

Guidance

Interpretation

Approach

Information

Decision



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Administration of Pension Benefits upon Marriage Breakdown

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1. Purpose

- 1.1. The purpose of this Guidance is to support administrators in satisfying their obligations relating to the valuation and division of pensions on marriage breakdown.¹
- 1.2. This Guidance recognizes the expertise of administrators and professional advisors in this sector. It outlines the principles FSRA will apply to the supervision of pension valuation and division on marriage breakdown. This Guidance also provides interpretations of certain sections of the *Pension Benefits Act* (PBA) and Regulation 287/11 (Family Law Matters) under the PBA. It does not attempt to provide FSRA's interpretation on every aspect of pension valuation and division on marriage breakdown.
- 1.3. A general overview of this topic is also available in FSRA's publication: [Pensions and Marriage Breakdown – A Guide for Members and their Spouses](#).

2. Rationale and background

- 2.1. Pensions are included in the definition of 'family property' in Ontario's *Family Law Act* (FLA) and must be considered as part of the net family property as a whole. The FLA is the source of any entitlement the spouse may have to a portion of the member's pension through the equalization process.
- 2.2. The PBA provides the process to value and pay the pension asset as equalization.
- 2.3. This Guidance consolidates and refreshes previous FSCO Policies related to the processes for the valuation and division of pensions on marriage breakdown. This

¹ Part I of the *Family Law Act* sets out family property rights for married spouses and does not apply to common law spouses. The pension asset of common law spouses does not have to be valued. Nevertheless, if a plan member chooses to share the pension with a common law spouse after their relationship has ended, the administrator must calculate the Family Law Value (imputed value) if the member completed the Application for Family Law Value in accordance with section 67.2(6) 2 of the PBA. The administrator is also required to make a payment from the plan to the common law spouse if authorized under a family arbitration award or domestic contract and the spouse completes an application in accordance with the PBA. As such, this Guidance will also apply to the division of pension assets for common-law spouses.

Guidance includes both Approach Guidance, which is intended to outline FSRA's supervisory approach and expectations, and Interpretation Guidance, which outlines FSRA's view of statutory or regulatory requirements and may lead to enforcement action.

- 2.4.** FSRA does not have a regulatory decision-making function as it relates to the valuation and division of the pension asset, as these transactions are not subject to FSRA's approval. Rather, FSRA's role is to support administrators' compliance with their statutory obligations which are generally for the benefit of plan members and their spouses.
- 2.5.** All previous FSCO Family Law Q&As and Policies are now inactive. Please refer to the Pension Guidance section of FSRA's website for further information.

3. Scope

- 3.1.** This Guidance applies to administrators of pension plans that are subject to the PBA.²
- 3.2.** Administrators are responsible for complying with court orders made under Part 1 of the *Family Law Act* as well as valid family arbitration awards and domestic contracts, to the extent that these settlement instruments comply with the PBA.
- 3.3.** Significant legislative changes to the PBA and FLA governing the valuation and division of pensions came into effect in Ontario on January 1, 2012 (Post-2011 Rules).³ This Guidance focuses on the administration of court orders, family arbitration awards and domestic contracts made on or after January 1, 2012.
- 3.4.** If the court order, family arbitration award or domestic contract is dated before January 1, 2012, spouses are subject to the pre-2012 pension valuation and division rules. There is one exception to this transition rule. If the court order, family arbitration award or domestic contract does not require one party to pay to the other party an equalization payment under section 5 of the Family Law Act, it can be amended to fall

² Section 3 of the PBA.

³ *Family Statute Law Amendment Act*.

within the Post-2011 Rules.⁴ For example, a domestic contract that is dated before January 1, 2012, and that only addresses child support and custody provisions may be amended with an equalization provision that includes a pension payment.

3.5. Out-of-province separations and court orders

3.5.1. The purpose of this section is to provide an analytical framework for determining which pension valuation and division rules apply when spouses separate while living in a different jurisdiction from where the pension was earned⁵. This framework consists of two parts: one for multi-jurisdictional plans and the second for pension plans that are not multi-jurisdictional.

Multi-jurisdictional pension plans

3.5.2. The 2020 Agreement Respecting Multi-Jurisdictional Pension Plans provides guidance on which pension legislation applies for division purposes for multi-jurisdictional pension plans. It states that the member's entire benefit accrual shall be determined by final location. For example, if an Ontario plan member moved to Alberta, continued to accrue pension benefits in Alberta and the spouses' last place of residence prior to separation was in Alberta (and the Alberta *Family Law Act* was determined to apply), then the pension would be both valued and divided in accordance with Alberta's family law rules and Alberta's pension division rules.

Pension plans that are not multi-jurisdictional

3.5.3. Step one: valuation – determine which province's family law legislation applies. Pension assets are to be valued based on the applicable family law legislation. This is often the jurisdiction in which the parties last resided together prior to separation⁶. The legislation may direct how pension property

⁴ Section 67.6 of the PBA.

⁵ Foreign court orders are beyond the scope of this guidance. Administrators are encouraged to consult their legal counsel.

⁶ For guidance on valuation in Quebec, refer to

https://www.rrq.gouv.qc.ca/en/administrateur/partage_droits/evaluation_regime/Pages/evaluation_regime.aspx

is to be valued.

3.5.4. Step two: division - determine which province's pension law legislation applies. Pension assets are to be divided based on the rules of the jurisdiction where the pension was earned. If Ontario pension assets are to be divided following an out-of-province separation, Ontario's pension division process will apply. Since valuation under the PBA is a prerequisite to a division under the PBA, the Ontario administrator would need to calculate the Family Law Value⁷ to ensure that the PBA's 50 per cent limit⁸ and other transfer restrictions would be applied. The Ontario administrator would also be required to comply with the PBA in determining the spouse's transfer options and post-payment adjustments.

3.5.5. An out-of-province court order is not enforceable in Ontario. The court order must be made under Part I (Family Property) of the FLA. Before making a payment from the pension plan to the spouse, the administrator should request either a court order⁹ under the Ontario FLA or a domestic contract, if appropriate in the circumstances.¹⁰

Valuation: If a member accrued benefits in Ontario, and the spouses last place of residence prior to separation was Alberta, and it is determined that the Alberta Family Law Act applies, the Alberta Family Law Act would govern valuation of family property, including Ontario pension assets.

Division: If the intention is to use the Ontario pension asset to satisfy an equalization debt, the division would need to comply with the Ontario PBA and the member would also need an Ontario valuation.

⁷ The term "Family Law Value" as used herein refers to the "imputed value" for the purposes of sections 67.1 to 67.9 of the PBA.

⁸ Sections 67.3(6), 67.4(5), 67.6(4) and 67.8(6) of the PBA.

⁹ Reciprocal Enforcement of Judgments Act, R.S.O. 1990, c. R.5 applies to Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, the Northwest Territories and the Yukon Territory.

¹⁰ Administrators may, for example, consider accepting a Quebec domestic contract that complies with contract law and is not inconsistent with the terms of the original Quebec order.

3.6. Pension benefits that are not subject to the PBA

3.6.1. Although all pensions are considered ‘family property’ under the Ontario FLA, not all pensions are subject to the PBA. The FLA¹¹ provides that pension assets of individuals who are subject to the Ontario FLA but whose pension is not subject to the PBA must be valued “where reasonably possible” in accordance with section 67.2 of the PBA with “necessary modifications”. This applies to federally regulated pension benefits, federal government plans and non-registered Supplemental Employee Retirement Plans (SERPs).¹²

3.6.2. *Federally regulated pension benefits and federal government pension plans – where the Ontario FLA applies*

3.6.2.1. For members of federally regulated private pension plans whose pension benefits are subject to the federal *Pension Benefits Standards Act, 1985* (PBSA)¹³, the plan administrator must comply with the PBSA minimum legislative standards relating to vesting rules, transfer options, and the maximum amount that may be assigned or paid to the spouse, etc. Administrators and advisors should consult the [Office of the Superintendent of Financial Institutions \(OSFI\)](#)’ guidance and newsletters for more information.

3.6.2.2. Members of the Federal Government’s pension plans are subject to the federal *Pension Benefits Division Act* (PBDA) and are not regulated by OSFI or FSRA. Questions about Federal Government pension plans should be directed to the [Government of Canada](#)

¹¹ Section 10.1(2) of the FLA.

¹² SERPs are not subject to the PBA and are not regulated by FSRA. Members are responsible for determining how the FLA applies to their SERPs.

¹³ The PBSA applies to members working in areas of “included employment” in Canada (e.g. employment in banking, telecommunications, inter-provincial transportation, etc.). See section 4(4) of the PBSA for meaning of included employment.

[Pension Centre or Government of Canada Pension Centre – Employer Support Services \(for compensation advisors\).](#)

4. Principles

- 4.1. FSRA is a principles-based and outcomes focused regulator. FSRA has published its [Guiding Principles for the Pension Sector \(Guiding Principles\)](#). These include FSRA being risk-based, reasonable, aware, adaptable, facilitative, effective, efficient, and collaborative in regulating the pension sector.
- 4.2. FSRA’s role is to enforce the minimum standards set out in the PBA’s marriage breakdown provisions and will focus its regulatory efforts on areas of greatest potential harm to plan members and their spouses.
- 4.3. The valuation of pensions on marriage breakdown is also governed by the FLA. FSRA’s interpretation of the provisions of the relevant provisions of the PBA will also be guided by one of the key principles of the FLA: the orderly and equitable settlement of the spouses’ property upon marriage breakdown.¹⁴
- 4.4. FSRA’s expectation is that administrators will work in their fiduciary capacity and act with the care, diligence and skill¹⁵ required of a fiduciary by the PBA, the common law and equity to apply the relevant legislation to support a fair valuation and equitable division of the spouses’ property on marriage breakdown.
- 4.5. FSRA’s expectation is that administrators will decide on a course of action in a particular case, acting as a fiduciary, in compliance with both the PBA and FLA and after consultation with its professional advisors where appropriate. FSRA may accept a process or practice that reflects the principles set out herein, that is applied consistently, and that is supported by the PBA. Administrators should be prepared to explain or defend their process or practice. Administrators also need to recognize that any approach, whether arrived at by the administrator based on professional advice, or

¹⁴ See preamble to the Family Law Act, (“...whereas in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership...”).

¹⁵ Section 22 of the PBA.

communicated by FSRA, does not preclude a tribunal or court from coming to a contrary decision.

- 4.6.** As both spouses in a marriage breakdown have rights set out under the FLA and PBA, FSRA will be reasonable in considering solutions that promote a fair valuation and equitable division of the pension.
- 4.7.** FSRA is aware of the complexity in marriage breakdown and in particular, the interconnection of pension law with family law, tax law and estate law, as well as the diverse interests of various stakeholders, including administrators, members, spouses and professional advisors.
- 4.8.** FSRA also recognizes that the regulatory process should avoid undue burden on members, spouses and administrators; acknowledging that even those plans charging fees are not able to recoup the costs that relate to their role in this process.
- 4.9.** FSRA recognizes that, given the complexity of the subject matter and the intersection between different fields, the best way to address a particular issue may not always be clear. FSRA does not intend to provide its interpretation on all matters that may arise while dealing with marriage breakdown.

Approach

5. Processes and practices

- 5.1.** As set out in the Guiding Principles, plan administrators are responsible for the oversight, management and administration of the pension plan in the interest of all plan beneficiaries. Consistent with their fiduciary responsibilities, administrators must ensure any delegated operations or functions are performed with the same standard of care as is required by the plan administrator.
- 5.2.** Administrators must be familiar, and compliant, with the framework in the PBA for pension valuation and division on marriage breakdown. This includes, for example, meeting all applicable deadlines, providing required information to members and spouses, adhering to fee maximums, correctly calculating Family Law Values and using prescribed forms.¹⁶
- 5.3. Informing FSRA of court proceedings**
- 5.3.1.** FSRA requests to be informed, as soon as possible, of any matter before a court that involves an interpretation of the PBA or its regulations. For this purpose, please contact FSRA at pensioninquiries@fsrao.ca.
- 5.3.2.** FSRA may decide to apply for intervenor status or otherwise become involved in the proceeding, as it determines appropriate, since the court's decision may have an impact on the administration and enforcement of the PBA and its regulations.

¹⁶ Plan administrators and their authorized agents may request Microsoft Word or unlocked PDF versions of FSRA's family law forms.

5.4. Court orders, family arbitration awards or domestic contracts contravening the PBA

- 5.4.1.** If the terms of a court order, family arbitration award or domestic contract contravene the PBA or Regulation 287/11, or are ambiguous, administrators must notify the parties of the issue, who may then amend their settlement instrument.
- 5.4.2.** Administrators must be satisfied that they can administer the court order, family arbitration award or domestic contract as written. In certain cases, it may be possible for administrators to administer the settlement instrument even where the administrator has identified an issue. For instance, if the division amount contravenes the PBA's 50% maximum equalization limit, administrators may pay up to the limit. Note that support orders are considered separately from, and do not count towards, the 50% equalization limit.

Interpretation

6. Interpretation

6.1. In this section, FSRA is interpreting the PBA statutory framework for family law matters. The Principles set out above guide FSRA's interpretations. The Interpretations therefore reflect the following considerations:

- An awareness of complexity in the law of valuation and division of pension assets on marital breakdown.
- Supporting outcomes that are reasonable, transparent and consistent.
- Consistency with a key principle in the FLA: the orderly and equitable settlement of the spouses' property upon marriage breakdown.
- Avoiding undue burden on members, spouses and administrators.

6.2. FSRA may amend this Guidance from time to time to include additional interpretations.

6.3. The interpretations below include issues related to:

- Valuation
- Payment and Division
- Survivor Benefits

7. Valuation

7.1. Where the PBA and its regulations clearly address a matter, FSRA expects administrators to defer to the legislative framework. If an issue is not clearly addressed, FSRA views a fair valuation of the pension asset as critical for the orderly and equitable settlement of the spouses' property, as set out in sections 4 and 6 of this Guidance.

7.2. Calculation: preliminary value

7.2.1. Overview

- 7.2.1.1. Regulation 287/11 provides that the commuted value of defined benefit pension benefits must be determined using methods and actuarial assumptions that are consistent with [section 3500 of the Standards of Practice of the Canadian Institute of Actuaries](#) (CIA SOP), as amended from time to time. In the event of a conflict, Regulation 287/11 prevails.¹⁷
- 7.2.1.2. Administrators should apply the CIA SOP in effect as of the Family Law Valuation Date (FLVD).¹⁸ The preliminary values are to be calculated and based on the actuarial assumptions as of the FLVD, in accordance with the approach and/or methods described in such version of CIA SOP. If the FLVD is a date before January 1, 2012, the version of CIA SOP effective at January 1, 2012, applies. Accordingly, as of December 1, 2020, the following mortality tables must be used in accordance with the CIA SOP effective on the FLVD:

Family law valuation date	Mortality table
Prior to December 9, 2015	UP94 (generational): UP-94 table with generational projection using mortality projection scale AA.
December 10, 2015 to December 31, 2016	CPM2014 (CPM-B1D2014 or CPM-B)¹⁹: 2014 Canadian Pensioners Mortality table (CPM2014) combined with a one-dimensional improvement scale CPM-

¹⁷ Sections 2(3) and 2(3.1) of Regulation 287/11.

¹⁸ Section 67.1(1) of the PBA defines “family law valuation date” as: “(a) the spouses’ valuation date under Part 1 (Family Property) of the *Family Law Act*, or (b) for spouses to whom Part 1 of that Act does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation;”

¹⁹ Must be consistent with the improvement scale used in determining the commuted value for termination payouts.

Family law valuation date	Mortality table
	B1D2014 or two-dimensional improvement

On or after January 1, 2017²⁰: **CPM2014 (CPM-B):** 2014 Canadian Pensioners Mortality table (CPM2014) combined with a two-dimensional improvement scale CPM-B.

7.2.1.3. Valuations are calculated as of the FLVD. The preliminary value²¹ reflects the total value of a member’s pension assets, for family law purposes, from the date the member joined the plan to the FLVD. The Family Law Value²² reflects the portion the preliminary value that accrued during the spousal period.²³ In certain cases, the PBA expressly requires that certain assumptions be used or certain benefits be included in calculating the Family Law Value. In other cases, FSRA’s Interpretations are guided by the principle that it is fair and equitable to include in the calculation any benefits that provide value to the individual.

7.3. Application of CIA SOP effective December 1, 2020

7.3.1. The CIA SOP was amended effective December 1, 2020. Where a terminated member is entitled to a subsidized early retirement pension, a commuted value is calculated using a retirement age assumption based on: (i) a 50% probability of retirement on the date that results in the highest commuted value; and (ii) a 50% probability of retirement on the earliest date the member would be entitled to an unreduced retirement benefit (the “50/50 assumption”). Prior to December 1, 2020, commuted values were calculated by assuming a 100% probability that

²⁰ Based on the CIA SOP effective December 1, 2020.

²¹ Preliminary value calculations are to be determined in accordance with sections 3 to 15 of Regulation 287/11.

²² Family Law Value calculations are to be determined in accordance with sections 16 to 20 of Regulation 287/11.

²³ Section 67.2(5) of the PBA.

retirement will occur at the date that would result in the highest commuted value.

- 7.3.1.1. **Active members on the FLVD (FLVD is before the member’s earliest unreduced retirement date)**²⁴: The preliminary value is determined using the weighted average of commuted values of the member’s accrued pension benefits based on three commencement age scenarios (Values A, B and C). For **Value A**, the administrator must assume that the member will choose the date that results in a pension with the greatest commuted value. The wording of this provision conflicts with the 50/50 assumption in the CIA SOP. As a result, section 6(3)(c) of Regulation 287/11 takes precedence and the 50/50 assumption would not apply in the calculation of the preliminary value. For **Value B**, the 50/50 assumption does not apply since the administrator must assume that the member’s pension will commence at the normal retirement date under the plan terms. For **Value C**, the 50/50 assumption does not apply since the administrator must assume that the member’s pension will commence at the earliest date at which the member would be eligible to receive an unreduced pension.
- 7.3.1.2. **Active members on the FLVD (FLVD is after the member’s earliest unreduced retirement date)**²⁵: For **Value B**, the 50/50 assumption does not apply since the administrator must assume that the member’s pension will commence at the normal retirement date under the plan terms. For **Value F**, the 50/50 assumption does not apply since the administrator must assume that the member’s pension will commence on the FLVD.
- 7.3.1.3. **Retired member on the FLVD**²⁶: The preliminary value is the commuted value of the pension adjusted to include the commuted value of any ancillary benefits that the retired member was receiving

²⁴ Section 6 of Regulation 287/11.

²⁵ Section 7 of Regulation 287/11.

²⁶ Section 9 of Regulation 287/11.

as of the FLVD and adjusted to exclude the value of survivor pension payable to the spouse after the death of the retired member (50/50 assumption is not relevant).

7.3.1.4. **Retired member's spouse on the FLVD²⁷**: The preliminary value is the commuted value of the survivor pension as of the FLVD (50/50 assumption is not relevant)

7.3.1.5. **Former member on the FLVD**: Section 8 of Regulation 287/11 provides that the preliminary value of a deferred pension is the commuted value of that deferred pension as of the FLVD, that is adjusted to include the commuted value of any ancillary benefits for which the former member has met all eligibility requirements necessary to exercise the right to receive the benefit. Unlike the wording found in section 6 of Reg. 287/11, section 8 of Regulation 287/11 does not mandate a retirement age assumption. As a result, there is no conflict between Regulation 287/11 and the CIA SOP. The commuted value should be calculated in accordance with the amended CIA SOP, applying the 50/50 assumption for the calculation of preliminary value of former members whose FLVD was on or after December 1, 2020.

7.3.2. Married assumptions (active and former members on FLVD)

7.3.2.1. The PBA and Regulation 287/11 require that when calculating the preliminary value of a pension benefit or deferred pension benefit (i.e. for a member who has not retired as of the FLVD), administrators must use the same set of married assumptions (including the percentage of married, and assumed spousal age difference at retirement) that are used to calculate commuted values under the pension plan. In other words, there should not be a separate married assumption for marriage breakdown calculations. For example, if the commuted value calculation under the plan assumes that 70 per cent of members will

²⁷ Section 10 of Regulation 287/11.

be married and 30 per cent of members will be single at retirement, then the same assumption should also be used for marriage breakdown calculations. If an administrator uses the actual marital status of a plan member when determining the married assumption for commuted value calculations, i.e. 100 per cent married for a married member and 0 per cent married for a single member, the administrator should assume that the member is married when calculating the preliminary value in order to reflect the value of the member's pension as a family asset accrued during the marriage, consistent with the FLA.

- 7.3.2.2. When calculating the preliminary value of a retired member's pension, the administrator should assume that the retired member was married on the FLVD, in order to reflect the value of the retired member's pension as a family asset accrued during the marriage, consistent with the FLA.

7.3.3. Guarantee attached to a pension paid in joint and survivor form – retired member on the FLVD

- 7.3.3.1. If there is a guarantee attached to a pension paid in joint and survivor form, the value of the guarantee must be included in the spouse's preliminary value and not that of the retired member. The guarantee has value to the spouse. The preliminary value of the survivor benefit is based on the lifetime pension that would be payable to the surviving spouse.²⁸

7.3.4. Guarantee attached to a pension not paid in a joint and survivor form – retired member on the FLVD

- 7.3.4.1. If the pension-in-pay to a retired member is not a joint and survivor pension, there would not be any lifetime survivor benefit payable to the retired member's spouse. Accordingly, if there is a guarantee attached

²⁸ Section 9(2)(b) and 10(2) of Regulation 287/11.

to the retired member's pension, the value of the post-retirement guarantee should be included in the retired member's preliminary value. This should be done regardless of whether or not the retired member's spouse is the beneficiary of that guarantee.

7.3.5. Bridging benefits – active member on the FLVD

7.3.5.1. Although there is no specific reference to bridging benefits for Value B in the preliminary value formula²⁹, Value B must be calculated in accordance with the specific terms of the pension plan. For example, for pension plans with an age 60 normal retirement date and bridging benefits ending at age 65, Value B must include the commuted value of any bridging benefits payable between ages 60 and 65.

7.4. Calculation: multi-employer pension plans

7.4.1. Multi-employer pension plans (MEPPs) that provide defined benefits can retroactively reduce accrued pension benefits if they are permitted to do so under plan terms.³⁰

7.4.2. The valuation provisions under the PBA are based on the benefit entitlement of the member on the FLVD, without taking into account any post-FLVD changes. Therefore, any amendments that are filed after the FLVD cannot be recognized for purposes of Family Law Value calculations, even though a post FLVD amendment may affect a member's accrued entitlement on or after the FLVD.

7.4.3. The valuation provisions require calculating the value of the benefit as if the member had terminated membership in the plan on the FLVD.³¹ Given the requirement to carry out the calculation as if the member had terminated, FSRA believes it is appropriate for the administrator to reflect any plan provision of the MEPP that reduces the benefit payable, but only if:

²⁹ Section 6 of Regulation 287/11.

³⁰ Section 14(2) of the PBA. Also, note that multi-employer plans that are JSPPs cannot reduce accrued benefits except upon wind-up.

³¹ Section 6 of Regulation 287/11.

- 1) The plan terms in effect on the FLVD explicitly provide for an automatic reduction on termination of a member's accrued benefits.
- 2) The member would be eligible for portability rights under the terms of the plan and the PBA if they terminated on the FLVD.

7.5. Ancillary benefits

7.5.1. Ancillary benefits to which the retired member is entitled to receive on the FLVD must also be included in the calculation of the preliminary value, not just the ancillary benefits that the retired member was actually receiving on the FLVD.³²

7.6. Indexation

7.6.1. Contractual increases payable on or after the FLVD must be included in the preliminary value.

7.6.2. Ad hoc increases granted before the FLVD must be included in the preliminary value.

7.7. Change in plan membership after FLVD but before application for a statement of Family Law Value

7.7.1. The FLA requires all assets to be valued as of the FLVD. This means that the Family Law Value of a member who separates and subsequently transfers membership and pension assets to another pension plan is to be calculated by the original administrator based on the plan terms in effect on the FLVD.

7.7.2. FSRA's Interpretation on this point is based on an interpretation of 67.2(1) of the PBA as well as the principle of avoiding undue burden on plan members and administrators. Section 67.2(1) of the PBA provides that the preliminary value of a member's pension benefits is determined by the administrator as of the family law valuation date. The term "as of the family law valuation date" guides not only the date as of which the calculation is to be done but also guides which administrator is responsible for completing the calculation.

³² Section 9(2)(a) of Regulation 287/11 and section 40 of the PBA.

Further, FSRA is of the view that, in most cases, the administrator of the original pension plan³³ will be in the best position to perform this valuation. Where the administrator of the original plan performs the valuation, it may charge the prescribed fee under Regulation 287/11³⁴.

7.7.3. Asset transfers between pension plans

- 7.7.3.1. The successor plan administrator may do the calculation as the agent of the original plan administrator if the original and successor plan administrators agree. In such cases, the original plan administrator should share any necessary plan records that would enable or assist the successor plan administrator to do the calculations. In that circumstance, each plan administrator's responsibilities could be set out in the terms of a reciprocal transfer agreement or a purchase and sale agreement.
- 7.7.3.2. The successor plan administrator would be required to do the calculations in cases of certain plan mergers³⁵ where the original pension plan no longer exists after the transfer.
- 7.7.3.3. The spouse's portion of the Family Law Value is to be paid out by the successor plan administrator.³⁶ The spouse's portion remains subject to the 50% maximum equalization limit, which has been determined in accordance with the terms under the original pension plan as of the FLVD.³⁷ The successor plan may pay up to this 50% maximum equalization limit.

³³ "Original pension plan" is defined in sections 67.3.1 and 67.4.1(2) of the PBA. These sections are not yet in force

³⁴ Sections 23 and 54 of Regulation 287/11.

³⁵ For example, asset transfers to jointly sponsored pension plans (from single employer pension plans) under section 80.4 of the PBA and adoption of successor pension plan under section 81 of the PBA.

³⁶ "Successor pension plan" is defined in sections 67.3.1 and 67.4.1(2) of the PBA. These sections are not yet in force.

³⁷ Where a member has terminated employment and transferred their benefit to a locked-in vehicle (e.g. locked-in retirement account, life income fund) before the spouse submits the Spouse's Application for Transfer of a Lump Sum to the plan administrator, the spouse will need to contact the provider of the locked-in vehicle with respect to payment of their entitlement.

7.7.4. Pension plan is wound up

7.7.4.1. If the original pension plan no longer exists because it has been wound up, the plan member is responsible for the valuation and can seek assistance from an independent actuary.

7.7.5. Termination of employment or plan membership

7.7.5.1. An administrator that complies with a terminating member's direction to transfer an entitlement under section 42 of the PBA after the FLVD but before a valuation is requested, would not be responsible for completing the valuation as a result of the discharge provided by section 42(11) of the PBA.

7.8. Purchased pension credit vs. transfers

7.8.1. When calculating the Family Law Value of a defined benefit pension, administrators should include any service or entitlement accrued up to the FLVD. The term 'credited' in items "H" and "J" in section 18 of Regulation 287/11 should be interpreted as credited either through service or through buyback. Any service that is purchased should be included in both "H" and "J" when calculating the Family Law Value. This approach reflects the intention of the legislative framework – to value the increase in family property during the spousal period – and further aligns with FSRA's principles of avoiding undue burden and supporting the fair and equitable division of the pension asset.

7.8.2. The key factor is whether the value of the pension was increased during the spousal period. FSRA's position on common scenarios is set out below:

1) Buybacks of credited service

Whether a buyback must be included in the Family Law Value depends on the date the pension credit was purchased. If the purchase falls within the period of the spousal relationship, it should be included in the Family Law

Value.³⁸ This is true whether or not the period of credited service relating to the buyback predates the period of the spousal relationship – as the value of the pension was increased during the spousal period.

2) Transfers under sections 21, 80 and 81 of the PBA

In cases where a member’s service in one plan transfers to another, due to plan mergers, purchase and sale agreements or under a reciprocal transfer agreement, the PBA deems the service/membership to be continuous from the original pension plan to the successor pension plan. The pension accrual and spousal relationship periods continue unchanged in these circumstances and the date of transfer is irrelevant. As a result, the calculation of the Family Law Value may reflect service accruals during the spousal period under more than one pension plan.

7.9. Annuities

- 7.9.1.** Defined benefit plans may purchase annuities as an investment of the pension fund, that is intended to back the pension obligations (commonly referred to as a “buy-in annuity”) or as a means for settling pension benefits owed to members (commonly referred to as a “buy-out annuity”).
- 7.9.2.** Where a “buy-in” annuity is issued to the administrator, or to the pension fund trustee, the administrator continues to be responsible for paying out all benefits promised in accordance with its terms. In these situations, the administrator continues to be responsible for all of its normal duties, including providing the Statement of Family Law Value (Family Law Form FL-4) upon receipt of an Application for Family Law Value (Family Law Form FL-1). The administrator also remains responsible for the potential division of any benefit. The insurer has no responsibilities for the valuation and division of the pension for buy-in annuities.

³⁸ Where the decision to purchase falls within the spousal period but the purchase is amortized over a period of time, only the portion of the pension paid for by the amortized payments made up to the FLVD should be included in the Family Law Value.

- 7.9.3.** In contrast, “buy-out” annuities that are no longer assets of the pension plan and which are administered by an insurer are not subject to the pension valuation and division regime if the administrator has obtained a discharge under section 43.1 of the PBA. Administrators would not be required to provide the Statement of Family Law Value. Accordingly, members would have to obtain the valuation from the insurer or an independent actuary. If the administrator has not obtained a discharge, the administrator is responsible for providing the Statement of Family Law Value.
- 7.9.4.** Administrators of wound up plans are not responsible for the valuation. The valuation would therefore have to be obtained from an independent actuary.

8. Payment and division

8.1. FSRA’s Interpretation on issues of Payment and Division again reflects the principles set out in sections 4 and 6 of this Guidance. In particular, many of FSRA’s Interpretations are guided by an awareness of the complexity involved in marriage breakdowns, the desire to avoid undue burden on the parties, and a recognition of the importance of FSRA being transparent and consistent in advancing its statutory objects of both good plan administration and protecting the rights of beneficiaries.

8.2. Options available for division

- 8.2.1.** If the plan member is not retired on the FLVD, the plan administrator is limited to paying a lump sum to the spouse for equalization. If the plan member is retired on the FLVD, the plan administrator is limited to paying the spouse a share of the retired member’s pension.
- 8.2.2.** A pension plan may not provide the spouse with the option to leave their portion of the Family Law Value in the pension plan. This option is contemplated under section 67.3(2)4 of the PBA but there are currently no supporting regulations.

8.3. Interest on payments to the spouse

- 8.3.1.** The Ontario Superior Court of Justice decision in *Heringer v. Heringer*³⁹ considered the right of a member's spouse to the payment of interest, where the spouse's portion of the Family Law Value is transferred out of the pension plan as a lump sum in accordance with section 67.3 of the PBA.⁴⁰ Whether or not interest will be credited on the spouse's lump sum payment under the pension plan is dependent on how that lump sum is expressed in the court order, family arbitration award or domestic contract.
- 8.3.2.** Where the spouse's portion of the Family Law Value is expressed as a specified dollar amount, the lump sum payment will be credited with interest only if the court order, family arbitration award or domestic contract explicitly states that interest is to be credited on the amount.
- 8.3.3.** Where the spouse's portion of the Family Law Value is expressed as a percentage of the Family Law Value, the lump sum payment must be credited with interest from the FLVD to the beginning of the month in which the lump sum is paid in accordance with section 30(4) of Regulation 287/11.
- 8.3.4.** The court order, family arbitration award or domestic contract should state the spouse's portion of the Family Law Value as either a specified dollar amount or as a percentage of the Family Law Value, but not both, in order to provide clear direction to the administrator regarding the crediting of interest.
- 8.3.5.** The FLA also has rules concerning the crediting of interest relating to pre and post judgement interest. The plan administrator is not responsible for making any payments for pre and post judgement interest.

8.4. Adjustment / revaluation after transfer or pension division

- 8.4.1.** The adjustment to a member's defined contribution benefit, a former member's deferred pension or a retired member's pension, is applied

³⁹ 2014 ONSC 7291.

⁴⁰ Payment of interest in this context would be paid for from the member's share of the pension, which would be reduced accordingly.

immediately following transfer or division, as applicable. However, a plan administrator cannot apply the adjustment to an active member who has a defined benefit until such time the member terminates employment or plan membership⁴¹.

- 8.4.2.** In accordance with the principles of good administration and safeguarding the rights of beneficiaries, FSRA recommends that for active members with defined benefits, administrators include an explanation in the annual pension statements that the amount of any pension estimate will be reduced following the lump sum transfer. Administrators may also include an estimate of the reduced pension. Although there is no requirement to do so, such information will keep members informed of the required future adjustment to their pension benefits.
- 8.4.3.** FSRA also notes that after a retired member's pension is divided and revalued, it is possible for the spouse's share of the pension to be greater than the retired member's share due to the addition of arrears and interest on the arrears on the spouse's share of the pension. The 50% maximum equalization limit applies only as of the FLVD.

8.5. Change in member status from active/former to retired post FLVD

- 8.5.1.** The member's status on the FLVD determines how the spouse's portion of the Family Law Value is to be calculated, as well as the options that are available to the spouse for any pension division. Complications may arise where the member was active on the FLVD, but the member has retired and is in receipt of a pension under the plan on the settlement/payment date. If the member was not retired as of the FLVD, the only option available to the spouse is a lump sum transfer from the pension plan.
- 8.5.2.** The plan administrator can pay the spouse's share of the Family Law Value in accordance with the Spouse's Application for Transfer of a Lump Sum (Family Law Form FL-5) and the court order, family arbitration award or domestic

⁴¹ Sections 31, 32, 33, 34, 38, 39 and 62 of Regulation 287/11.

contract, and then adjust the retired member's pension based on section 33 of Regulation 287/11 with respect to the initial reduction, and section 39 of Regulation 287/11 with respect to converting the arrears into pension instalments to reduce the member's pension in payment.

8.5.3. However, in line with FSRA's principles that recognize the complexity of the marriage breakdown regime and the need to support good plan administration, FSRA is of the view that the PBA may support other options for calculating the amount to be transferred as a lump sum and the corresponding recalculation of the retired member's pension. For example, the plan administrator may decide to reduce the amount available for apportionment for family law purposes. Should an administrator elect this interpretation of section 28(2) of Regulation 287/11, it must include appropriate disclaimers on the Statement of Family Law Value, advising plan members and their spouses that the amount available for transfer on the statement will decrease if the member retires before the lump sum settlement is made. In that circumstance, the member would be personally responsible for paying any shortfall in the equalization payment to the spouse.

8.6. Re-employment and suspension

8.6.1. Neither the PBA nor Regulation 287/11 contemplates a suspension of the pension stream to a spouse once it has commenced if the member is re-employed and their pension suspended. It is FSRA's view that the plan administrator should suspend the assignment and payment of the spouse's share of the retired member's pension in these situations. The administrator should advise both parties of the suspension. The plan member may be personally accountable for any discrepancy in payments, depending on the terms of their court order, family arbitration award or domestic contract.

8.7. Spouse dies before the retired member

8.7.1 [placeholder] – to be updated once FSRA has completed its review of the recent Ontario Court of Appeal decision in *Meloche v Meloche*.⁴²

8.8. Retired member dies before the spouse

8.8.1. If the retired member dies before the spouse, the retired member's pension, including payment of the spouse's share, will end (subject to any guarantee period).

8.8.2. If the pension is paid in a joint and survivor form, and the spouse did not waive the survivor pension, the spouse will be entitled to receive a lifetime survivor pension following the retired member's death.

9. Survivor benefits

9.1. Waiver of post retirement joint and survivor pension

9.1.1. A spouse's entitlement to a survivor benefit vests on the date the first instalment of a member's pension is due. This entitlement can be waived before the member's retirement under section 46 of the PBA. The entitlement can also be waived after the member's retirement under section 67.4(8) of the PBA.

9.1.2. The waiver of survivor pension in the context of a marriage breakdown is a significant financial decision. The impact of the waiver may vary significantly depending on the plan terms. Consistent with the principles of ensuring good administration, safeguarding the rights of beneficiaries, and ensuring a fair and equitable division, FSRA is of the view that administrators should take steps to ensure retired members and their spouses have the information necessary to make an informed decision.

⁴² 2021 ONCA 640.

9.1.3. Administrators must ensure that the following conditions are satisfied before accepting the Post-retirement Waiver of Survivor Pension After Separation (Family Law Form FL-8) from the spouse:

- Separation occurred after pension payments started.
- The retired member's pension has not yet been divided.⁴³
- A Statement of Family Law Value (Family Law Form FL-4E) was provided to the retired member and spouse
- Incorporation or reference of the waiver in a court order, family arbitration award or domestic contract is good practice but not a requirement.

10. Compliance expectations

Where FSRA has set out an interpretation, it expects pension plan administrators to administer their plan in compliance with the PBA and FSRA's interpretation.

11. Effective date and future review

This Guidance became effective on **November 9, 2021** and will be reviewed no later than **November 9, 2026**.

12. About this guidance

This document is consistent with [FSRA's Guidance Framework](#). As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action. As an Approach, it describes FSRA's internal principles, processes and practices for supervisory action and application of FSRA's discretion.

⁴³ The phrase "before the pension is divided in accordance with this section" under section 67.4(8) of the PBA requires the parties to apply for the Family Law Value before the spouse can waive the survivor pension.

13. Appendices and reference

References

- Sections 3, 14(2), 21, 22, 40, 42, 43.1, 46, 67.1 to 67.9, 80, 80.4 and 81 of the PBA.
- Regulation 287/11 (Family Law Matters).