

April 16, 2020: Questions and Answers

Question 15 and 17 Updated on May 14, 2020

The Pension Benefits (Restrictions on Transfers and Payments) Regulations, 2020

1. What is the purpose of the new Regulations?

The purpose of *The Pension Benefits (Restrictions on Transfers and Payments) Regulations, 2020* is to add a new section to *The Pension Benefits Regulations, 1993* (the Regulations) effective April 16, 2020.

New section 28.1 of the Regulations requires that plan administrators obtain the prior written consent of the Superintendent of Pensions (the Superintendent) to transfer moneys or make payments out of defined benefit plans if, in the Superintendent's opinion, the transfer or payment would impair the solvency of the pension fund. The Superintendent may consent to the transfer or payment or may direct the plan administrator to carry out a transfer or payment, subject to terms and conditions.

Effective April 16, 2020, The Deputy Superintendent of Pensions [who has the same authority under *The Pension Benefits Act, 1992* (the Act) to carry out the duties and exercise the powers of the Superintendent] issued a Notice that, in her opinion, given the financial market conditions, transfers or payments out of defined benefit plans would impair the solvency of pension funds.

The effect of the amendment to the Regulations and the Notice is that, with very limited exceptions, there is a freeze on transfers and payments out of defined benefit plans. The Regulations specify which types of transfers and payments are affected.

This Question and Answer document will provide an overview of the new measures taken to protect member benefits in defined benefit plans. Basically, with very limited exceptions, no transfer or payment can be made from any defined benefit plan registered under the Act unless written consent is received from the Superintendent or Deputy Superintendent.

The freeze does not affect ongoing pension payments from a pension plan or the commencement of new periodic pension payments from a pension plan to retirees,

surviving spouses, or spouses or former spouses with respect to a division on spousal relationship breakdown.

This Question and Answer document has no legal authority. The Act and Regulations should be used to determine specific requirements.

Here is a link to [*The Pension Benefits \(Restrictions on Transfers and Payments\) Amendment Regulations, 2020.*](#)

2. Why were the Regulations amended?

The effect of the COVID-19 pandemic on the current financial and economic environment has resulted in significant market volatility. The impact on the solvency ratios of defined benefit pension plans is currently uncertain and the Superintendent believes that any transfer or payment out of a defined benefit plan at this time would impair the solvency of pension funds. Transfers or payments out of a pension fund at this time may not be fair to plan members and beneficiaries whose benefits remain in the pension fund.

The Government of Saskatchewan determined that amending the Regulations to require plan administrators to obtain consent to transfer money or make payments out of plans is necessary to protect member benefits.

3. How long will the freeze be in place?

This is a temporary measure. The Superintendent will need a better understanding of the solvency position of pension plans and evidence of some level of financial market stability before considering adjustments to the freeze.

4. Does the freeze apply to defined contribution plans?

The freeze does not apply to defined contribution plans.

5. Does the freeze apply to hybrid plans?

A hybrid plan is a plan that includes both defined benefit and defined contribution provisions. The freeze applies to the defined benefit portions of hybrid plans.

6. Does the freeze apply to individual pension plans?

The freeze applies to individual pension plans.

7. Does the freeze apply to limited liability plans?

The freeze applies to limited liability plans.

8. What types of transfers or payments are included in the freeze?

The freeze affects the following transfers or payments from defined benefit plans:

Act

- Section 20: The transfer of moneys pursuant to a transfer agreement.
- Section 31: Payment of the value of a member's contributions plus interest that exceeds one-half of the commuted value of a pension when a member terminates, a plan terminates, or on commencement of a member's pension.
- Section 32: The transfer of the commuted value of a pension when a member terminates membership in a plan or when a plan is fully or partially terminated. This includes the transfer deficiency payments made to former members over a 5-year period.
- Section 33: Payment or transfer of the commuted value to a surviving spouse, designated beneficiary or estate upon death of a member or former member.
- Section 48: The transfer of the commuted value due to a division on spousal relationship breakdown.

Regulations

- Section 26.1: Payment to persons who are non-resident of Canada.
- Section 28.1: Payment or transfer to an insurance company to purchase a life annuity, group annuity or buy-out annuity.

9. What types of transfers or payments are not included in the freeze?

The freeze does not affect the following transfers or payments from defined benefit plans:

- Payment of voluntary or optional ancillary contributions, where those contributions have not been used to provide benefits.
- Payment of contributions plus interest for non-vested member terminations.
- Commuted value payments or transfers in respect of small benefits or shortened life expectancy. These payments or transfers are addressed in Section 39 of the Act.
- Ongoing pension payments from a pension plan or the commencement of new periodic pension payments from a pension plan to retirees, surviving

spouses, or spouses or former spouses with respect to a division on spousal relationship breakdown.

- Post-retirement death benefit payment of the value of remaining guarantee payments to a surviving spouse or beneficiary.

10. Would the freeze on transfers apply to those who are retiring and want to elect portability rather than a pension from the plan?

These would be transfers pursuant to section 32 of the Act and section 42(1.1) of the Regulations, which are affected by the freeze.

11. What happens if a plan member made an election for a transfer or payment prior to the effective date of the Regulations?

The freeze applies to transfers or payments covered by the new section 28.1 of the Regulations, as long as the transfer or payment has not been processed as of the effective date of the Regulations. In other words, any money that was still in the pension fund on April 16, 2020 must remain in the pension fund. However, the Superintendent understands that in some cases, administrative processes may be difficult to reverse, and recognizes that some payments may be processed in the days following the freeze.

12. What types of annuity purchases are included in the freeze?

The freeze affects all life annuity purchases from a defined benefit plan. This includes individual purchases, group purchases and buy-out annuity purchases.

The freeze does not, however, affect payment of pensions directly from pension plans.

13. Are buy-in annuities affected?

Buy-in annuities can proceed as they are not affected by the freeze. Buy-in annuities are considered to be an investment of the plan and are subject to the same rules that apply to any investment made by the plan administrator.

14. Does the freeze apply to plans that will be or have terminated?

The freeze applies to all payments, transfers and annuity purchases, including those resulting from the termination or partial termination of a defined benefit plan, regardless of the date of the termination or partial termination, as long as the payment, transfer or annuity purchase has not been made by April 16, 2020.

15. UPDATED MAY 14, 2020: Under what circumstances would the Superintendent grant consent for a transfer, payment or an annuity purchase?

The Superintendent will consider consent for a transfer, payment or annuity purchase depending on the circumstances of the pension plan. We expect this would involve the plan administrator providing documentation that demonstrates that a transfer, payment or annuity purchase would not unduly impact the security of the benefits of the remaining members and other beneficiaries of the plan.

The Superintendent will consider granting consent if a condition is added which would address concerns regarding the security of benefits. For example, if a recently estimated transfer ratio is applied to commuted value transfers, then the security of benefits of the remaining plan members may not be affected if commuted value transfers are processed, and the Superintendent may grant consent.

The plan administrator should provide certain information along with a request for consent:

1. The name and registration number of the plan.
2. The following information about the plan as at the last filed actuarial valuation report and as at a current date (March 31, 2020 or a more recent month-end):
 - The solvency ratio of the plan (estimate is acceptable for the current date)
 - Market value of assets
 - Solvency liabilities (extrapolation is acceptable for the current date)
 - For limited liability plans, in addition to the above, the going concern liabilities (extrapolated at the current date) and the best estimate funded number (estimate at the current date).
3. Details of the proposed transfer, payment or annuity purchase, including the value, date and purpose of the proposed transaction, and the total number of affected members. The plan administrator may choose to request consent for all transfers, payments or annuity purchases, or all transfers, payments and annuity purchases of a certain type, and the Superintendent will consider this type of request.
4. Rationale for the proposed transfer, payment or annuity purchase: Special circumstances the Superintendent should consider. This includes the circumstance of the plan as whole or of the member(s) subject of the request. Also include any other information that supports that the proposed transaction does not unduly impact the security of the benefits of the remaining members.

16. How should a plan administrator request consent for a transfer, payment or annuity purchase?

Plan administrators should email the Superintendent at pensions@gov.sk.ca. The subject line of the email should be “Request for Consent for Portability”.

In all cases, the request should be made by the plan administrator to the Superintendent. It would also be acceptable for the request to come from the plan’s consultant or third party administrator, if that is the usual form of communication to the Superintendent.

17. UPDATED May 14, 2020: How can a plan member or beneficiary make a request for consent for a transfer, payment or annuity purchase?

Plan members should contact their plan administrator with questions about the freeze, including questions about consent for a transfer.

This document provides plan administrators with the framework regarding requesting consent. Plan administrators will consider the impact on the plan as a whole in making decisions about requesting consent.

Plan administrators stand in a fiduciary relationship, and must act in good faith and in the best interests of members, former members and any other persons entitled to benefits pursuant to the plan. Plan administrators are required to treat all beneficiaries with fairness and impartiality and are ultimately responsible for the administration and the risk management of their plans. The Superintendent relies on the plan administrator to use their knowledge of the plan and their fiduciary duty to know whether a transfer can be made without jeopardizing the benefits of the remaining members, and to determine an approach that is fair to all plan members – both those wanting to exercise portability and those remaining in the plan. The Superintendent does expect that individual circumstances would be taken into account in deciding whether to request consent.

Plan members could also contact FCAA with questions. However, it is the plan administrator who would have to request consent from the Superintendent to transfer money out of the plan.

18. Should plan administrators still issue statements on member termination, plan termination, retirement, death, and spousal relationship breakdown while the freeze is in effect?

Members should still be given their statement. Under the freeze, the member’s entitlement to a pension benefit calculated as of the date of the event is

unaffected, however the transfer and payment options are temporarily on hold. The member can select an option but the administrator cannot make a transfer or payment at this time without prior consent of the Superintendent. Once the freeze is lifted, transfers, payments and annuity purchases can proceed.

It is recommended that plan administrators advise members and other beneficiaries of the freeze when the statement is sent.

19. How is the calculation of the payment or transfer adjusted when the transfer or payment is made after the freeze is lifted?

Plan administrators should look to subsections 24(3) or 27(3) of the Regulations, depending on the type of payment or transfer, to determine how interest is calculated. Plan administrators should look to subsection 24(4) of the Regulations regarding re-computation of commuted values.

20. Does the freeze apply to out-of-province members of plans registered in Saskatchewan?

Generally, the freeze applies to all members of plans registered in Saskatchewan. However, administrators of multi-jurisdictional plans registered in Saskatchewan should contact the Superintendent when dealing with transfers, payments and annuity purchases for out-of-province members. This will ensure the Superintendent is able to ensure fair treatment of members when different rules may apply.

21. Does the freeze apply to Saskatchewan members of pension plans registered in other provinces or registered federally?

If the plan is registered in a jurisdiction which is a signatory to the 2016 Agreement, then transfers, payments and purchases of annuities for Saskatchewan members in that plan are not subject to Saskatchewan's portability freeze. However, transfers, payments and purchases for Saskatchewan members would be subject to any portability freeze in effect in the jurisdiction where the plan is registered. The signatories to the 2016 Agreement are British Columbia, Saskatchewan, Ontario, Quebec and Nova Scotia.

If the plan is registered in a jurisdiction which is not a signatory to the 2016 Agreement, then transfers, payments and purchases of annuities for Saskatchewan members in that plan would normally be subject to Saskatchewan's portability freeze. However, the interests of Saskatchewan members in a plan registered outside of Saskatchewan are not best served by imposing Saskatchewan's freeze when other members are able to exercise portability in accordance with the rules and restrictions in the other jurisdiction. Therefore, to treat those Saskatchewan

members fairly, transfers, payments and annuity purchases that are available pursuant to Saskatchewan's Act or Regulations for Saskatchewan members in plans registered outside of Saskatchewan may be made subject to the rules in place in the jurisdiction of registration. The jurisdictions which are not signatories to the 2016 Agreement are Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, and Canada.

In summary, transfers, payments and annuity purchases for Saskatchewan members in plans registered outside of Saskatchewan are subject to portability restrictions in place in the jurisdiction of plan registration.

22. How are maintenance enforcement orders affected?

Subsection 50(1) of the Act provides that pension benefits that are payable to a former member of a plan are subject to seizure for the purposes of enforcing a maintenance order pursuant to *The Enforcement of Maintenance Orders Act, 1997*. Furthermore, pension benefits that are payable to a former member at a future date are subject to attachment.

The freeze does not affect seizures or attachments pursuant to *The Enforcement of Maintenance Orders Act, 1997*.

23. Where can inquiries regarding the freeze be directed?

Inquiries should be directed to pensions@gov.sk.ca. Alternatively, you could call 306-787-7650.