

August 2, 2018

Via email: capsa-acor@fscs.gov.on.ca

CAPSA Secretariat
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

Dear Sirs/Mesdames:

Re: Draft Guideline No. 9: Searching for Un-locatable Members of a Pension Plan

Unifor welcomes the opportunity to provide feedback on draft guideline no. 9: Searching for Un-locatable Members of a Pension Plan. We commend CAPSA's efforts to develop guidelines on the duties of plan administrators in searching for un-locatable members, and simultaneously, we encourage further action toward a national solution.

Unifor is Canada's largest private sector union with over 315,000 members. Our union was formed in 2013 as a progressive social union. We participate in public policy discussions on a wide range of issues affecting Canadians, including the regulation of workplace pension plans and broader financial sector regulation.

Our members participate in pension plans in every regulatory jurisdiction in Canada. Additionally, our union acts as a pension plan sponsor (both jointly and solely) in pension plans across the country. Our organization encounters the challenges associated with un-locatable members in different circumstances. Like other stakeholders, we have observed that increased mobility in the labour market and the frequency of corporate transactions (acquisitions, mergers, and corporate restructuring) contribute to the number of un-locatable members in the country.

We regularly receive requests from members (active and retired) for assistance in locating accrued pension benefits earned with a former employer. An un-locatable pension plan member to an employer, could to the union, be a member who has lost contact with the administrator of their pension plan. In these instances, our union attempts to connect union members with the pension plan administrator.

We are also familiar with the nature of these challenges from the perspective of the plan sponsor. In some situations, pension plans are unable to fully wind-up due to the challenge associated with locating members who retain entitlements in the plan. There is also a significant administrative challenge associated with locating such members and the costs and time associated with these searches can delay and complicate pension plan administration.

In a recent submission to the Department of Finance, which is attached, we made a case for federal-provincial collaboration to establish a pan-Canadian registry. We invite CAPSA to play a role in supporting this initiative.

Building a Pan-Canadian Registry

CAPSA's consultations on Guideline no. 9 occur at the same time that the federal government consults on the establishment of a framework for unclaimed pension balances in the federal jurisdiction. Some provinces (Quebec, Alberta, and British Columbia) already have frameworks in place to address unclaimed pension balances.

We are supportive of CAPSA's guidelines on the responsibilities of pension plan administrators in finding un-locatable members. In our view, guideline no. 9 will be useful to some plan administrators. In particular, we are supportive of the proposal that administrators establish electronic registries on their websites where possible. In our experience, however, many plan administrators currently maintain records management policies and make use of some of the proposed options for conducting searches. While the guideline is helpful, our experience suggests that the most effective solution would be to establish a national registry. By way of overview, here is a summary of our views on the benefits of a national solution:

1. A coordinated pan-Canadian approach offers the most effective avenue for addressing an issue that affects pension plan members and administrators across the country. CAPSA can begin discussions on integrating and harmonizing regulatory policies and guidelines across provincial jurisdictions. And, as a start, Alberta, British Columbia, and Quebec could consider options for transferring their unclaimed personal property registry service to the Bank of Canada. Other provinces would have an opportunity to participate in the initiative.
2. The current arrangement is ineffective, in part, because of the absence of coordination and resource sharing. If a national registry is established in coordination with the Bank of Canada, there would be an opportunity to collaborate with other federal departments to share data. Employment and Social Development Canada (ESDC), as an example, has indicated that 99% of Canadians eligible for a benefit from the Canada Pension Plan receive such benefit. And, a similar analysis by ESDC indicates that the take-up rate for the OAS pension is similarly high at 97%. A national database could be cross-referenced with databases of federal departments to the benefit of un-locatable members.
3. An opportunity exists to expand this service to incorporate other retirement savings vehicles. In addition to registered workplace pension plans, a national registry could incorporate unclaimed balances of un-locatable members of Registered Retirement Savings Plans and Tax-Free Savings Accounts held by financial institutions. While the regulatory authorities that participate in CAPSA do not regulate these vehicles, should CAPSA take the lead in establishing a pan-Canadian solution for workplace pension plans, there would be an opportunity to expand the service to other related financial products.

4. There is a significant opportunity to reduce administrative burdens on pension plan administrators. Plan administrators have a fiduciary duty to ensure that pension plan beneficiaries are paid their benefits. Meeting this obligation for un-locatable members can be onerous and delay pension plan wind-ups. OSFI reports that there are over 500 unclaimed pension balances in terminated plans in the federal jurisdiction. Twenty-five percent (25%) of these plans are prevented from fully winding-up due to the remaining unclaimed pension balances of un-locatable members.

Provincial Electronic Registry

In addition to providing guidance on conducting searches for un-locatable members and working toward a national registry, there are interim steps that can be taken at the provincial level. In Ontario, as announced in the 2017 Ontario budget, the superintendent of pensions will need to establish and operate an electronic registry of un-locatable members. Provincial registries would centralize information on un-locatable members in the interim and could be transferred to a national registry in the future.

We encourage CAPSA to advantage of its opportunity to play a role in developing a national registry.

Unifor appreciates the opportunity to share our recommendations and proposals with your organization.

Sincerely,



Jerry Dias
National President

JD:sb cope343

Unifor Response to the Review of the Federal Financial Sector Framework, Second Consultation Paper

**Submitted to the Department of
Finance Canada**

September 26, 2017

We welcome this opportunity to provide comments in respect of the second stage of the review of Canada's federal financial institutions and the assessment of potential opportunities for future policy measures. We appreciate that various stakeholders have previously provided comments around positioning the federal financial services sector in Canada for the future.

The Review of the Federal Financial Sector Framework consultation paper at page 24 of the Annex invites comments on whether to modernize the process of administering unclaimed balances, including the type of unclaimed balances that should be transferred to the Bank of Canada as the designated federal custodian. The Annex does not expressly include unclaimed registered pension plan (RPP) benefits as part of the consideration of the Bank of Canada role in respect of "unclaimed balances", but we would strongly support including any benefit accrued to a RPP beneficiary within the definition of an "unclaimed balance".

Unifor negotiates workplace pension plans across Canada for the purpose of achieving a financially secure and adequate retirement income for our members. Unifor was formed in 2013 as a new union from the merger between the Communications Energy and Paperworkers (CEP) union and the Canadian Auto Workers (CAW) union. Unifor is now the largest union in the private sector with 315,000 members across Canada.

We fully appreciate that every reasonable measure should be employed to ensure pension plan beneficiaries are provided with their entitlements and that to the extent possible plan beneficiaries communicate with the pension plan administrator any change in mailing address and status that pertains to their benefit.

Ensuring a registry for "unclaimed balances"

In particular we wish to comment on and endorse the potential policy measure included in the Annex to the consultation document of a more targeted nature of extending the "unclaimed balances" practices of the Bank of Canada to include registered pension plan (RPP) benefits.

We appreciate that when there has been no account holder activity in relation to any balance for a period of 10 years, and the institution holding the asset or balance cannot contact the account holder, the account balance is turned over to the Bank of Canada as custodian on behalf of the account holder.

Thereafter, the Bank of Canada holds such unclaimed balances of less than \$1,000 for a further 30 years (in addition to the previous 10 years of account inactivity at the financial institutions). Larger balances of \$1,000 or more are held for 100 years once they are transferred to the Bank of Canada. Any balance remaining unclaimed at the end of this prescribed period of custody is transferred by the Bank of Canada to the Receiver General for Canada.

The need for a federal custodian and registry

There is a substantial precedent for the Bank of Canada as it serves as the repository of any unclaimed account (savings account or chequing/current account), deposit (credit card balance, term deposit, guaranteed investment certificate (GIC) or depository receipt) or negotiable

instrument (bank draft, certified cheque, official cheque, money order or a traveller's cheque) held or issued by a federally regulated bank or trust company.

Indeed, at the end of December 2016, approximately 1.8 million unclaimed balances, worth some \$678 million, were being held by the Bank. The bulk of the unclaimed balances - over 93 per cent - were under \$1,000 and represented 26 per cent of the total value outstanding. In 2016, the Bank only paid out \$15 million (or 2.2 per cent of unclaimed balances) to balance holders. Given the magnitude of unclaimed balances being transferred to the Receiver General for Canada, there ought to be no consideration of administering such a broader program that included pension/retirement savings accounts on a cost-recovery basis.

However, if the services provided by the Bank of Canada were more narrowly limited to locating missing beneficiaries based on cross-reference access to Canada Revenue Agency data; or to Service Canada data files for Old Age Security and Canada Pension Plan recipients, a stronger argument exists for cost-recovery or fees to administer such a registry or search service on behalf of third parties seeking to locate missing beneficiaries.

There remains however a compelling argument to permit RPPs to surrender assets associated with missing beneficiaries, especially in situations involving pension plan windups to provide a measure of finality and closure without adversely impacting on the beneficiaries' entitlements.

The need for federal-provincial collaboration

The federal jurisdiction is also a logical platform for unclaimed balances in respect of RPP benefits as these are benefits governed by the provisions of the *Income Tax Act*, and complimentary to other employment-based pension entitlements such as the Canada Pension Plan. In 2012 we understand that 99.7 per cent of men and 99.6 per cent of women eligible for a CPP retirement pension were in receipt of such a pension¹. This indicates that Employment and Social Development Canada (ESDC) has an existing capacity to identify and locate beneficiaries who are also in receipt of CPP pensions arising from their employment.

This would be further amplified as ESDC also administers our universal social security benefits: the Old Age Security (OAS) and Guaranteed Income Supplement (GIS) programs. Operating these programs further enhances the ESDC capacity to identify beneficiaries of unclaimed RPP benefits. A similar evaluative study² of the OAS program indicated the scope of beneficiaries is near-universal as almost all eligible seniors aged 65 or older receive OAS benefits. The ESDC analysis indicated that the OAS pension take-up rate had remained stable at around 97 percent of all eligible resident of Canada over the course of ten years (1996 to 2006).

Administering the existing federal CPP pension and OAS/GIS social security programs (as well as the *Income Tax Act*) and issuing the Social Insurance Number (SIN) that is needed to work in Canada or to have access to federal government programs and benefits does predispose the

¹ <https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/2016-summative-cpp-retirement-pension-survivor-benefits.html>

² http://publications.gc.ca/collections/collection_2012/rhdcc-hrsdc/HS28-203-2012-eng.pdf

federal jurisdiction and ESDC working in conjunction with the Bank of Canada as the logical site or mandated host for the pan-Canadian registry and repository for unclaimed RPP benefits.

Cooperation with Provincial Counterparts

However, we also recognize that pension regulation is a shared jurisdictional undertaking and several provincial jurisdictions have enacted unclaimed personal property legislation. There are there 3 provinces with unclaimed property legislation³, albeit governing a varied mix of personal assets.

British Columbia provides for a voluntary transfer of unclaimed property to the BC Unclaimed Property Society so that it can be claimed by its rightful owners including trust funds, insurance policies, brokerage accounts, closed pension plans and other organizations as provided under the *Unclaimed Property Act*. The Society maintains a searchable database allowing the public to identify whether unclaimed funds are held in their name. There is no limitation period to claim funds from the Society and no cost for the service.

Alberta enacted the *Unclaimed Personal Property and Vested Property Act* in 2008 to establish a registry service to Albertans who have lost track of property as a result of business or personal circumstances. The provincial registry is administered by the Alberta Treasury Board and Finance, Tax and Revenue Administration (TRA) and holds property in trust for 10 years while providing a searchable directory for unclaimed property, including RRSP and RRIF balances (although major specified public sector pensions are exempt from the application of the Act).

Québec enacted unclaimed property legislation in 1999 under the *Unclaimed Property Act*. Pension plans holding financial assets as defined as ‘holders’ as well as insurance companies, trust companies, mutual fund and other investment dealers. The registry list of eligible financial assets includes unclaimed pension or retirement plan proceeds which are designated as unclaimed after a period of 3 years prior to being entered into the register of unclaimed property if exceeding the minimum threshold property value of \$100.

Apparently Ontario has studied this matter for some period of time and is preparing to finally act. As noted in the 2017 Ontario Budget, has instructed the Superintendent of Pensions to develop policy to direct plan administrators on the necessary steps to locate missing plan beneficiaries and to further consider options such as a missing beneficiary registry, as well as options to protect the benefits of missing beneficiaries on the wind-up of pension plans⁴.

Building a pan-Canadian registry

While other provincial jurisdictions have considered similar unclaimed property registries, it remains the case that there is no centralized pan-Canadian registry or service available and accessible to all Canadian residents that is tasked with providing such services beyond the Bank

³ <http://www.cbc.ca/news/canada/unclaimed-assets-of-5b-await-canadians-expert-says-1.3140196>

⁴ <http://www.fin.gov.on.ca/en/budget/ontariobudgets/2017/ch3.html#ch327>

of Canada which as noted earlier serves as the legal custodian for unclaimed balances held or issued by a federally regulated bank or trust company outside any provincial jurisdiction.

For the majority of provincial jurisdictions, finding ‘non-locatable’ members and unclaimed benefits are increasingly onerous and expensive fiduciary obligations for pension plan administrators, relying on private fee-for-service search firms to locate missing members. Invariably such searches devolve to relying on public resources including vital statistics registries. Given that similar circumstances may occasion a missing bank account balance or pension benefit, such as migration or transience in employment and/or residence, the Bank of Canada is ideally suited to extend its mandate to include unclaimed RPP benefits.

In view of the considerable amount of assets never claimed, we would propose that the Bank of Canada be enabled to proactively access the various federal data sources and registries to provide an integrated search well as an accessible on-line searchable registry that residents across Canada may access, including existing provincial registries if they remain operational.

We would also propose that the federal government collaborate with the Canadian Association of Pension Supervisory Authorities (CAPSA) and these provincial jurisdictions in developing a coordinated and integrated pension registry system in Canada. We understand that CAPSA is also presently examining this issue of “un-locatable” or missing pension plan members and reviewing national and international practices of various jurisdictions.

We support a coordinated pan-Canadian approach that integrates and harmonizes regulatory policies and guidelines across provincial jurisdictions in regards to the legal and fiduciary obligations on pension plan administrators to proactively locate missing plan members. We recommend enabling the Bank of Canada to engage in discussions with Alberta, British Columbia and/or Quebec with a view to transferring the unclaimed personal property registry service to the Bank of Canada; or in the alternative jointly hosting such shared registry data.

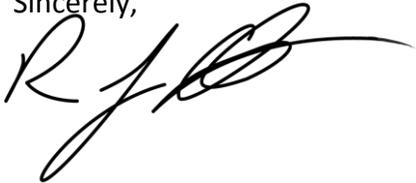
We believe there is a broad multi-party consensus within the pension industry around the benefits of a single public registry or domain where missing beneficiaries could be listed and to which assets could be transferred. Given that most federally-regulated financial services institutions such as banks and trust companies are directly involved in providing custodial services as well as participant record-keeping services to pension trust funds, whether they are defined benefit plans or capital accumulation plans, a registry at the federal level is imminently practical.

It is these institutions that are properly the ‘fund holder’ – the financial institution or party retained by the plan sponsor and/or administrator to hold the pension fund’s assets in accordance with the terms of the fund holder agreement(s), the requirements of applicable federal and provincial legislation and the express terms of the pension plan. These same institutions also serve as ‘custodians’ – holders of some or all of the pension fund’s assets pursuant to an agreement with the fund holder.

Such a role for the Bank of Canada as a repository and registry for unclaimed balances would ensure an efficient financial sector and provide a valued social function in seeking to unite residents in Canada with their unclaimed property accrued in RPP and other retirement savings vehicles. We submit that it is timely to both modernize and expand the administration of unclaimed balances and other forms of personal property, including pension benefits by extending the scope of “unclaimed balances” to include pensions and to designate the Bank of Canada as the entity for receiving, holding and disbursing any unclaimed pension benefit of any beneficiary who cannot be located after exhausting the obligations under federal or provincial pension statutes and regulations.

We are appreciative of your consideration of our recommendations and proposals and extend an ongoing offer to clarify or expand on any particular issues or matters raised in this consultation.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. J. Orr', with a long, sweeping horizontal stroke extending to the right.

ROBERT J. ORR
National Secretary-Treasurer

RJO:CV:nmcope343