# Funding Defined Benefit Plans

A guide to assist plan administrators and their service providers in understanding the funding requirements for defined benefit pension plans registered pursuant to
*The Pension Benefits Act, 1992.*

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# 1. Introduction

This guide applies only to defined benefits plans and plans that contain defined benefit provisions.

The process by which *The Pension Benefits Act, 1992* (the Act) ensures the orderly funding of defined benefit plans is described in various sections of legislation, but can be summarized as follows:

1. The plan's actuary must review the plan's financial position and prepare an actuarial valuation report (AVR) describing the funding needs of the plan;

2. The employer is then responsible for remitting contributions on the basis of the AVR and in a manner required by legislation; and

3. The filing of an annual information return describing the funding that has occurred allows the superintendent of pensions ("the superintendent") to ensure that contributions are being made in accordance with the AVR.

This guide will explain the provisions of the Act and *The Pension Benefits Regulations, 1993* ("the Regulations") as they pertain to the funding of defined benefit plans. However, this bulletin has no legal authority. The Act and Regulations should be used to determine specific requirements.

The amount of funding required by the Act and Regulations varies by type of defined benefit plan. Specified plans, as listed in Table 1 of the Regulations (and in the Appendix to this document), have different funding requirements than other plans. These differences will be indicated throughout this document. Almost all public sector and publicly funded plans are specified plans. There are no private sector plans that are specified plans. For the purposes of this document, the two groups of plans will be referred to as specified plans and private sector plans. The funding rules pertaining to specified plans changed in respect of AVRs with a review date of December 31, 2012 or later. The funding rules for private sector plans did not change.

# 2. The Actuarial Valuation Report (AVR)

### 2.1 Timing of the AVR

In the case of a new plan, section 8 of the Regulations requires a plan administrator to have a plan reviewed as of the effective date of the plan. Thereafter, an actuarial review must occur at the end of a fiscal year and at intervals not exceeding three fiscal years after the preceding review date. As well, the superintendent has the authority to request a review be made of the

plan at any time.

By review, we mean a review conducted by a Fellow of the Canadian Institute of Actuaries with respect to the financial position of the plan and the contributions required to be made to the plan to meet the tests of solvency required by legislation.

Having completed a review, clause 11(4)(b) of the Act requires the administrator to file with the superintendent an AVR based on the review. In the case of a new plan, section 9 of the Regulations requires an AVR to be filed not later than 120 days after the establishment of the plan. The plan is established on the date the persons authorized to establish the plan resolve to do so. The plan may have an effective date that precedes the date it is established.

In the case of a review occurring after the effective date of the plan, an AVR must be filed not later than 9 months after the review date. This filing deadline applies to all AVRs that are filed with the superintendent, whether or not the AVR is due. The requirement is to conduct a review every third year. However, if a review is conducted one or two years after the preceding review date and the employer wishes to make contributions on the basis of the new review, then the AVR resulting from the new review must be filed within 9 months of the review date.

### 2.2 Types of Valuations

In the AVR, an actuary is required to provide opinions on the financial condition of the plan and on the contributions required to be made to the plan, based on the requirements of the Act and Regulations, on the assumption:

(1) That the plan will be a going concern and will not terminate. There are 2 types of going concern funding:

> (a) The actuary must make a recommendation with respect to the normal actuarial cost of the plan for the fiscal year following the review date. Legislation defines the normal actuarial cost of a plan as "the amount estimated ... to be the cost to persons required to contribute to the plan of the benefits of the plan for a fiscal year".
>
> (b) The actuary must determine, via a going concern valuation, whether the plan has a funding deficit or a funding surplus on a going concern basis.

(2) That the plan has terminated at the review date. The actuary must determine, via a solvency valuation, whether the plan has sufficient assets to cover its liabilities if the plan were to terminate.

### 2.3 Going Concern Valuation

The purpose of a going concern valuation is to recommend the orderly funding of a plan to accumulate assets to provide for the plan's benefits in advance of their actual payment.

The actuary must compare the plan's going concern assets to its going concern liabilities, as accrued to the date of the review. If the liabilities exceed the assets, then the plan is said to have an unfunded liability. An unfunded liability might exist because the plan's benefits were improved retrospectively without the plan having sufficient assets to provide for the benefit improvements. An unfunded liability also might be created if the assumptions on which the last valuation of the plan were based were not met, if the valuation method changed or if there was negative plan experience.

**2.4 Solvency Valuation**

The purpose of the solvency valuation is to determine whether the plan has enough assets to cover its liabilities in the event the plan is terminated at the review date. In examining the solvency of a plan, the actuary must compare the plan's liabilities determined on a plan termination basis to the value of solvency assets.

In preparing a solvency valuation, all benefits which would be payable upon the termination of the plan must be included in the liabilities of the plan. The assumptions used to calculate liabilities are set as at the review date and not as at some later date, such as the report date. For instance, legislation provides that members not yet eligible to commence a pension be given the right to transfer the commuted value of benefits from the plan on plan termination. As such, the actuary would use the transfer value assumptions in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans to value benefits. The interest rate prescribed by those standards as at the date of the hypothetical termination would be used.

The actuary also must take into account the estimated expenses of administering the termination of the plan that would be required to be paid out of the pension fund.

For purposes of determining the value of a plan's assets when preparing a solvency valuation, the actuary must include:

(a) the market value of the assets of the plan as determined as of the latest review date or the value of plan assets related to their market value by means of an averaging method over a period of not more than five years, and for either basis reduced by the estimated expense of administering the termination of the plan that are required to be paid out of the pension fund; and

(b) any cash balances and accrued and receivable income; and

(c) the present value, determined in accordance with generally accepted actuarial principles using the same assumptions as are used in the solvency valuation of the plan's liabilities, of:

    (i) special payments payable with respect to benefits for employment before the effective date of the plan, if no benefits for that employment had been provided under the plan before the establishment of those special payments; and

(ii) special payments payable over the five years following the plan's latest review date and not included in subclauses (i).

**2.5 Contents of the AVR**

Section 10 of the Regulations requires an AVR to be prepared in a manner that is consistent with the current Standard of Practice (SOP) for the preparation of AVRs issued by the Canadian Institute of Actuaries.

Section 10 also describes the contents of an AVR. An AVR must include the following so far as is applicable:

(a) the normal actuarial cost, showing separately the employer contributions and the member contributions relating to the normal actuarial cost:

(i) for the fiscal year following the review date, where that date falls on the last day of a fiscal year; or
(ii) for the fiscal year in which the review date falls, where that date falls on any other day;

(b) the rules for computing normal actuarial cost (i.e., percentage of payroll, cents per hour, dollar amount, etc.) and for allocating that cost between the employer and the members with respect to employment in the period covered by the report or certificate;

(c) the date of establishment and the unamortized balance of any unfunded liability, the special payments to be made to amortize that liability and the date at which that liability will be amortized;

(d) either:

(i) a statement that, in the opinion of the reviewer, there is no solvency deficiency; or
(ii) the date of establishment and the unamortized balance of any solvency deficiency, the special payments to be made to amortize that deficiency, and the value of the assets and liabilities used to determine that solvency deficiency, together with the assumptions and valuation methods used to calculate that deficiency and the date at which that deficiency will be amortized;

(e) either:

(i) a statement that in the opinion of the reviewer the solvency ratio is not less than 1; or
(ii) if the solvency ratio is less than 1, the solvency ratio, the value of the assets and liabilities used to determine the solvency ratio, and the assumptions and valuation methods used to calculate the liabilities;

(f) the surplus assets of the plan, and, if known to the reviewer, a description of how they will be utilized;

(g) the market value of the assets of the plan, and, if available, the book value of the assets of the plan and a description of the valuation method used to determine the going concern assets;

(h) the value of the going concern liabilities with respect to each of the following groups:

- (i) members;
- (ii) as a single group:
  - (A) former members who have not commenced to receive their pensions under the plan; and
  - (B) other persons who have a future entitlement to receive benefits from the plan; and
- (iii) as a single group:
  - (A) former members who are receiving their pensions; and
  - (B) other persons who are receiving payments from the plan;

and a description of the assumptions and valuation methods used to determine those values; and

(i) in the case of a review occurring after the effective date of a plan, a reconciliation of the results of the review and identification of the gains and losses experienced since the date of the latest previous review.

### 2.6 Salary Projections

In a final or best average earnings type of plan, where the pension is based on a rate of salary at retirement date or on average rates of salary over a specified and limited period, a projection of the current salary of each member must be used to estimate the salary on which the pension payable at retirement date will be based when conducting a going concern valuation. A solvency valuation normally would not take into account a projection of salary.

### 2.7 Actuarial Basis

If the actuarial basis used in the actuarial valuation is such that an unfunded liability or solvency deficiency may not be revealed, as is the case with the Aggregate Method, then the actuary must perform supplementary calculations to show that the solvency tests are being met, and must certify to conducting those calculations and to the solvency tests being met.

### 2.8 Margins

The superintendent expects actuaries to follow the CIA Standards of Practice and consider the adoption of recommendations contained in the CIA Educational Notes when preparing actuarial valuation reports and cost certificates.

All reports must contain appropriate levels of margin consistent with plan characteristics. The funding basis must support and promote appropriate levels of benefit security for plan members and former members. Where it is determined that appropriate levels of margin have not been included in a report, the superintendent has the authority to require the report to be revised.

The superintendent's expectations are described in detail in our publication entitled Actuarial Assumptions.

### 2.9 Use of Surplus Assets

Subsection 36(7) of the Regulations provides that, if the valuation reveals that a plan has surplus assets, the surplus assets must be used to reduce the outstanding balance of any unfunded liability, with the oldest established unfunded liabilities being amortized or reduced before later ones. As well, further special payments may be reduced on a prorated basis over the remainder of the unamortized period.

### 2.10 Outstanding Transfer Deficiencies

The liability associated with an outstanding payment of a transfer deficiency value must be reported in the AVR. This liability should be reported separately in the going concern and solvency valuations, as opposed to being included in the liability value attributed to a certain group of plan beneficiaries (such as actives or deferreds).

# 3. Funding Requirements

### 3.1 Private Sector Plans

The funding rules for private sector plans are contained in section 36 of the Regulations. For plans which elected temporary solvency deficiency funding relief in respect of a 2008, 2009 or 2010 AVR, the rules in section 36.1 through 36.6 of the Regulations will also apply. As described under section 3.4 of this publication, certain plans may elect temporary solvency deficiency funding relief in respect of a 2012, 2013 or 2014 AVR; in this case, section 36.91 of the Regulations would apply.

#### 3.1.1 Normal Cost

The normal cost must be implemented upon the filing of the AVR.

#### 3.1.2 Unfunded Liability

With the exception noted in the next paragraph, unfunded liabilities must be amortized at least monthly in equal amounts over a period not exceeding 15 years from the review date relating to the establishment of the unfunded liability. Note that the 15 year period commences from the

review date, not the date the AVR is filed. Interest, at the discount rate used in the AVR, must be included in the retroactive amortization payments.

The employer may make at least monthly payments expressed in a manner that each payment is a constant percentage of future payroll of the members, projected as of the date of the original establishment of the unfunded liability, provided that the actuarial present value of all such payments is equal to the unfunded liability. If salaries are projected to rise, this would result in a schedule of special payments which increase over time, rather than as a schedule of equal payments.

Where a solvency deficiency has been amortized, the plan's actuary may recalculate any special payments with respect to any unfunded liability that has not been amortized.

Each unfunded liability must be funded and reported separately.

#### 3.1.2 Solvency Deficiency

With the exception noted in the next paragraph, solvency deficiencies must be amortized at least monthly in equal amounts over a period not exceeding 5 years from the review date relating to the establishment of the solvency deficiency. These payments are in addition to contributions required with respect to the normal actuarial cost and to special payments with respect to unfunded liabilities. Note that the 5 year period commences from the review date, not the date the AVR is filed. Interest, at the discount rate used in the AVR, must be included in the retroactive amortization payments.

The employer may make at least monthly payments expressed in a manner that each payment is a constant percentage of future payroll of the members, projected as of the date of the original establishment of the solvency deficiency, provided that the actuarial present value of all such payments is equal to the solvency deficiency.

For the purposes of the solvency valuation, solvency assets may include special payments (towards both unfunded liabilities and previously established solvency deficiencies) payable over the five years following the plan's latest review date.

Each solvency deficiency must be funded and reported separately.

### 3.2 Specified Plans

The requirements are different for specified plans than they are for private sector plans. Almost all public sector plans are specified plans. As public sector plans face unique challenges in their ability to react to volatile contribution requirements, the funding rules for those plans aims to create a smoothing of the contribution requirements from one actuarial valuation to the next. In order to mitigate the risk that this smoothing introduces, conservatism has been achieved in other ways. These ways will be explained throughout the document.

The rules described in this section are applicable only once a specified plan (as listed in the Appendix) files an AVR with a review date of December 31, 2012 or later. Until that time, the funding rules are the same for specified plans as they are for private sector plans.

The funding rules for specified plans are contained in sections 36 and 36.7 of the Regulations.

### 3.2.1 Normal cost

The normal cost must be implemented within one year of the review date. However, if the normal cost is not implemented at the time the AVR is filed, the amount of the contributions must be increased to take into account the amount of the delayed payments, once the payments are implemented, or the amount of the delayed payments must be included in the value of the going concern liabilities.

### 3.2.2 Unfunded Liability

With the exception noted in the 3rd paragraph of this section, unfunded liabilities established in an AVR with a review date prior to December 31, 2012 must be amortized at least monthly in equal amounts over a period not exceeding 15 years.

With the exception noted in the 3rd paragraph of this section, unfunded liabilities established in an AVR with a review date of December 31, 2012 or later must be amortized at least monthly in equal amounts over a period not exceeding 10 years. This shortened amortization (10 years, as compared to 15 years for private sector plans) is in place to mitigate the risk associated with the absence of solvency deficiency funding.

The employer may make at least monthly payments expressed in a manner that each payment is a constant percentage of future payroll of the members, projected as of the date of the original establishment of the unfunded liability, provided that the actuarial present value of all such payments is equal to the unfunded liability. If salaries are projected to rise, this would result in a schedule of special payments which increase over time, rather than as a schedule of equal payments.

Each unfunded liability must be funded and reported separately.

Typically, a contribution increase as a result of an unfunded liability is implemented as at the review date relating to the establishment of the unfunded liability. However, the implementation can be delayed for a period not exceeding one year measured from the review date. Where this delay occurs, the amortization period must be decreased by a period equal to the period of the delay. Also, the actuarial present value of all of the payments over the amortization period must equal the actuarial present value of the payments were they to have been made over the 10 year period. For example, if an unfunded liability is established in an AVR with a review date of December 31, 2012, the contribution increase could be implemented as late as December 31, 2013, but it would then have to be fully amortized by December 31, 2022, which is 9 years from the implementation date.

### 3.2.3 Solvency Deficiency

Solvency deficiencies, regardless of the date they were established, do not have to be funded. However, an AVR must include a solvency valuation and 5 year amortization schedule (based on equal monthly payments), notwithstanding that payments do no need to be made towards the solvency deficiency.

As long as allowed under the *Income Tax Act*, a plan sponsor could voluntarily make solvency deficiency payments, even though they are not required to do so under the Act.

The solvency deficiency is calculated as a fresh start in all AVRs with a review date of December 31, 2012 or later.

As no solvency deficiency payments are required, solvency assets would not be increased in consideration of any future payments toward a solvency deficiency. Solvency assets would, however, include the present value of 5 years of unfunded liability payments.

## 3.3 Defined Contribution Plans Underwriting Annuities

A plan that is purely defined contribution is not required to file an actuarial valuation and fund on the basis of the valuation as described in this bulletin. However, some defined contribution plans underwrite annuities for their members. In lieu of transferring money to an insurance company to purchase a life annuity, a member may purchase a life annuity from the plan itself.

For the purposes of the Act and Regulations, the annuity underwriting operation of such plans is considered to be a defined benefit provision. This means that the requirements of legislation described in this bulletin must be followed.

## 3.4 Negotiated Cost Defined Benefit Plans

The Act and Regulations operate to establish funding obligations for an employer. The employer must make contributions equal to the normal actuarial cost of the plan, unless the plan provides for employee contributions. The employer must make special payments with respect to an unfunded liability, and for a private sector plan, with respect to a solvency deficiency. Generally speaking, these obligations are without limit.

However, subsections 40(5) and (6) of the Act deal with a special arrangement which would apply to plans known as negotiated cost pension plans (NCPP). In a NCPP, the employer's liability with respect to the funding of a plan may be limited to the amount that is provided for in the plan where the liability of the employer is limited pursuant to a collective bargaining agreement.

Where the employer's liability is so limited, the plan must provide for the reduction of benefits to ensure that the plan meets the prescribed test for solvency, subject to the approval of the reduction by the superintendent.

A specified plan which is a negotiated cost plan pursuant to section 40 of the Act does not have to reduce benefits in respect of a solvency deficiency in order to meet the solvency test.

The funding rules for private sector NCPPs are contained in section 36 of the Regulations. For private sector NCPPs which elected temporary solvency deficiency funding relief in respect of a 2008, 2009 or 2010 AVR, the rules in section 36.1 through 36.6 of the Regulations would also apply. For private sector NCPPs which elect temporary solvency deficiency funding relief in respect of a 2012, 2013 or 2014 AVR, the rules in section 36.91 of the Regulations would also apply.

### 3.5 Plan Terminations

Section 51 of the Act provides that the failure of an employer to make contributions is grounds for the superintendent to terminate the plan. As an exception to this rule, in certain cases an employer may use surplus assets to make contributions. As well, failure of an employer to make contributions pursuant to a multi-employer plan does not result in the termination of the whole plan.

Section 54 of Act describes the employer's obligations on the termination of the plan. Within 30 days after the termination of a plan, the employer:

"(a) shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act; and

(b) without limiting the generality of clause (a), shall make all payments that, by the terms of the plan or this Act:

> (i) are due from the employer to the plan but have not been made at the date of the termination; or
>
> (ii) have accrued to that date but are not yet due."

Therefore, an employer is not obliged under legislation to make special payments with respect to an unfunded liability or solvency deficiency for the amortization period beyond the date of the termination.

Plan terminations are described in more detail in our publication entitled Plan Termination.

## 4. Funding Policy

Funding requirements promote benefit security. The goal of funding defined benefit pension plans is to ensure that sufficient assets will be accumulated to deliver the promised benefits on

an ongoing basis, and to protect pension benefits in situations that involve employer insolvency or bankruptcy.

The Canadian Authority of Pension Supervisory Authorities (CAPSA) has developed a guideline that is intended to provide guidance on the development and adoption of funding policies for pension plans that provide defined benefits. FCAA endorses this guidance.

The guidelines for developing and implementing a pension plan funding policy are described in more detail in the CAPSA publication entitled Pension Plan Funding Policy Guideline.

# 5. Solvency Ratio

The calculation of the solvency deficiency was described in sections 2.4, 3.1.2, and 3.2.3 of this document. A solvency deficiency exists if the liabilities of a plan, determined on a plan termination basis, exceed the market value of its assets (plus any cash balances and accrued and receivable income, and less the estimated expense of the plan termination), together with the present value of certain future special payments.

A plan's solvency ratio is the fraction obtained by dividing the market value of the assets currently held in the plan (plus any cash balances and accrued and receivable income, and less the estimated expense of the plan termination) by the liabilities of the plan on a plan termination basis. In other words, in calculating the solvency ratio, the present value of certain future special payments is excluded from the determination of the value of assets. If a plan's solvency ratio is less than one, then the plan administrator may have to withhold for a period of time a portion of the commuted value of benefits that are being transferred from the plan. Section 28 of the Regulations, as well as our publication entitled Transfer Deficiencies addresses the transfer deficiency holdback rules.

As well, if a plan's solvency ratio is less than one, section 13 of the Regulations requires the plan administrator to include on the annual statement to plan members a statement that the plan's assets are not sufficient to cover the liabilities accrued with respect to benefits promised, as at the latest review date, and that special payments are being made to make the plan solvent in accordance with pension legislation or a statement that special payments are not required to be made.

# 6. Plan Amendments

### 6.1 Filing a new AVR or cost certificate

Section 8 of the Regulations provides that, where an amendment to a plan affects the cost of benefits provided by the plan, creates an unfunded liability or otherwise affects the solvency or funding of the plan, a re-evaluation of the plan's financial position is in order. The administrator

may have the plan reviewed, in which case a comprehensive AVR must be prepared and filed. Alternatively, the administrator may have the latest AVR revised. If the latter approach is to be used, the plan's actuary must be confident that the data, assumptions and actuarial methods used in the previous AVR remain appropriate. If the latest review is revised, a cost certificate must be filed.

The administrator must file a new AVR or cost certificate within 120 days after the date the amendment is made. The date the amendment is made is the date on which the amendment is executed by whoever is authorized to amend the plan. The date the amendment is made is not necessarily the date that the amendment is effective - for instance, a plan's benefits could be improved retroactively. As well, the date the amendment is made is unlikely to be the date the amendment is registered with the superintendent. Registration typically occurs sometime after the amendment is made.

If a new review is conducted, the review date is deemed to be the last day of the fiscal year preceding the fiscal year in which the amendment was made, for purposes of the Regulations. This is particularly important with respect to the timing of the plan's next review.

Assume, for example, that a plan is amended by resolution of the Board of Directors of the company on October 4, 2012, the administrator is having a new actuarial valuation prepared and the fiscal year end of the plan is December 31. The administrator would be required to file the AVR with the superintendent within 120 days of October 4, 2012. For purposes of determining when the next review is due, the new review would be deemed to have occurred on December 31, 2011. The administrator would have the plan next reviewed no later than December 31, 2014, three years after the most recent review.

If the last review is revised, another AVR must be conducted within three years of the date of the last review. Suppose in the previous example that the administrator had chosen to revise the most recently filed AVR which was prepared as at December 31, 2010. The administrator still would be required to file the revision within 120 days of October 4, 2012, but the next review would have to be conducted no later than December 31, 2013.

### 6.2 Restrictions on Benefit Improvements

As a way of mitigating the risk associated with the absence of solvency deficiency funding, benefit improvements are restricted for specified plans.

For specified plans only, benefit improvements are not allowed if the solvency ratio as measured at the last filed AVR is less than 0.90, or if the benefit improvement would cause the solvency ratio to fall below 0.90. However, a benefit improvement would be allowed if it is immediately funded by an amount which will result in the plan’s solvency ratio being no less than 0.90. This restriction does not apply to benefit improvements which were established by collective bargaining agreement or other contract before June 26, 2013. The calculation of the solvency ratio is explained in section 5 of this document.

Benefit improvements are not restricted for private sector plans. The exception to this is that benefit improvements cannot be made during the period of suspended solvency deficiency payments, where a private sector plan has elected temporary solvency deficiency payment relief under section 36.2 of the Regulations.

# 7. Contributions

### 7.1 Remitting Contributions

Section 40 of the Act requires that a plan be funded in accordance with a filed actuarial valuation report. An employer is required to make contributions that are sufficient to provide for all benefits in accordance with the prescribed tests for the solvency of the plan which were previously described. Employees contribute to a plan only if so required by the plan.

Section 36 and 36.7 of the Regulations requires contributions to be made monthly, both with respect to the normal actuarial cost and special payments. Section 37 of the Regulations requires the remittance of those contributions to the plan's fund holder within 30 days after the end of the month for which those contributions are payable. Interest, at the discount rate used in the most recently filed valuation, should be included on contributions in arrears.

Section 37 also requires the remittance to the fund holder of any contributions made by the member within 30 days after the end of the month in which the contributions were received by the employer from a member or were deducted from the member's salary.

A fund holder is that person or entity which holds the pension fund of a pension plan. Section 41 of the Act describes who can act as a fund holder and includes an insurance company, a trust corporation and individual trustees. Except for multi-employer plans, the fund holder is obligated to inform the superintendent where an employer has failed to remit any required contributions.

To protect money which is payable, but not yet remitted to the fund holder, section 43 of the Act provides that money which has been received by an employer from an employee or has been withheld by an employer from money payable to an employee or is due to be paid by the employer as the employer's contribution is deemed to be held by the employer in trust. The employer cannot appropriate or convert any part of the money to the employer's own use or to any use not authorized by the terms of the plan.

### 7.2 Contribution Holidays

Contribution holidays are permitted under the Act. Subsection 51(4) of the Act allows an employer to use surplus assets to provide employer contributions, if:

1. the plan permits that use;

2. the intention of the employer to do so is disclosed to the members and former members in the manner described by section 41 of the Regulations; and

3. the superintendent has approved that use of surplus assets.

In determining whether or not a plan permits the use of surplus assets to make employer contributions, the Pensions Division will be guided by the decision of the Supreme Court of Canada decision on Schmidt v. Air Products Canada Ltd. The Court's decision with respect to an employer's right to take a contribution holiday appeared to turn on this conclusion: "When permission is not explicitly given in the plan, it may be implied from the wording of the employer's contribution obligation. Any provision which places the responsibility for the calculation of the amount needed to fund promised benefits in the hands of an actuary should be taken to incorporate accepted actuarial practice as to how that calculation will be made. That practice currently includes the application of calculated surplus funds to the determination of overall current service cost."

Clause 36(3)(a) of the Regulations requires an employer to pay into a plan the normal actuarial cost allocated to the employer "as stated in the most recent actuarial valuation report or cost certificate filed". Therefore, an employer's obligation with respect to the payment of the normal actuarial cost cannot change until another actuarial valuation report or cost certificate is filed. As a result, a contribution holiday only can occur prospectively from the filing of an actuarial valuation that supports the use of surplus in this way and cannot occur retroactively to the date of the review. If the plan has sufficient surplus assets, a contribution holiday could continue until the next actuarial valuation is filed.

### 7.3 Increasing Special Payments in an Inter-valuation Period

Subsection 36(9) of the Regulations provides that, at any time, an employer may increase the rate of amortization of an unfunded liability or solvency deficiency by increasing the amount of the special payments, making special payments in advance or making additional payments of any kind. Where the rate of amortization is increased, the amount of a special payment in a fiscal year subsequent to the year in which the additional amount is paid may be reduced to take into account the reduction in the amortization of the unfunded liability or solvency deficiency.

## 8. Prosecution

Section 70 of *The Pension Benefits Act, 1992* states that it is an offence for an employer to fail to remit all amounts that the employer is liable to remit. An employer is liable on summary conviction to a fine not exceeding $100,000. In addition, the court shall order the employer to pay all amounts that the employer is found liable to remit to the plan.

Where a corporation is guilty of an offence against the Act, an officer, director or agent of the

corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding $100,000, whether or not the corporation has been prosecuted or convicted for the offence.

## 9. Contact Information

For additional information please contact:

Financial and Consumer Affairs Authority of Saskatchewan
Pensions Division
Suite 601, 1919 Saskatchewan Drive
REGINA SK  S4P 4H2

Tel:   (306) 787-7650
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Web site:  www.fcaa.gov.sk.ca

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# Appendix – Specified plans

1. The Target Retirement Income Plan for the Regina Police Service
2. General Superannuation Plan for City of Saskatoon Employees Not Covered by the Police and Fire Departments' Superannuation Plan
3. Saskatoon Fire Fighters' Pension Plan
4. Saskatoon Police Pension Plan
5. Retirement Plan for Employees of City of Weyburn
6. Municipal Employees' Pension Plan
7. Pension Plan for the Non-teaching Employees of the Saskatoon Board of Education
8. Saskatchewan Healthcare Employees' Pension Plan
9. The Contributory Superannuation Plan for the Employees of Saskatchewan Government Insurance
10. Saskatchewan Research Council Employees' Pension Plan
11. Saskatchewan Teachers' Retirement Plan
12. Saskatchewan Telecommunications Pension Plan
13. Pension Plan for Employees of the Saskatchewan Workers' Compensation Board
14. Pension Plan for Academic and Administrative Employees of the University of Regina
15. The University of Regina Non-Academic Pension Plan
16. The Pension Plan for the Academic Employees of the University of Saskatchewan, 1974
17. University of Saskatchewan 1999 Academic Pension Plan
18. University of Saskatchewan and Federated Colleges Non-Academic Pension Plan