

Draft Regulations

Draft Regulation

Supplemental Pension Plans Act
(chapter R-15.1)

Exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act

—Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation is to harmonize the provisions of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), regarding flexible pension plans, with the tax rules and, regarding member-funded pension plans, with the provisions in force of the Supplemental Pension Plans Act (chapter R-15.1) and the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6).

More specifically, the draft Regulation includes the following measures:

—regarding flexible pension plans:

–subjecting every flexible pension plan to the provisions of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act;

–providing for the refund out of the pension fund of optional ancillary contributions not converted into optional ancillary benefits;

–allowing the conversion of optional ancillary contributions after payment of the pension began;

—regarding member-funded pension plans:

–allowing the benefits of certain members and beneficiaries affected by the withdrawal of their employer to be maintained in the plan if certain conditions are met;

–forcing the settlement of benefits of the members and beneficiaries maintained in the plan if the criteria determined by the plan’s funding policy are met;

–simplifying the process of amendments related to pension indexation;

–simplifying the withdrawal process of an employer and the termination process of a plan;

–adding a transfer option to a locked-in retirement vehicle;

–providing that the terms and conditions related to the appropriation of surplus assets must be mentioned in the plan text;

–eliminating the conditions under which the plan can have annuities insured by an insurer, but prohibiting the purchase of buy-out annuities pursuant to an annuity purchasing policy;

–imposing an actuarial valuation of the plan as at 31 December 2024;

–harmonizing the provisions with those of the Supplemental Pension Plans Act concerning the amortization period of deficiencies, the degree of solvency applicable for the payment of benefits, the time limit for the invitation to attend the annual meeting and the transfer, partition and seizure of benefits.

The draft Regulation also includes the following measures:

–raising the number of plan members and beneficiaries from 26 to 51 under which the employer may serve as pension committee, if the plan text so provides;

–providing for the exemption from the financial report audit for every plan whose market value of the assets is lower than \$5 million, regardless of the number of plan members and beneficiaries.

The draft Regulation has no impact on enterprises, including small and medium-sized businesses.

Further information on the draft Regulation may be obtained by contacting Stéphane Gamache, Retraite Québec, Place de la Cité, 2600, boulevard Laurier, 5^e étage,

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Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to René Dufresne, President and Chief Executive Officer of Retraite Québec, Place de la Cité, 2600, boulevard Laurier, 5e étage, Québec (Québec) G1V 4T3. The comments will be forwarded by Retraite Québec to the Minister of Finance, who is responsible for the administration of the Supplemental Pension Plans Act.

ERIC GIRARD
Minister of Finance

Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act

Supplemental Pension Plans Act
(chapter R-15.1, s. 2, 2nd par.)

1. The Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7) is amended in section 1 by replacing “25” in the part preceding subparagraph 1 of the first paragraph by “50”.

2. Section 5 is amended by replacing “25” by “50”.

3. Division III, including sections 7 and 7.1, is revoked.

4. Section 8 is amended by replacing “third paragraph of section 98” in the text concerning provisions related to transfers of benefits and assets by “fourth paragraph of section 98”.

5. Section 10 is amended in the first paragraph

(1) by replacing “those rates are compiled monthly by Statistics Canada and published in the Bank of Canada Banking and Financial Statistics in series V122515 in the CANSIM system” in subparagraph 5 by “those rates are those referred to in the third paragraph of section 39 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6)”;

(2) by replacing “third paragraph of section 98” in subparagraph 5.1, subparagraphs *a* and *b* of subparagraph 6 and subparagraph 12 by “fourth paragraph of section 98”.

6. Section 13 is amended by replacing “third paragraph of section 98” by “fourth paragraph of section 98”.

7. Section 16.1 is revoked.

8. The heading of Division V is amended by replacing “LA VÉRIFICATION” in the French text by “L’AUDIT”.

9. Section 20 is amended

(1) by replacing “la vérification du rapport financier prévue” in the part preceding subparagraph 1 of the first paragraph of the French text by “l’audit du rapport financier prévu”;

(2) by replacing subparagraph 3 of the first paragraph by the following:

“(3) a pension plan having net assets of a market value of less than \$5 000 000.”;

(3) by replacing the second paragraph by the following:

“The pension committee that, for a fiscal year subsequent to its first, intends to avail itself of such a dispensation referred to in subparagraph 3 of the first paragraph must inform the members and beneficiaries during the annual meeting.”.

10. Division VI, including sections 21 to 25.6, is revoked.

11. Section 26 is amended

(1) by striking out “or defined benefit-defined contribution”;

(2) by replacing “the requirements set forth in Bulletin 96-3, dated 25 November 1996, entitled “Flexible Pension Plans” published by Registered Plans Directorate of Canada Revenue Agency” by “Canada Revenue Agency’s requirements respecting flexible pension plans”;

(3) by replacing “in the said Bulletin” by “by the said Agency”.

12. Section 28 is replaced by the following:

“**28.** The following special modifications apply regarding optional ancillary contributions:

(1) the provisions of section 47 of the Act apply to the provisions until they are converted into optional ancillary benefits or refunded;

(2) the provisions of section 83 of the Act apply provided that the member is entitled, from the date on which a pension begins to be paid to the member under the plan, to purchase optional ancillary benefits, whose value is determined in accordance with section 33 with the contributions and accrued interest, or to a refund of those contributions and that interest;

(3) the provisions of the first paragraph of section 86 and subparagraph 2 of the first paragraph of section 98 of the Act apply without taking into account optional ancillary contributions not converted into optional ancillary benefits before the date of death, the date on which the member ceased to be an active member or the date of the transfer application so that the contributions are refunded, as the case may be, pursuant to the second paragraph of section 86 or subparagraph 1 of the first paragraph of section 98 of the Act.”

13. Section 29 is amended

(1) by replacing subparagraph 3 of the first paragraph by the following:

“(3) the right to the refund of optional ancillary contributions that the member has paid that have not been converted into optional ancillary benefits, as well as the conditions and time periods applicable to the refund.”;

(2) by striking out “exempted from the application of certain provisions of the Supplemental Pension Plans Act” in the second paragraph.

14. Sections 30 to 32 are revoked.

15. Section 33 is replaced by the following:

“**33.** The provisions of section 67.4 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) apply to the calculation of the value of optional ancillary benefits.

The plan may provide that the value referred to in the first paragraph is calculated using, for the purposes of standards of practice referred to in that section, the average of the rates for the 24 calendar months preceding the calculation date rather than the rate applicable to the calendar month preceding that date.”

16. Section 35 is amended

(1) by inserting the following after paragraph 1:

“(1.1) the optional ancillary contributions converted into optional ancillary benefits during the fiscal year;

(1.2) the optional ancillary contributions that were subject to partition or a transfer of the member’s benefits or seizure for non-payment of support during the fiscal year;

(1.3) the member’s optional ancillary contributions balance account at the ending date of the fiscal year;”;

(2) by replacing paragraph 3 by the following:

“(3) where the circumstances warrant and at least once every 3 years, the optional ancillary contributions at the ending date of the fiscal year that could not be converted into additional optional benefits by supposing that the member ceased to be an active member on that date and that the optional ancillary contributions were converted at the optimum value of the options available under the plan.”

17. Section 35.1 is amended

(1) by replacing paragraph 2 by the following:

“(2) where a member is entitled to a deferred pension:

(a) the optional ancillary contributions entered separately in the member’s account during the fiscal year concerned and, since the member has joined the plan, the total of the contributions accrued with interest at the end of the fiscal year;

(b) the optional ancillary contributions converted into optional ancillary benefits during the fiscal year;

(c) the optional ancillary contributions that were subject to partition or a transfer of the member’s benefits or seizure for non-payment of support during the fiscal year;

(d) the member’s optional ancillary contributions balance account with interest accrued at the ending date of the fiscal year;”;

(2) by replacing paragraph 3 by the following:

“(3) where the circumstances warrant and at least once every 3 years, the optional ancillary contributions at the ending date of the fiscal year that could not be converted into additional optional benefits by supposing that the member exercised his or her transfer right on that date and that the optional ancillary contributions are converted at the optimum value of the options available under the plan.”

18. Section 35.2 is revoked.

19. Section 36 is amended

(1) by replacing “in paragraphs 1 and 2” in paragraph 1 by “in paragraphs 1 to 2”;

(2) by replacing paragraph 2 by the following:

“(2) where the circumstances warrant, the optional ancillary contributions at the date on which the member ceased to be an active member that could not be converted into optional ancillary benefits by supposing that the optional ancillary contributions are converted at the optimum value of the options available under the plan.”.

20. Section 37 is replaced by the following:

“37. For the purposes of section 36.1 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6), a member’s aggregate benefits include optional ancillary contributions not converted into optional ancillary benefits and are treated as capital benefits.”.

21. Section 38 is revoked.

22. Section 64.1 is revoked.

23. Section 65 is replaced by the following:

“65. This division refers to a pension plan called a “member-funded pension plan”, a defined-benefit pension plan, which has the following characteristics:

(1) the plan’s commitments, less the employer contribution fixed in the plan, are borne by the plan’s active members;

(2) the employer contribution is limited to the contribution stipulated in the plan;

(3) on 1 January of each year, the plan provides for an assumption for the indexation of pensions before and after retirement of all the plan’s members and beneficiaries according to the increase in the seasonally unadjusted All-items Consumer Price Index for Canada, published by Statistics Canada for each month during the 12-month period ending on 31 December of the preceding year; the indexation rate cannot be less than 0% or more than 4%;

(4) the cap on the plan’s degree of solvency for the purposes of the payment of the value of benefits does not apply;

(5) only the members and beneficiaries are entitled to the surplus assets, unless the tax rules require that the employer be relieved from paying the employer contributions through appropriation of all or part of the plan’s surplus assets;

(6) surplus assets are allocated as a priority to the indexation of pensions, in accordance with subdivision 11 of this division;

(7) the plan may not be amended or terminated, directly or indirectly, unilaterally by an employer that is a party to the plan or, in the case of a multi-employer pension plan, even not considered as such under section 11 of the Act, by all the employers that are party to the plan or by one of them.”.

24. Section 66 is amended by replacing the part preceding paragraph 1 by the following:

“66. A member-funded pension plan cannot be”.

25. The following is inserted after section 66:

“66.1. A member-funded pension plan cannot contain provisions which, in a defined-benefit pension plan, are identical to those of a defined-contribution plan.

66.2. The provisions of the Act apply to member-funded pension plans with the exclusions and adaptations provided for in this division.

In the event of incompatibility, the provisions of this division prevail.”.

26. The following is inserted before section 67:

§2. *Establishment, amendment and registration”.*

27. Subdivisions 2 and 3 of Division X, including sections 68 to 95, are replaced by the following:

“68. A member-funded pension plan may be established only if the eligible employees consent to the obligations incumbent on them under the plan.

Likewise, a plan amendment resulting in an increase in member contributions may be made only if the members subject to the increase consent to it, unless the amendment

(1) has been made mandatory by a new legislative or regulatory provision giving no latitude;

(2) results from the withdrawal of an employer referred to in section 199 or 199.1 of the Act or the cessation of eligibility considered a withdrawal of an employer pursuant to section 123;

(3) involves the appropriation of surplus assets and meets all the terms and conditions provided for under the plan;

(4) is referred to in section 97.

Approval in writing of the plan's establishment or amendment by an accredited association constitutes consent, as the case may be, of the eligible employees or the members concerned that it represents.

For the employees eligible for membership under the plan or the members concerned by the amendment to the plan who are not represented by such an association, their consent is deemed obtained if less than 30% of them are opposed to the plan's establishment or amendment, as the case may be.

Sections 146.4 and 146.5 of the Act apply, with the necessary modifications, to the consultation required to obtain consent.

The notice referred to in section 146.4 of the Act must, in the case of the plan's establishment, mention that the cost of the plan's commitments, less the employer contribution, is borne by the plan's active members, that the members and beneficiaries' pensions may be indexed provided that the plan remains fully funded and that the assets determined upon plan termination are entirely allocated to the plan's members and beneficiaries.

69. The plan text must indicate, in addition to the information required under the second paragraph of section 14 of the Act, except for the information referred to in subparagraph 9.1 of the second paragraph and the information related to the appropriation and allocation of surplus assets referred to in subparagraphs 16 to 18 of the second paragraph of that section,

(1) the characteristics referred to in paragraphs 1 to 6 of section 65;

(2) the terms and conditions for the indexation of pensions provided for under the plan's funding method;

(3) that the assets determined upon termination of the plan are entirely allocated to the plan's members and beneficiaries, proportionately to the value of their benefits on a solvency basis;

(4) the person or body that is empowered to terminate the pension plan and under what conditions;

(5) the rules used to determine the date of withdrawal of an employer party to the plan;

(6) in the case of a plan that meets the requirements of section 105, that the benefits of members and beneficiaries affected by the withdrawal of an employer party to the plan whose pension is paid on the date of withdrawal or who

would have been entitled to payment of a pension if they had applied for it on that date may be maintained in the plan if, according to the criteria established by the funding policy, such maintenance of benefits is permitted.

The conditions and procedure for appropriating surplus assets that must be mentioned in the plan text are those established in accordance with the provisions of subdivision 11 of this division.

70. The notice required under section 16 of the Act, where a pension plan becomes effective before it is registered with Retraite Québec, must indicate that the plan is a member-funded pension plan.

71. The application for registration referred to in section 24 of the Act must be accompanied by an attestation that the consents required under section 68 have been obtained and that they can be provided to Retraite Québec on request.

72. Registration of a member-funded pension plan requires that the report referred to in subparagraph 1 of the first paragraph of section 118 of the Act shows that the pension plan is fully funded and solvent on the date it comes into force.

Registration of an amendment to such a plan, except for an amendment referred to in subparagraph 1 of the second paragraph of section 68, requires that the report referred to in subparagraph 4 of the first paragraph of section 118 of the Act shows that the plan, once the commitments resulting from the amendment are taken into account, remains fully funded and solvent at the date of the actuarial valuation or remains fully funded at that date if it is an amendment referred to in section 112.

§3. Contributions

I. — Member contribution

73. In the case of a member-funded pension plan, the contribution payable referred to in section 39 of the Act, less the employer contribution stipulated in the plan, is borne by the active members.

All contributions that an active member is required to pay under the first paragraph are considered as member contributions.

74. Member contributions are paid in equal instalments, at the frequency provided for under the plan. The instalments may represent an hourly rate or a rate of remuneration. The rate must be uniform unless it is established by reference to a variable authorized by Retraite Québec.

Where member contributions are not determined at the beginning of the fiscal year, the member must continue to pay fixed contributions for the preceding year. Any variation in the amount of payments established by an actuarial valuation of the plan takes effect on the date on which the fiscal year begins following the first fiscal year for which the contribution is calculated.

II. — *Employer contribution*

75. The provisions of the second paragraph of section 41 of the Act apply to the monthly payments of every employer contribution to member-funded pension plans, whatever the type.

Adjustments to the monthly payments of employer contributions provided for in the fourth paragraph of section 41 of the Act do not apply.

76. Sections 42.1 and 42.2 of the Act do not apply to member-funded pension plans.

III. — *Voluntary contribution*

77. Voluntary contributions are, until retirement, credited to an account from which all other types of contributions are excluded.

IV. — *Special payments*

78. No special improvement payment or special annuity purchasing payment may be established under a member-funded pension plan.

§4. *Refunds and pension benefits*

79. Sections 60 and 61 of the Act do not apply to benefits acquired under a member-funded pension plan.

The value of benefits accrued under a member-funded pension plan must be determined at the date of vesting of the benefits, on the basis of the actuarial assumptions determined under Division VIII.1 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6).

Such value is, for the purposes of the Act, in particular for the transfer of benefits, substituted for the value of the member's benefits that would otherwise be determined pursuant to section 61 of the Act.

80. For the purposes of the Act, a reference to the actuarial assumptions referred to in section 61 of the Act constitutes a reference to the actuarial assumptions referred to in the second paragraph of section 79.

Despite the foregoing, to determine the additional pension referred to in section 84 of the Act or a pension referred to in section 105 of the Act purchased with amounts transferred, the assumptions to be used are those used in verifying the funding of a plan for the purposes of its most recent actuarial valuation.

81. In order to establish the amount of the early benefit referred to in section 69.1 of the Act, the value of the member's benefits under the plan is the value assigned to the member's benefits for the purposes of their payment by supposing that the member ceases to be an active member and exercises his or her right to the refund or transfer of his or her benefits on the date on which the member applies for the payment of the benefit.

82. Section 78 of the Act related to contributions paid during the postponement period of a pension does not apply to member-funded pension plans.

83. Despite subparagraph 2 of the first paragraph of section 93 of the Act, the option of replacing the pension with a pension the amount of which is increased periodically according to an index or at a rate cannot be offered under a member-funded pension plan.

84. Despite the second paragraph of section 5 of the Act, the plan may not contain provisions that are more advantageous than those contained in this subdivision.

§5. *Transfer of benefits and assets*

85. Despite section 101 of the Act, the conditions set out in section 107 for the payment of the benefits of members and beneficiaries apply to the payment of transferred amounts.

86. A member-funded pension plan cannot be the subject of a general agreement referred to in section 106 of the Act.

87. Any amount transferred in the pension plan must, on the date of the transfer even otherwise than under Chapter VII of the Act, be converted, on the basis of the actuarial assumptions used to measure the funding of the plan for the purposes of the most recent actuarial valuation of the plan, into a normal pension amount.

The value of benefits transferred to another plan is determined in accordance with the second paragraph of section 79.

§6. *Transfer of benefits between spouses*

88. For the purposes of partition or the transfer of a member's benefits or the seizure of such benefits for non-payment of support, the most recent degree of

solvency of the plan referred to in the fourth paragraph of section 143 that precedes the date of their valuation must be taken into account in determining the value of the member's benefits.

§7. *Information to members*

I. — *Documents*

89. The summary of a member-funded pension plan must include the following instead of the particulars referred to in subparagraphs 1 and 6 of the first paragraph of section 56.1 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6):

(1) that the members' and beneficiaries' pensions under the plan may be indexed only if the plan is fully funded;

(2) that the assets determined upon termination of the plan are entirely allocated to the members and beneficiaries whose benefits were not paid before the date of termination.

It must also indicate

(1) that the plan is exempted from several provisions of the Act;

(2) that the plan's commitments, less the employer contribution, are borne by the plan's active members.

90. In all statements of benefits, member contributions are mentioned without stating whether they are service contributions or amortization payments.

In addition, the information to be included must be established by taking into account the following characteristics of member-funded pension plans:

(1) the provisions of section 60 of the Act do not apply;

(2) the plan's degree of solvency referred to in section 143 of the Act cannot be capped;

(3) the rules provided for in section 146 of the Act do not apply;

(4) the indexation of pensions can only be included in an amendment resulting from the appropriation of surplus assets.

91. To establish the second part of the annual statement referred to in section 112 of the Act and sent to a member or beneficiary, the provisions of the first paragraph of section 59.0.2 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) apply, in accordance with the following rules:

(1) the degree of funding referred to in subparagraph 1 must be given with and without the indexation referred to in section 99;

(2) the maximum amount of surplus assets that can be used under subparagraph 2 is the amount established in accordance with the second paragraph of section 111;

(3) the share of the surplus assets used under subparagraph 5 is the amount established in accordance with the second paragraph of section 111.

II. — *Annual meeting*

92. If the plan allows the benefits of members and beneficiaries affected by the withdrawal of an employer party to the plan to be maintained in the plan, the following subjects must be on the agenda of the annual meeting, in addition to those referred to in section 61.0.11 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6):

(1) the main risks associated with such maintenance of benefits;

(2) the measures taken during the last fiscal year of the plan to manage these risks.

§8. *Funding*

I. — *General provisions*

93. An actuarial valuation referred to in subparagraph 2 of the first paragraph of section 118 of the Act must be carried out at the ending date of the plan's fiscal year.

An actuarial valuation related to the appropriation of surplus assets under subdivision 11 of this division must be carried out at the ending date of the fiscal year preceding the fiscal year during which the surplus assets were appropriated.

An actuarial valuation referred to in the second paragraph of section 118 of the Act must be carried out at the ending date of the plan's fiscal year. To determine whether or not an actuarial valuation is required, the funding level to be used is the one established without taking into account the assumption for indexation of the pensions referred to in section 99.

Despite the third paragraph of section 118 of the Act, any actuarial valuation of a member-funded pension plan must be complete.

94. The report related to an actuarial valuation of the plan must include, in addition to the requirements of subdivision 3 of Division I of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6), the funding level referred to in paragraph 5 of section 5 of that Regulation with and without the assumption for indexation of the pensions referred to in section 99.

It must also include, instead of the information referred to in subparagraphs 6 and 7 of the first paragraph of section 6 of the Regulation, the member contribution provided for in the plan, if it is higher than the contribution provided for in section 73, and the description of the variation in the contribution resulting from the application of the second paragraph of section 74.

In addition, member contributions must be mentioned therein without stating whether they are service contributions or amortization payments.

95. If the plan allows the benefits to be maintained in the plan in the case of the withdrawal of an employer or has benefits maintained in the plan, all reports related to an actuarial valuation of the plan must indicate the criteria established by the funding policy, in accordance with section 105 and determine, at the date of the actuarial valuation, whether such maintenance of benefits may be offered in the case of withdrawal of an employer and if wound-up benefits, in accordance with subdivision 13 of this division, must be maintained in the plan, where applicable.

96. For the purposes of the report related to an actuarial valuation referred to in subparagraph 5 of the first paragraph of section 118 of the Act, the maximum amount of surplus assets that can be used under the first paragraph of section 11.1 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6), is the amount established in accordance with the second paragraph of section 111, and the amount of the surplus assets that are expected to be used and the conditions for their appropriation are those determined in accordance with subdivision 11 of this division.

97. No more than 30 days after the date of the report on the actuarial valuation, the pension committee must inform the active members of any ensuing change to the member contribution. To do so, a notice is sent to each accredited association representing members, as well as to each member not represented by such an association, informing them that the change will take effect without further consultation according to the conditions provided for in the second paragraph of section 74.

Despite the foregoing, a pension plan may provide that the active members can elect to have the pension credit adjusted in lieu of a change to the member contribution. In

such a case, the notice provided for in the first paragraph must indicate that the members must express their opinion on the proposed change to the member contribution and that the pension credit is to be adjusted accordingly for each accredited association or each group of unrepresented members that does not accept the proposal. The rules provided for in sections 146.4 and 146.5 of the Act apply to the consultation, with the necessary modifications.

The amendments to be made to the plan further to the decision of the active members are made without further consultation.

II. — *Funding*

98. Member-funded pension plans are exempt from the obligation referred to in section 125 of the Act to establish a stabilization provision.

99. The funding method referred to in section 126 of the Act must include the assumption for the indexation of pensions established in accordance with the plan's funding rules.

100. All funding deficiencies must be established without taking into account the assumption for the indexation of pensions provided for in section 99.

101. An improvement unfunded actuarial liability cannot be established in a member-funded pension plan, with the exception of an amendment referred to in subparagraph 1 of the second paragraph of section 68.

102. Despite section 137 of the Act, the amortization amounts to be paid for an unfunded actuarial liability for all or part of each of the pension plan's fiscal years included in the amortization period may be distributed according to the conditions set out in the pension plan.

For the purposes of the first paragraph, the provisions related to payroll and the number of active members are the same as those used to verify the plan's funding for the purposes of its last actuarial valuation.

103. The service contribution can be expressed, in addition to what is provided for in section 140 of the Act, as a fixed amount per active member.

III. — *Solvency*

104. Despite section 142.3 of the Act, the values related to the plan's solvency are determined according to the rules set out in section 121.

IV. — *Funding policy*

105. A member-funded pension plan can allow the benefits of members and beneficiaries affected by the withdrawal of an employer party to the plan to be maintained in the plan only if the plan's funding policy determines the plan's funding level under which, on the one hand, the option to maintain their benefits in the plan may not be offered to members and beneficiaries affected by the withdrawal of an employer and, on the other hand, benefits maintained in the plan during previous employer withdrawals must be wound up. The limit may not be lower than 100%.

The funding level to be used is the one established without taking into account the assumption for the indexation of pensions, determined by the most recent actuarial valuation of the plan.

The funding policy may provide for criteria which, among the following, must in addition be considered for the purposes referred to in the first paragraph:

- (1) the percentage that the plan's liabilities related to the benefits of members and beneficiaries whose benefits are maintained in the plan after employer withdrawals are of the plan's liabilities determined on a funding level;
- (2) the plan's level of maturity, knowing the percentage that the plan's liabilities related to the benefits of members whose pension is in payment and of beneficiaries, determined on a funding level, are of the plan's total liabilities;
- (3) the plan's degree of solvency.

§9. *Payment of benefits made in accordance with the annuity purchasing policy*

106. A payment of benefits made in accordance with the annuity purchasing policy referred to in section 142.4 of the Act cannot be carried out in a member-funded pension plan.

§10. *Payment of benefits*

107. Despite the third paragraph of section 143 of the Act, the degree of solvency applicable to the payment of benefits cannot be capped.

Sections 144 to 146 of the Act do not apply to member-funded pension plans.

108. Voluntary contributions are refunded with accrued interest.

§11. *Appropriation of surplus assets*

109. During the life of a member-funded pension plan, the appropriation of surplus assets is subject to the provisions of this subdivision rather than the provisions referred to in section 146.1 of the Act.

Despite the foregoing, the provisions of the first paragraph of section 146.2 and sections 146.3 to 146.5.1 of the Act apply, with the necessary modifications.

110. Surplus assets can only be appropriated for the following, according to the plan's provisions:

- (1) indexation of pensions;
- (2) provided that the pensions are fully indexed, payment of member contributions, payment of the value of additional commitments resulting from an amendment to the plan or a combination of both.

111. Surplus assets can be appropriated, as the case may be:

- (1) if they are appropriated for the indexation of pensions, once the plan is fully funded;
- (2) where the plan is fully funded and solvent and only if pensions are fully indexed for any of the purposes provided for in the plan under paragraph 2 of section 110.

In the case referred to in subparagraph 1 of the first paragraph, the maximum amount of surplus assets that can be used is equal to the amount of surplus assets determined on a funding basis and, in the case referred to in subparagraph 2 of the first paragraph, to the lesser amount of surplus assets determined on a funding basis and those determined on a solvency basis, established on the date of the actuarial valuation and taking into account, if applicable, the previous appropriation of the surplus assets to the indexation of pensions.

112. Subject to section 111, a pension plan can be amended in order to index the pension of each member and beneficiary in accordance with the provisions of the plan.

An amendment related to indexation cannot become effective on a date before the date of the plan's last actuarial valuation or more than one year after that date.

113. The appropriation of surplus assets to the payment of member contributions ceases on the date of any actuarial valuation or of any notice referred to in section 119.1 of the Act that shows that the conditions set out in subparagraph 2 of the first paragraph of section 111 are no longer met.

114. Despite the second paragraph of section 5 of the Act, no amendment related to the appropriation of surplus assets may be made to the plan unless it is in accordance with the provisions of this subdivision.

115. An adjustment resulting from the indexation referred to in section 112 applies to the amounts established in accordance with sections 15.3, 54 and 56.0.3 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6).

§12. Division and merger

116. The following are not authorized under a member-funded pension plan:

(1) the division of the plan's assets and liabilities among several plans, one of which is not a member-funded pension plan;

(2) the merger of the plan's assets and liabilities with those of a plan that is not a member-funded pension plan.

117. The second, third and fifth paragraphs of section 196 of the Act do not apply to member-funded pension plans.

§13. Liquidation of the benefits of members and beneficiaries

I. — General provisions

118. Despite sections 198, 207 and 240.2 of the Act, only the members and beneficiaries whose benefits have not been paid before the date of withdrawal of an employer party to a member-funded plan or the date of termination of such a plan are affected by the withdrawal or termination.

Despite subparagraph 1 of the third paragraph of section 198 of the Act, active members who are in the employ of another employer party to the plan on the date of the employer's withdrawal are not affected by such withdrawal.

119. As of the date of withdrawal of an employer or termination of the plan, no pension or part of pension of members or beneficiaries affected by the withdrawal or termination can be guaranteed by an insurer unless it is for the purposes of their payment in accordance with the provisions of this subdivision.

120. Member-funded pension plans are exempt from the application of the following provisions of Division II of Chapter XIII of the Act related to winding-up:

(1) sections 210.1 and 211 and the second and third paragraphs of section 212.1;

(2) subdivision 3, related to the distribution of assets;

(3) subdivision 4, related to debts of the employer;

(4) subdivision 4.0.1, related to the payment options in the event of insufficient assets;

(5) subdivision 4.1, related to the distribution of surplus assets in the event of termination;

(6) section 237.

121. Despite section 212 of the Act, the value of the benefits of the members and beneficiaries affected by the withdrawal of an employer or the termination of a plan must be determined at either of the following dates, using the assumptions referred to in the second paragraph of section 79 that are applicable at that date:

(1) the date the member ceased to be an active member, if the benefits whose value is being determined are those accrued to a member whose active membership ended before the date of the withdrawal or termination and who, at that date, had already opted, within the time limit set out in subparagraph 1 of the second paragraph of section 99 of the Act, for the payment of his or her benefits or still had time to exercise such an option, or those accrued to a beneficiary whose benefits under the plan derive from the service credited to such a member;

(2) the date of the withdrawal or termination, if the benefits whose value is being determined are those accrued to any other member or beneficiary affected by the withdrawal or termination, including any member or beneficiary whose pension is in payment on that date.

The benefits accrued to the members and beneficiaries referred to in subparagraph 1 of the first paragraph bear interest from the date their value is determined to the date of the withdrawal or termination, at the rate used for the purposes of the valuation.

122. In the event of withdrawal of an employer or the termination of the plan, section 216 of the Act does not apply to amendments to the plan related to the indexation of pensions under section 112.

II. — Withdrawal of an employer

123. The cessation of active members' eligibility under the plan resulting from a decision concerning the accreditation of an association of employees or a decision of a group of employees provided for under the pension plan is considered to be a withdrawal of an employer. In this case, the following are affected by the withdrawal:

(1) active members who cease to be employees eligible for membership in the plan by reason of the decision;

(2) non-active members who would have ceased to be employees eligible for membership in the plan if they had been active members on the date of the decision;

(3) beneficiaries whose benefits derive from the service credited to a member who, were it not for his or her death, would have been referred to in subparagraph 1 or 2.

Despite the foregoing, where, by reason of the decision referred to in the first paragraph, the members referred to in that paragraph become eligible for another member-funded pension plan, the plan in which they cease to be active members must, regardless of the conditions set out in the first paragraph of section 196 of the Act, be subject to an amendment concerning the division of its assets and liabilities. If the person authorized under the plan to make such an amendment fails to do so within 30 days after the pension committee is informed of the decision, the committee must proceed with the amendment. The members and beneficiaries referred to in subparagraphs 1, 2 and 3 of the first paragraph must be included in the division.

124. Where an employer withdraws from a pension plan, all the benefits accrued under a member-funded pension plan by a member who has worked for several employers party to the plan must be considered in the value of his or her benefits regardless of the employer under which the benefits were accrued.

125. Despite the second paragraph of section 198 of the Act, the date of withdrawal of an employer cannot be later than the date of the end of the fiscal year following the one in which the last contribution was required by members employed by that employer.

126. Only a plan whose funding policy includes provisions in conformity with those required by section 105 can provide for the benefits of members and beneficiaries affected by the withdrawal of an employer to be maintained in the plan.

Such benefits maintained in the plan can only be offered to members and beneficiaries whose pension is in payment on the date of the withdrawal or who would have been entitled to payment of a pension on that date if they had so requested.

In addition, benefits maintained in the plan cannot be offered if, on the date of the withdrawal, the plan's funding level is lower than the limit set by the funding policy or other criteria established by the funding policy are met on that date.

127. The notice referred to in section 200 of the Act that must be sent by the pension committee must contain the following, instead of the information listed in paragraphs 2 to 4 of that section:

(1) that the benefits of members and beneficiaries affected by the withdrawal will be paid based on the plan's degree of solvency;

(2) if the members' and beneficiaries' benefits cannot be maintained in the plan:

(a) that the benefits, adjusted in accordance with paragraph 1, of members and beneficiaries to whom a pension is in payment on the date of the withdrawal will be paid by the purchase, from an insurer selected by the pension committee, of an annuity established using the value of those benefits or, if they so request, by means of a transfer under subparagraph *b*;

(b) that other members' benefits, adjusted in accordance with paragraph 1, will be paid by means of a transfer under section 98 of the Act, which applies with the necessary modifications or, if applicable, by a lump-sum payment or transfer to a registered retirement savings plan of the portion of their benefits that is refundable;

(3) if the members' and beneficiaries' benefits can be maintained in the plan,

(a) that the benefits of the members and beneficiaries referred to in the second paragraph of section 126 will be maintained in the plan, unless the members and beneficiaries request payment of their benefits adjusted in accordance with paragraph 1 by the purchase, from an insurer selected by the pension committee, of an annuity established using the value of those benefits or by means of a transfer under subparagraph *b* of paragraph 2;

(b) that other members' benefits, adjusted in accordance with paragraph 1, will be paid using one of the methods referred to in subparagraph *b* of paragraph 2.

128. The pension committee must send to each member or beneficiary affected by the withdrawal, within 60 days of the date on which the notice referred to in section 200 of the Act is sent, a statement of benefits and their value, as well as the information necessary to choose a benefit payment method. Members and beneficiaries must be given at least 30 days to indicate their choice and exercise their options.

The statement must contain the following information:

(1) the information referred to in paragraphs 2 to 10 of section 58 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) and, unless the statement

is for a non-active member whose pension is in payment or a beneficiary, in paragraph 1 of that section, as established or updated on the date of the withdrawal;

(2) a mention whether or not it is possible to maintain the member's or beneficiary's benefits in the plan;

(3) the period during which the member's or beneficiary's choices must be provided to the pension committee;

(4) in the case of a member or beneficiary referred to in the second paragraph of section 126, an estimate of the annuity that can be purchased from an insurer with the value of his or her benefits adjusted in accordance with paragraph 1 of section 127 and a mention that the purchased annuity could differ.

An estimate of the annuity is made based on the premium determined using the assumptions for the hypothetical wind-up and solvency valuations established by the Canadian Institute of Actuaries as they apply at the date on which the statement was prepared. The premium must be increased by a margin that allows for any possible variation in the cost of purchasing the annuity between that date and the probable date of payment.

129. If the members' and beneficiaries' benefits cannot be maintained in the plan, the statement must also indicate,

(1) in the case of a non-active member whose pension is in payment on the date of the withdrawal or a beneficiary,

(a) the payment methods provided for in subparagraph *a* of paragraph 2 of section 127;

(b) that the benefits, adjusted in accordance with paragraph 1 of section 127, will be paid by the purchase of an annuity from an insurer selected by the pension committee if the member or beneficiary does not indicate another choice within the period referred to in subparagraph 3 of the second paragraph of section 128;

(2) in the case of any other member, that the benefits, adjusted in accordance with paragraph 1 of section 127, will be paid by means of a transfer to a plan referred to in section 98 of the Act, which applies with the necessary modifications, or, where applicable, by a lump-sum payment or transfer to a registered retirement savings plan of the portion of his or her benefits that is refundable.

130. If the members' and beneficiaries' benefits can be maintained in the plan, the statement must also indicate,

(1) if it concerns a member or beneficiary referred to in the second paragraph of section 126

(a) the payment methods provided for in subparagraph *a* of paragraph 3 of section 127;

(b) that the benefits will be maintained in the plan if the member or beneficiary does not indicate another choice within the period referred to in subparagraph 3 of the second paragraph of section 128;

(c) an indication that the benefits maintained in the plan may, if the criteria provided for in the funding policy are later met, be wound up according to the rules provided for in paragraph 1 of section 129 and that the purchased annuity or transferred amount could be less than the pension to which the member or beneficiary would have been entitled on the date of the withdrawal;

(2) if it concerns any other member, the payment methods provided for in subparagraph *b* of paragraph 2 of section 127.

131. The value of the benefits accrued to the members and beneficiaries referred to in the second paragraph of section 202 of the Act may, with the authorization of Retraite Québec and subject to the conditions determined by Retraite Québec, be determined on any date other than the date referred to in that paragraph.

The third paragraph of that section does not apply to member-funded pension plans.

132. The benefits referred to in subparagraph 2 of the first paragraph of section 218 of the Act are paid in proportion to the plan's degree of solvency as established in the report related to the withdrawal of an employer referred to in section 202 of the Act and sent to Retraite Québec.

133. In the report referred to in section 202 of the Act, the plan's degree of solvency referred to in subparagraph 9 of the first paragraph of section 62 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) is the one determined for the entire plan at the date of the valuation of the members' and beneficiaries' benefits.

The withdrawal report must in addition indicate whether, on the date of the withdrawal, the benefits can be maintained in the plan based on the criteria established by the funding policy.

III. — *Liquidation of benefits maintained in the plan during the previous withdrawal of an employer*

134. Members and beneficiaries' benefits whose benefits were maintained in the plan following the employer's withdrawal must be settled where the report related to an actuarial valuation of the plan shows that the plan's

funding level, at the date of the actuarial valuation, is lower than the limit set by the plan's funding policy or that the other criteria established by the policy are met on that date.

135. The pension committee must, within 30 days of the date of the report, send to the members and beneficiaries a notice informing them, in addition to their benefits that will be settled,

(1) of any criterion that, according to the funding policy, imposes to settle their benefits;

(2) that the degree of solvency, applicable to the plan, is the most recent in the fourth paragraph of section 143 of the Act;

(3) that their benefits will be paid based on the plan's degree of solvency;

(4) that their benefits, adjusted in accordance with paragraph 3, will be paid by the purchase, from an insurer selected by the pension committee, of an annuity established using the value of the benefits or, if they so request, by means of a transfer referred to in section 98 of the Act, which applies with the necessary modifications, or, where applicable, by a lump-sum payment or transfer to a registered retirement savings plan of the portion of those benefits that is refundable.

136. The settlement is carried out as though it was a withdrawal of an employer party to a plan that does not allow the benefits of members and beneficiaries affected by the withdrawal to be maintained in the plan.

Sections 119 to 122, 128, 129 and 131 to 133 apply, with the necessary modifications, including the following:

(1) the date of the actuarial valuation is substituted for the date of the withdrawal;

(2) the date of the valuation of the benefits of members and beneficiaries affected is the date of the actuarial valuation;

(3) for the purposes of section 128, the time limit for sending statements of benefits is established based on the date on which the notice referred to in section 135 was sent;

(4) the statement of benefits referred to in that section must also mention that the benefits of members and beneficiaries affected will be paid based on the plan's degree of solvency and in accordance with the rules provided for in paragraph 2 of section 127.

IV. — *Termination of the plan*

137. The right to terminate the plan referred to in section 204 of the Act belongs to the person or body to which such right is granted in the plan text.

138. If there remains a balance after payment of the benefits referred to in subparagraph 2 of the first paragraph of section 218 of the Act, the balance must be allocated to the members and beneficiaries proportionately to the value of their benefits.

139. In the termination report referred to in section 207.2 of the Act, the following modifications apply to the information referred to in the first paragraph of section 64 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6):

(1) the information required by subparagraph 7 must not be distributed by employer or category;

(2) the information referred to in subparagraphs 5, 8.1 to 8.4, 10 and 11 is not required;

(3) the values referred to in paragraph 8 must be established in accordance with section 121, each of those values is reduced in accordance with section 122.1 of the Act;

(4) the value of the benefits of members and beneficiaries affected by the termination must be distributed in accordance with each item of the payment order provided for in section 218 of the Act, which applies in accordance with paragraph 1 of section 120 and sections 122 and 138.

To prepare the statement of benefits referred to in section 207.3 of the Act, the following modifications apply:

(1) the information referred to in subparagraphs 1 and 2 of the first paragraph of section 65 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) must not be distributed by employer or category and the information referred to in subparagraphs 3, 4 and 5 of that paragraph is not required;

(2) the statement must include the value of the member's benefits that corresponds to the amount allocated to the member, where applicable, pursuant to section 138.

If it is intended for a member or beneficiary whose pension is in payment or has been suspended on the date of the termination, the statement must also indicate an estimate of the annuity that could be purchased from an insurer and mention that the purchased annuity could differ. It must also indicate that the value of the member's or beneficiary's benefits must be paid according to one of the following payment methods:

(1) by the purchase, from an insurer selected by the pension committee, of an annuity established using the value of the benefits in accordance with section 218 of the Act, which applies in accordance with paragraph 1 of section 120 and sections 122 and 138;

(2) at the member's or beneficiary's request, by means of a transfer of the value of his or her benefits established in accordance with subparagraph 1 to a plan referred to in section 98 of the Act, with the necessary modifications.

The statement must also indicate that, if a member or beneficiary does not communicate his or her choices to the pension committee before the expiry of the period referred to in the first paragraph of section 207.2 of the Act, the value of his or her benefits will be paid by the purchase of an annuity referred to in subparagraph 1 of the second paragraph.

The estimate referred to in the second paragraph must be calculated based on the premium determined using the assumptions for the hypothetical wind-up and solvency valuations established by the Canadian Institute of Actuaries as they apply at the date on which the statement was prepared, increased by a margin that allows for any possible variation in the cost of purchasing the annuity between that date and the probable date of payment.

140. Any amount paid by an employer, including any amount recovered after the date of termination in respect of contributions outstanding and unpaid at the date of termination, must be used for the payment of members' and beneficiaries' benefits in the order of priority established under section 218 of the Act."

MISCELLANEOUS AND TRANSITIONAL

28. Section 20 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), as amended by section 9 of this Regulation, applies to the financial report that must accompany the annual information return related to any fiscal year of the plan ending after 30 December 2024.

If the annual meeting was held before 31 December 2024, the dispense from the financial report audit may apply provided that the members and beneficiaries have been informed in writing before the expiry of the period set out in section 161 of the Act to send the annual information return.

29. Every flexible pension plan, within the meaning of section 26 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act

(chapter R-15.1, r. 7), must comply with the provisions of this Regulation as of (*insert the date of coming into force of this Regulation*).

Despite the foregoing, the application for registration of amendments to a flexible pension plan that result from the provisions of Division VII, as amended by this Regulation, in particular regarding the refund of optional ancillary contributions not converted into optional ancillary benefits and regarding the plan text, must be filed with Retraite Québec no later than (*insert the date that occurs one year after the date of coming into force of this Regulation*).

30. Section 32 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), revoked by section 14 of this Regulation, continues to apply until payment by the employer of any amount determined before (*insert the date of coming into force of this Regulation*) in accordance with that section.

31. The provisions of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), as amended by this Regulation, apply to any partition, transfer or seizure of benefits of a flexible pension plan carried out as of (*insert the date of coming into force of this Regulation*).

32. A flexible pension plan is exempted, for every application for registration filed after (*insert the date that occurs before the date of coming into force of this Regulation*), from payment of the \$1000 fee provided for in paragraph 4 of section 13 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6).

33. Every member-funded pension plan must be subject to an actuarial valuation as at 31 December 2024.

34. Every statement produced before (*insert the date that occurs one year after the date of coming into force of this Regulation*) may be established in accordance with the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7) in force on (*insert the date that occurs before the date of coming into force of this Regulation*).

Despite the foregoing, every statement related to the withdrawal of an employer party to a member-funded pension plan or the termination of such a plan that is produced after the date on which the report related to the actuarial valuation referred to in section 33 is sent to Retraite Québec must be established in accordance with the provisions of the Regulation as amended by this Regulation.

35. The plan's degree of solvency established before (*insert the date of coming into force of this Regulation*) for the purposes of payment referred to in section 83 pursuant to section 84, as the provisions read on that date, based on the date on which the pension committee received the application to exercise the rights referred to in section 38 may be used for payment purposes.

36. Subdivision 13 of Division X, enacted by section 27 of this Regulation, does not apply to member-funded pension plans for the purpose of liquidating benefits where the notice referred to in section 200 or 204 of the Act was sent before the actuarial valuation referred to in section 33 was sent to Retraite Québec. The provisions, in force on (*insert the date that occurs before the date of coming into force of this Regulation*), apply for the purpose of liquidating the benefits of members and beneficiaries affected by the withdrawal of an employer or the termination of the plan.

37. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

106728

Draft Regulation

Act respecting health and social services information (chapter R-22.1)

Rules regarding the governance of health and social services information

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the governance of health and social services information, appearing below, may be made by the Minister of Health on the expiry of 45 days following this publication.

The draft Regulation sets out the rules that would govern the health and social services information held by health and social services bodies. In that regard, the draft Regulation provides for responsibilities that would be incumbent on those bodies, terms for keeping and destroying information, and rules for the maintenance and evaluation of technological products or services.

Further information on the draft Regulation may be obtained by contacting Pier Tremblay, Direction de la gouvernance des données, Ministère de la Santé et des Services sociaux, 930, chemin Sainte-Foy, 4^e étage, Québec (Québec) G1S 2L4; email: pier.tremblay@msss.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Health, 1075, chemin Sainte-Foy, 15^e étage, Québec (Québec) G1S 2M1; email: ministre@msss.gouv.qc.ca.

CHRISTIAN DUBÉ
Minister of Health

Regulation respecting the governance of health and social services information

Act respecting health and social services information (chapter R-22.1, s. 90, 1st par., 2nd par., subpars. 1, 2 and 4)

CHAPTER I RESPONSIBILITIES OF BODIES

1. A body must ensure that the members of its personnel and the professionals practising their profession within the body, including students and trainees, receive training regarding the protection of information recognized by the Minister as soon as they begin working or practising their profession within the body.

2. A body must see to it that the members of its personnel and the professionals practising their profession within the body, including students and trainees, undergo refresher training regarding the protection of information on an annual basis.

The refresher training concerns, in particular,

(1) the roles and responsibilities of the members of the body's personnel and of the professionals practising their profession within the body, including students and trainees, with regard to the information held by the body;

(2) the rules and terms for keeping, destroying and anonymizing information;

(3) the security measures for ensuring the protection of information put in place by the body, in particular to minimize the risk of a confidentiality incident;

(4) the procedure for processing confidentiality incidents; and

(5) the safe use of the body's technological products or services.

3. A body must keep proof of any consent it receives in accordance with section 6 of the Act respecting health and social services information (chapter R-22.1).