



ISSUE
04

InfoPensions

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this issue

Legislative Developments [P.1](#)

Amendment to the Directives of the
Superintendent (Directives) [P.8](#)

Actuarial Reports - Extension of Filing
Deadline [P.8](#)

Guidance Note – Asset Transfers
Related to DC Provisions of
Pension Plans [P.8](#)

Pension Industry Forum [P.8](#)

Estimated Solvency Ratio (ESR)
Results and Charts [P.9](#)

Instruction Guide - Asset Transfers
Related to DB Provisions of Pension
Plans [P.9](#)

Survivor Rights - Prescribed
Retirement Savings Plan [P.10](#)

OSFI Standard - Double Sided
Documentation [P.10](#)

InfoPensions - Issue 4 – November 2010

InfoPensions is the Office of the Superintendent of Financial Institutions' (OSFI's) electronic newsletter on pension issues. *InfoPensions* includes announcements and reminders on issues relevant to federally regulated private pension plans as well as descriptions of how OSFI applies selected provisions of the *Pension Benefits Standards Act, 1985 (PBSA)*, its regulations and directives and other OSFI guidance. Plan administrators should obtain appropriate legal and actuarial advice on how the legislation and guidelines affect their particular pension plan.

InfoPensions and *PBSA Update* (OSFI's predecessor pension newsletter) are available on the [Pensions Page](#) of the OSFI Web site. To automatically receive new issues of this newsletter and other OSFI pension related documents by e-mail, subscribe through the [Subscription Centre Link](#).

The next issue of *InfoPensions* will be posted in May 2011.

Legislative Developments

Proposed changes to the federal private pension legislative framework were announced by Finance Canada in October 2009 ([Backgrounder](#)). Some of these proposed changes have been included as part of [Bill C-9](#), which received Royal Assent on July 12, 2010 and [Bill C-47](#), which was tabled on September 30, 2010. Other changes have been included in the [first](#) round of amendments to the *Pension Benefits Standards Regulations, 1985 (PBSR)*.

OSFI expects plan administrators to consider the impact of legislative amendments on the provisions of their plan documents. However, as many legislative changes require regulations, OSFI will not expect formal amendments to plan documents until all *PBSA* and *PBSR* amendments have been passed or adopted. The *PBSA* applies to all federally registered pension plans and plan administrators must administer their plans in accordance with the *PBSA* and *PBSR*. Therefore, the provisions of *PBSA* and *PBSR* that are in force will apply to the plan and must be administered by the plan administrator, regardless of what the plan text says.

Continued on Page 2



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Legislative Developments (cont'd)

The following are some of the key changes to the *PBSA* and *PBSR*. Unless otherwise noted, amendments came into force on July 12, 2010. Bill C-47 changes are noted by the blue background; at the time of publication these amendments had been introduced but had not been passed by Parliament.

New or Amended Definitions

Topic	Description	Section of <i>PBSA / PBSR</i>
Negotiated Contribution Plan	Definition of negotiated contribution plan - a multi-employer pension plan in which a participating employer's contributions are limited to an amount determined in accordance with an agreement between the participating employers, collective agreement, statute or regulation and that do not vary as a result of the prescribed tests and standards for solvency referred to in subsection 9(1).	2(1) <i>PBSA</i>
Former Member	Definition of former member amended to exclude individuals whose pension benefits were transferred to another pension plan for section 9.2 and section 28(1)(b.1) of the <i>PBSA</i> .	2(1) <i>PBSA*</i>

Member/Retiree Entitlements and Rights

Topic	Description	Section of <i>PBSA / PBSR</i>
Benefit Reductions	Subject to the Superintendent's authorization, an administrator of a negotiated contribution plan (see definition added in Bill C-47) may make an amendment that reduces benefits, despite the terms of the plan.	10.11 <i>PBSA</i>
Death Benefits	Where there is no survivor on the death of the member or former member, an amount, as described in the provisions of the <i>PBSA</i> , must be paid to the designated beneficiary. If there is no designated beneficiary, the death benefit is payable to the estate. The differentiation between a pre-retirement death benefit for members eligible for early retirement and members who are not has been removed.	16.3(2), 23(1) & 23(1.1) <i>PBSA*</i>
Immediate Vesting	Members' pension benefits are immediately vested upon joining a pension plan. An amendment to 18(1)(c) provides that pension benefits are locked-in after two years of plan membership. Most pre-1986 and post-1987 references affecting benefits have been removed throughout the <i>PBSA</i> .	17 & 18(1)(c) <i>PBSA*</i>

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Member/Retiree Entitlements and Rights (cont'd)

Topic	Description	Section of PBSA / PBSR
Unlocking - Small Benefits	A lump sum payment may be made to a member when they cease membership in the plan, or to a survivor when the member dies, if the value of the entire benefit is less than 20% of the Year's Maximum Pensionable Earnings (YMPE).	18(2)(c) <i>PBSA</i>
Adjustment of a Joint & Survivor Pension	Where no part of a pension benefit is required to be distributed to a spouse, former spouse or former common-law partner under a court order or agreement, the plan can adjust a pension benefit to be payable in the normal form rather than a joint and survivor benefit.	25(7.1) <i>PBSA</i>
Spouse or Common-Law Partner Consent	Where a member who is eligible to retire ceases membership in the plan, consent of the spouse or common law partner is required prior to transferring pension benefit credits to a prescribed retirement savings plan. The consent form will be set out in the <i>PBSR</i> .	26(2.1) <i>PBSA</i>

DC-Specific Provisions

Topic	Description	Section of PBSA / PBSR
Investment Options	Clarifies the responsibility of an administrator with respect to offering plan members investment options in respect of defined contribution provisions; and Establishes the authority to develop regulations respecting investment options offered to members of a member-choice defined contribution pension plan.	8(4.2) to 8(4.4) <i>PBSA</i> 39(n.2) & 39(n.3) <i>PBSA</i>
Asset Transfers	The Superintendent's permission to transfer assets related to DC plan provisions is no longer required. Please refer to OSFI's August 2010 Guidance Note on DC Asset Transfers .	10.2 <i>PBSA</i>
Variable Benefits	Variable benefits (i.e. payments similar to those paid from a life income fund) may be paid from a DC plan. Detailed requirements with respect to the payment of variable benefits from a DC plan will be set out in the <i>PBSR</i> .	16.2 to 16.4 <i>PBSA</i> [*]

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Legislative Developments (cont'd)

Plan Termination

Topic	Description	Section of <i>PBSA / PBSR</i>
Disclosure to Members	<p>After the whole of a plan is terminated, a written statement must be provided to members, former members and their spouses or common-law partners informing them of:</p> <ul style="list-style-type: none"> a) the plan termination within 30 days; and b) their pension benefits and other benefits payable under the plan within 120 days. <p>Definition of “termination” refers to situations described in s.29 (1), (2), (2.1) and (4.2). Other than situations where the Superintendent terminates a plan, a plan may only be terminated if the administrator or employer notifies the Superintendent in writing of their decision.</p> <p>Detailed information requirements to be included in the written statement will be set out in the <i>PBSR</i>.</p>	28(2.1) <i>PBSA</i> *
Declaration by Superintendent	The Superintendent may declare a plan termination where there is a cessation of crediting of benefits.	29(2.1) <i>PBSA</i>
Partial Plan Termination	Only the Superintendent may declare part of a pension plan terminated. Employer-declared partial plan terminations are no longer permitted under the <i>PBSA</i> .	29(4.1) <i>PBSA</i>
Notice of Plan Termination	Notice to the Superintendent of a voluntary termination or winding-up shall be not less than 60 and not more than 180 days before the date of termination or winding-up.	29(5) <i>PBSA</i>
Full Funding	<p>With the exception of those that meet the definition of a <u>negotiated contribution plan (see definition added in Bill C-47)</u>, pension plans are required to fully fund their obligations with respect to pension benefits following plan termination.</p> <p>Detailed requirements with respect to full funding on plan termination will be set out in the <i>PBSR</i>.</p>	29(6.1) to 29(6.5) <i>PBSA</i> *

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Legislative Developments (cont'd)

Funding

OSFI has developed a set of [FAQs](#) to provide more specific guidance on changes to the funding rules. Unless otherwise noted, the following amendments were brought into force on July 1, 2010.

Topic	Description	Section of <i>PBSA / PBSR</i>
Required Payments	<p>In respect of pension plans, other than multi-employer plans, the employer shall pay all amounts required to meet the prescribed tests and standards for solvency.</p> <p>In respect of multi-employer pension plans, each participating employer shall pay all contributions required under an agreement among participating employers or a collective agreement, statute or regulation.</p>	9(1.1) and 9(1.2) <i>PBSA</i>
Letters of Credit	<p>An employer may obtain a qualifying letter of credit instead of paying into the pension fund an amount that is required to be paid under subsection 9(1.1), except amounts deducted from members' remuneration. Letters of credit cannot be used where a plan has terminated.</p> <p>Detailed requirements with respect to letters of credit will be set out in the <i>PBSR</i>.</p>	9.11 <i>PBSA*</i>
Crown Corporations	<p>Allow crown corporations to reduce their payments required under 9(1.1), recognizing that it would be through a different means than obtaining a letter of credit.</p> <p>The conditions that crown corporations will have to meet under section 9.16 will be set out in the <i>PBSR</i>.</p>	9.16 <i>PBSA*</i>
Average Solvency Ratio	Use of a three year average solvency ratio to establish solvency special payments.	9(8) <i>PBSR</i>
Contribution Holidays	Contribution holidays may only be taken where the solvency ratio is above 1.05 (and there is a going-concern excess).	9(5)(b) <i>PBSR</i>
Remittance – Employer Contributions	<p>Starting January 1, 2011, employer contributions, including current service cost contributions and any special payments, must be remitted to the pension fund monthly (within 30 days following the end of each period for which the instalment is paid). The timing of member contributions is unchanged - must be remitted within 30 days following the end of the period in which the contributions were deducted.</p> <p>Plan administrators should update their 2011 contribution planners to reflect their schedule of monthly payments.</p>	9(14)(a) & (b) <i>PBSR</i>
Interest Rate on Late Payments	Outlines the interest rate to be used if an employer fails to make payments in accordance with subsection 29(6) or at the times set out in subsection 9(14).	10 <i>PBSR</i>

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Legislative Developments (cont'd)

Disclosure to Members

Topic	Description	Section of PBSA / PBSR
Electronic Communication	Establishes rules with respect to the use of electronic means to satisfy requirements to provide information to members.	31.1 & 31.2 PBSA
Plan Amendments	Requirement to provide an explanation of the provisions of the plan and any applicable amendments to members, eligible members and spouses or common-law partners within 60 days of establishing the plan or making an amendment to the plan.	28(1)(a)(i) PBSA
Annual Statement to Former Members	Each former member of the plan and former member's spouse or common-law partner must be provided with a written statement containing the prescribed information within six months of the plan year end. Detailed information requirements to be included in the written statements will be set out in the PBSR.	28(1)(b.1) PBSA*

Powers of the Superintendent & Authority to Develop Regulations

Topic	Description	Section of PBSA / PBSR
Terms or Conditions	Terms or conditions can be added to any Superintendent approval, consent, authorization or permission.	5(3) PBSA
Designated Actuary	Superintendent may designate an actuary to prepare an actuarial report for a pension plan.	9.01 PBSA
Void Amendment	Enhanced existing authority to develop void amendment regulations. A solvency ratio level will be set out in the PBSR.	10.1(2) PBSA*
Regulations Requiring Filings	Regulations may be passed requiring filings with the Superintendent by an employer.	12(3) PBSA
Incorporation by Reference	Provisions regarding incorporation by reference within a regulation.	39.1 PBSA

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Legislative Developments (cont'd)

Other

Topic	Description	Section of PBSA / PBSR
Distressed Pension Workout Scheme	<p>Establishes a distressed pension workout scheme whereby an employer may make a declaration that:</p> <ul style="list-style-type: none"> • it does not anticipate being able to make the required payments to the plan or is subject to restructuring proceedings; • it intends to negotiate with representatives of members and beneficiaries with the purpose of entering into a workout agreement; • indicates what portion of the payments referred to in subsection 29.07(1) the employer intends to defer; and contains any prescribed information. <p>Upon making the declaration, special payments may be deferred for up to nine months. During that period, the parties may negotiate a new funding arrangement that would be subject to member and beneficiary non-objection, the Superintendent's determination that the arrangement meets certain funding criteria and Ministerial approval.</p> <p>Detailed requirements with respect to the distressed pension workout scheme will be set out in the <i>PBSR</i>.</p>	29.01 PBSA*
Purchase of Annuities	<p>The purchase of immediate or deferred annuities are restricted if the purchase would impair solvency.</p> <p>OSFI is revising the <i>Directives of the Superintendent pursuant to the Pension Benefits Standards Act, 1985</i> to provide direction on the restricted purchase of immediate and/or deferred annuities by plan administrators.</p>	26.1 PBSA
Quantitative Investment Limits	Elimination of quantitative investment limits in respect of resource and real property investments. This was part of the July 1, 2010 changes to the <i>PBSR</i> .	Schedule III <i>PBSR</i>
Unlocatable Members or Former Members	Authority to designate an entity for the purpose of holding pension benefit credits of any person who cannot be located. This entity has not yet been designated.	10.3(1) to 10.3(5) PBSA
Multi-lateral Agreement	Authority for the Minister of Finance to enter into a multi-lateral agreement with designated provinces regarding the regulation and supervision of multi-jurisdictional pension plans.	6.1 PBSA

*Amendments that will come into force on a day to be fixed by order of the Governor in Council

Amendment to the Directives of the Superintendent (Directives)

On June 25, 2010 OSFI posted changes to [Section 2](#) of the *Directives* issued on June 30, 1987. These changes set out the frequency requirements for the preparation of actuarial reports referred to in subsection 12(2) of the *PBSA*.

Going forward, in general, the frequency requirements for the preparation of actuarial reports are as follows:

- a) Triennially for designated plans as well as plans reporting a solvency ratio of 1.20 or greater or
- b) Annually, for cases not described in a).

Details and transitional exceptions are provided in [Section 2](#) of the *Directives* and in the [FAQs – Changes to Funding Rules](#).

Actuarial Reports - Extension of Filing Deadline

The *PBSR* amendments that took effect July 1, 2010 included modifications to the funding rules for defined benefit pension plans for plan year ends on or after December 31, 2009. Given the timing of these *PBSR* amendments, the filing deadline was extended to September 15, 2010 for actuarial reports required to be filed for a plan year-end date of December 31, 2009 up to February 28, 2010.

Pension plans that filed their actuarial reports prior to the effective date of the *PBSR* amendments are not required to re-file the report. However, if these plans wish to use the modified funding rules, they may re-file the report. The new funding rules must be used for all actuarial reports filed on July 1, 2010 or later.

OSFI will not refuse a voluntarily filed or re-filed report for the above noted valuation dates if it is filed by December 31, 2010.

Guidance Note – Asset Transfers Related to DC Provisions of Pension Plans

As part of *PBSA* amendments that received Royal Assent on July 12, 2010, the Superintendent's permission is no longer required prior to transferring assets related to defined contribution provisions from one pension plan to another. In August 2010, OSFI posted its [Guidance Note](#) to inform the pension industry of OSFI's expectations for plan administrators when such asset transfers occur. The Note also addresses asset transfers that include members subject to provincial pension legislation. This Guidance Note came into effect when posted and replaced the previous Instruction Guide for DC Asset Transfers issued in December 2008.

Pension Industry Forum

On February 16, 2011 OSFI will hold its second Pension Industry Forum in Toronto. The Forum will focus on the recent legislative and regulatory changes and will be targeted to plan administrators of federally registered plans as well as actuaries, lawyers and other consultants. OSFI is also looking into offering the Forum online via Webinar, later in 2011.

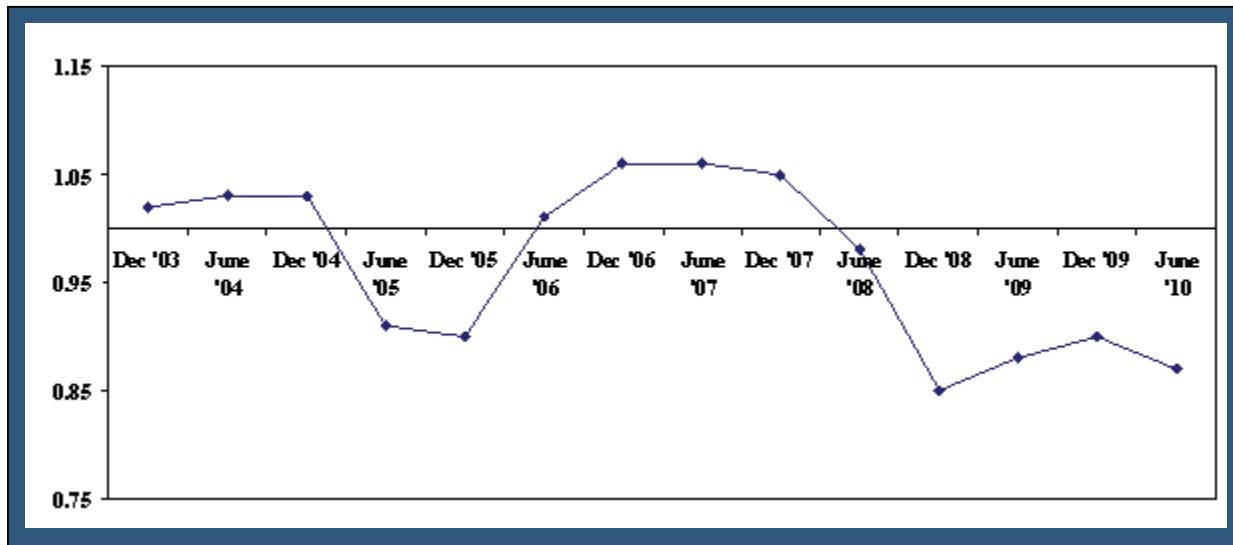
Estimated Solvency Ratio (ESR) Results and Charts

OSFI estimates solvency ratios for the approximately 400 defined benefit pension plans it regulates to assist with the early identification of solvency issues that could jeopardize the security of promised pension benefits.

The actual solvency ratio of a plan can differ from the ESR for a number of reasons. Please see [InfoPensions – Issue 2](#) for details on how OSFI calculates ESRs and our intervention activities based on these solvency testing results.

In October 2010, OSFI issued a [release](#) announcing that the weighted average ESR was 0.87 at June 2010. The average ESR at June 2010 shows a slight deterioration from the ratio of 0.90 at December 2009.

Weighted average ESRs



OSFI estimated that 79% of the approximately 400 defined benefit plans were underfunded on a solvency basis at June 2010, compared to an estimated 76% at December 2009. At June 2010, it is estimated that 22% of all federally regulated pension plans had a solvency ratio of less than 0.80, whereas at December 2009, the comparable proportion was 15%.

Instruction Guide – Asset Transfers Related to DB Provisions of Pension Plans

In August 2010, OSFI posted its draft Instruction Guide and Approval Request Form for the transfer of assets related to defined benefit provisions of pension plans. Comments on the draft guide were requested by September 30th, 2010. No comments were received and the only change to the draft guide was a clarification in Section VI on what could be considered a small group of members. In November 2010, OSFI issued the finalized Instruction Guide which replaces the Instruction Guide for Asset Transfers between Defined Benefit Pension Plans issued in July 2005. Use of the [Instruction Guide](#) and [Approval Request Form](#) are strongly encouraged and should result in faster response times from OSFI.

Survivor Rights – Prescribed Retirement Savings Plan

OSFI has recently received questions regarding a survivor's ability to surrender a death benefit payable from a prescribed retirement savings plan. We would like to clarify that subsection 23(5) of the *PBSA* is in respect of the surrender of a pre-retirement death benefit paid from a pension plan. If a member or former member has exercised portability and transferred their pension benefit credit to a prescribed retirement savings plan then we look to provisions in the *PBSR*.

Sections 20(1)(b), 20.1(1)(i), 20.2(1)(b) and 20.3(1)(i) of the *PBSR* provide that on the death of the holder, the funds in a prescribed retirement savings vehicle shall be paid to the survivor of the holder. There is no provision in the *PBSR* that allows for a survivor to surrender their entitlement following the death of the holder. Sections 20.(1)(c), 20.1(1)(j), 20.2(1)(c) and 20.3(1)(j) outline that except as provided in subsection 25(4) of the *PBSA*, the funds in a prescribed retirement savings plan shall not be assigned, charged, anticipated or given as security and that any transaction purporting to assign, charge, anticipate or give the funds as security is void. Section 36 of the *PBSA* also outlines instances where an agreement or arrangement to surrender or commute benefits payable as a result of a portability transfer is void.

OSFI Standard - Double Sided Documentation

OSFI encourages plan administrators and other external stakeholders to file double-sided documentation with our office, as it is both economical and environmentally sound.