

Policy Bulletin #22
SERP Plans

Issued June 2002/Revised August 2006

This Bulletin has no legal authority. The Act and Regulation should be used to determine specific legislative requirements.

It addresses our policy regarding plan provisions being proposed for the purpose of providing benefits on a non-registered basis to employees whose benefits under a pension plan are limited by the rules for pension plans under the federal *Income Tax Act*. The plan sponsors, in some fashion, propose to use excess assets with respect to a defined benefit provision, defined in the *Employment Pension Plans Act* (the Act) as assets in excess of going-concern liabilities, to provide benefits in excess of the tax rule maximums under a Supplemental Employee Retirement Plan (SERP).

A number of alternative designs may be acceptable to the Superintendent of Pensions if the relevant criteria, set out below, are met. It should be emphasized that the Superintendent will review each plan amendment implementing SERP arrangements, and must be satisfied that the proposed amendment conforms in all respects to the Act, before approving SERP provisions. The criteria below must be met in order for the Superintendent to approve a SERP provision. As well, all proposed arrangements must meet the criteria set out under the federal tax rules. A plan design that meets the requirements of the Act cannot be assumed to meet the requirements of the tax rules. Plan sponsors and their advisors are strongly urged to determine Canada Revenue Agency requirements before finalizing amendments for submission to the Superintendent.

1. The benefit may be characterized either as a contingent benefit (contingent on the presence of excess assets with respect to the defined benefit provisions of the plan) or as an obligation under the plan.
2. The benefits may be funded either by transferring the excess assets into an RCA or by the periodic application of excess assets to fund the benefits. The Act does not apply to any further arrangements or promises that may be made to employees by the plan sponsor.

3. Under the Act, use of excess assets to deliver benefits via the SERP can be seen conceptually as a use of excess assets to improve benefits, as permitted in the *Employment Pension Plans Regulation* section 48(10)(b)(i), rather than a withdrawal of excess assets. This means there is no requirement for notification of plan members as would normally precede withdrawal.
4. Since the SERP's provision of benefits is not deemed under the Act to be a withdrawal by the employer, the Act does not require the retention of a "cushion" in the registered plan. It is strongly recommended, however, that a plan apply section 67 of the Regulation that requires the retention of a cushion with respect to a defined benefit provision where there is a withdrawal of excess assets by the employer.
5. The trust must not be restrictive; that is, ownership of excess assets must not be limited in such a way as to preclude its use to provide benefit enhancements for a subgroup of plan members.
6. Nothing in the pension plan document or trust document may preclude the adoption of a unilateral amendment implementing a SERP provision. If such a restriction exists, the plan beneficiaries must have consented to the amendment.
7. There must be full disclosure to plan members eligible for the benefit regarding the funding arrangement for their SERP benefits. This disclosure must set out the source or sources of funding, and state that the Act does not set funding standards with respect to benefits that are over and above the benefit maximums for Registered Pension Plans as restricted by the *Income Tax Act*.

The plan amendment establishing the SERP must be disclosed to plan members in the usual manner, in compliance with section 15(1)(a) of the Act (Revised Statutes of Alberta, Chapter E-8), which requires the administrator to inform plan members and beneficiaries of amendments to the pension plan.

For further information please contact:

Superintendent of Pensions
Alberta Finance
Room 402, 9515 - 107 Street
Edmonton, AB T5K 2C3

Telephone: (780) 427-8322
Fax: (780) 422-4283
Internet: www.finance.alberta.ca

For toll-free dialling within Alberta, call 310-0000 and then dial 780-427-8322.