



Mr. A. John Page, CA, CA-CAIRP  
President  
Ontario Association of Insolvency and Restructuring Professionals  
c/o A. John Page & Associates Inc.  
Suite 447, 100 Richmond Street West  
Toronto, Ontario  
M5H 3K6

Dear Mr. Page:

Thank you for your submission on behalf of the Ontario Association of Insolvency and Restructuring Professionals (OAI RP) concerning the *Wage Earner Protection Program (WEPP) Regulations*, which were pre-published in Part I of the *Canada Gazette* on June 7, 2008. As you are likely aware, the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) also submitted comments on the WEPP Regulations, which for the most part, mirror those of OAI RP.

After careful consideration of both submissions, the WEPP Regulations have been amended to streamline the application process, clarify the information that is to be provided by trustees and receivers and simplify the payment scheme for insolvency professionals' fees and expenses. The enclosed document explains in greater detail the changes that were made to the Regulations, and responds to certain concerns that were raised in the submissions which were not addressed in the Regulations.

In addition to changes to the Regulations, we will take the necessary steps to establish a joint committee between the Labour Program and CAIRP to discuss issues that arise pertaining to the administration of the Act. Furthermore, a review of the effectiveness and impacts of the WEPP Regulations will be undertaken within one year.

.../2

In closing, we sincerely appreciate the interest in the WEPP Regulations by OAIRP and CAIRP, as demonstrated by the time and effort taken by both organizations in preparing comments. We look forward to working with you as we proceed to implement this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Streiner". The signature is stylized with a large initial "S" and a cursive "t".

Scott Streiner

Enclosure: 1

**DETAILED EXPLANATION OF CHANGES TO WEPP REGULATIONS AND  
DISCUSSION OF OTHER ISSUES RAISED BY CAIRP AND OAIRP**

The following amendments have been made to the Regulations based on the comments received during the pre-publication of the Regulations in Part I of the *Canada Gazette*.

**Excluded Managers**

**Section 5** – CAIRP suggests that the current definition of excluded managers within the Regulations will negate the claims of individuals to whom the WEPP is designed to provide security, and that the portion of the definition which includes “making binding financial decisions affecting the business of the former employer” be eliminated.

The recommendation was not incorporated, as the existing wording avoids the problems raised in the CAIRP and OAIRP submissions. The wording implies that the financial decisions of an excluded manager would be “binding” in the sense that those decisions would not be reviewed by a more senior manager within the bankrupt or insolvent business. Managers who make decisions that “bind the finances of an enterprise, whether directly or indirectly” would be included under the current wording of the regulation, provided that those decisions could have been subject to review by a more senior manager. The meaning of the regulation will be clarified further in program policy documents.

**Applications**

**Section 9** – This section has been amended to provide the individual with an additional 11 days to apply to the Program, providing them with a total of 56 days instead of 45. This modification addresses the concerns expressed by CAIRP that the individual would not have sufficient time to comply with the application requirements.

CAIRP recommended that this section be modified to allow individuals 21 days from receipt of the information from the trustee or receiver to apply to the Program. However, establishing the timeframe within which individuals may apply on receipt of information from the trustee or receiver will make it difficult to predict when they will apply, and may potentially result in inconsistency in the timeframes for individuals employed within the same organization. Furthermore, the deadline for application must take into account situations in which the trustee or receiver provides no information and is unable to identify any employees. This could occur, for example, in cases where the payroll records are missing and cannot be recovered.

## **Information to be provided to the Minister**

**Subsection 15(1)** – This section has been amended to specify the requirement of trustees and receivers to provide the required information to the Minister on the form prescribed by the Minister. This modification, coupled with the amendment to paragraph 15(1)(b) (see below), provides trustees and receivers with a clear and simple method of providing information pertaining to the managerial function of the individual.

**Paragraph 15(1)(b)** – This section has been amended by requesting that the trustee or receiver provide the Minister with the ‘job title’ of the individual. This information will assist the Minister in his determination of whether or not the individual should be considered as an excluded manager under Section 5.

It should be noted that trustees and receivers will not be required to determine whether or not an individual is an “excluded manager”, as it will be the responsibility of the Program administrator (Service Canada) to make this determination and render a decision on eligibility or non-eligibility of an individual.

**Paragraph 15(1)(d)** – This section has been amended to remove the requirement of trustees and receivers to provide a copy of the individual’s proof of claim to the Minister. This serves two purposes. First, given that the trustee or receiver must attest to the fact that a proof of claim was submitted, and that applicants will be required to attest on their application form to having submitted one, it was deemed unnecessary to include this requirement. Second, it eliminates unnecessary duplication of documents. Under paragraph 16(1)(c), trustees and receivers are required to provide individuals a copy of the documents they provided to the Minister. In effect, a trustee or receiver would be required to provide a copy of a document the individual already possesses – his or her own proof of claim.

Including an explicit dispensation to trustees or receivers who pay outstanding wages to the employees of the bankrupt or insolvent business is unnecessary. Where the trustee or receiver pays wage claims upfront, the claim to the WEPP is automatically extinguished, which would relieve the trustee or receiver of its obligations under the Act. This will be clarified in the policy directives for the program and in directions issued by the minister to trustees and receivers.

The allocation of duties under section 21 of the Act where a bankruptcy and receivership occur simultaneously and when the trustee and receiver are different persons, is not addressed in the regulations. However, this issue will be clarified in the policy directives for the program and in the guidelines that the minister will issue to trustees and receivers.

## **Duty to Assist – Deadlines**

**Section 17** – This section has been removed since the aggregate time frame trustees have to perform their duties is specified in subsection 16(2).

This change was made on the recommendation of both CAIRP and OAIRP.

## **Fees and Expenses**

**Paragraphs 19(1)(b) and 19(1)(d)** – CAIRP and OAIRP recommended that no deficit be required in the administration of the estate or property to qualify for payment under this regulation. They further recommended that the requirement that at least 10 percent of estate expenditures be related to performing WEPP-related duties be removed. These recommendations are not included in the regulations. It is important to clarify the broad policy rationale that underpins section 19 of the regulations. The payment of fees and expenses under section 19 of the regulations is intended to provide reasonable compensation for trustees and receivers in administrations in which the performance of the WEPP-related duties is a major consideration within the overall administration. It is intended to be a remedial measure, to cover estates in which the resources are substantially 'stretched' by the imposition of WEPP duties. It is not intended that payments be available in all situations, in which the performance of WEPP related duties is a relatively small consideration within the overall administration. The regulation attempts to strike a balance between the interests of insolvency professionals and the prudent use of the Government of Canada's fiscal resources.

**Paragraph 19(2)(b)** – This paragraph has been replaced with new wording that simplifies and clarifies the payment scheme to trustees and receivers in response to concerns raised by CAIRP and OAIRP that the existing payment parameters were overly complex and confusing. The new subsection establishes one payment scheme, regardless of the completeness of the information available or the level of cooperation from those in possession of information with respect to their duties, and establishes a higher minimum threshold of payment (\$600 for the first wage claim versus the current \$300).

The increased minimum threshold of payment was adjusted in light of CAIRP's recommendation that the previous formula be supplemented by the direct costs incurred by a trustee or receiver, and providing a minimum fee and expense guarantee. The amount established for the first wage claim recognizes that there are certain fixed costs that must be borne by the trustee or receiver in fulfilling their duties under the WEPP Act, irrespective of how many wage claimants there are in the bankruptcy or receivership.

**Paragraphs 21(1)(c) and 21(2)(c)** – Finally, the recommendation that payment of fees and expenses for the overall administration should not be limited to cases in which all assets of the employer are encumbered by the security for unpaid wage claims was not adopted. A clear standard is needed to decide when the Minister will pay fees and expenses related to the overall administration, particularly given that such payments could entail a large expense on the part of the Minister.

### **Cross-Cutting Issues Related to the Payment of Fees and Expenses**

The recommendation to integrate sections 19 and 20, so that eligibility for payment would be set out in regulation 19 and payment schedules would be contained in section 20, was not included in the regulation. Adopting this recommendation seemed unnecessary, in light of other changes made to the regulations which considerably simplify the conditions of eligibility and the formulae to calculate payments.

CAIRP and OAIRP further recommended that payment of compensation under section 19 be provided even where the trustee or receiver has a guarantee from a third party. This recommendation was not adopted, given that guarantors accept the risks inherent in financing an insolvency administration, and the WEPP will not typically add substantially to the risks that guarantors incur in doing so given that it is only a part of the overall administration.

It was also recommended that, in cases where the entire value of the estate or property of the employer is encumbered by the wage super priority, the Minister should provide a minimum fee guarantee to the trustee or receiver. This proposal conflicts with the basic policy objective of sections 19 and 20 of the regulations. The objective of these regulations is simply to mitigate the financial risks that trustees and receivers face as a result of the wage super priority and the WEPP. It is not intended to mitigate risks that arise due to factors other than the new super priority.