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SECTION:	Amendments
INDEX NO.:	A400-500
TITLE:	Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Canada Revenue Agency of Registration of a Pension Plan - PBA ss. 14(1), 18(1), 26(1), 26(3), 26(4), 63(1) and 78(1) - Regulation 909 s. 47
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	Summer 1995 - PCO Bulletin 6/2
EFFECTIVE DATE:	June 26, 1995 [references updated - December 2009]

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*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Section 47 of Regulation 909 was amended effective October 28, 1994 by O. Reg. 665/94. The purpose of the amendment was the resolution of conflicts between the requirements of the PBA and the *Income Tax Act* (Canada) and the *Income Tax Regulations*, C.R.C., c.945 (ITA), respecting benefit reductions, refunds of member and/or former member contributions, and payments to an employer.

The federal Minister of National Revenue may revoke the registration of any pension plan that permits or provides for, on or after January 1, 1992, contributions or benefits that are in excess of the maximum limits established under the ITA. Subject to satisfaction of the evidence and notice conditions identified in this policy, sections 47(11) to 47(16) of the Regulation provide pension plans with exemptions from specific sections of the PBA.

Exemptions from sections 14(1), 63(1) and 78(1) of the PBA apply only to pension plans which continue to provide for contributions or benefits that are in excess of the maximum limits permitted under the ITA. Exemptions do not apply where a benefit reduction, a refund of contributions to members and former members, or a payment to an employer is needed to avoid any penalty under the ITA other than revocation of a plan's registration.

Exemptions from sections 14(1), 63(1) and 78(1) are not automatic. The administrator of the pension plan (administrator) must first submit evidence that an exemption is necessary to avoid revocation of a pension plan's registration by Canada Revenue Agency and notice of the benefit reduction, refund and/or payment, as applicable, to the Superintendent of Financial Services (Superintendent).

This policy identifies the documents the Superintendent will expect to receive from administrators. Information that is relevant to the exemptions is included under the following headings:

- Evidence and Notice to the Superintendent under sections 47(12), 47(14) and 47(16) of the Regulation
- Notice under section 26 of the PBA
- The Earliest Date a Pension Plan may be Administered as a Plan that is Eligible for an Exemption

**Evidence and Notice to the Superintendent under sections 47(12), 47(14) and 47(16) of the Regulation**

1. The following evidence that an exemption is required in order to avoid revocation of the pension plan's registration under the ITA must be provided no later than the date notice is provided to the Superintendent,
  - a) a copy of a letter from the Canada Revenue Agency which confirms that the plan is in a revocable position; and
  - b) where all of the following information is not provided in a), a letter from the administrator to the Superintendent which identifies, as applicable,
    - i) the specific benefit reduction and/or amount of refund or payment which is being made in order to avoid revocation of the plan's registration;
    - ii) the specific conflict between the plan document and the ITA which gives rise to the necessity to administer a pension plan as a plan that is eligible for an exemption;
    - iii) the provision(s) of the pension plan which do not comply with the ITA;
    - iv) how the amount of refund or payment requested was determined; and
    - v) a statement by the administrator that the amount of any refund or payment not identified in a) is the minimum amount required to avoid revocation of the plan's registration under the ITA.
2. Written notice of the administrator's intention to reduce benefits, refund contributions and/or make a payment to the employer, as applicable, must be submitted to the Superintendent 60 days before an amendment is effective, or a refund or payment is made.
3. Notice to the Superintendent should include,
  - a) the name of the pension plan;
  - b) the plan registration number;
  - c) the name of the person the Superintendent should contact regarding the submission;
  - d) the specific exemption being sought under section 47 of the Regulation;
  - e) confirmation that the evidence identified in section 1 of this policy is attached or has been submitted to the Superintendent (identify the date that evidence was submitted); and

- f) confirmation that any plan amendment required to provide for a reduced benefit, a refund of contributions to members and former members and/or a payment to an employer, as applicable, is attached or has been filed with the Superintendent (identify the date the amendment was filed).

**Notice under section 26 of the PBA**

1. An amendment that provides for a reduced benefit, a refund of contributions to members and/or former members and/or a payment to an employer to avoid revocation of registration of the pension plan under the ITA may be considered an adverse amendment within the meaning of section 26(1) of the PBA.
2. In accordance with section 26(4) of the PBA, the Superintendent need not require the transmittal of notices under section 26(1) of the PBA or by order may dispense with the notice required by section 26(3), or both,
  - 26(4)(a)** if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
  - (b) if the amendment has been agreed to by a trade union that represents the members; or
  - (c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

**The Earliest Date a Pension Plan may be Administered as a Plan that is Eligible for an Exemption**

1. A pension plan is not entitled to an exemption until 60 days from the date both notice and evidence are submitted to the Superintendent. Where the evidence submitted does not satisfy the Superintendent that the plan's registration is in a revocable position, a pension plan is not entitled to an exemption until a date specified by the Superintendent.
2. In accordance with section 18(1) of the PBA, the Superintendent may refuse to register an amendment or to revoke the registration of a pension plan that does not comply with the PBA and the Regulation.