



4 April 2012

To all RSE licensees

RESPONSE TO SUBMISSIONS ON SUPERANNUATION PRUDENTIAL PRACTICE GUIDES: CONTRIBUTION AND BENEFIT ACCRUAL STANDARDS AND PAYMENT STANDARDS

In August 2011, APRA released a consultation package comprising a discussion paper and two draft superannuation prudential practice guides (SPGs).¹ This package proposed updated guidance in the areas of contribution and benefit accrual standards, and payment standards. The need for updated APRA guidance in these areas has arisen from the significant number of legislative changes that have been introduced since the previous guidance was issued in 2006.

This package is separate from APRA's ongoing work in implementing elements of the Government's Stronger Super reforms.

APRA received five submissions on the consultation package. The submissions broadly supported APRA's proposals and welcomed APRA's initiative to revise the guidance. Submissions sought clarification in a number of areas and provided suggestions for amendment to the guidance. This letter discusses the main issues raised in the submissions and APRA's responses to these issues. In some cases the response is a clarification. In other cases APRA has made minor revisions to the guidance. These changes are reflected in the final SPGs released with this letter, which are available on APRA's website.² The SPGs are effective immediately and replace previous guidance issued by APRA on these subjects.

In response to submissions, APRA has made the amendments outlined below. In addition to the issues discussed below, some minor editorial changes were made to the wording and presentation of the guidance to reflect a more principles-based approach.

Prudential practice guide SPG 270 Contribution and benefit accrual standards for regulated superannuation funds

Trustee monitoring of member contributions

Submissions stated that trustees are only required to monitor individual non-concessional contributions, not members' concessional contributions or contributions on a cumulative basis. APRA has revised the guidance in this area to reflect this.

Contributions in error

Submissions raised a number of concerns with the draft guidance on this topic. In particular, concerns were raised with the types of errors that the draft guidance stated could not be corrected by the trustee, and which required a formal application to APRA. The submissions were concerned that the classification of errors did not adequately reflect the circumstances in which the error was made.

¹ Consultation package: <http://www.apra.gov.au/Super/PrudentialFramework/Pages/August-2011-Super-PPGs-Consultation.aspx>

² Final package: <http://www.apra.gov.au/Super/PrudentialFramework/Pages/superannuation-ppgs.aspx>

APRA has considered these submissions, and has modified the guidance on this topic. The revised guidance now more clearly distinguishes:

- administrative errors which may be rectified by the trustee without reference to APRA, provided the trustee is satisfied that the payment received by the fund is the subject of an error and does not reflect a change in intention of the contributor. APRA expects the trustee to be able to support this decision with sound documented evidence; and
- ‘errors’ where the contributor may acknowledge the validity of the contribution at the time it was made, however, there may be extraordinary circumstances that warrant consideration. The trustee is not authorised to rectify these type of ‘errors’, however, an application may be made to APRA demonstrating the relevant extraordinary circumstances.

Other amounts may be claimed by the member to be ‘errors’, however, the trustee may not be satisfied that an administrative error has occurred and may be concerned that the contributor’s intention has changed from their intention at the time the contribution was made. In the absence of extraordinary circumstances, these type of ‘errors’ are not able to be rectified.

Timing of contributions received

Some submissions pointed out that the guidance in this area was unclear as to how APRA interpreted when a contribution was received. The guidance has been modified to include guidance on this topic.

Defined benefit funds / defined benefit interests

Some submissions pointed out that the guidance didn’t always clearly distinguish the separate requirements that applied to defined benefit funds. There were also concerns regarding the distinction between defined benefit funds and defined benefit interests, and the implication that all defined benefit interests would be held in separate sub-funds. APRA has revised the guidance in this area to address these issues.

Contributions made via a clearing house

Some submissions were of the view that the guidance should only deal with clearing houses where the trustee/fund directly offers and operates the service to contributing employers or actively engages and has some control over the service. Other submissions questioned the statement that monies in a clearing house need to be in a separate bank account, and stated that this would depend on the nature of the arrangement between the clearing house, trustee and employers.

APRA has revised the section related to clearing houses to more clearly outline the guidance on this topic. APRA’s view is that there are risks and practical concerns related to the use of clearing houses even where the trustee has little or no control over the service. The separation of the bank account for the clearing house applies where the trustee operates a clearing house itself and is required to keep the clearing house account separate from the fund’s own bank account.

Inclusion of additional guidance

Some submissions raised concerns that APRA had omitted to include guidance on areas that were included in previous guidance material. Some submissions asked that guidance be included on ‘in specie’ contributions and APRA has now included some guidance in this area. Other submissions sought guidance on how trustees/administrators should deal with contributions received for members over age 65 who had not yet provided evidence of gainful employment, early in the new financial year. APRA is of the view that this is an administrative responsibility and trustees/administrators should put in place appropriate procedures to manage this process.

Some submissions sought further guidance on workers compensation and its relationship with authorised leave. APRA's view is that the guidance contains sufficient information on this topic and that trustees should refer to the SIS legislation for determining any further details on these matters.

Prudential practice guide SPG 280 Payment standards for regulated superannuation funds and approved deposit funds

Release of benefits on compassionate grounds

While submissions did not make reference to this topic, the guidance has been modified to reflect the transfer of this function from APRA to the Department of Human Services. This change became effective on 1 November 2011.

Guidance on death benefit payments

Some submissions queried the guidance on payment of death benefits and stated that there are practical considerations in managing death benefits, including the making of interim payments, managing beneficiaries' concerns and the appropriate investment of the benefit following the member's death. The guidance has been revised to take these matters into account, and confirms that trustee policies and procedures should be in place to deal with these considerations.

Errors - former members not paid full entitlement

Some submissions raised concerns with the wording of this paragraph (within the Miscellaneous section), which appeared to deal only with unit pricing / crediting rate errors and did not clearly explain the procedures where a condition of release had not been met. The guidance has been revised to be clear that it applies to all types of errors where a former member has not been paid their full entitlement, and provides guidance on where a condition of release has been met, or where it has not been met.

Benefit payments and proceeds of crime

Some submissions asked that APRA provide the industry with guidance on how the payment standards interact with benefits associated with the proceeds of crime. APRA understands that Treasury is considering issues with confiscation orders made under Proceeds of Crime legislation against superannuation assets.

Inclusion of additional guidance

Similar to comments received regarding SPG 270, some submissions raised concerns that APRA had omitted to include guidance on areas that were included in previous guidance material. Some submissions asked that guidance be included on the meaning of 'cashed' and APRA has now included some guidance in this area. Other submissions asked that further guidance be provided on the preservation standards and conditions of release, however, APRA's view is that reference should be made to the SIS legislation for details of these matters.

Comments impacting both SPG 270 and SPG 280

Inclusion of additional guidance

Some submissions raised areas that were included in previous guidance material, but were not in the SPGs. On consideration, APRA has now included some guidance on the impact of more restrictive requirements in the governing rules (impacting both SPG 270 and SPG 280). APRA is of the view that sufficient guidance is included on gainful employment, although some

legislative references have been added to both SPG 270 and SPG 280 to refer to the legislative definition of gainful employment.

APRA's view is that not all matters of concern, for example risks relating to the contribution and payment standards, will be cross referenced to other superannuation prudential practice guides (comments on this topic were made in relation to both SPG 270 and SPG 280).

Guidance sought on matters outside of APRA responsibilities

Some submissions suggested that APRA should provide guidance in areas that are not directly APRA's responsibility. APRA's view is that the SPGs provide guidance on practical measures for meeting the SIS Act and related legislative obligations. The trustee needs to manage its obligations arising from superannuation law in conjunction with its other obligations. It is not APRA's role to advise how a trustee should meet its other obligations.

Another issue was identified concerning the payment standards and illegal early release and identity theft/fraud. Paragraph 46 of SPG 280 recommends that, if trustee concerns are not able to be resolved, the trustee should not rollover or transfer the amount but instead should report the matter to the APRA Contact Centre, the ATO, AUSTRAC and the relevant State Police. It was suggested that the process be streamlined so that all 3 regulators share the information (if there is no existing legal impediment). While APRA appreciates the benefits that would be derived from such a sharing arrangement, the establishment of such an arrangement is not part of this process.

For further information please contact contribution.payment.standards@apra.gov.au.

Yours sincerely



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