



ISSUE  
**05**

# InfoPensions

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## InfoPensions - Issue 5 – May 2011

*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 November 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 were included as part of [Bill C-9](#), which received Royal Assent on July 12, 2010 and [Bill C-47](#), which received Royal Assent on December 15, 2010. Other changes have been included in amendments to the *Pension Benefits Standards Regulations, 1985* (PBSR), various provisions of which came into force on July 1, 2010, January 1, 2011 and April 1, 2011. Further amendments to the PBSR are expected to follow.

OSFI expects plan administrators to consider the impact of legislative amendments on the provisions of their plan documents. As some legislative changes still require regulations, OSFI will not expect formal amendments to plan documents until all PBSA and PBSR amendments have come into force. However, plan sponsors may amend their plan texts earlier or once coming into force dates are known. 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 the 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.



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Canada

## Legislative Developments (cont'd)

This table, originally posted in [InfoPensions - Issue 4](#), has been updated to include the current status of key changes to the PBSA and PBSR. For details with respect to these changes please refer to the specific sections of the PBSA and PBSR.

All amendments to the PBSA have now received Royal Assent; however, not all amendments are in force. Amendments not yet in force will come into force on a day or days to be fixed by order of the Governor in Council. All PBSR amendments listed here came into force as of their adoption date.

### ***New or Amended Definitions***

<b>Topic</b>	<b>Description</b>	<b>Section of PBSA / PBSR</b>	<b>In Force Date</b>
Negotiated Contribution Plan	Definition of negotiated contribution plan added - 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) of the PBSA.	2(1) PBSA	Dec.15, 2010
Former Member	Definition of former member amended for section 9.2 and section 28(1)(b.1) of the PBSA to exclude individuals whose pension benefits were transferred to another pension plan.	2(1) PBSA	April 1, 2011

### ***Member/Retiree Entitlements and Rights***

<b>Topic</b>	<b>Description</b>	<b>Section of PBSA / PBSR</b>	<b>In Force Date</b>
Benefit Reductions	Subject to the Superintendent's authorization, an administrator of a negotiated contribution plan may make an amendment that reduces benefits, despite the terms of the plan.	10.11 PBSA	Dec.15, 2010
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 PBSA, 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.	23(1) & 23 (1.1) PBSA	July 1, 2011

**Member/Retiree Entitlements and Rights (cont'd)**

Topic	Description	Section of <i>PBSA / PBSR</i>	In Force Date
Immediate Vesting	<p>Members' pension benefits are immediately vested upon joining a pension plan. An amendment to 18 (1)(c) provides that all pension benefits are locked-in after two years of plan membership.</p> <p>Most pre-1986 and post-1987 references affecting benefits have been removed throughout the PBSA.</p>	17 & 18(1)(c) PBSA	July 1, 2011
Unlocking - Small Benefits	<p>A lump sum payment may be made to a member or survivor on cessation of membership or death, if the value of the pension benefit is less than 20% of the Year's Maximum Pensionable Earnings (YMPE).</p> <p>For additional details regarding the application of this provision please refer to the <i>Small Benefit Unlocking – Transitional Issues</i> article in this newsletter.</p>	18(2)(c) PBSA	Dec.15, 2010
Adjustment of a Joint & Survivor Pension	<p>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.</p> <p>This section of the PBSA should be read in conjunction with section 25(5) of the PBSA which requires an administrator to determine and administer the pension benefit in accordance with a court order or agreement.</p>	25(7.1) PBSA	July 12, 2010
Spouse or Common-Law Partner Consent	<p>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.</p> <p>The consent form will be set out in the PBSR.</p>	26(2.1) PBSA	Not yet in force

## Legislative Developments (cont'd)

### Plan Termination

Topic	Description	Section of PBSA / PBSR	In Force Date
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> <p>a) the plan termination (within 30 days); and b) their pension benefits and other benefits payable under the plan (within 120 days).</p> <p>“Termination” refers to situations described in s.29(1), (2), (2.1) and (4.2).</p> <p>Further amendments to the PBSR are expected to follow and will outline information requirements to be included in the written statement. Disclosure is not expected until these regulations come into force.</p>	28(2.1) PBSA	April 1, 2011
Declaration by Superintendent	The Superintendent may also declare a plan terminated where there is a cessation of crediting of benefits.	29(2.1) PBSA	July 12, 2010
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 PBSA.	29(4.1) PBSA	July 12, 2010
Notice of Plan Termination	<p>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.</p> <p>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>	29(5) PBSA	Dec. 15, 2010
Full Funding	<p>With the exception of Negotiated Contribution plans, pension plans are required to fully fund their obligations with respect to pension benefits following plan termination.</p> <p>An employer must pay an amount equal to the solvency deficit at the date of plan termination, either by:</p> <p>a) a lump sum payment; or b) equal annual payments sufficient to liquidate the solvency deficit over a period of five years from the date of plan termination.</p> <p>Plans must continue to file annual actuarial reports after the date of plan termination, until the plan is wound up. These annual actuarial reports must, in part, set out the remaining payments required to liquidate the solvency deficit as at the valuation date.</p>	29(6.1) to 29(6.5) PBSA  24.1 PBSR	April 1, 2011  April 1, 2011

## Legislative Developments (cont'd)

### Funding

OSFI has developed a set of [FAQs](#) to provide more specific guidance on changes to the funding rules.

Topic	Description	Section of PBSA / PBSR	In Force Date
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. However, pursuant to 9(1) of the PBSA, the plan as a whole must be funded in accordance with the prescribed tests and standards for solvency.</p>	9(1.1) and 9(1.2) PBSA	July 12, 2010
Letters of Credit	<p>An employer may obtain a qualifying letter of credit instead of paying solvency special payments into the pension fund, except amounts deducted from members' remuneration. Letters of credit cannot be used where a plan has terminated.</p> <p>The total face value of all letters of credit held for the benefit of a plan cannot exceed 15% of the market value of assets as determined on the valuation date. Other detailed requirements that must be met are outlined in section 9.1 of the PBSR.</p>	9.11 PBSA  9.1 PBSR	April 1, 2011  April 1, 2011
Crown Corporations	<p>Agent crown corporations are permitted to reduce their solvency special payments, recognizing that it would be through a different means than obtaining a letter of credit.</p> <p>The conditions that agent crown corporations have to meet in order to reduce solvency special payments are outlined in section 9.16 of the PBSA.</p>	9.16 PBSA  9.2 PBSR	April 1, 2011  April 1, 2011
Average Solvency Ratio	A three year average solvency ratio is used to establish solvency special payments.	9(8) PBSR	July 1, 2010
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) PBSR	July 1, 2010
Remittance – Employer Contributions	<p>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).</p> <p>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 ensure their 2011 contribution planners reflect their schedule of monthly payments.</p>	9(14) PBSR	Jan. 1, 2011
Interest Rate on Late Payments	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) is specified for various payment types.	10 PBSR	July 1, 2010

## Legislative Developments (cont'd)

### Other

Topic	Description	Section of PBSA / PBSR	In Force Date
Distressed Pension Workout Scheme	<p>An employer may make a declaration that:</p> <ul style="list-style-type: none"> <li>• it does not anticipate being able to make the required payments to the plan or is subject to restructuring proceedings;</li> <li>• it intends to negotiate with representatives of members and beneficiaries with the purpose of entering into a workout agreement;</li> <li>• indicates what portion of the payments referred to in subsection 29.07(1) the employer intends to defer; and</li> <li>• contains any prescribed information.</li> </ul> <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:</p> <ul style="list-style-type: none"> <li>• member and beneficiary non-objection,</li> <li>• the Superintendent's determination that the arrangement meets certain funding criteria and</li> <li>• Ministerial approval.</li> </ul>	29.01 PBSA	April 1, 2011
	<p>Section 10.1 to 10.991 of the PBSR provide additional detail with respect to:</p> <ul style="list-style-type: none"> <li>• information to be provided to members and beneficiaries,</li> <li>• minimum requirements that the negotiated funding schedule must meet,</li> <li>• requesting Ministerial approval of the funding schedule,</li> </ul> <p>among other requirements.</p>	10.1 to 10.991 PBSR	April 1, 2011
Purchase of Annuities	<p>The purchase of immediate or deferred annuities are restricted if the purchase would impair solvency.</p> <p>Section 9 of the <i>Draft Directives of the Superintendent pursuant to the Pension Benefits Standards Act, 1985</i> provides direction on the restricted purchase of immediate and/or deferred annuities by plan administrators.</p>	26.1 PBSA	July 12, 2010
Quantitative Investment Limits	Quantitative investment limits in respect of resource and real property investments have been eliminated.	Schedule III PBSR	July 1, 2010
Unlocatable Members or Former Members	The Minister of Finance, with the approval of the Governor in Council, may 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	Dec. 15, 2010
Multi-lateral Agreement	The Minister of Finance may enter into a multi-lateral agreement with designated provinces regarding the regulation and supervision of multi-jurisdictional pension plans.	6.1 PBSA	Dec. 15, 2010

## Legislative Developments (cont'd)

### *Powers of the Superintendent & Authority to Develop Regulations*

Topic	Description	Section of <i>PBSA / PBSR</i>	In Force Date
Terms or Conditions for Approvals	Any approval, consent, authorization or permission of the Superintendent may be subject to terms and conditions.	5(3) PBSA	July 12, 2010
Designated Actuary	The Superintendent may designate an actuary to prepare an actuarial report or a termination report for a pension plan.	9.01 PBSA	July 12, 2010
Void Amendment	The existing authority to develop void amendment regulations has been enhanced  For the purposes of paragraph 10.1(2)(c) of the PBSA, the prescribed solvency ratio level is 0.85. Unless the Superintendent authorizes the amendment, an amendment is void if it would reduce the solvency ratio of the plan to below 0.85 once the amendment is made.	10.1(2) PBSA  9.3 PBSR	Oct. 31, 2010  April 1, 2011
Regulations Requiring Filings	Regulations may be passed requiring filings with the Superintendent by an employer.	12(3) PBSA	July 12, 2010
Incorporation by Reference	A regulation may incorporate by reference a document produced by a person or body other than the Minister or Superintendent.	39.1 PBSA	July 12, 2010

### *Disclosure to Members*

Topic	Description	Section of <i>PBSA / PBSR</i>	In Force Date
Electronic Communication	Rules with respect to the use of electronic means to satisfy requirements to provide information to members are established.	31.1 & 31.2 PBSA	Not yet in force
Plan Amendments	An explanation of the provisions of the plan and any applicable amendments must be provided to members, eligible members and spouses or common-law partners within 60 days after the establishment of the plan or the making of an amendment to the plan.	28(1)(a)(i) PBSA	Dec. 15, 2010
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 after the plan year end.  Further amendments to the PBSR are expected to follow and will outline information requirements to be included in the written statement. Disclosure is not expected until these regulations come into force.	28(1)(b.1) PBSA	April 1, 2011

## Legislative Developments (cont'd)

### DC-Specific Provisions

Topic	Description	Section of P <sup>B</sup> S <sup>A</sup> / P <sup>B</sup> S <sup>R</sup>	In Force Date
Investment Options	<p>The responsibilities of an administrator are clarified with respect to offering plan members investment options in respect of defined contribution provisions or additional voluntary contributions; and</p> <p>The authority to develop regulations respecting investment options offered by an administrator has been added.</p>	<p>8(4.2) to 8(4.4) P<sup>B</sup>S<sup>A</sup></p> <p>39(1)(n.2) &amp; (n.3) P<sup>B</sup>S<sup>A</sup></p>	Not yet in force
Asset Transfers	<p>The Superintendent's permission to transfer assets related to DC plan provisions is no longer required.</p> <p>Please refer to OSFI's August 2010 <a href="#">Guidance Note on DC Asset Transfers</a>.</p>	10.2 P <sup>B</sup> S <sup>A</sup>	July 12, 2010
Variable Benefits	<p>Variable benefits (i.e. payments similar to those paid from a life income fund) may be paid from a DC plan.</p> <p>The P<sup>B</sup>S<sup>A</sup> provides certain minimum requirements with respect to the payment of variable benefits such as survivor benefits and transfer options. Further details will be set out in the P<sup>B</sup>S<sup>R</sup>.</p>	16.2 to 16.4 P <sup>B</sup> S <sup>A</sup>	Not yet in force

## Draft Stress Testing Guideline

In March 2011 OSFI posted its [Draft Stress Testing Guideline](#) for Pension Plans with Defined Benefit Provisions. This Guideline provides general information on stress testing and outlines OSFI's expectations regarding the use of stress testing as a risk management tool. In the past, OSFI has communicated the importance of stress testing however this is the first Guideline that OSFI has issued on this topic with respect to pension plans. Comments on the draft Guideline were requested by April 30, 2011 and OSFI is in the process of reviewing the comments received. Plan administrators may refer to this Guideline while in draft form.

## 2011 Pension Industry Forum

On February 16, 2011 OSFI held its 2<sup>nd</sup> Pension Industry Forum in Toronto. The Forum focused on recent legislative changes and their impact on plan administration. Some of the topics included legislative developments, new funding rules and OSFI's expectations of plan administrators. Breakout sessions were held to focus on both DB and DC topics. OSFI would like to thank those who attended and for the valuable feedback that was provided.



## First Nations Pension Plans – Supreme Court of Canada Decision

Pension plans subject to the PBSA provide pension benefits to employees employed in a work, undertaking or business to which the federal Parliament has exclusive legislative authority (known as “included employment”). The federal government's jurisdiction over “included employment” is derived from the *Constitution Act 1867*. Subsection 4(4) of the PBSA defines included employment and sets out a list of what is generally considered “included employment”.

The November 4, 2010 Supreme Court of Canada (SCC) decision in *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union* provides direction on the jurisdiction applicable to labour matters in respect of First Nations. The SCC found that in determining jurisdiction of an entity established to provide services to First Nations, one must determine the nature of the undertaking in which the employer is engaged. Where the employer's business, work or undertaking is not in an area over which Parliament has exclusive legislative authority, the employer (and its pension plan) is subject to provincial jurisdiction. For example, if an employer is exclusively engaged in areas such as

- health care,
- education,
- social / child / family services

provincial labour and pension legislation would apply. If an employer is engaged in an area of exclusive federal jurisdiction (for example, it operates a radio station) then the plan and employment is governed by federal legislation.

OSFI is in the process of reviewing the SCC decision and its potential impact on federally regulated First Nations pension plans. OSFI also expects plan administrators to assess the impact the SCC decision may have on their pension plans.

## Small Benefit Unlocking – Transitional Issues

The amendment to paragraph 18(2)(c) of the PBSA allowing a lump sum payment to be made to a member or survivor if the value of the pension benefit credit is less than 20% of the Year's Maximum Pensionable Earnings (YMPE) came into force on December 15, 2010.

Prior to December 15, 2010, this section of the PBSA allowed a lump sum payment to be made to a member or survivor if the annual pension benefit payable was less than 4% of the YMPE.

OSFI has recently received questions with respect to a transitional issue. OSFI would like to clarify that the 20% rule is currently in effect however any transactions that were in process at the time the 20% rule came into effect may be completed using the 4% rule. Moving forward, a plan may only continue to apply the 4% rule if the pension benefit credit is less than 20% of the YMPE.

Plan administrators may apply the 20% rule effective December 15, 2010 even if plan amendments reflecting paragraph 18(2)(c) of the PBSA have not yet been filed with OSFI.

## Updating Guidance Notes - Risk Assessment Framework

In April 2009, OSFI posted its [Risk Assessment Framework for Federally Regulated Pension Plans](#) and accompanying Guidance Notes. OSFI has begun an initiative to periodically review these Guidance Notes to ensure they remain up to date. OSFI will re-issue revised Guidance Notes as required.

## Pension Fees

Amendments to section 23 of the *Office of the Superintendent of Financial Institutions Act* (OSFI Act) were included in Part 8 of Bill C-47 and will come into force on a day to be fixed by order of the Governor in Council. This section of the OSFI Act was amended to move the assessment of annual pension fees from the PBSA to the OSFI Act. In general, the intent of the pension plan assessment methodology is to reflect the cost incurred by OSFI in connection with administering the PBSA. OSFI is in the process of reviewing this methodology with the objective of providing a better alignment between plans' assessments and the effort undertaken by OSFI. Any changes to the method of calculating pension plan fees or assessments will need to be implemented through regulations.

Some of OSFI's considerations in reviewing possible changes to the current methodology include:

- In the supervision and regulation of pension plans OSFI considers risks to all plan beneficiaries including retirees. The current methodology, however, captures only active members;
- Additional OSFI resources are required when large plans face increased risk, while the current maximum plan fee base is capped at 10,000 members;
- The current minimum annual fee, which is charged to pension plans with 20 members or less, is generally not sufficient to cover OSFI's costs.

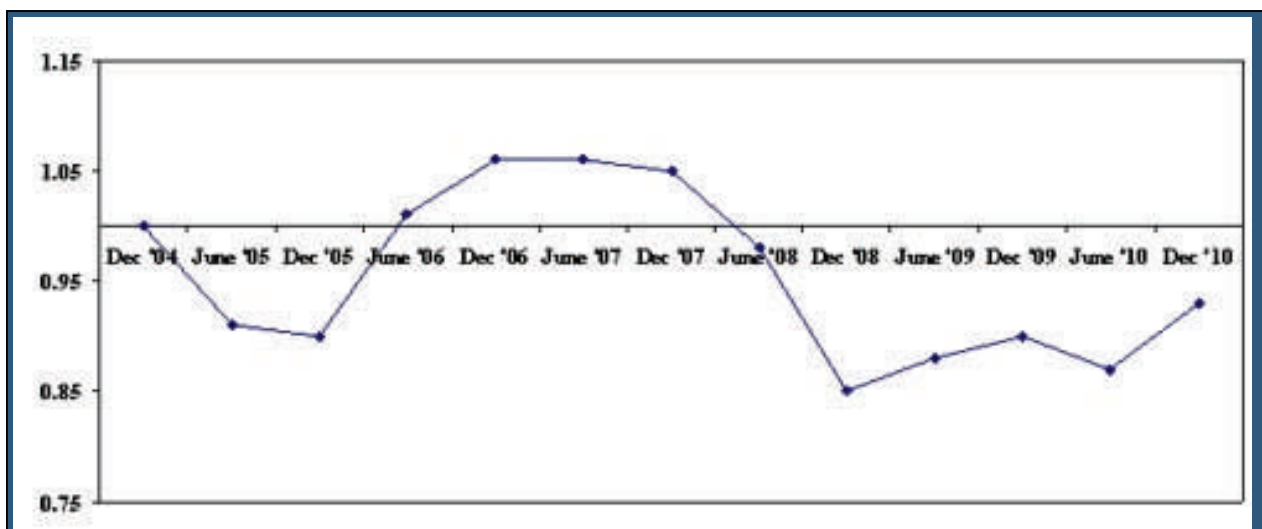
Any changes to the methodology based on the above considerations will not increase the total value of fees or assessments charged to federal pension plans. Rather, changes would have the effect of adjusting the relative amounts that pension plans pay in order to better align those amounts with the effort undertaken by OSFI. OSFI will continue to communicate further information as this work moves forward. Questions and/or comments regarding this matter may be directed to [Pirjo.Davitt@osfi-bsif.gc.ca](mailto:Pirjo.Davitt@osfi-bsif.gc.ca).

## 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.

The weighted average ESR was 0.93 at December 31, 2010. The average ESR at December 2010 shows an improvement from the ratio of 0.87 at June 2010, and is also moderately better than the December 31, 2009 ratio of 0.90.



## Estimated Solvency Ratio (ESR) Results and Charts (cont'd)

OSFI estimated that 76% of the approximately 400 defined benefit plans were underfunded on a solvency basis at December 2010, compared to an estimated 79% at June 2010. At December 2010, it is estimated that 16% of all federally regulated pension plans had a solvency ratio of less than 0.80, whereas at June 2010, the comparable proportion was 22%.

## Filing Actuarial Reports

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. We have updated our FAQs on [Changes to the Funding Rules](#) to include the following table. This table is intended to help plan administrators and other external stakeholders determine when actuarial reports are due to be filed.

Solvency Ratio (SR)	For plans with a most recent valuation date of Dec. 31, 2009 or Jan. 1, 2010	For plans that do not have a most recent valuation date of December 31, 2009 or January 1, 2010	
		Valuation date is before Dec.31, 2009	Valuation date is after Jan.1, 2010
SR disclosed in the actuarial report is less than 1.0	Plan must file annually (i.e. next valuation date of Dec. 31, 2010 or Jan.1, 2011)	Plan must file annually (i.e. at date of next plan year-end)	Plan must file annually (i.e. at date of next plan year-end)
SR disclosed in the actuarial report is between 1.0 and 1.20	Plan must file in two years (i.e. next valuation date of Dec. 31, 2011 or Jan.1, 2012)	Plan must file in three years	Plan must file annually (i.e. at date of next plan year-end)
SR disclosed in the actuarial report is >1.20 or plan is designated under the <i>Income Tax Act</i>	Plan must file in three years (i.e. next valuation date of Dec. 31, 2012 or Jan.1, 2013)	Plan must file in three years	Plan must file in three years

Details regarding filing requirements are outlined in Section 2 of the [Directives of the Superintendent](#) as amended on June 25, 2010.

## Calculation of Transfer Values

In response to several questions that were raised, OSFI would like to clarify that once the first actuarial report is filed with OSFI on or after July 1, 2010, the solvency ratio based on market value of assets should be used when applying the portability restrictions in section 9 of the [Directives](#). This is the case even if the first actuarial report filed with OSFI on or after July 1, 2010 used a smoothed asset value to calculate the average solvency ratio.