

Band Employee Benefits Program Policy

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Authority

TB Decision (March 2005) - Indian Government Support contribution programs

Program overview

The purpose of the *Band Employee Benefits* program is to provide funding to eligible Indian, Inuit and Innu employers to support the cost of the employer's share of contributions to pension and benefit plans for eligible employees. These may include the costs of employer sponsored pension plans, the Canada/Quebec Pension Plan and additional non-statutory employee benefits.

INAC may contribute toward the cost of the eligible employer's share of pension and benefits plans for eligible employees delivering services pursuant to an eligible program.

The department may contribute toward private pension plans, Canada/Quebec Pension Plan, underwriter fees/administrative costs, and non-statutory benefit plans. Funding levels are based on the following rates :

- (a) The department may contribute to an eligible employer an amount up to a total of the sum of 5.5% (to the maximum allowed by the *Canadian Revenue Agency*), plus the applicable Canada/Quebec Pension Plan percentage rate (as specified in the Canada Pension Plan), of eligible employee payroll toward the employer's share of contributions to an employer-sponsored pension plan and/or Canada/Quebec Pension Plan.
- (b) The department may also transfer to an eligible employer an additional amount of up to 2.0% of the eligible employee payroll to allow for the funding of other non-statutory employee benefits.
- (c) An additional amount up to a total of \$1,000 per employer plus \$25 per eligible employee may be provided annually (approximately 0.2% of payroll), or if less than 10 employees, a total of \$125 per eligible employee, by the department, towards the eligible employer's costs (including underwriter fees) of administering an employer-sponsored pension plan (and non-statutory band employee benefits, where applicable).

The employee's share of the cost of employer-sponsored pension plans will be at least equal to the employer's share contributed by INAC.

Only the three existing defined benefit pension plans may vary from the levels specified above (see Annex-3: Terms and Conditions for Existing Defined Benefit Pension Plans).

The department will not contribute toward the cost of prior pensionable service of employees.

The *Band Employee Benefits* program can be funded through a Contribution, a *Flexible Transfer Payments* and a *Alternative Funding Arrangement* authority.

These terms and conditions apply to the contribution funded elements of the *Band Employee Benefits* program. This program policy also applies to the *Flexible Transfer Payments* funded elements of the *Indian Government Support* program, in conjunction with the *Flexible Transfer Payments* terms and conditions. For the purposes of the *Alternative Funding Arrangement* funded components of the *Band Employee Benefits* program, the *Alternative Funding Arrangement* terms and conditions apply in conjunction with the *Alternative Funding Arrangement* minimum program requirements.

Objectives and Results

Band Employee Benefits is one of the programming components of INAC's Results Framework which aims at improving the quality of life and increasing self-reliance of Indian communities. As part of the Framework's Government pillar, the *Band Employee Benefits* program plays a key role in strengthening institutions by enabling recruitment and retention of a professional and independent Indian and Inuit public service.

The main objective of the *Band Employee Benefits* program is to enable eligible Indian employers to compete effectively in attracting and retaining the qualified staff required to manage and deliver programs and services, particularly those taken over from the federal government in recent years. This can only be achieved by providing adequate funding to employers, giving them the opportunity to establish competitive employee benefit packages, comparable to other competing employers (e.g. federal, provincial and municipal governments, school boards, etc.). This also supports the department's goals of devolving control of program management and program delivery to band communities.

Eligible Recipients

The class of eligible recipients include eligible employers as defined in Annex-2: Definitions.

The employer-sponsored pension plans must meet the requirements of *Canada Revenue Agency*, and those of the federal *Pension Benefits Standards Act, 1985*, as determined by *Office of the Superintendent of the Financial Institutions*, or be a provincially legislated pension plan which has been excluded by Regulation from the operation of the *Pension Benefits Standards Act, 1985*, in order to be eligible to receive funding under the *Band Employee Benefits* program.

Employers will also be eligible for funding for other non-statutory employee benefits under the *Band Employee Benefits* program only once an employer-sponsored pension plan has been approved for funding by INAC under this program.

In the following specific instances only, certain of the *Band Employee Benefits* program criteria do not apply:

- (a) Provincially-legislated pension plans which have been excluded from the operation of *Pension Benefits Standards Act, 1985* by amendment to the Pension Benefits Standards Regulations may vary from the immediate vesting and locking-in requirements specified below.
- (b) Notwithstanding the terms and conditions described here which apply to the *Band Employee Benefits* program, there are three defined benefit pension plans which pre-existed the current *Band Employee Benefits* program. In order to enable their continuance, they have been allowed limited exemption from four specific areas. Variations from certain terms and conditions, as described in Annex-3: Terms and Conditions for Existing Defined Benefit Pension Plans, applies to these plans.

Where employees not eligible for *Band Employee Benefits* program funding participate in a plan, along with Band Employee Benefits-funded employees, the following conditions apply :

- (a) Band employee benefits programs developed for employees of eligible employers should be made available without prejudice to all employees, regardless of the funding source of the salary. Eligible employers will be responsible for resourcing the employer's share for those employees whose salaries are not provided for in the funding from INAC.
- (b) Where employees of band-owned enterprises participate in band employee benefits programs established for eligible band council employees, the employer's share of pension plan contributions, in respect of employees of that enterprise, will be paid by the enterprise, and not by the department.

Employers who have agreed to allow employees to participate in a pension plan must agree not to terminate the plan or, in the case of a multi-employer pension plan, their participation in the plan, or amend the plan, without notifying the employees, and obtaining concurrence from *Office of the Superintendent of Financial Institutions, Canada Revenue Agency, and INAC.*

As per *Canada Revenue Agency and Office of the Superintendent of Financial Institutions* directives, the department requires that the plan specify that benefits are immediately vested, that payroll deductions must be held in trust separate from operating funds, and that funding toward the employer's share of pension plan remittances be locked-in immediately upon receipt by the plan administrator. Employees

terminating their employment will have the corresponding accrued employer's share placed in deferred pension benefits, or locked-in Registered Retirement Savings Plans (RRSPs) for the intended employees.

The eligible employer may agree, upon application for funding, to conclude a reciprocal pension transfer agreement with the Public Service Superannuation Plan. The eligible employer would submit its request for the establishment of a Reciprocal Transfer Agreement directly to the Financial Management and Portability Group, Pensions and Special Projects Division, Personnel Policy Branch, Treasury Board Secretariat.

Under the *Alternative Funding Arrangement* Block Funding:

Eligible recipients for *Alternative Funding Arrangement* are First Nations and Tribal councils who represent their communities and are mandated by First Nations to represent their communities.

Stacking Provisions

Proposals for funding from each recipient shall address the requirement for the recipient to declare any and all prospective sources of funding for the program or project, inclusive of all federal, provincial, territorial or municipal government (total government assistance) and other sources that is expected to be received. The maximum level of total government assistance will not exceed 100% of eligible expenditures. In the event that the financial reporting shows more than one source of funding for the program or project in excess of \$100,000, then the repayment of any amount exceeding the total government assistance limit will be calculated on a pro-rated basis and recipient shall reimburse to INAC the calculated amount.

Third Party Delivery

Where the recipient delegates authority or transfers program funding to an agency (e.g. a board, council, committee or other entity authorized to act on behalf of the recipient), the recipient shall remain liable to the Minister and to its members for the performance of its obligations under the funding agreement. Neither the objectives of the programs nor the expectations of transparent, fair and equitable service shall be compromised by this delegation or transfer of funds.

Application Requirements

When a recipient hires staff or contracts with a consultant to work on *Indian Government Support* program and the employee or consultant is a former public office holders they must respect and comply with the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the *Conflict of Interest and Post-Employment Code for the Public Service (2003)*. Such employees or consultants who are former public servants must respect and comply with the *Values and Ethics Code for the Public Service*. Where an applicant employs or has a major shareholder who is

either a current or former (in the last twelve months) public office holder or public servant in the federal government, compliance with the Code(s) must be demonstrated.

Band Employee Benefits

Recipients must complete an application form annually in the manner prescribed by the department, and must submit the form, duly filled out and signed, to the regional office. The application form contains the data used in the formula to establish the funding level and therefore must be reviewed for comparison with departmental records and approved by regional office. The application form must be a document separate from the funding arrangement and must not be incorporated into the text of the arrangement. For *Band Employee Benefits*, the application form must also be accompanied by a list of eligible employees.

In order to continue to receive funding under the *Band Employee Benefits* program, the eligible recipient will provide the department with :

- program specific annual reports which include the necessary information, as specified by the department, sufficient to verify adherence to program terms and conditions and demonstrate results (see Annex 7, link to Indian Government Support Forms); and
- an annual financial audit as per the Year-End Reporting Handbook for First Nations, Tribal Councils and First Nation Political Organizations.

With respect to *Band Employee Benefits*, the eligible recipient must also provide all required reports to the *Office of the Superintendent of Financial Institutions and Canada Revenue Agency* as determined by those institutions.

Under the Alternative Funding Arrangement Block Funding

Application requirements specific to *Alternative Funding Arrangement* are set out in the *Alternative Funding Arrangement* terms and conditions. Once a recipient has met specific *Alternative Funding Arrangement* eligibility criteria, the application requirements of specific programs shall apply in order to establish the initial base budget for *Alternative Funding Arrangement* funding and where *Alternative Funding Arrangement* funding is to be re-established.

All recipients must submit an application for each agreement renewal. All recipients must submit an application form to receive any increase in funding or if they are assuming management of a new program. Recipients must agree to make available to their members a budget for the expenditure for all funds to be received, and to maintain accounting and record systems consistent with their responsibility to account properly for the expenditure of public funds.

Eligible Expenditures

The following funding approval processes will apply :

- (a) Funding under the *Band Employee Benefits* program may be approved upon application where that application meets program-specific criteria.
- (b) Funding under the *Band Employee Benefits* program may also be approved upon application prior to registration by *Office of the Superintendent of Financial Institutions* where a plan meeting *Band Employee Benefits* criteria has been already been initiated (i.e. as evidenced by the deduction of employee contributions from the employees' pay cheques).

Eligible expenditures under the *Band Employee Benefits* program include contributions toward private pension plans, Canada/Quebec Pension Plan, underwriter fees/administrative costs, and non-statutory benefit plans, as defined in Annex-2: Definitions.

The department will not contribute toward the cost of prior pensionable service of employees.

Under the *Alternative Funding Arrangement* Block Funding:

Eligible expenditures as set out in this program policy shall apply in order to establish the initial base budget for *Alternative Funding Arrangement* funding and where *Alternative Funding Arrangement* funding is to be re-established.

Maximum Amount Payable

The maximum amount payable is determined by the funding formula.

The employee's share of the cost of employer-sponsored pension plans will be at least equal to the employer's share contributed by INAC. Only the three existing defined benefit pension plans may vary from this maximum amount payable (see Appendix 3: Terms and Conditions for Existing Defined Benefits Pension Plans).

Under the *Alternative Funding Arrangement* Block Funding:

Payments under the *Alternative Funding Arrangement* shall not exceed the results given by the formula. Further details about this calculation process are included in the Maximum Amounts Payable section of the *Alternative Funding Arrangement* Terms and Conditions.

Basis and Timing of Payment

Contributions are normally paid on the basis of achievement or performance objectives or as reimbursement of expenditures incurred. Payments are made based on a cash flow forecast from the recipient and will not exceed the payment frequency as set out in the Cash Management Policy (Policy on Transfer Payments, Section 7.6).

According to the Financial Management Manual, INAC contribution arrangements with Indian bands do not have explicit hold back provisions. Instead, recipients are advised in the agreement that: “funding otherwise payable under this Arrangement may be withheld by the Minister, if the Audit and reports are not provided by the Council to the Minister as required under this Arrangement or its predecessor. Any amounts so withheld shall be paid by the Minister to the Council, within forty-five (45) days of the submission of the reports.”

For all other recipients, INAC will hold back up to 20 percent of the funding allocated for this service, until the recipient submits final and acceptable financial and other reports according to the requirements set out in the contribution arrangement.

Under the *Alternative Funding Arrangement* Block Funding:

Alternative Funding Arrangement payments are made as follows, or in such other manner as the parties may agree upon and set out in writing:

- (1) 25.3% (8.7% April + 8.3% May + 8.3% June) of the total *Alternative Funding Arrangement* funding payable for each fiscal year will be paid within the first ten (10) business days of April; and
- (2) 8.3% of the total *Alternative Funding Arrangement* funding payable for each fiscal year will be paid on the first business day of each of the nine successive months commencing in May and ending in January of each fiscal year.

Funding Level Changes

For the cases in which the recipient is a recognized Indian band, INAC received an exemption to the requirements in section 7.3.6 of the Policy on Transfer Payments on the provisions in the event that departmental funding levels are changed by Parliament, on the basis that contribution arrangements already contain a requirement that any payment made is subject to there being an appropriation by Parliament for the fiscal year in which the payment is made. This clause is based on section 40 of the *Financial Administration Act*, which also provides sufficient authority for INAC to cancel or reduce contribution arrangements and payment in the event that departmental funding levels are changed by Parliament.

All other recipients are advised through program literature and when funding proposals are made and approved, that payments may be cancelled or reduced in the event that departmental funding levels are changed by Parliament. In these cases, the "level of funding changed by Parliament" clause is included in funding arrangements.

Due Diligence in Managing and Administering the Transfer Program

Departmental funding is for the provision of employee benefit programs and the eligible employer is acting on its own behalf and not as an Agent of the Crown. The eligible employer is to be solely responsible for any and all payment and /or deductions required for the Canada/Quebec Pension Plan and other employer-sponsored benefit programs. The eligible employer shall be responsible for making these payments directly. In the event that the employer fails to make the obligated payments the federal government assumes no responsibility to make these payments.

In the case of non-compliance with the terms and conditions of the *Band Employee Benefits* program, the department will work closely with the recipient to resolve the difficulties. If the difficulties cannot be resolved, or in the unlikely event that the *Office of the Superintendent of Financial Institutions* de-registers a pension plan, the department will discontinue funding until the plan is again approved by *Office of the Superintendent of Financial Institutions*.

Audit Framework

A separate audited "Schedule of *Band Employee Benefits* Funding" or a Note to the Financial Statements is to be prepared in accordance with the INAC Year-End Reporting Handbook and provided as part of the Annual Audited Consolidated Financial Statements that the recipient is required to prepare and submit to INAC. A statement will be required that the *Band Employee Benefits* funds are locked-in, that payroll deductions are held in trust separate from operating funds, and payments have been remitted in accordance with the plan or are current."

Annex 1

Indian Government Support Program

Summary

As bands and Inuit communities have assumed primary responsibility for the provision of programs and services to their members over the past two decades, five distinct but related programs have evolved as sources of support to their governments and public institutions. Referred to as the *Indian Government Support* programs, they include: *Band Support Funding, Band Employee Benefits, Tribal Council Funding, Band Advisory Services* and *Indian and Inuit Management Development*. These programs constitute the foundation for the development and maintenance of community governments, institutions and regional delivery organizations. Band governments, through an array of institutions and organizations, now directly administer 85% of INAC-funded programs and services including education, social assistance and social support services, housing and community infrastructure (source: Basic Departmental Data, 2003, p.69).

Objectives

The goal of *Indian Government Support* programming is to provide bands with assistance for the establishment and maintenance of effective local governance and administrative systems and the provision of programs and services to their members. *Indian Government Support* is provided for a variety of functions, including: pension and benefit regimes for eligible band employees; capacity development and training; and, where feasible and desirable, the regional administration of programs and services through tribal councils.

Annex 2

Definitions for the *Band Employee Benefits Program*

Administration Costs: The department may contribute towards the eligible employer's costs (including underwriter fees) of administering an employer-sponsored pension plan (and non-statutory band employee benefits, where applicable).

Band Employee Benefits Program refers to the program which provides funding to eligible Indian, Inuit and Innu employers to support the cost of the employer's share of contributions to pension plans (see below), other non-statutory benefits (see also below) and administration costs.

Block Funding: A transfer in which funding for the initial fiscal year for the programs and services eligible to be funded under the *Alternative Funding Arrangement*. TB authority is established based upon allocation methodologies identified in individually approved program authorities. Subsequent fiscal year funding is adjusted based upon a formula which reflects changes in price and volume. Unexpected balances are not debts due to the Crown provided program requirements have been met.

Canada/First Nations Funding Arrangement or *DIAND/First Nations Funding Agreement*: A five-year funding arrangement structured to include:

- (i) multi-year funding under the *Alternative Funding Arrangement* funding authority; annual targeted funding under *Contribution* funding authority and *Flexible Transfer Payment* funding authority; and
- (ii) funding from other government departments. The *Canada/First Nations Funding Arrangement* is an optional funding arrangement available to those First Nations and Tribal Councils who wish to have flexibility to design programs and apply allocated funds to programs and services that address community needs and priorities. The funding arrangement is conditional on meeting the entry criteria for *Alternative Funding Arrangement* eligibility and meet both the *Alternative Funding Arrangement* terms and conditions and certain specified minimum program requirements as outlined in this program policy are met, and who meet specific *Alternative Funding Arrangement* entry criteria.

Comprehensive Funding Arrangement: It is the basic annual funding arrangement INAC uses to transfer annual funding to recipients for program delivery and which is structured to include the following authorities: Grant, Contribution and Flexible Transfer Payment.

Contribution: A conditional transfer in accordance with specific program terms and conditions and based on reimbursing for specific expenditures. Unexpended balances or unallowable expenditures are debts due to the Crown.

Contribution Arrangement: An arrangement INAC enters into which requires significant interaction between the department and eligible recipients for the management of specific programs or projects. Funding is based on reimbursing for eligible expenditures. Unexpended balances or unallowable expenditures are debts due to the Crown.

Eligibility Criteria: Are the conditions to be met by an applicant before funding can be issued.

Eligible Employee: Means a person who is employed by an eligible employer for the purpose of delivering services pursuant to an eligible program, but does not include a person who provides services pursuant to a contract for services or a person acting in the capacity of a member of a board of directors of a corporation, society, or any other incorporated body.

Eligible Employer: Means an Indian, Inuit or Innu employer that is engaged in the delivery of services pursuant to an eligible program.

Eligible Program: Means a program being the object of a funding arrangement with the department, that was formerly delivered by INAC, providing no funding for employee benefits is provided directly by the program, other than for the statutory benefits of Worker's Compensation, Employment Insurance and pay in lieu of vacation. Excluded are employees working on capital projects or for a profit oriented organization which generates its own income.

Employer Sponsored Pension Plan is a private pension plan to which the employer contributes on behalf of its employees that is not a Canada or Quebec Pension Plan. See Pension Plan.

Flexible Transfer Payment: A conditional transfer in accordance with specific program terms and conditions and based on a predetermined fixed amount of expenditure. Unexpended balances are not debts due to the Crown provided program terms and conditions have been met.

Funding Formula: Is the methodology used to determine the maximum eligible funding level the department may contribute towards *Band Employee Benefits*. For example, the department may contribute up to 5.5% towards a private pension plan, plus the current percentage rate for Canada and Quebec Pension Plans, (e.g. 4.95%), 2.0% for non-statutory benefits of the salaries of eligible employees, and \$1000 per employer plus \$25 per eligible employee for administration costs, (or if less than 10 employees, a total of \$125 per eligible employee may be provided.)

Grant : is an unconditional transfer payment in support of the achievement of specific objectives for which eligibility and entitlement may be verified.

Indian Government Support System: The authoritative source for *Indian Government Support* program data.

Non-Statutory Benefits: Means those employee benefits, other than pensions or statutory benefits (where pension refers to both private pension plans and the Canada or Quebec Pension Plan). The non-statutory benefits which are eligible for funding under the *Band Employee Benefits* program are also referred to as “group insurance”. These include health insurance plans (supplementary medical and dental insurance), group life insurance, and salary continuation plans (short- and long-term disability insurance). These benefits also correspond to those most prevalent among non-Indian employers, including the federal public service.

Other Benefits: See Non-Statutory Benefits.

Pension Plan includes the Canada and Quebec Pension Plans, as well as employer-sponsored pension plans, which must be registered under the *Pension Benefits Standards Act, 1985 (PBSA, 1985)* and the *Income Tax Act*. This includes two types of employer-sponsored pension plans :

- (a) **Defined Contribution Pension Plan** is as defined under the *PBSA, 1985*, a pension plan that consists of defined contribution provisions, which means a provision of a pension plan under which pension benefits for a member are determined solely as a function of the amount of pension benefit that can be provided by contributions made by or on behalf of that member, and interest earnings and other gains and losses allocated to that member.
- (b) **Defined Benefits Pension Plan** is as defined under the *PBSA, 1985*, a pension plan that contains defined benefit provisions and is not a defined contribution plan. (See Annex 3:- Terms and Conditions for Existing Defined Benefit Pension Plans.)

Private Pension Plan: See employer sponsored pension plan.

Statutory Benefits: Are those required by legislation, and which the employer and/or employee may not avoid paying. Canada and Quebec Pension Plans are statutory and are included as eligible benefits for the purpose of this program. Other statutory benefits such as Employment Insurance or Worker’s Compensation, however, are not eligible expenditures under this program.

Targeted Funding is a contribution, i.e. a conditional transfer in accordance with specific program terms and conditions and based on reimbursing for eligible expenditures. Unexpended balances or unallowable expenditures are debts due to the Crown.

Annex 3

Terms and Conditions for Existing Defined Benefit Pension Plans

A. Context

Three defined benefit pension plans have been in operation for a period of 25 years. Two of these plans are in Quebec: “Le Régime des bénéficiaires autochtones” and “Pension plan for employees of Mohawk Council of Kahnawake”. The third plan is in Manitoba: “The retirement plan for employees of the Fort Alexander Indian Band”.

These three plans were established prior to the conception and implementation of the department’s devolution plans, or the *Band Employee Benefits* program. The benefits of these defined benefit pension plans are similar to those of the public service superannuation plan. These three pension plans are in conformity with the requirements of the *Pension Benefits Standards Act, 1985*. They are very well managed as confirmed in 2002, by the *Office of the Superintendent of Financial Institutions*. They meet the objectives of the government of Canada of ensuring that all Canadian workers have access to adequate pension plans.

There are four areas where the revised program terms and conditions impact directly upon the three existing defined benefit pension plans. Specifically, these involve the maximum level of contribution by the department towards the eligible employer’s share of contributions to these pension plans, the requirement that the employee’s share of the cost be at least equal to the employer’s share and the stipulation that the employer’s share of the pension plan remittance be locked-in immediately and that the benefits be immediately vested.

In this context, INAC exempted the three defined benefit pension plans from only those specific requirements of the program terms and conditions which impact directly on these plans. The exemption permits the retention of the *status quo* for these pension plans, in their current form, with respect to the level of contribution of the department toward the employer’s share (i.e. based upon triennial actuarial valuations) and the timing of vesting of benefits and locking-in the employer’s share.

All the other approved existing pension plans, currently funded by INAC are defined contribution pension plans because the employers had chosen that option when the plans were initiated. These pension plans conform to the current program terms and conditions.

B. Exceptions to *Band Employee Benefits* Program Terms and Conditions

The *Band Employee Benefits* program policy includes the following stipulations which pertain specifically to the existing currently funded defined benefit Indian pension plans:

- (1) That INAC will continue to fund the three existing defined benefit Indian pension plans (“Le Régime des bénéfices autochtones”, “Pension plan for employees of Mohawk Council of Kahnawake”, and “The retirement plan for employees of the Fort Alexander Indian Band”) in their current form, in accordance with the *Band Employee Benefits* program terms and conditions, with the following specific exemptions from these terms and conditions with respect to the level of funding and design features:
 - (a) the maximum level of contribution by the department toward the employer’s share of pension plan contributions, which is specified in the Program Overview;
 - (b) the requirement that the employee’s share of the cost of pension plan contributions be at least equal to the employer’s share contributed by INAC, as indicated under Maximum Amount Payable; and
 - (c) the requirement that the employer’s share be locked-in immediately upon receipt by the administrator of the plan and that benefits be immediately vested, as indicated under Eligible Recipients.

C. Scope of Extended Coverage

The exceptions to the *Band Employee Benefits* program terms and conditions will apply to the Fort Alexander plan and present and future eligible participants only as presently defined; that is, employees of the Sagkeeng Education Authority.

The same exceptions will also apply to present and future eligible employees of the “Pension Plan for employees of Mohawk Council of Kahnawake”, as presently defined.

As “Le Régime des bénéfices autochtones” is a multi-employer plan, these exceptions will apply only to present and future eligible participants within the Region/Province of Quebec.

Annex 4

Responsibilities and Procedures

1. Responsibilities

The Eligible Employer's responsibilities include the following:

- (a) To be eligible to receive funding from the program, the eligible employer must prepare complete and accurate applications for pension plan registration and for *Band Employee Benefits* funding, and submit these to the regional INAC office.
- (b) Applying for ongoing funding from INAC on an annual basis. In the case of multi-year agreements, the application for funding will be completed once and will be in effect for the duration of that agreement.
- (c) Selecting an insurance company, trust company or investment manager to hold and manage the funds which will be deposited on behalf of eligible employees to the pension plan, and who may provide a non-statutory benefit plan.
- (d) The administration of the benefit plan and/or pension plan including the recording of contributions to the pension plan and remitting all eligible employee and employer contributions to the pension plan fund as required by applicable legislation. Contributions to the employer-sponsored plan must be held in trust separate from operating funds and remitted within the time limits prescribed by the *Pension Benefits Standards Act, 1985*.
- (e) Ensuring that the annual audit report, which is required to be filed with INAC, contains any necessary information specified in the funding agreement as being required to be reported regarding the Pension Plan and its funding.
- (f) Filing the Annual Information Returns required under the *Pension Benefits Standards Act, 1985* and the *Income Tax Act*.

The responsibilities of INAC headquarters include the following:

- (a) The Director, Program Governance is responsible for the development, issuance and interpretation of the program directive for the *Band Employee Benefits* program.
- (b) Headquarters Finance is responsible for managing the allocation process for the *Band Employee Benefits* program.

- (c) The Director, Corporate Information and Management Directorate (CIMD) in Headquarters is responsible for the overall administration of the National Indian Government Support System (IGSS) which is used to determine eligible funding levels and performance reporting. The Director, CIMD, or his/her delegate, provides regional database support and training. The regions are responsible for gathering the relevant data and entering it in the system.

The responsibilities of INAC Regional Office include the following:

- (a) Reviewing the initial proposal for completeness and verify eligibility of the employer for *Band Employee Benefits* funding and verify compliance with the specific terms of the *Band Employee Benefits* program.
- (b) Reviewing and approving all applications for ongoing funding by INAC, subject to the limits of regional authority.
- (c) Monitoring expenditures associated with the *Band Employee Benefits* program.
- (d) Process any applications submitted which include a request for INAC funding.
- (e) Ensuring continuing compliance with the terms of the *Band Employee Benefits* policy.

The responsibilities the *Office of the Superintendent of Financial Institutions* include the following:

- (a) *Office of the Superintendent of Financial Institutions* is responsible for reviewing pension plans to determine if they are in compliance with the *Pension Benefits Standards Act, 1985*. *Office of the Superintendent of Financial Institutions* will inform INAC whether or not the pension plan qualifies for registration under *Pension Benefits Standards Act, 1985*, and will forward its advice to INAC regional office at each stage. (Upon compliance, *Office of the Superintendent of Financial Institutions* will register the pension plan under *Pension Benefits Standards Act, 1985*).

2. Procedures

Funding under the *Band Employee Benefits* program is available to support the eligible employer's share of contributions on behalf of employees to an employer-sponsored pension plan and/or the Canada/Quebec Pension Plan and, where an employer-sponsored pension plan is being funded, to support a non-statutory benefits plan for eligible employees.

Funding Levels and Eligibility

- (a) INAC will provide funding towards the employer's contribution to the pension plan, as follows. The departments will contribute to an eligible employer an amount up to a total of the sum of 5.5% plus the applicable C/QPP rate, of the salaries of eligible employees towards the employer's share of contributions to an employer-sponsored pension plan and/or C/QPP premiums.
- (b) Since the contribution of the department towards pension plans is based on actual costs, an annual adjustment to the employer contributions will be made based on annual reports.
- (c) Where an eligible employee's salary is only partly paid by INAC funds, then a percentage of the employer's contribution in respect of that employee will be paid by INAC funds, while the remaining employer's contribution must be paid by the other employer(s). The percentage that will be paid from INAC funds will be equal to the percentage of the eligible employee's salary which is paid by INAC funds.
- (d) Additional funding may be made available for the registration fees required to have the pension plan registered under the terms of *Pension Benefits Standards Act, 1985*.
- (e) Funding for new pension plans will be transferred to the eligible employer only upon confirmation from *Office of the Superintendent of Financial Institutions*, that the plan meets requirements of the *Pension Benefits Standards Act, 1985*.
- (f) Upon approval of the plan for funding, the funds for the plan will be provided to the employer, as required, to cover a period beginning no earlier than the first day of the month prior to the month in which plan approval is received.
- (g) Plans may be eligible for funding under the *Band Employee Benefits* program prior to full review and approval by *Office of the Superintendent of Financial Institutions* (under *Pension Benefits Standards Act, 1985*) and *Canada Revenue Agency* (under the *Income Tax Act*), upon meeting the following specified conditions:
 - (1) If the plan is based upon an approved (by INAC, *Office of the Superintendent of Financial Institutions* and *Canada Revenue Agency*) sample plan, then funding may be provided upon confirmation by INAC regional office of the acceptable required documents, with a funding date as described under (f), above.

- (2) When INAC regional office indicates that a submitted pension plan meets the *Band Employee Benefits* -specific criteria (immediate vesting and locking-in; payroll deductions must be held in trust separate from operating funds, at least matching employee contributions), then that plan will be acceptable for *Band Employee Benefits* funding as soon as the plan is actually implemented (since upon implementation, the plan is deemed to fall under the requirements of the *Pension Benefits Standards Act, 1985*, and of all *Canada Revenue Agency* requirements), or as indicated under (f), above, whichever is later.
- (h) Additional funding may be made available for professional administration costs of an employer-sponsored pension plan, in an amount equivalent to \$1,000 (per eligible employer) plus \$25 per participating eligible employee. However, where an employer sponsors a pension plan for fewer than ten employees, the total amount will be \$125 per employee.
- (i) Where funding has been approved for an employer-sponsored pension plan, the eligible employer may request an amount of up to 2.0% of eligible employee payroll towards the costs of a non-statutory benefit plan for the eligible employees participating in the *Band Employee Benefits* -funded pension plan.
- (j) Where an employer wishes to participate in an already funded multi-employer pension plan, then a funding application for that employer and an appropriate amendment to the existing multi-employer plan are necessary. Funding may be provided upon verification of the foregoing by INAC Regional office.

Ongoing Administration Responsibilities

- (a) The employer is deemed to be the administrator by default but may choose to hire a professional administrator (individual or corporate) to perform the day-to-day administrative responsibilities connected with the pension plan. The final decision of whether to hire a professional administrator, and of the particular administrator to hire, remains with the employer.
- (b) The administrator will be responsible for the ongoing administration of the pension plan. This includes the recording of contributions to the pension plan using an accounting system that records all transactions separately, and the remitting of all employee and employer contributions to the pension plan fund according to and with the time limits prescribed by the *PBSA, 1985*.
- (c) In order to receive ongoing funding from the *Band Employee Benefits* Program, the employer must complete an Application for *Band Employee Benefits* annually and submit it to the INAC regional office.
- (d) The administrator must file the Annual Information Returns required under *Pension Benefits Standards Act, 1985* and the *Income Tax Act*.

- (e) The employer will ensure that the annual audit report filed with INAC contains the information required to be reported regarding the pension and employee benefits plans and their funding. For eligible employers for whom funding is provided through multi-year agreements, a list of eligible positions and total payroll must be provided with the annual reports.

Other Considerations

- (a) INAC will not contribute towards the cost of prior pensionable service by employees.
- (b) The eligible employer must not terminate or amend the plan, or the trust agreement or insurance contract without notifying and obtaining approval from *Office of the Superintendent of Financial Institutions*, and, as appropriate, INAC.

Dispute resolution

Disputes regarding the accuracy of stated populations and programs administered will be adjudicated by the Regional Director General.

Disputes regarding the application of policy or formulae will be adjudicated by, in the first instance, the Regional Director General. If a satisfactory resolution is not achieved, the matter must be referred to the Director General, Governance, at headquarters.

Annex 5

Establishing a Pension Plan

Establishment of a Pension Plan

The first step in the establishment of a pension plan should be the “indication of intent”. The eligible employer should first express its intent to establish a pension plan by preparing a band council resolution or a resolution of the board of directors. This resolution should indicate that the eligible employer will undertake the steps necessary to establish a pension plan. The eligible employer should obtain input from its employees prior to preparation of the band council resolution or a resolution of the board of directors.

Required Documentation

- (a) The eligible employer will then establish the features of the pension plan and will arrange after verification with *Office of the Superintendent of Financial Institutions*, for preparation of declaration of compliance, a pension plan text, employee booklet, and a trust agreement or an investment contract with an insurance company, and undertake a Statement of Investment Policy and Procedures (SIP&P). This will normally be done with the assistance of a trust company, insurance company or consultant.
- (b) Design Features - The employer must ensure that the pension plan documents meet the requirements for funding under the program guidelines, which include but are not limited to the following:
 - (1) The pension plan must be made available to all employees of the eligible employer, regardless of the funding source of the employees' salary. The eligible employer will be responsible for providing the funding for the employer's contributions for those employees who are not eligible for INAC funding under this program.
 - (2) The eligible employees' required contributions must be at least equal to the contribution provided from the *Band Employee Benefits* Program for the employer's share of plan contributions.
 - (3) The employer contributions, less administration fees, if any, made on behalf of an eligible employee must be immediately vested in that employee.

- (4) The employer contributions, less administration fees, if any, must be locked-in immediately upon deposit to the pension plan. Employees terminating their employment in the first two years of membership, before their share of the pension plan contribution is locked-in under the *Pension Benefits Standards Act, 1985*, will have the corresponding accrued employer's share placed in deferred pension benefits for the intended employees. A plan may, however, provide for the commutation of a pension where the annual pension benefit is less than two percent of the Year's Maximum Pensionable Earnings (YMPE) in the year in which the member terminates employment.
- (5) For employers participating in a pension plan established by provincial statute, evidence of participation of eligible employees of the employer in that plan will replace the foregoing plan registration documentation.
- (6) The employer and employee contributions (payroll deductions) must be held in trust separate from operating funds.

Preparation of Application Package

The eligible employer will prepare an application package to request funding under the *Band Employee Benefits* program, once all of the documentation has been completed. The application package should consist of:

- (1) The band council resolution or resolution of the board of directors.
- (2) An Application for *Band Employee Benefits* including the total number of eligible employees and total salary. When applying for joint pension plan funding under a multi-employer pension plan, each eligible employer must complete a separate Application for *Band Employee Benefits* Funding.
- (3) A *Canada Revenue Agency* form CPT 124, if the eligible employer elects to participate in the Canada Pension Plan for status Indian employees.
- (4) The plan text, employee booklet, cost certificate and investment contract or trust agreement for the pension plan.
- (5) *Canada Revenue Agency* Form T510, Application for Registration of Employees' Pension Plan.
- (6) The Application for Registration required under *Pension Benefits Standards Act, 1985*, a cheque for the registration fee, made payable to the Receiver General of Canada, and the Declaration of Compliance, *Office of the Superintendent of Financial Institutions* 522.

For provincially-established (by statute plans, only sub-sections (1) and (2) above apply. Evidence of participation in the plan is also required.

Submission Process

- (a) The eligible employer will submit the application package to INAC regional office, once it is complete.
- (b) The application package will be reviewed by INAC regional office upon receipt. This review will ensure that the package is complete and that the eligible employer and eligible employees meet the criteria for funding under the *Band Employee Benefits* program.

Approval Phase

- (a) If the regional review of the application package is positive, INAC regional office will prepare a recommendation for initial funding.
- (b) When the documents meet *Band Employee Benefits* program-specific criteria, or if the plan is based upon a pre-approved plan, then INAC region will advise Headquarters. The employer will arrange for the plan to be reviewed by the *Office of the Superintendent of Financial Institutions Pension Benefits Standards Act, 1985* section and by *Canada Revenue Agency* for all *Canada Revenue Agency* requirements.
- (c) The employer will submit complete copies of the pension documents to *Office of the Superintendent of Financial Institutions*, indicating where further contact should occur (i.e.: through the employer, or the underwriter directly). INAC regional office will review the documents to ensure conformity with the *Band Employee Benefits* program criteria.
- (d) If there are any changes required to the documents in order for them to be acceptable under the terms of the *Pension Benefits Standards Act, 1985*, or *Canada Revenue Agency* requirements, the underwriter or employer will be contacted directly. The amended pension plan documents will then be submitted directly to *Canada Revenue Agency*.
- (e) INAC may, under certain conditions, approve a pension plan for funding prior to full *Office of the Superintendent of Financial Institutions* and *Canada Revenue Agency* review and approval:
 - (1) where a submitted plan is based upon a plan (which is referenced in the letter of transmittal) which has been pre-approved as meeting *Pension Benefits Standards Act, 1985*, *Canada Revenue Agency* and *Band Employee Benefits* requirements; or

- (2) where the initial INAC regional office review indicates that the plan meets the specific *Band Employee Benefits* program criteria (with the exceptions of *Pension Benefits Standards Act, 1985* and *Canada Revenue Agency* approval) and where the pension plan has already been (or is being) initiated, as evidenced by the deduction and submission of employee contributions to the plan, and the submission of matching employer contributions to the plan.

Annex 6

Frequently Asked Questions

Who is eligible for *Band Employee Benefits*?

See definition of “Eligible Employer”, “Eligible Program”, and “Eligible Employee” under the Definition section (annex 2).

To be eligible for *Band Employee Benefits* funding, the organization must be funded by INAC for an eligible program.

What are some examples of eligible and ineligible employee positions?

Examples of Eligible Positions	Examples of Ineligible Positions
Teacher	Daycare Worker (*except in Ontario Region)
Principal	Police Officer
School Bus Driver	Nurse
School Janitor	Community Health Manager
School Librarian	Addictions Counsellor
Band Manager	Fisheries Officer
Administration Clerk	Contractor
Finance Officer	Trading Post Manager
Economic Development Officer	Video Lottery Operator
Lands Officer	Store Clerk
Social Worker (*provided salary funded by INAC program)	

Employees who are hired on contract, on a project basis, for profit related services, who's source of funds is from a source other than INAC or from an INAC program that is ineligible, are all considered ineligible employees. (For more information, see definition of eligible employee in Annex 2 above).

How are the different parts calculated to come up with the amount INAC provides for *Band Employee Benefits*?

The department may contribute toward private pension plans, Canada/Quebec Pension Plan, underwriter fees/administrative costs, and non-statutory benefit plans. (See Program Overview section for information on funding levels.)

For example, if 10 or more eligible employees:

- 5.5% private pension plan
- 4.95% C/QPP
- 2.0% non-statutory
- \$1000 per employer plus \$25 per eligible employee
- = Total *Band Employee Benefits* Eligible Funding

For example, if less than 10 eligible employees:

- 5.5% private pension plan
- 4.95% C/QPP
- 2.0% non-statutory
- \$125 per eligible employee
- = Total *Band Employee Benefits* Eligible Funding

Do First Nations have to submit names of employees who are not funded by INAC programs (e.g. Health Canada)?

Employers are only required to report the employees who are eligible for the *Band Employee Benefits* program. It is not necessary for employers to list employees whose positions are funded from a source other than INAC.

Will First Nations receive retroactive funding for previous year(s)?

No. The *Band Employee Benefits* program does not contribute toward the cost of prior pensionable service of employees.

The start date for *Band Employee Benefits* funding is determined by the approval of the *Band Employee Benefits* application (See Program Procedures Section under Annex 4 above).

What steps need to be taken to get a pension fund in place for a First Nation? How does (if at all) the fact that the First Nation is under Third Party Management affect the situation?

Please see annex 5, establishing a pension plan for the steps required. Approval of new plans is a regional decision subject to funding availability. The Third Party Management policy does not support taking on new programs.

What are the deadlines for application? What is the base year? How do we determine if the information provided is correct?

The *Band Employee Benefits* application form, list of eligible employees and annual report are due May 31st to the regional office. Regional procedures are in place for the validation of this information. E.g. FSOs, Allocation Officers and Program Officers should have a process to verify that the First Nation employees on the List of Eligible Employees are delivering services pursuant to an eligible program.

Annex 7

Other Internet Links

Audit of the Band Employee Benefits Program (2004)
http://www.ainc-inac.gc.ca/pr/pub/ae/au/02-05/02-05_e.pdf

Band Support Funding Program Evaluation (2003)
http://www.ainc-inac.gc.ca/pr/pub/ae/ev/01-23_e.html

Band Employee Benefits Funding Application
http://ainc-inac.gc.ca/frm/pdf/80-049_e.pdf

Canada Pension Plan (CPP)
<http://laws.justice.gc.ca/en/c-8/19987.html>

Canada/First Nations Funding Agreement National Model for use with First Nations and Tribal Councils for 2005-2006
http://www.ainc-inac.gc.ca/pr/pub/cana_e.html

Comprehensive Funding Arrangement National Model for use with First Nations and Tribal Councils for 2005-2006
http://www.ainc-inac.gc.ca/pr/pub/compfn_e.pdf

Comprehensive Funding Arrangement National Model for use with Recipients other than First Nations and Tribal Councils for 2005-2006
http://www.ainc-inac.gc.ca/pr/pub/compnmr_e.html

Conflict of Interest and Post-Employment Code for Public Office Holders
http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/mg-ldm/gfmo1_e.asp#_Toc78160357

Conflict of Interest and Post-Employment Code for the Public Service
http://www.tbs-sct.gc.ca/archives/hrpubs/tb_851/CIP1-1E.asp#i

Departmental Performance Report (DPR) 2003-2004
http://www.tbs-sct.gc.ca/rma/dpr/03-04/INAC-AINC/INAC-AINCd34_e.asp

DIAND/First Nations Funding Agreement National Model for use with First Nations and Tribal Councils for 2005-2006
http://www.ainc-inac.gc.ca/pr/pub/fundi_e.html

Evaluation of the Band Employee Benefits Program (2004)
http://www.ainc-inac.gc.ca/pr/pub/ae/ev/03-04/03-04_e.pdf

First Nations National Reporting Guide (FNNRG)
http://www.ainc-inac.gc.ca/pr/pub/fnnrg/index_e.html

First Nations Profiles

http://sdiprod2.inac.gc.ca/FNProfiles/FNProfiles_home.htm

Indian Government Support Forms

http://ainc-inac.gc.ca/frm/pgd_e.html

Institutional and Professional Development (INAC)

http://www.ainc-inac.gc.ca/ps/lts/fng/ipd_e.html

List of Eligible Employees Form

http://ainc-inac.gc.ca/frm/pdf/80-062_e.pdf

Native Benefits Plan

<http://www.rba-nbp.qc.ca/english/english.html>

Office of the Superintendent of Financial Institutions (OSFI)

www.osfi-bsif.gc.ca

Pension Benefits Standards Regulations, 1985

<http://laws.justice.gc.ca/en/p-7.01/sor-87-19/161817.html>

Pension Benefits Standards Act, 1985

<http://laws.justice.gc.ca/en/p-7.01/92836.html>

Pension Plan Funding Annual Report

http://www.ainc-inac.gc.ca/pr/pub/fnnrg/2005/fnnrg_e.pdf

Quebec Pension Plan (QPP)

http://ww.rrq.gouv.qc.ca/en/programmes/regime_rentes/

The Indian Act

<http://laws.justice.gc.ca/en/i-5/74596.html>

Year-End Reporting Handbook for First Nations, Tribal Councils and First Nation Political Organizations

http://www.ainc-inac.gc.ca/pr/pub/yrh/yrh01_e.html