plan administrators of terminated plans would have the option to transfer the unclaimed pension balances of unlocatable beneficiaries to the designated entity, conditional on meeting additional criteria discussed below.

This approach would relieve the pressure of unclaimed pension balances where the need is greatest – i.e., terminated pension plans. It would also ensure that the number of unclaimed pension balances initially transferred to the designated entity is manageable. Consideration may be given to expanding the unclaimed pension balances framework to ongoing pension plans at a later date.

Questions

- Do unclaimed pension balances and/or unlocatable beneficiaries pose other issues for terminated and ongoing plans than those identified above?

- Can any plan sponsors or administrators of ongoing plans provide an estimate of the number of unclaimed pension balances and unlocatable beneficiaries in their plan?

CFP Response

CFP supports the proposal for terminated plans. We agree that plan administrators of terminated plans should have the option to transfer the unclaimed pension balances of unlocatable beneficiaries to the designated entity, conditional on meeting additional criteria discussed below.

But CFP would also like to see a framework for ongoing plans introduced immediately, coincident with the proposals for terminated plans. We believe there is a need for a national registry and that it should be implemented immediately with the goal of helping beneficiaries locate the pension benefits that they are owed. We support the introduction of a plan modelled on the one Ontario recently set out to create. Specifically, the Bank of Canada would create and maintain an electronic registry of unlocatable beneficiaries of federally-regulated pension plans. Plan administrators would notify OSFI when plan beneficiaries cannot be located so the registry may be updated, but administrators will continue to hold beneficiaries' pension benefits.

CFP has no comments on the two questions posed in this section of the consultation paper, as we do not have access to requested data or information.

Proposal 3: Transfers to the Designated Entity (Consultation Paper 2.3)

“Terminated pension plans are currently required to file a termination report with OSFI that describes the efforts that have been made to locate all beneficiaries of the plan and how the plan administrator intends to proceed with regard to the pension benefits of unlocatable beneficiaries. In addition, it is proposed that plan administrators would have to make a separate application seeking OSFI’s authorization to transfer unclaimed pension balances to the designated entity. The pension benefit credits of unlocatable beneficiaries would be calculated in accordance with existing standards …

Proposed Approach

Currently, terminated pension plans must file termination reports with OSFI that include descriptions of the search efforts that have been made to locate all plan beneficiaries, and how the administrator intends to treat the liabilities in respect of unlocatable beneficiaries. OSFI must approve the termination report prior to the disbursement of benefits.

It is proposed that the PBSA be amended to provide that transfers of unclaimed pension balances to the designated entity cannot occur without the authorization of the Superintendent of Financial Institutions. This authorization could be subject to terms and conditions, as permitted under the PBSA. After the termination report has been approved by the Superintendent and a plan administrator has undertaken what it considers to be

sufficient time and effort searching for unlocatable beneficiaries, it would apply to the Superintendent for permission to transfer the assets related to the pension benefit credits of unlocatable beneficiaries to the designated entity. OSFI would review the application, including the particular circumstances for that plan, the amounts owed to the unlocatable beneficiaries and steps that have been taken to locate them, and then either ask the plan administrator for further efforts and/or information, or agree to the transfer. OSFI may issue guidance for plan administrators to provide further details regarding this process.

It is also proposed that the PBSA be amended to clarify that only the assets related to a pension benefit credit, not the credit itself, would be transferred to the designated entity, and the entity would be responsible for disbursing those assets in a lump sum. For further clarity, it is also proposed that the PBSA be amended to allow plan administrators to transfer to the designated entity any portion of surplus for which the unlocatable beneficiaries are eligible, and that the entity would be responsible for disbursing that surplus.

It is understood that terminated pension plans that transfer unclaimed pension balances to the designated entity would not retain any liability in respect of those balances under the PBSA.

Questions

- What are examples of effective search methods/techniques?
- What seems like a reasonable minimum time period to make appropriate efforts to search for a plan beneficiary?
- Should there be a minimum time period before eligible unclaimed pension balances may be transferred to the designated entity?
- What necessary criteria, if any, should be required to obtain OSFI's authorization?"

CFP Response

In order to facilitate the closure of the Plan and to save unnecessary administration costs associated with keeping the Plan active while a search for unlocatable beneficiaries continues, we generally agree with the proposed approach for the transfers to the Designated Entity.

However, we also believe that if a framework for ongoing plans is introduced immediately, coincident with the proposals for terminated plans, we believe the number of unlocatable beneficiaries may be reduced and would be an added tool in the location process.

With respect to the first question posed in this section, CFP believes that if a framework for ongoing plans is introduced immediately, coincident with the proposals for terminated plans, the number of unlocatable beneficiaries may be reduced and would be an added tool in the location process. We suggest that a greater use of the Canadian Revenue Agency (CRA) and its databases may aid in the location of beneficiaries. An additional benefit to engaging CRA in this process is that, if beneficiaries are located, there may be an impact on the amount of entitlements such as Old Age Security (OAS) and Guaranteed Income Supplement (GIS).

With respect to the second question, CFP believes that, due to the nature of the asset, and that these questions apply only to terminated plans, a search period of 24 -36 months is the appropriate time period to search for the plan beneficiary before winding up unclaimed pension balances entitlement.

Although this may appear to be a short period of time we believe that due to the age of the participants of the pension plan and the need to wind up the plan to reduce administrative costs to the Plan and its members the time period to search for unlocatable participants should be much shorter than that used for holders of bank balances.

With respect to the third question, CFP believes that the eligible unclaimed pension balances for companies to be wound up should be transferred to the designated entity with a reasonable delay from the end of search period to facilitate the closure of the plan and to help reduce ongoing administrative costs. (90 days)

CFP has no comment on the fourth question.

Proposal 4: Information Provision (Consultation Paper 2.4)

“In order to accurately validate claims, the designated entity requires certain personal information concerning the owners of unclaimed pension balances which plan administrators would have to provide at the time of transfer. Additionally, certain information would be published in a public database so that individuals may search for their unclaimed funds ...

Proposed Approach

It is proposed that the PBSA be amended to require that plan administrators, upon transferring the assets related to a pension benefit credit of a person who cannot be located to the designated entity, would have to provide the designated entity with any prescribed information related to that credit, insofar as it is known to the plan administrator. The PBSR would be amended to provide that the prescribed information includes the following:

- The date of the transfer;
- The name of the person who accrued the pension balance (“the person”) and, if applicable, the name of the survivor or designated beneficiary;
- The recorded address of the person;
- The date of birth of the person;
- The social insurance number of the person;
- The amount of assets related to the pension benefit credit and any portion of surplus for which the person is eligible;
- The name and registration number of the pension plan, as at the date of transfer;

- The recorded name of the plan sponsor (i.e., employer) of the pension plan under which the balance was accrued; and
- The name and address of the administrator of the pension plan under which the balance was accrued, as at the date of transfer, if different than the plan sponsor.

The existing PBSA requirement for employers to provide any information to the plan administrator required for the administration of the plan would apply with respect to the above information.

It is further proposed that the PBSA be amended to provide the designated entity with the authority to publish any prescribed information with respect to unclaimed pension balances. The PBSR would be amended to prescribe that the designated entity could publish the following information in respect of unclaimed pension balances until the balance is no longer held by the designated entity:

- The date of transfer;
- The name of the person;
- The recorded address of the person;
- The amount of assets held by the designated entity related to the pension benefit credit and any distribution of surplus;
- The name and registration number of the pension plan as at the date of transfer; and
- The recorded name of the plan sponsor (i.e., employer) of the pension plan under which the balance was accrued.

Questions

- What are your views on plan administrators having to provide the proposed information to the designated entity, and having the proposed information posted publicly?
- Do plan administrators have access to all the proposed information to provide to the designated entity?”

CFP Response

CFP agrees with the proposed approach. While we agree that the need for privacy of the individual is to be respected, this must be balanced with the ability of the verified owners of unclaimed balances or their survivors or designated beneficiaries to search the public database for unclaimed pension balances. Further, CFP believes that to maximize success, the registry should be open to third parties to locate and notify individuals of their potential pension entitlement, similar to unclaimed bank account practice.

We believe this issue will become even greater in the future, as many future pensioners who have changed jobs frequently reach retirement age and try to claim their pension benefits from Plans whose sponsors may have been purchased, merged, or been wound-up.

We also suggest that not only the name of the pensioner be provided but also the name of the spouse, if any.

CFP has no comments on the second question.

Proposal 5: Claiming Funds from the Designated Entity (Consultation Paper # 2.5)

“The verified owners of unclaimed pension balances, or their survivors or designated beneficiaries, would be able to claim their pension balances from the designated entity so long as the prescription period has not expired – i.e., the amount of time that the designated entity holds the assets related to the unclaimed pension balance before transferring the assets to the Crown (i.e., the federal government’s Consolidated Revenue Fund) …

Proposed Approach

It is proposed that the PBSR be amended to specify that, until the prescription period with respect to an unclaimed pension balance expires, the following individuals would be eligible to claim the balance from the designated entity: the owner of the balance; any individual with power of attorney or legal mandate to represent the owner; and, if the owner is deceased, their survivor or designated beneficiary or any individual representing the owner’s estate. Funds claimed from the designated entity would be disbursed as an unlocked lump sum to the claimant.

It is proposed that the prescription periods for unclaimed pension balances would be consistent with the framework for unclaimed balances. That is, the prescription period would be 100 years for pension balances (including any surplus) of \$1,000 or more, and 30 years for balances less than \$1,000. Additionally, consideration is being given to establishing a third threshold for “small balances” with a shorter applicable prescription period, consistent with the proposal under consideration for unclaimed bank balances. Once the applicable prescription period has expired, claims against an unclaimed pension balance could no longer be made.

Questions

- Are there others who should be eligible to claim funds from the designated entity?”

- What are your views on the proposed prescription periods, including views on what would be an appropriate prescription period and threshold for small balances, and the appropriateness of full alignment with the framework for unclaimed bank balances?

CFP Response

We agree that the proposed list of eligible individuals is a comprehensive list.

CFP would like to point out that unlike unclaimed bank balances, the Designated Entity will know exactly the age of the unlocated beneficiary and his/her designated spouse. We suggest that one might want to consider using this information in setting the time period for locating the individual. It may be determined that once the younger of the member or his spouse is 120/130 years of age and still not located, the funds could be transferred to general funds. In most cases, this should be less than the 100 years proposed above.

Further, we suggest that, due to the nature of pension plans, the amount of monies used to determine the prescription period for unlocatable beneficiaries could be much greater than the bank account examples.

Proposal 6: Interest and Fees (Consultation Paper # 2.6)

“Interest could be paid on unclaimed pension balances transferred to the designated entity, if the balance were ultimately claimed, and/or the entity could charge administration fees
...

Proposed Approach

It is proposed that no interest would be credited on unclaimed pension balances, nor would any administration fees be charged when individuals submit a claim or receive a verified claim.

Questions

- Are there other reasons to support crediting a reasonable rate of interest on amounts claimed from the designated entity, or charging a cost-recovery administration fee?”

CFP Response

CFP is of the opinion that interest should be credited to unclaimed balances and that no administrative fee should be charged when funds are claimed by a plan member or beneficiary. CFP is of the position that the amounts will be larger than for unclaimed bank balances, therefore interest should be provided. Further, given that unclaimed balances eventually are transferred to the Crown, we feel that the Crown (or one of its agencies) should not be charging administration fees of any kind. It is our opinion that the Designated Entity has the use of the monies during the

holding period, and that it will be the beneficiary of any and all unclaimed balances at the end of the holding period. We believe that this will more than compensate the Designated Entity for the cost of administering the unclaimed balances from terminated Plans.

Proposal 7: Tax Obligations (Consultation Paper 2.7)

“Pension benefit payments made from a registered pension plan to the plan member or surviving beneficiary are generally included in the taxable income of the recipient. Options are being considered for appropriate tax rules to apply in cases where a person’s unclaimed pension balance is paid to a designated entity ...”

Proposed Approach

It is proposed that payments of unclaimed pension balances to a designated entity be made on a pre-paid tax basis. That is, income tax would be withheld and remitted to the CRA, by the administrator of the registered pension plan, at the time the administrator transfers an unclaimed pension balance to the designated entity. The appropriate rate of tax that would apply for the purpose of withholding tax on payments of unclaimed pension balances to a designated entity would need to be carefully considered.

If an unlocatable pension plan member or their survivor or designated beneficiary subsequently makes a claim to the designated entity to be paid the account balance, the designated entity would not report an amount to the CRA (e.g. no T4A slip) and the amount would not be included in the claimant’s taxable income because the account held by the designated entity would be net of the pre-paid tax. Since it is proposed that no interest be paid on unclaimed pension balances held by the designated entity, the issue of the tax treatment of interest income would not arise. That is, such an approach avoids the need to consider whether and how income tax should be paid on interest earned on such balances.

It is also proposed that the unclaimed pension balance would no longer be “registered” tax-deferred funds after being paid to the designated entity. Under that approach, the designated entity would be relieved of several tax obligations, such as the requirement after age 71 to annually pay out a prescribed minimum amount and to remit to the CRA the applicable income tax.

Questions

- Do you agree that remitting a pre-paid tax is a simple, efficient and practical approach to the taxation of unclaimed pension benefits?
- Do you agree that remitting pre-paid tax is a simple, efficient and practical approach to the taxation of unclaimed pension benefits?

- What would be an appropriate rate of tax to apply on payments of unclaimed pension balances to a designated entity?
- Should the account held by the designated entity (net of the taxes paid) be an unregistered account? “

CFP Response

CFP is not in agreement with the proposal that these funds should be taxed prior to transfer to the Designated Entity. Plan funds should certainly not be taxed before the beneficiary is 71. We suggest that the funds be transferred to a vehicle similar to a LIRA and that they remain untaxed until claimed by the beneficiary. In this way, the funds will be treated in a manner consistent with the treatment of pension funds that have not yet been paid to the beneficiary.

Moreover, CFP sees significant issues with the proposed remittance of a pre-paid tax.

When it is claimed the pension amount, including any accrued interest could be taxed in the beneficiaries' hands at an appropriate rate of tax, to be determined at the time e.g., re-file for past five years, flat tax, lump sum. We suggest the appropriate treatment would depend on the amount and circumstances of the individual at the time. The CRA could waive receiving the tax immediately, in lieu of all unclaimed amounts being transferred to the government at the end of the prescribed period for terminated plans.

It is the position of CFP that any unclaimed funds from a terminated plan should be transferred to a registered plan similar to a LIRA or LIF for the benefit of the plan holder. If the beneficiary is not located the funds would be transferred to the appropriate government agency at the end of the prescribed period.

CFP suggests that the rate of tax should be determined when the funds are claimed by the beneficiary. If he/she is under 71 years of age the funds would be transferred and held in a vehicle similar to a LIRA. If the beneficiary is over 71 when he or she is located, the funds could be transferred to a LIF and the appropriate tax could be determined for any unpaid amounts that should have been paid up to that date. This ensures that the appropriate rate of tax is always paid, as funds are claimed and released by the designated entity.

CFP disagrees with the proposal to employ an unregistered account for the pension balance (and any accrued interest) and, as noted above, suggests that the funds be placed in a vehicle similar to a LIRA or LIF account until the beneficiary is located and the funds are claimed or the holding period expires.