Commuted Value Transfers - Q&As

O. Reg. 239/09 made under the PBA, amended Section 19 of the Regulation effective June 19, 2009. These amendments included changes to the treatment of commuted values. Pension plans registered in Ontario with defined benefits must review the plan transfer ratio before transferring a commuted value, if the administrator of a plan knows or ought to know that the transfer ratio has fallen by 10% or more since the most recent determined transfer ratio. In the event the transfer ratio has fallen by 10% or more the administrator **shall not** transfer any part of the commuted value without the prior approval of the Superintendent. FSCO's Policy on Commuted Value Transfers provides detailed information on the Request for Approval and other requirements.

The following Q&As address a number of issues that have arisen.

Questions currently posted here relate to:

Application to Sections 48-51 Commuted Value Transfers

Q3. Do the limitations prescribed in respect of the transfer of funds in sections 19(2) to (7) of the Regulation apply to amounts that are paid under section 48 of the Pension Benefits Act (PBA)?

A3. Yes, the limitations in sections 19(2) to (7) of the Regulation apply to amounts paid under section 48. Section 19(8) of the Regulation, which was amended effective July 1, 2012, does not exclude amounts that are paid under section 48 of the PBA from the application of sections 19(2) to (7) of the Regulation. - 04/13

Q4. Do sections 19(4) and (5) of the Regulation apply to the marriage breakdown provisions in section 51 of the *Pension Benefits Act* (PBA)?

A4. The new transfer provisions apply to the spouse of a member involved in a marriage breakdown situation. Under section 51(5) of the PBA, where the member terminates employment or ceases to be a member of the pension plan, the former spouse is entitled to any option available in respect of the spouse's interest in the pension benefits as the member named in the domestic contract or order. - 09/09

Excess Transfer Values

Q5. Are amounts payable in excess of the Income Tax Act (ITA) maximum transfer value subject to sections 19(4) and (5) of the Regulation?

A5. Yes. The entire commuted value, including any excess amount, is subject to sections 19(4) and (5) of the Regulation. The established transfer ratio is applied pro rata to both the excess amount to be paid and the amount to be transferred. When transferring the remainder of the commuted value in future years, the amount that represents the maximum transfer value may need to be redetermined for the purposes of the ITA.

For questions about the maximum transfer value, contact the Canada Revenue Agency. - 09/09

Processing Requests for Approval

Q6. What is the expected turnaround time for requests for Superintendent Approval?

A6. The performance standard established for approval of a correctly completed Request for Approval is 5 business days. - 09/09

Q7. What criteria will the Superintendent use in deciding whether or not to approve Requests for Approval?

A7. The criteria to be used by the Superintendent are based on the actuarial information and certification and the proposal for commuted values set out in the Request for Approval form. - 09/09

Q8. Can there be a lag between the determination date and the filing date of the Request for Approval?

A8. The determination date used in a Request for Approval should be within 3 months of the date at which the Request is made. - 09/09

Q9. At the plan's last valuation date of January 1, 2008 the transfer ratio was 0.90. At July 1, 2009 the transfer ratio has fallen to 0.70. If the administrator of the plan files a Request for Approval on August 1, 2009 with a determination date of July 1, 2009 and proposes to use section 19(6)(b), what date should the plan use to determine 5% of assets?

A9: As indicated in Policy T800-402 the date to be used to determine 5% of assets is the date of determination of the most recently filed Request for Approval, which is July 1, 2009 in the described situation. - 09/09

Q10: If an administrator files a Request for Approval, can the plan pay out the commuted value prior to receiving the Superintendent's approval under sections 19(4) or (5) of the Regulation?

A10: No. The administrator must obtain the prior approval of the Superintendent before transferring any funds. - 09/09

Other

Q11. The transfer ratio for my pension plan has dropped from 0.98 in the most recently filed valuation report to a level of 0.85. Can I still transfer the full value of a pension to a terminating member without the approval of the Superintendent?

A11. No, the approval of the Superintendent is required. Section 19 of the Regulation requires that where the administrator of a pension plan knows or ought to know that the transfer ratio of the plan has declined by 10% or more of the most recently determined transfer ratio, the administrator is required to seek the prior approval of the Superintendent before transferring any funds under section 42 or 43 of the PBA. Please see FSCO's Policy on Commuted Value Transfers Size: ## kb. -11/11

Q12. In preparing the Request for Approval form used under section 19(4) or 19(5) of the Regulation, is it necessary to include such items as solvency incremental cost, and the effect of interest rate sensitivity on going concern liabilities, normal cost, and solvency liabilities that are required for "external user reports" under the new CIA standards that became effective on December 31, 2010?

A12. No, as set out in FSCO's Policy on Commuted Value Transfers Size: ## kb, the actuary is only required to provide certification as it relates to the determination of the updated transfer ratio of the plan when preparing the Request for Approval. The additional disclosure items required under the new CIA standard need not be included. -11/11

Q13. How do the new provisions in section 19 of the Regulation apply to a defined contribution plan that has a defined benefit component?

A13. The transfer ratio is determined based solely on the defined benefit portion of the plan. The provisions of s.19 are then applied to the commuted value transfer of those defined benefits. - 09/09

Q14. Are commuted value transfers made under a reciprocal agreement subject to the changes to section 19 of the Regulation?

A14. No. Commuted value transfers made under a reciprocal agreement are exempt pursuant to section 19(8) of the Regulation. - 09/09

Q15. Do sections 19(4) and (5) of the Regulation apply to plans that have been wound up or partially wound up?

A15. No. The settlements of wind up benefits are governed by the specific wind up provisions of the Regulation (in particular, section 29 of the Regulation). - 09/09

Q16. Will there be any exemption under sections 19(4) and (5) of the Regulation for smaller plans?

A16. No. Note that the administrator is required to review the transfer ratio whenever a transfer under sections 42 or 43 of the PBA is made, unless a review has been done in the prior three months. Smaller plans may have fewer terminations and thus a review would not be done as often as a larger plan. - 09/09

Q17. If the transfer ratio in the last filed report as of January 1, 2008 is 0.85, a redetermination has been filed as of July 1, 2009 indicating a transfer ratio of 0.68 and a redetermination is made at September 1, 2009 indicating a transfer ratio of 0.78, can the September 1, 2009 redetermination be filed?

A17. No. Under section 19(5) of the Regulation, the prior approval of the Superintendent for the payment of commuted values must be obtained if the transfer ratio has dropped by 10% or more of the most recently determined transfer ratio. In the described situation, since the transfer ratio at September 1, 2009 is higher than the most recently determined transfer ratio of 0.68 at July 1, 2009, a Request for Approval cannot be filed under section 19(5) of the Regulation. However, a new valuation report under sections 3 or 14 with a valuation date of September 1, 2009 may be filed. - 09/09

Q18. Section 20(2) of the Regulation requires the administrator to comply with an election made under section 42 of the *Pension Benefits Act* within 60 days after receipt of all the information required by the administrator to comply with the direction. What happens if the administrator is required to obtain, but has not yet obtained, the approval of the Superintendent to make commuted value transfers?

A18. The administrator needs to monitor the transfer ratio and submit a Request for Approval as soon as possible once it has been determined that the Superintendent's approval is required. FSCO's performance standard established for approval of a correctly completed Request for Approval is 5 business days. Once the Superintendent's approval has been obtained the administrator has until the end of the 60 day period to comply with the election. If the 60 day period has been exceeded, the administrator should make the transfer immediately after receiving the Superintendent's approval. - 09/09

Q19. If the employer made a contribution over and above the minimum required contributions under the plan prior to the date of a request under s. 19(4) or (5) of the Regulation, can such extra contribution be used to satisfy the transfer deficiencies in respect of commuted value transfers?

A19. The extra payment can be used to satisfy transfer deficiencies in respect of commuted value transfers provided that the extra payment is identified as "transfer deficiency payment" in the pension fund financial statement. - 09/09

Q20. The Actuarial Certification requires the disclosure of the prior year credit balance as of the determination date. How should this balance be determined?

A20. The prior year credit balance (PYCB) should be calculated from the PYCB disclosed in the last filed valuation report, reduced by any amount applied to meet required funding contributions up to the determination date. If contributions over and above the required minimum were made, upward adjustment to the PYCB is neither required nor permitted. Any excess contributions made since the last valuation date can form part of the PYCB only if it is set out in a new report filed under section 3 or 14 of the Regulation. - 09/09

Q21. Can the prior year credit balance be used to fund the deficit portion of the commuted value if the company is proposing to "top up" under section 19(6)(a) of the Regulation?

A21. No. The prior year credit balance cannot be used to meet the transfer deficiency payment since it is not part of the required normal cost or special payments under section 4(2)(b), (c) and (d) of the Regulation. - 09/09