BRITISH COLUMBIA | Financial Institutions Commission

INFORMATION
BULLETIN

BULLETIN NUMBER:	**PENS 15-003**
TITLE:	**SUMMARY OF CHANGES - REGULATION**
LEGISLATION:	***Pension Benefits Standards Act***
DATE:	**MAY 2015**

PURPOSE

The purpose of this bulletin is to provide a summary of significant changes resulting from the adoption of the *Pension Benefits Standards Act,* SBC 2012, c. 30, as amended by Bill 10-2014, the *Pension Benefits Standards Amendment Act*.

On May 11, 2015, the Lieutenant Governor approved the Pension Benefits Standards Regulation (the New Regulation). The New Regulation supports Bill 38-2012, the *Pension Benefits Standards Act*, (the New Act) which was passed in May of 2012, and subsequently amended by Bill 10-2014. Although the New Regulation is passed, the New Act and Regulation will not come into force until September 30, 2015.

This Bulletin is designed to provide plan administrators and service providers with a summary of the significant changes in the New Regulation and how they relate to the New Act. This Bulletin is not exhaustive, and administrators and their service providers should undertake a comprehensive review of the New Act and Regulation to determine all specific legislative requirements applicable to a registered pension plan.

In addition to this information, the Superintendent's office will be reviewing existing Bulletins and updating, rescinding or replacing these Bulletins, as appropriate. It is our intention to have key bulletins and guidelines published by September 30, 2015 with other bulletins and guidelines to follow thereafter. We will be seeking stakeholder comment on these guidelines as they are developed, after which the finalized versions will be posted to the website.

Stakeholders should also review the following documents:

1. PENS 15-001, "New Pension Legislation Proclaimed"
2. PENS 15-002, "Summary of Changes – Act"
3. PENS 15-004, "Administrative Information"

If you have questions about any of the new legislation or the processes for meeting compliance requirements, please contact our office via e-mail (Pensions@ficombc.ca) or through the contact information at the end of this Bulletin.

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New Definitions in the Regulation (Section 1)

“accessible going concern excess” and “accessible solvency excess”
“plan’s accessible going concern excess” and “plan’s accessible solvency excess”
“participating employer’s accessible going concern excess” and “participating employer’s accessible solvency excess”

Accessible excess refers assets available to the administrator or a participating employer to use for various purposes depending on the plan type and plan provisions. The concept of accessible excess has been added to emphasize the requirement to leave a contingency reserve in the fund when actuarial excess arises. Total excess will always be greater than accessible excess.

“annuity” is used to refer to a non-commutable life annuity, the only type of annuity to which benefits in a pension plan or money in a locked-in retirement account or life income fund may be transferred.

“benefit formula component”, “defined benefit component”, “defined contribution component”, “plan component” and “target benefit component”

The term “component” refers to the portion of the plan that relates to a provision of the plan text document, including, without limitation, the assets and liabilities of the plan that relate to that provision.

“divisional multi-employer plan” is a term used to describe either a collectively bargained multi-employer plan (CBMEP) that is not a specified multi-employer pension plan under the *Income Tax Act* (Canada) or a non-collectively bargained multi-employer plan (NCBMEP) under which the participating employers are individually responsible for funding of benefits accrued to or accruing by the members who are, or were, employees of the employer.

“life income type benefit account” refers to the account that may be set up under a defined contribution plan to permit a retired member to receive life income fund (LIF) type payments from the plan rather than transferring funds out of the plan to a LIF.

“medical practitioner” is a term used to describe a qualified person who is able to provide certification of considerably shortened life expectancy, or who can certify that medical treatment is necessary (for purposes of financial hardship unlocking).

“provision for adverse deviation (PfAD)” and **“PfAD offset”** are terms used in the funding rules applicable to target benefit provisions.

“target benefit funded ratio” is a term used in the calculation of a member’s entitlement under a target benefit provision for the purpose of a commuted value transfer under section 86 (b) of the New Act. It is the same as the going concern funded ratio of the component, except that the ratio cannot be greater than 1.

"type" is a term used in section 92 (2) of the Act to refer to the types of plan provisions that may be converted. The three types are defined benefit, defined contribution and target benefit. If a new category of plan provision was prescribed as a "benefit formula provision" under section 1 of the New Act that would also be a "type" of plan provision.

"withdrawal factor" is a term used in the calculation of maximum withdrawals for a life income type benefit (LITB) account or a Life Income Fund (LIF). While the concept has existed since the inception of the LIF, these defined terms are now part of the calculation of the maximum amount that may be paid from a LITB account or a LIF.

The term **"contribution holiday"** in the current regulation has not been carried forward. Instead, see section 63 of the New Act and section 61 of the New Regulation for the new terminology, use of actuarial excess.

Note: All section references below refer to the New Regulation.

Calculation of a PfAD (section 2)

The PfAD is a percentage of a target benefit component's going concern liabilities, which is adjustable depending on certain risk factors. The PfAD has two components.

The first factor is called the "asset allocation amount". The amount of the PfAD associated with this factor depends on the amount of the plan's equity allocation.

The second factor in determining the PfAD compares the going concern discount rate used in the plan's actuarial valuation report to a benchmark discount rate. Instructions on how to calculate the benchmark discount rate are in section 2. The amount of the PfAD associated with this component is a 15% increase in going concern liability for every 1% that the assumed discount rate exceeds the benchmark discount rate.

Jointly Sponsored Plan (section 5)

The definition of jointly sponsored plan (JSP) is set out in section 1 of the New Act. To qualify as a JSP, a plan must meet the criteria prescribed in this section. A JSP must be administered by a board of trustees (or a similar body acceptable to the Superintendent). At least 50% of the trustees must be individuals who represent plan members. Under this type of plan the participating employer or employers and the active members share the funding cost of the plan, including the requirement to make special payments in respect of either, or both, unfunded liabilities or solvency deficiencies, based on agreement between the employer and employees as joint sponsors. As members are sponsors, they participate in the administration, investment, funding and governance decisions related to the plan.

Commuted Value Calculation (section 9)

There are no changes in the method for calculating the commuted value of benefits under a defined benefit provision. New rules have been added for the calculation of the commuted value of benefits under a target benefit provision. Under a target benefit provision, the commuted value is calculated using the actuarial assumptions used in determining the going concern liability under the "current actuarial valuation report;" that is, the most recent actuarial valuation report on file with the Superintendent of Pensions (Superintendent).

In either case, the commuted value must be calculated as at the date of the member's termination of active membership or death. Where payment of the commuted value is not made within 180 days after that calculation, the commuted value **must** be recalculated before payment is made.

Plans for "specified individuals"

The exemption for plans for "specified individuals," as that term is defined in section 8515 (4) of the Income Tax Regulation (ITR), set out in section 2 (2) (c) of the current Pension Benefits Standards Regulation (Reg. 433/93) has been modified. Plans for specified individuals are no longer included in the list of prescribed plans that are not "pension plans" as defined under section 1 of the New Act.

Except as set out in sections 10 (9) through 10 (11), inclusive, of the New Regulation, with effect from September 30, 2015, plans for individuals who earn in excess of 2-½ times the Year's Maximum Pensionable Earnings (YMPE) must be registered with the Superintendent and comply with the requirements of the New Act and Regulation.

Sections 10 (9) through 10 (11), inclusive, of the New Regulation continues the exemption for plans for specified individuals that are either registered with the Canada Revenue Agency, or for which an application for registration has been made before September 30, 2015.

Plans for connected persons

Plans for a person or persons connected with an employer continue to be exempt from the legislation except for a few provisions such as vesting, locking-in, portability, survivor benefits and age restrictions. These sections are listed in section 12 of the New Regulation.

For more information on determining whether a person is connected with an employer, please refer to section 8500 (3) of the ITR.

Additional matters to be dealt with in the plan text document (section 14)

Section 8 (1) of the New Act lists the topics that must be set out in the plan text document, and refers to some additional prescribed items, which include five new items. Most of these items apply to plan content. The other item restricts how the plan is created and the nature of the governing document.

1. The plan text document must provide that an additional amount of pension that is to cease or be reduced upon eligibility or receipt of CPP or QPP is to cease or be reduced at the age of eligibility for unreduced CPP or QPP (currently age 65) (section 13 (4)).

2. The plan text document must state the effective date of the plan (section 13 (5)).

3. The plan text document must be a stand-alone document. It cannot form part of a collective agreement or any other document under which the plan was created (section 13 (6)).

4. If the benefit to be provided under a negotiated cost plan is determined by reference to contributions (example: benefit formula = X% of contributions received), the plan text document must further provide that a change in the negotiated contribution rate must only affect future service benefits. Past service benefits cannot be automatically increased by the change in contribution rate but would require a separate amendment and be subject to restrictions related to funding requirements (section 13 (7)).

5. If the plan contains a defined contribution provision, the plan text document must state who is responsible for directing the investments: the member, the administrator or some combination of the two (section 13 (8)).

<u>Administrator must amend target benefit provisions (section 20)</u>

A "target benefit provision" is a benefit formula provision that establishes a formula by which the amount of pension that is intended to be paid is calculated and requires that benefits may be reduced. A target benefit provision is generally funded with a fixed rate of employer and, where required, employee contributions.

Where an actuarial valuation report demonstrates that the expected contributions to a target benefit provision will be insufficient to provide the benefits in accordance with the plan formula, section 20 requires that the administrator file, concurrently with the actuarial valuation report, an amendment to the plan text document which:

- adjusts either the formula used in the target benefit provision or the ancillary benefits, as defined in section 82 of the New Act, so that the fixed rate of contributions is sufficient to meet the funding requirements of section 58 (2) and (4) of the New Regulation, or
- increases contributions so that those funding requirements are met.

Alternately, the administrator may demonstrate to the Superintendent that a contribution increase that is sufficient to meet those funding requirements has been incorporated into an applicable collective agreement.

Administrator may amend for temporary benefit improvements (section 21)

The administrator of a pension plan with a target benefit provision may amend the plan text document to provide retired members with a temporary increase to monthly pensions if there is sufficient accessible going concern excess to cover the cost of the increase. Temporary increases cannot result in the provision having an unfunded liability following the benefit improvement, and are subject to confirmation in the next actuarial valuation report.

Superintendent may refuse to register an amendment (section 22)

The Superintendent may refuse to register an amendment to the plan text document under section 22 (2) of the New Act, which includes two prescribed circumstances set out in section 22.

A. In the case of a defined benefit provision, if
    - the effect of the amendment would be to reduce the solvency ratio of the component,
    - a supporting actuarial valuation that demonstrates that the component's solvency ratio would be at least 0.9 after the amendment has not been filed, and
    - any other information that the Superintendent requires has not been filed.

    The amendment may be registered if the Superintendent receives confirmation that the participating employer or employers have remitted a lump sum amount that will keep the component's solvency ratio at 0.90 or higher.

B. In the case of a target benefit provision, if
    - the effect of the amendment would be to reduce the target benefit component's going concern funded ratio,
    - a supporting actuarial valuation that shows that the component will continue to have accessible going concern excess assets has not been filed, and
    - any other information that the Superintendent requires has not been filed.

Auto-Enrollment (section 25)

Section 25 sets out the conditions under which auto-enrollment in a pension plan may occur, including information that must be provided to a member and the minimum time period a member has to opt out of the plan.

Prescribed Classes of Employment

To provide employers with more flexibility in determining the groups covered by the plan, the concept of prescribed classes for eligibility has been removed. It should be noted that section 29 (1) of the New Act sets out when employees are entitled to become members of the plan.

Temporary Suspension of Active Membership (section 26)

Section 31 of the New Act gives the administrator the option of allowing active members to temporarily suspend their participation in a pension plan while continuing in employment covered by the plan. Section 26 of the New Regulation requires that an employee who has suspended active membership in the plan must be given the option of recommencing participation in the plan as of January 1 and July 1 of each year.

Participation Agreements (section 28)

All participating employers in a NCBMEP must sign a participation agreement with the plan administrator. The participation agreement must set out the following items:

- the information and records that must be provided by the participating employers to the plan administrator and when and how they must be provided;
- other duties and obligations of participating employers;
- the consequences a participating employer will face for failing to meet the terms of the agreement.

The agreement must also bind each participating employer to the terms of the plan documents and make each participating employer responsible for making contributions and special payments as required under the Act or plan text document.

Section 53 of the New Regulation requires that the participation agreement must be signed by each participating employer and filed with the administrator within 60 days after the employer starts to participate in the plan.

Disclosure Requirements (sections 29 through 43)

Enhanced disclosure requirements are a key element of the new legislation. One of the main principles outlined in the Joint Expert Panel on Pension Standards 2008 report was that members need to have a clear understanding of “the pension deal” and what their rights, duties and obligations are under the plan.

As a result, some new requirements have been added to existing disclosure statements, and other new statements have been added. In addition, both statement and plan summary requirements have been tailored to better match plan of plan provision.

Plan Summary (section 29)

The plan summary must be provided to new active members of the plan. The plan summary must set out a full description of the member's entitlements and obligations under the plan, and – for the first time - the rights and obligations of participating employer(s).

- the name of the pension plan
- the Canada Revenue Agency registration number, and
- the name of and contact information for the administrator,
- if a defined contribution plan requires member direction regarding investments, the specified information, which the member requires to provide that direction;
- an explanation of when and how benefits under a benefit formula provision may be reduced in an ongoing or terminating plan (other than a jointly sponsored plan);
- an explanation of when and how benefits under a jointly sponsored plan may be reduced, and of the methods set out in the plan documents regarding how participating employers and active members make decisions about the governance of the plan and the appointment of members to the board of trustees responsible for administering the plan.

Section 29 also outlines the timing requirements for providing an individual with a copy of the plan summary.

Statements (sections 30 through 44)

Electronic delivery of statements is permitted with member consent.

New Statements

- an annual statement to retired members (section 31);
- a statement to members receiving lump sum payments if permitted by the pension plan (section 36);
- statements for members who are receiving life income type benefits (sections 32 transfer statement; section 38 death benefits statement);
- a notice to members of a change in contributions or a reduction in benefits (section 40).

Timing for disclosure requirements

- A plan summary must now be provided at different times depending on the type of plan provision (see section 29).

- The requirement to provide a termination of active membership statement for all plans except collectively bargained multi-employer plans is now 90 days from the date the member terminates membership.

- A retirement statement is not required to be provided until the member has applied, with all of the information needed for the administrator to prepare the statement. The timing for providing the summary varies and is found in section 34 (3). Early applications for retirement no longer require a response within 30 days after receiving a completed application. The earliest that statements must be provided for these applicants is 120 days before the member's pension commencement date.

Annual information return (section 44)

Terminating plans with a benefit formula provision now have 120 days after the effective date of the termination of the plan to file an annual information return (increased from 60 days).

However, for plans making solvency deficiency payments after termination, the filing requirement has been reduced to 60 days after the anniversary of the effective date of the termination of the plan (from 180 days).

Review of a Plan/Actuarial Valuation and Cost Certificate (sections 45 and 46)

A pension plan must be reviewed at least once every three years, and the results of the review are to be set out in an actuarial valuation report. The date of the review must be the plan fiscal year end unless the plan text document specifies otherwise. Once a review date has been set, it cannot be changed for at least nine (9) years.

An actuarial valuation report must also be filed if an event occurs that materially affects the funding of the plan, either positively or negatively. Such an event may be a plan amendment, the sale or closure of a part of the business, a change in the negotiated contribution rate in a negotiated cost plan, or a significant drop in the market value of plan assets (herein called "material events"). It is up to the plan administrator, with the help of the plan actuary, to determine if such an event has occurred.

In addition, the Superintendent may require the preparation and filing of a new actuarial valuation report at any time (section 38 (2) (c) of the New Act).

Triennial actuarial valuations and cost certificates must be filed no later than 270 days after the review date. Where a material event has occurred between reviews, the new actuarial valuation and cost certificate is required no later than 60 days after the effective date of the material event. Where a material event review is done between triennial reviews, the next triennial review must be done on a review date that ensures no more than 3 years have elapsed between the material event review date and the normal review date. For example, if the plan review date is December 31, and the material event review is June 30, then the next triennial review would be required 2 ½ years from the June 30 review.

The requirements for the contents of an actuarial valuation report and cost certificate have been expanded to reflect the unique differences for the different types of benefit formula provisions and the different types of plans.

Elimination of the Requirement to file a partial plan termination report

With the move to immediate vesting, the concept of partial plan termination, the need to file partial termination reports and obtain the consent of the Superintendent for the disbursement of assets, has been eliminated. However, as mentioned previously, if an event changes the membership composition in such a way as to have a material impact on the funding of the plan, then a new actuarial valuation report and cost certificate must be filed.

Audited Financial Statements (section 47)

The threshold for the filing of an audited financial statement of a pension plan that has a benefit formula provision (defined benefit or target benefit) remains at $10 million. Audited financial statements for pension plans that have only a defined contribution provision have been eliminated. However, the Superintendent has the authority to request year-end pension fund statements from the fundholder for the defined contribution component of a plan (section 55 (4)).

All collectively bargained multi-employer plans must file audited financial statements, regardless of the value of plan assets or type of provision.

Assessment of the Plan (section 49)

The administrator must assess the plan on a triennial (3-year) basis to confirm that the plan meets the requirements of the Act, is being administered in accordance with the plan text document and is being administered and funded in accordance with the governance policy, funding policy (if applicable) and investment policy. The assessment must be in writing and kept on file by the plan administrator. The assessment does not need to be filed with the Superintendent unless the Superintendent requests it.

Governance Policy (section 50)

A governance policy is required under section 42 of the New Act and must, at a minimum, include the items set out in section 50. The governance policy does not need to be filed with the Superintendent unless the Superintendent requests it.

Funding Policy (section 52)

A funding policy is required under section 44 of the Act for plans that contain a benefit formula provision. The policy must, at a minimum, include the items set out in section 52 and the intended method for achieving them. The funding policy does not need to be filed with the Superintendent unless the Superintendent requests it. A copy of the policy must be provided to the plan actuary by the deadline specified in section 44 of the Act.

Responsibilities of Fundholders / Notice of Failure to Remit / Summary of Contributions (sections 55, 65 and 66)

These sections provide greater detail with respect to the requirement for fundholders to advise the Superintendent when contributions are not remitted as expected. These sections do not apply to collectively bargained multi-employer plans.

Fundholders are required to monitor contributions and to report to the Superintendent when the following circumstances occur:

- On a monthly basis, to report within 15 days after the remittance due date if no contributions have been received (section 56 (3) of the New Act);

- On a quarterly basis, to report within 45 days after the end of the quarter if the contributions actually received are less than 90% of those expected to be remitted (section 55 (5) and (6)).

A notice of the failure of a participating employer to remit contributions must set out the information prescribed in section 55 (6) or 65, as applicable. To assist fundholders and plan administrators with the new requirement under section 66, a Schedule of Expected Contributions will be developed.

Funding of a Pension Plan (sections 56 through 58)

Section 56 sets out new definitions related to funding. In the case of a jointly sponsored plan, any applicable unfunded liability payment period or solvency deficiency payment period is delayed until the first anniversary of the establishment date of the unfunded liability or solvency deficiency, to allow time to decide whether to increase contributions or reduce benefits. Sections 57 and 58 deal with funding requirements for defined benefit and target benefit provisions, respectively, and are discussed more fully below.

Funding of Defined Benefit Provisions (section 57)

With one notable exception, the rules for funding a defined benefit provision have not changed. The exception is that contributions to fund a defined benefit provision must be remitted monthly. This requirement applies to all contributions, whether in respect of the normal actuarial cost or special payments needed to fund an unfunded liability or a solvency deficiency.

As contemplated by section 54 of the New Act, the plan administrator may now establish a solvency reserve account to receive and hold special payments to amortize solvency deficiencies made by the participating employer or employers.

Funding of Target Benefit Provisions (sections 2, 58 and 60)

Sections 2 and 58 establish the funding requirements for a plan with a target benefit provision. Some highlights of those provisions include:

- Section 58 requires that the calculated normal cost determined in the actuarial valuation report must be increased by the amount equal to the product of the PfAD, determined in accordance with section 2, and the normal cost determined in the actuarial valuation report. The additional funding starts three years after the conversion of the plan to a target benefit.

- Section 58 requires that, similar to the funding requirements for defined benefit provisions, contributions to a target benefit provision must be made on a monthly basis.

- When preparing an actuarial valuation report for a target benefit provision, section 60 requires that the actuary must perform stress testing for elements which the actuary considers to pose a material risk to the plan's ability to meet its funding requirements. The stress testing results must be reported in the valuation report. There is no legislated obligation to fund the plan in consideration of the results of the stress testing.

<u>Withdrawal/Distribution of Actuarial Excess or Surplus (sections 61, 62 and 70)</u>

In a change that harmonizes our language and processes with those in the province of Alberta, the New Act and Regulation differentiate between going concern excess, solvency excess and surplus.

Going concern and solvency excess exist while a benefit formula provision continues to provide benefit accruals to active members. Excess exists only where the component's assets value exceeds the component's liabilities, measured on a going concern or solvency basis, as appropriate.

Accessible going concern excess or accessible solvency excess is that portion of the excess that exceeds 105% of the liabilities determined on a going concern or solvency basis, as appropriate.

Surplus is determined in the event of the full termination of a plan with a benefit formula provision, and only after all benefit obligations of the provision have been satisfied.

Plans with target benefit provisions are not permitted to have solvency reserve accounts or to distribute accessible going concern or solvency excess from that component of the plan while the plan continues.

Section 61 contains details regarding the withdrawal of accessible actuarial excess from a solvency reserve account in a defined benefit plan. Section 71 contains details regarding the distribution of accessible actuarial excess from a defined benefit component of a plan, other than from a solvency reserve account.

Accessible actuarial excess may be withdrawn/distributed, subject to the following conditions:

- An application has been made to, and the Superintendent has consented, in writing to the withdrawal/distribution of accessible actuarial excess.

- No more than 20% of the accessible actuarial excess may be withdrawn/ distributed in a given fiscal year, for no more than three years (or until the next actuarial valuation is filed).

- If accessible actuarial excess continues to exist, a new application for withdrawal/distribution based on the new amount of excess may be made. The Superintendent may revoke the consent to the continued withdrawal/distribution of accessible actuarial excess at any time.

- In the case of a withdrawal from a solvency reserve account,

    - the plan must not have an unfunded liability, and the withdrawal of the accessible actuarial excess cannot create an unfunded liability, and

    - after the withdrawal of the assets from the solvency reserve account, members must be notified of that withdrawal on the next annual statement.

- In the case of distribution from a plan, other than from a solvency reserve account,

    - the plan must not have a solvency deficiency, and the withdrawal of the accessible actuarial excess cannot create a solvency deficiency,

    - communication to members and any union representing members must be done in advance of the distribution, and

    - member consent must be obtained to the proposed distribution if the plan text document does not clearly provide for the distribution.

Letters of Credit (section 63)

Timelines around notifications, renewal and expiration of a letter of credit have been shortened from 90 days to 30 days. The provision also expands on details related to:

- the continued requirement to make contributions in situations where a filed letter of credit does not meet the requirements for a "prescribed letter of credit" (formerly referred to as a "conforming letter of credit"), and
- the cancellation of a letter of credit on full plan termination.

Remittance of contributions (section 64)

- In the case of a jointly sponsored plan, when an actuarial valuation report reveals that an increase in contributions is required, the increase may be delayed until the second fiscal year following the review to allow time to decide whether to increase contributions or reduce benefits. Example: if an actuarial valuation report is prepared as at December 31, 2015, any contribution increase would commence on January 1, 2017.
- When an actuarial valuation report is being prepared, a participating employer can no longer cease making contributions during the period between the review date and the filing date. Contributions must continue in the amounts and for the purposes specified under the prior actuarial valuation until the new actuarial valuation report is filed.
- It is permitted to make special payments for an unfunded liability and/or a solvency deficiency in advance. For example, if the amortization payment for an unfunded liability is $1,000 per month, a payment of $12,000 could be made in January to cover all the payments for the year. The payment must be in advance of the normal due date, and cannot extend the amortization period.

<u>Allocation and Distribution of Excess Member Contributions (section 67)</u>

New rules have been added with respect to the allocation and distribution of excess member contributions from pension plans, other than a JSP, that have a target benefit provision.

If a target benefit provision requires member contributions, the excess is determined based on the value of member contributions with interest and the commuted value of the target benefit (going concern liability). The excess is then multiplied by the funded ratio of the component (to a maximum of 1.0) to determine the amount of excess to which the member is entitled.

If the member chooses a deferred benefit, the plan may choose to defer the calculation of the member excess until the member's pension commencement date (section 57 (5) of the New Act).

Investment Requirement (section 68)

Pension plans which require the members to make investment decisions must offer investment options in accordance with section 68 (4), including a default option which is either a balanced fund or a target date fund.

Use of Accessible Actuarial Excess to Reduce or Eliminate Contributions (section 71)

Plans with target benefit provisions are not permitted to use accessible actuarial excess from that component of the plan to offset employer contributions.

Plans with defined benefit provisions may use accessible actuarial excess from that component of the plan to offset employer contributions, or in the case of a jointly sponsored plan, employer and member contributions. However, no more than 20% of the accessible actuarial excess may be used in a given fiscal year, and that excess may be used for no more than three years (or until the next valuation report is filed). Continued use will be reevaluated at the filing of each subsequent actuarial valuation. The Superintendent may stop the use of accessible actuarial excess at any time and request that a new actuarial valuation report be prepared and filed. Use of accessible actuarial excess must be disclosed to members in the next annual statement.

Life Income Type Benefits (LITBs) (section 74)

Similar to section 30.1 of the former Regulation, section 74 allows the plan administrator to offer LITBs from a defined contribution component of a plan. The LITB is an account that permits payments to be made in a manner that complies with the *Income Tax Act* (Canada). This type of benefit is called a variable benefit under that Act. The payments and rules for LITBs are very similar to those for life income funds, details of which are discussed later in this Bulletin.

Lump-sum payments (section 75)

A pension plan may provide for active members of a defined contribution component to be entitled to receive lump-sum payments in the circumstances described in section 76 of the New Act. This gives defined contribution plans the ability to provide benefits that are similar to phased retirement benefits. This section specifies conditions regarding applications for lump-sum payments.

Exceptions to Locking-in (section 76)

As a result of immediate vesting, locking-in requirements are determined solely on the basis of a threshold amount: 20% of YMPE (i.e. "small amounts"). The ability to unlock a benefit in the case of a defined benefit provision where the annual pension is less than 10% of YMPE has been eliminated. A retired member is entitled to small amounts unlocking from the plan only if the retired member is receiving life income type benefits from the plan. A member or former member's right at age 65 to unlock benefits in all defined contribution pension plans and locked-in accounts if the person's cumulative entitlement is less than 40% of YMPE has changed so that it applies to each individual plan or account.

Section 8 (2) of the New Act requires that an individual who is entitled to receive a lump sum amount that is less than 20% of the YMPE has the option to transfer those funds to an RRSP that is not subject to the locking-in conditions.

Unlocking on the basis of considerably shortened life expectancy is not available to retired members or other persons who are receiving a pension under a benefit formula provision. The rules regarding unlocking due to non-residency in Canada have not changed.

Conditions for the purchase of an annuity (section 83)

Bill 10-2014, *Pension Benefits Standards Amendment Act, 2014*, added section 89.1 to the New Act. This section provides that, if a plan administrator of a benefit formula provision complies with the prescribed conditions when purchasing an annuity, the plan administrator has no further liability to deferred members or persons receiving a pension for whom the annuity has been purchased. Section 83 establishes the conditions that must be met before the annuity is purchased. In summary:

- employers must top up the pension fund so that members still in the plan are protected from the extra cost of purchasing the annuities;
- deferred members and pensioners must receive the same benefits under the annuity contract that they would have received from the plan;
- surviving spouses or designated beneficiaries must have the same rights to the benefits from the annuity that they would have had to benefits in the plan.

Successor/Predecessor Situations (sections 85 and 86)

Rules regarding successor/predecessor situations have been expanded to better clarify what is required both in terms of information for the Superintendent and disclosure to members.

Manner and Extent of Transfers (section 90)

Where the balance of a transfer deficiency is to be paid would materially impair the solvency of the plan, a plan administrator may, subject to the consent of the Superintendent, delay payment of that amount until such time as it no longer materially impairs the solvency of the plan.

Conversion of Plan Provisions (section 92)

Rules regarding conversion from a plan provision of one type to a plan provision of another type clarify when the Superintendent may refuse to register an amendment for conversion and the disclosure that must be provided to affected members.

Locked-In Retirement Accounts (LIRAs) and Life Income Funds (LIFs) (sections 94 through 130)

Section 94 contains new defined terms used in new provisions for financial hardship unlocking. Also, new terms are used to describe the different types of LIRA and LIF owners.

Section 95 provides for new Superintendent's lists for LIRA issuers and LIF issuers, to replace the former lists of individual specimen contracts. Issuers must apply to become authorized issuers listed on the applicable list.

The contract for a LIRA must include the addendum found in Schedule 1, and the contract for a LIF must include the prescribed addendum found in Schedule 2 (sections 99 and 116). A copy of the addendum must be provided to the LIRA or LIF owner, but a contract that does not contain the addendum is deemed to include it.

A person's right at age 65 to unlock benefits in all defined contribution pension plans and locked-in accounts if the person's cumulative entitlement is less than 40% of YMPE has been changed so that it applies to each individual plan or account (sections 107 and 126).

All LIRA and LIF contracts will be required to provide that the owner may unlock the account if the person has a disability or terminal illness that is likely to considerably shorten the person's life, based on a doctor's certificate (sections 108 and 127), or if the owner is a non-resident of Canada who has been absent from Canada for at least 2 years (sections 109 and 128). Under the current Regulation, these contractual provisions are optional.

The maximum amount that may be paid out of a LIF in a calendar year ("life income fund maximum amount") will be the greatest of the investment returns for the previous calendar year, the "life income fund minimum amount", and the amount determined by dividing the account balance by the "withdrawal factor". The terms in quotations are defined in section 112. The maximum withdrawal from a LIF will no longer be set out in a Schedule.

The earliest age at which a LIF may be established for a former member or a spouse owner who is a former spouse will be age 50, reduced from age 55 (section 120).

A surviving spouse will be entitled to receive money from a deceased owner's LIF on an unlocked basis (section 125).

Financial Hardship Unlocking

Financial hardship unlocking will be available from either a LIRA or a LIF. A spousal waiver in Form 1 of Schedule 3 is required for applications from member owners. This new option will be administered by the financial institutions who are issuers of locked-in vehicles.

Under the new rules, applicants may apply once per calendar year for each of the following reasons:

- low income (based on expected income, with a maximum withdrawal of 50% of YMPE);
- inability to pay medical expenses that cannot be reimbursed from another source (including the cost of renovations);
- eviction from a principal residence due to rent arrears;
- foreclosure on a mortgage against a principal residence;
- first month's rent, damage deposit and pet deposit for a principal residence.

Termination Reports (section 133)

The due dates for filing a termination report for a pension plan that does not have a benefit formula component (i.e. a defined contribution provision) continues to be 60 days after the effective date of the termination. For plans with a benefit formula component the due date has been changed to 120 days after the effective date of the plan termination.

If a participating employer becomes insolvent while making solvency deficiency payments after the effective date of the termination of the plan, the administrator must file a termination report within 120 days after the insolvency.

If a participating employer is making solvency deficiency payments after the effective date of the termination of the plan, the administrator must file a termination report when the solvency deficiency is eliminated (at the latest, 5 years later).

Allocation and Distribution of Assets if Assets are Insufficient (section 135)

The New Regulation prescribes a single method for the allocation and distribution of plan assets in the case of a pension plan that terminates with insufficient assets to meet its obligation. There is no longer authority for the Superintendent to consent to another method, such as a method that provides a priority to any class of plan member, whether active, deferred or retired.

Section 135 of the New Regulation sets out requirements for all benefit formula provisions, whether defined benefit or target benefit.

Specific rules, based on whether or not the plan is a JSP, will determine how benefits will be reduced in the cases.

All plans will be required to adopt the methodology for allocation and distribution of plan assets set out in section 135 of the New Regulation.

Transfer Rights on Wind-up (section 144)

On plan wind-up, life annuities that match the form and amount of pension that retirees and beneficiaries were receiving from the plan are purchased, depending on the terms of the plan. A retired member or other pensioner will be entitled to elect a transfer from the plan in the following circumstances:

- the plan is not a jointly sponsored plan, has a solvency deficiency and the participating employer responsible for funding that deficiency is insolvent;
- the plan administrator cannot or is not reasonably able to purchase an annuity that provides the same type of benefit and the same amount of income that the person has been receiving under the plan;
- the plan is a negotiated cost plan or a jointly sponsored plan and, at the effective date of termination, the plan assets are not sufficient to pay all benefits;
- the plan provides a target benefit and, at the effective date of plan termination, assets of the target benefit component are not sufficient to pay all target benefits;
- the person is receiving life income type benefits from a defined contribution component.

The transfer is subject to the written consent of the Superintendent.

Multi-employer negotiated cost plan exemption from solvency payments (section 142 and Schedule 5)

Multi-employer negotiated cost plans (MENCs) that have obtained an exemption from solvency payment requirements under Schedule 1.1 of the former regulation in respect of a defined benefit component have until December 31, 2017 to have an amendment registered to convert the defined benefit provision of the plan to a target benefit provision, in accordance with section 20 (2) (d) of the New Act, which requires the consent of the representative union.

If the exemption period under Schedule 1.1 ends prior to December 31, 2017, the same December 31, 2017 deadline for conversion of the defined benefit provision applies for new applications for continuing solvency exemptions under Schedule 5 of the New Regulation.

The conversion deadline under both section 142 and Schedule 5 is subject to extension in the case of reconsideration, appeal or judicial review of any revocation of the amendment by the Superintendent, as set out in those provisions.

New applications under Schedule 5 must be made by December 31, 2016 and must be accompanied by actuarial valuation reports prepared as at December 31, 2014 or later.

MENCs that convert all benefits, including accrued benefits, to target benefit in accordance with section 20 (2) (d) of the New Act will no longer be subject to solvency funding requirements.

MORE INFORMATION

All interested persons should monitor the Pensions website (http://www.fic.gov.bc.ca/index.aspx?p=pension_plans/index) for further updates and information.

Plan sponsors and their service providers should contact the relevant employee of the Superintendent of Pensions if they have questions specific to their plan.

Other stakeholders may contact the Office of the Superintendent of Pensions by telephone or by email at:

Telephone: 604 660-3382
email: Pensions@ficombc.ca