

New Ontario Commuted Value Transfer Policy

On July 7, 2009, the Financial Services Commission of Ontario (FSCO) published a new policy with respect to commuted value transfers.¹ Essentially, the policy requires every pension plan registered in Ontario to receive FSCO's approval to pay commuted value transfers if there is reason to believe that a current determination of the transfer ratio would be at least 10 percent less than the transfer ratio presently being used.

For example, a plan that is presently using a transfer ratio of 1.00 (typically, a plan that was fully funded on a wind-up basis at the time of the last filed actuarial report) would need to request approval if there is reason to believe that a current determination of the transfer ratio would be less than 0.90. Similarly, if the transfer ratio presently being used is 0.80, then approval to make any commuted value transfers is required if a current calculation would be less than 0.72.²

The policy suggests that plan administrators review their transfer ratio no less frequently than every three months. In the past, it has been typical only to review the transfer ratio at the time an actuarial report is prepared, which could be once every three years under some circumstances. Obviously, this is a significant new obligation for plan administrators and actuaries.

¹ On June 19, 2009, O. Reg. 239/09 under the Pension Benefits Act (PBA) was filed. Included in the amendments to the Regulation were changes to Section 19. These changes require the administrator to seek the prior approval of the superintendent, using a "Request for Approval Form," before transferring any funds under Sections 42 or 43 of the PBA in situations where the administrator knows or ought to know that the transfer ratio in the most recently filed valuation report has declined by 10% or more. Policy T800-402, available at <http://www.fSCO.gov.on.ca/english/pensions/policies/active/T800-402.pdf>, implements this change. While the policy applies to annuity purchases as well as commuted value transfers, this *Bulletin* only discusses transfers.

² Note that the test is based on 10 percent of the present factor, not ten percentage points.

The transfer ratio is determined by taking the market value of plan assets (net of estimated plan expenses to wind up the plan) divided by the wind-up liabilities. The asset determination is usually straightforward, and most plans will receive an asset statement about ten days after the end of each month from the custodian of the plan's assets. The wind-up liability amount, on the other hand, is an actuarial determination that varies every month.

Specifically, each month the wind-up liability increases by the value of new benefit accruals for those actively at work and by the interest factor that was used in determining the prior wind-up liability. The wind-up liability may also increase by other factors, such as the increased value of past accruals for "final average salary" plans and by participants "crossing over" the threshold of eligibility for subsidized early retirement.

The wind-up liability decreases each month by the benefit payments made, whether monthly pensions or lump sum payments. Finally, the wind-up liability increases or decreases each month to reflect changes in the cost of annuities and the prescribed interest rates used to calculate commuted value transfers. Therefore, the determination as to whether or not it is reasonable to believe that the transfer ratio has declined by more than 10 percent will need to be prepared by the plan's actuary.

Once the determination has been made that there has been more than a 10 percent decline in the transfer ratio, the plan must cease making commuted value transfers until approval has been requested and received from FSCO.³

FOUR OPTIONS TO RESUME PAYMENT

FSCO has a specific form that must be completed by the plan administrator and the plan actuary to request approval. That form is submitted to the plan's assigned Pension Plans Branch staff member at FSCO. The actuary must certify to

³ The procedure is clear with respect to Ontario participants in plans registered with FSCO. Plan administrators should discuss with legal counsel how to treat other situations.

the calculation of the new transfer ratio. The plan administrator must propose one of four options to resume payment. These are:

1. Make commuted value transfers based on the new transfer ratio, with the balance to be paid with interest within five years.
2. Pay the full commuted value following an additional employer contribution of the transfer deficiency based upon the new transfer ratio. This option will normally not be suitable for multi-employer plans.
3. Pay the full commuted value because, based on the new transfer ratio, the total transfer deficiencies paid since the last filed actuarial report do not exceed 5 percent of the market value of assets used in the calculation of the new transfer ratio. Note that the 5 percent test may cover a three-year period; it is not 5 percent each year unless annual actuarial valuations are being filed. Most multi-employer plans and many other plans will qualify for this option.
4. Pay in accordance with a plan-specific proposal designed by the plan administrator.

Once approval is received, commuted value transfers must be resumed. The approval remains in effect until the next actuarial report is filed⁴ or the plan administrator concludes that there has been another decline in the ratio of more than 10 percent, at which time the approval process begins again.

⁴ In some cases, a newly filed actuarial report may be retroactive to an earlier date than the calculation date of the new transfer ratio. For example, a plan may prepare a new transfer ratio determination as of July 1, 2009. An actuarial report as of January 1, 2009 does not need to be filed until September 30, 2009. In this situation, the transfer value in the actuarial report is required to be the lesser of the two calculated rates.

For further information, please contact Thomas Levy at 416.969.3968 or tlevy@sibson.com.

As with all issues involving the interpretation or application of laws or proposed changes to laws, trustees should rely on their fund counsel for authoritative advice on the implications of the new Regulation and Policy. Sibson Consulting can be retained to work with plan sponsors and their pension legal counsel to assess the potential impact.

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