



August 21, 2018

Ms. Lynn Hemmings
A / Director General
Financial Sector Division
Financial Sector Policy Branch
Department of Finance Canada
90 Elgin
Ottawa, Canada K1A 0G5

By email: FIN.Pensions-Pensions.FIN@canada.ca

Dear Ms. Hemmings:

Re: Consultation re Unclaimed Pension Balances Framework

I am writing on behalf of Canada's life and health insurance companies in response to the Department's June 22nd announcement of a public consultation regarding how best to manage unclaimed entitlements under terminated, federally regulated, pension plans and assist consumers in identifying and accessing such pension entitlements. Our industry greatly appreciates the opportunity to provide input on this matter.

As you know, the Canadian Life and Health Insurance Association (CLHIA) is a voluntary industry association representing manufacturers of life, health and wealth insurance products throughout Canada. CLHIA members manage approximately two-thirds of registered pension plans in Canada, with a particular focus on defined contribution plans for small and middle-size employers and their workers. In addition, Canada's life insurance companies administer over eighty-five percent of capital accumulation plans.

This consultation is timely, given the simultaneous consultation by the Canadian Association of Pension Supervisory Authorities (CAPSA) with respect to regulators' expectations regarding pension plan administrators' responsibilities to locate missing members and plan beneficiaries. CLHIA has responded separately to that consultation. The present consultation is also relevant given ongoing consumer concern where employers cease to be viable and pension plans collapse, with significantly underfunded liabilities.

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Proposal

The proposed regime would transfer unclaimed pension plan assets to a designated entity for administration upon termination of a federally regulated pension plan. Assets would be "deregistered" and transferred to the designated entity on a "net of withholding tax" basis. After transfer of the unclaimed balance to the designated entity as administrator, no investment yield would be credited to amounts transferred, and no fees would be assessed against those assets. If an appropriate claimant were subsequently identified, a lump sum would be paid to that individual.

CLHIA Comments

In our view, this approach is fundamentally flawed, and inconsistent with the intent of the registered pension plan regime, as detailed below. We believe that a more appropriate mechanism is possible that would be more consistent with the public policy intent underlying workplace pension plans, and that alternative is summarized at the end of this letter. Responses to the specific questions posed in the consultation paper are included in the appendix to this letter.

Finding Unclaimed Pension Balances

One of the key consumer challenges of Canada's pension regime is the multiplicity of pension regulators. Few Canadians have a good understanding of which government (if any) regulates their pension plan entitlements, so knowing if a plan is federally or provincially regulated is a significant consumer challenge. This complexity for consumers can be compounded by frequent employment changes and the merger, acquisition and simple name changes of former employers.

Because of the narrowly defined scope of the proposed unclaimed property regime, we anticipate a high degree of consumer confusion as to where to look for plan balances, and whether the regime applies to any entitlements that a given individual may have.

In light of the obligation of plan administrators to maintain contact information for (former) pension plan members and the expectations of regulators regarding the efforts of plan administrators to maintain accurate contact information that are set out in the draft CAPSA guideline referenced above, it is unclear how material the challenge that the proposed regime seeks to address actually is. Given what we believe is a comparatively small number of federally regulated pension plans that might be expected to terminate without being able to locate and make payment to substantially all plan members, the number of individuals for whom unclaimed balances might be transferable to a designated entity under the proposed model would appear to be small. Similarly, the value of each such unclaimed pension balance would also be expected to be small – consumers tend not to lose track of significant assets. Absent objective

published data re the number and materiality of prospective account transfers, the cost of establishing the transfer mechanism and administrative regime may not be justified.

To the extent that there is a nation-wide problem across all pension regulators where former pension plan members and beneficiaries are not able to locate previously-earned pension entitlements, the proposal does little to address that problem. But it is unclear that such a problem actually exists, or that this is the optimal way to assist individuals in accessing such entitlements.

Disclosure of personal information

The proposed regime would require the communication to a designated entity assuming responsibility for the unclaimed pension balance of a significant amount of personal information relating to the pension plan member or other beneficiaries having an interest in the unclaimed amount. What is perhaps more troubling is the apparent intent to publish a substantial subset of that information as a means of assisting individuals in determining whether claimable assets are held by the designated entity. This publication would appear to create a significant and, in our view, inappropriate risk of identity theft and misappropriation of unclaimed pension balances.

Elimination of Investment Returns

It is well documented that investment returns constitute the majority of pension benefits ultimately payable. Some authors have concluded that, based on average historical rates of return, only ten percent of pension benefits payable actually represent a return of employer and employee contributions. Fully ninety percent of pension value reflects investment returns.¹

It therefore seems incongruous that pension benefits could be considered to be prudently managed if investment returns were eliminated upon transfer of unclaimed balances to a designated entity. Arguably, a pension plan administrator that effected such a transfer could be accused of failing its fiduciary duty to manage those assets in the best interests of plan members. While mandating transfers may absolve the plan administrator of such breaches of fiduciary duty, changing the character of the unclaimed balance so that it is no longer "pension money" does little or nothing to mitigate the potential harm done to (former) pension plan members who claim such balances but find them inadequate due to the loss of perhaps many years of investment returns.

¹ The Retirement Plan Solution: The Reinvention of Defined Contribution, Wiley Finance, 2009, Ezra, Collie & Smith.

Elimination of Administration Fees

The proposal to eliminate any asset management or other fees associated with transfers to a designated entity appears to arise as an offset to the elimination of crediting investment returns to such transferred amounts. While this may be a simplifying administrative model, it seems unlikely that the costs of administration would actually equal the investment returns earned by a designated entity, at least under a mature regime. That is, the simplifying model would prejudice those individuals with unclaimed pension balances that have been transferred to a designated entity. We believe that this is inappropriate public policy and is at odds with various government efforts to improve the retirement income adequacy and security of all Canadians.

Conversion of Retirement Income into Lump Sum Benefits

Similarly, payment of lump sum benefits when a claimant is identified is a simplifying process. But pension plans are intended to provide retirement income as long as the plan member (and in most cases, a surviving spouse or common-law partner) survives. Payment of a lump sum is fundamentally at odds with such a public policy objective.

If a designated entity is unable to administer periodic income payments on a cost-effective basis, transfer of pension plan assets to an alternative payout instrument, such as a Life Income Fund or registered life annuity, without the involvement of a designated entity, would better mirror the objective of providing secure lifetime retirement income.

Lack of Harmonization

As indicated above, most unclaimed pension plan balances probably do not relate to terminated, federally regulated, pension plans. Introducing a new designated entity regime complicates and confuses the pension landscape for individuals in search of lost entitlements. Failure to mirror existing provincial regimes compounds this problem. Instead, adopting a voluntary transfer regime with a coordinated, multi-jurisdictional registry of unclaimed pension balances (and perhaps other unclaimed financial assets), would appear to be a more consumer-friendly mechanism to identify claimants and reconnect them with their unclaimed pension entitlements.

A Better Approach

In our view, mandatory transfer of unclaimed pension plan balances to a designated entity serves no measurable public purpose. It potentially reduces retirement income benefits through the elimination of investment returns, and converts tax-advantaged, lifetime income payments with potential survivorship rights into lump sums that may be spent imprudently. The proposed regime thereby creates significant

potential demands on federal, provincial and municipal governments for income, housing and social services supports by Canadian seniors whose private pension plan income benefits have been converted without their knowledge or consent.

Rather than requiring mandatory transfer of unclaimed pension balances to a designated entity, such transfers should be optional, as is the case in some provincial unclaimed property regimes. Mandating reporting to a central register of unclaimed amounts, and publishing via that register of the name and community of last known residence for each individual with an unclaimed pension plan balance would better allow such individuals to locate their entitlements, while minimizing the risk of identity theft and misappropriation of unclaimed pension balances. In effect, a designated entity would become a referral facility, through which individuals could identify potential entitlements, identify the source of such entitlements, and then pursue recovery of those entitlements directly from the pension plan administrator or from a designated entity, in the case of a plan that has voluntarily transferred assets to that designated entity. Such a reference source, facilitated by a designated entity, would presumably complement processes adopted by plan administrators and their service providers to assist individuals in locating long-forgotten pension entitlements.

Retaining tax-advantaged status and discharging payment of claimed benefits via transfers to registered instruments such as Locked-In Retirement Accounts (LIRAs), Life Income Funds (LIFs) or registered payout annuities would preserve the intent of the source pension plan, and provide claimants with retirement income options. Providing investment returns for assets held by a designated entity, as well as charging appropriate cost recovery fees related to administration and distribution of plan benefits, would put consumers whose unclaimed pension balances have been transferred to a designated entity on an equal footing with those where the plan administrator has chosen not to transfer assets to a designated entity.

Again, thank you for the opportunity to provide comments regarding the proposed transfer protocol. CLHIA would be pleased to expand on these concerns as necessary, and looks forward to continued dialogue with the Department on this and other issues. Please feel free to contact me by telephone at 416-359-2021 or by email at rsanderson@clhia.ca should you or your colleagues wish to discuss any of the issues identified in our comments, or those from other stakeholders.

Yours sincerely,

(Original signed by)

Ronald Sanderson
Director, Policyholder Taxation and Pensions

Appendix to CLHIA Response to Consultation re Unclaimed Pension Balances Framework

Part I

- Should financial institutions provide the Bank of Canada with further information (e.g., Social Insurance Number, date of birth, signature card and business number) to streamline the validation process for claimants and to protect against fraudulent claims?

Given our preference for a regime that continues to credit investment returns to unclaimed pension balances and the optional transfer of unclaimed pension balances to a designated entity, only information that would be necessary to facilitate a referral of a claimant to the entity holding unclaimed pension balances should be transferred to the designated entity, unless that designated entity is holding the unclaimed pension balance. In general, name and last known community of residence should be sufficient to facilitate a referral of a claimant. Where an unclaimed pension balance is transferred to a designated entity, then transfer of the claimant's personal information, including social insurance number and date of birth would appear reasonable. Transfer of a signature card or other record of the individual's signature may not be appropriate, and it is unclear why a business number would be relevant in the context of an unclaimed pension balance.

- Should the prescription time for smaller balances be reduced, and if so, for which amounts and for how long?

In a pension context, absent receipt of information indicating the death of the individual, an entitlement should not be considered unclaimed until an individual would attain at least the normal retirement age under the plan, and preferably not before the end of the year in which the individual would attain 71 years of age.

- Should the definition of unclaimed balances in legislation be expanded to include foreign denominated accounts?

No comment, since registered pension accounts would be denominated in Canadian currency.

- Should financial institutions be required to notify balance owners through electronic means such as email, if possible, in addition to mail?

To the extent permitted by pension law, CLHIA members support the use of electronic communications with policyholder and plan members as a default in lieu of paper-based communication. If electronic communication does not produce a response, paper-based communication may be appropriate. However, there would appear to be little value added for the pension plan administrator, service provider or consumer in parallel communication via multiple channels.

- Should the Bank stop paying a rate of interest on unclaimed balances? Should the Bank have the ability to charge administration fees, such as on a cost recovery basis?

CLHIA strongly supports the crediting of investment returns and the charging of appropriate cost recovery fees to unclaimed pension balances, regardless of who holds such accounts.

- Should exiting financial institutions be allowed to transfer unclaimed balances to the Bank of Canada prior to reaching the 10-year dormancy period?

In the pension context, it is unclear that an exit by a financial institution would be possible without transferring service of active pension accounts to a successor service provider. CLHIA has no comment with respect to optional transfers to a designated entity by other financial institutions.

Part 2.2

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

No other issues have been reported to CLHIA.

- 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?

CLHIA has no quantitative data related to this issue, but anecdotally understands that material balances related to "missing" plan members are rare.

Part 2.3

- What are examples of effective search methods/techniques?

See CAPSA draft Guideline 9 – Searching for Un-locatable Members of a Pension Plan, available at <https://www.capsa-acor.org/Documents/View/554>

- What seems like a reasonable minimum time period to make appropriate efforts to search for a plan beneficiary?

Search efforts, and the time necessary to complete such searches, should reasonably reflect the value of an individual's entitlement, and CLHIA does not recommend a fixed time period for search efforts.

- Should there be a minimum time period before eligible unclaimed pension balances may be transferred to the designated entity?

In a pension context, absent receipt of information indicating the death of the individual, an entitlement should not be considered unclaimed until an individual would attain at least the normal retirement age under the plan, and preferably not before the end of the year in which the individual would attain 71 years of age.

- What necessary criteria, if any, should be required to obtain OSFI's authorization?

If transfers are voluntary and permissible for both terminated and continuing pension plans, proof of reasonable search efforts should be maintained by the plan administrator, and subject to audit by OSFI. Express consent by OSFI to transfer should not be required for continuing pension plans. If transfers are only permitted on wind-up, then consent may reasonably be contingent on approval of the search protocol and the evidence of completion of that protocol with respect to each missing plan member.

Part 2.4

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

Public posting on comprehensive person information creates a significant and unacceptable risk of identity theft and misappropriation of unclaimed pension balances. Only the individual's name and last known community of residence should be publicly posted, consistent with Alberta's unclaimed property search facility.

- Do plan administrators have access to all the proposed information to provide to the designated entity?

In general, CLHIA believes that plan administrators would have personal information relating to pension plan members, but may have limited information relating to other pension plan beneficiaries.

Part 2.5

- Are there others who should be eligible to claim funds from the designated entity?
Pension plan members, spouses and common-law partners, named beneficiaries, individuals operating under a power of attorney on behalf of any of the foregoing and estate trustees for any of the foregoing should, with appropriate evidence, be able to claim unclaimed pension balances.

- 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?

Alignment with the framework for unclaimed bank balances is inappropriate given when pension income becomes payable; prescription periods should reflect normal retirement date or, preferably, the end of the calendar year in which the individual would attain 71 years of age.

Part 2.6

- 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?

As indicated in the attached letter, investment returns can represent approximately ninety percent of the income payable under pension plans. Not providing investment returns to unclaimed pension balances drastically undercuts the value of the pension incomes payable to older Canadians, is contrary to sound pension public policy, and increases demand for publicly funded income, housing, and social services supports. Maintaining both investment returns and appropriate cost-recovery fees ensures that a voluntary transfer regime operates in an equivalent manner to unclaimed pension balances that are administered by the plan administrator or are transferred to a successor instrument such as a LIRA, LIF or retirement annuity.

Part 2.7

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

While treating unclaimed pension balance transfers as net of withholding tax amounts may simplify the designated entity's handling of such amounts, CLHIA members believe that this is fundamentally

inconsistent with the public policy underlying pension plans, and that such simplicity does not justify this model.

- Do you agree that the pension plan administrator is in the best position to report, withhold and remit the pre-paid tax to the CRA?

No; a voluntary transfer mechanism whereby regulated financial institutions provide successor instruments in the form of LIRAs, LIFs, and retirement annuities provides a more appropriate model, and such financial institutions are generally as capable as, or more capable than, pension plan administrators to comply with tax withholding, reporting and client search protocols to optimize the payment of pension benefits to plan members and their beneficiaries.

- What would be an appropriate rate of tax to apply on payments of unclaimed pension balances to a designated entity?

Amounts should transfer on pre-tax basis, such that no withholding would apply at point of transfer. Transfers on a net of withholding tax are inconsistent with the public policy underlying workplace pension plans.

- Should the account held by the designated entity (net of the taxes paid) be an unregistered account?
No; the registered status of the pre-transfer pension balance should be retained; if the designated entity is not capable of administering registered accounts, including appropriate tax withholdings and reporting, then the designated entity model should not proceed, and transfers to regulated financial institutions should proceed as an alternative model that preserves the registered character of the unclaimed pension balance. If a designated entity can administer such amounts as registered plans, transfers to the designated entity should be optional, creating a competitive market between the designated entity and regulated financial institutions.