

# Information



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## Pension Sector Emergency Management Response

### Purpose and Scope

This Guidance outlines information for pension sector stakeholders and plan members during the COVID19 pandemic.

This Information Guidance replaces Information Guidance PE0204INF issued June 24, 2020. Changes have been identified with **\*UPDATED\*** or **\*NEW\*** where information is updated relative to PE0204INF, or is new to this Guidance.

### Rationale and Principles

We are receiving and listening to your input on the challenges brought on by the pandemic, and we are working with other regulators and the Government of Ontario so that we can support the sector with appropriate and timely measures during emergency and other extraordinary circumstances. This Guidance aims to promote good administration of pension plans by assisting plan administrators in their ongoing administration and other pension-related obligations during this disruption, while not losing sight of the need to protect and safeguard benefits and rights of plan beneficiaries.

This Guidance provides FSRA's responses to questions received from pension stakeholders during this unprecedented and challenging time. We ask you to bear in mind that we are facing a unique and rapidly evolving situation and our position on any given matter may change as the situation progresses. This Guidance may be updated to reflect clarifications, new responses to questions and updated positions. Please refer to the section "Effective Date and Future Review" towards the end of this document for more information.

Our answers below are subject to the general principle that, during this disruption, we expect pension plan sponsors and administrators to focus on managing risks while meeting obligations to:

- Pay benefits
- Make and remit contributions
- File required filings, or advise us immediately where you need extensions
- Provide member communications in a timely manner, or advise us immediately if you're unable to comply with the requirements

Note: Where this Guidance conflicts with the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8 (FSRA Act), the Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or the regulations thereunder, the FSRA Act, PBA or regulations govern.

## Contacting FSRA

During this disruption, we ask plan administrators and sponsors, and their advisors, to please email your FSRA Pension Officer as the first point of contact for questions or concerns. Plan members can do that also, or they can contact our contact centre at 416-250-7250 or toll free at 1-800-668-0128 or email us at [PensionInquiries@fsrao.ca](mailto:PensionInquiries@fsrao.ca). You can check who your Pension Officer is by going to this [FSRA Pension Plan Information Access](#) and searching for your pension plan. Given current working arrangements during the COVID-19 pandemic, our response may take longer than normal. Thank you for your patience and understanding where you experience delays.

Please note that FSRA staff will respond to matters regarding the administration of and obligations under the *Pension Benefits Act (PBA)*, but **do not provide professional advice**.

You should obtain professional advice from your actuary, lawyer, accountant, insurer, investment advisor or other relevant professional as appropriate.

When contacting FSRA with a question, we ask that you do so by email, outlining the facts of your situation and setting out your question. You should also include your own (or your advisor's) analysis of the issue and conclusion, and attach any relevant documents to your email. If the size of attachments is a problem, please contact the Pension Officer, who will assist you to submit those documents.

## Information

This page includes responses and information related to:

- **\*NEW\*** [Funding Relief Announced on September 21, 2020](#)
- [Pension Plan Sponsors](#)
- [Pension Plan Members](#)
- [Timing of Events, Consultations and Communications](#)

## **\*NEW\*** Funding Relief Announced on September 21, 2020

**Q1. \*NEW\*** How does Regulation 520/20 under the Pension Benefits Act provide funding relief to pension plans?

**A1.** On September 21, 2020, the government filed Regulation 520/20 (Regulation), <sup>1</sup> which amended Regulation 909 under the Pension Benefits Act. This amendment assists employers maintaining and supporting their day-to-day business operations by allowing pension contributions to be deferred, freeing up cash to support operational requirements. The Regulation restricts certain employer's activities during this deferral period to help balance employer's liquidity needs with protection of members' benefits.

More specifically, the Regulation permits employers of certain pension plans to elect to defer one or consecutive monthly payments of employer contributions due beginning October 1, 2020 and ending on March 31, 2021 including normal cost, provision for

adverse deviations in respect of the normal cost and special payments.<sup>2</sup> These deferred payments must be repaid with interest within the timeframes specified in the Regulation.

**Q2. \*NEW\*** Does Regulation 520/20 under the Pension Benefits Act apply to all pension plans?

**A2.** The Regulation sets out plans that are ineligible. Those plans include plans that do not provide defined benefits, multi-employer pension plans, listed jointly sponsored pension plans, public sector plans and individual pension plans. Please see subsection 4.1 (25) of [Regulation 909](#) for all plans that are ineligible.

**Q3. \*NEW\*** How do employers access the relief? What filings are required and where are they filed?

**A3.** The Regulation requires employers electing to defer contributions to file an [election](#) and [schedule of payments](#) with FSRA and file updates and a [statutory declaration](#) throughout the deferral period. The initial election and updates may be filed by the plan administrator and should be submitted to [pensioninquiries@fsrao.ca](mailto:pensioninquiries@fsrao.ca)

## Filing the Election

Elections must be filed with FSRA. An election form and schedule has been prepared by FSRA and are available here: [Election to Defer Certain Contributions Form](#) and [Schedule to Defer Certain Contribution Form](#). The election must include the schedule of payments described in the Regulation. This schedule must be prepared by an actuary. FSRA does not approve the election or payment schedule, but will review the filings for compliance with the Regulation.

## Filing Updates

The first update must be prepared by the plan actuary as of the last day of the month that is the third month following the month in which the date on which the first deferred payment would have been required to have been made had the election not been made.

Administrators must send this update to FSRA no later than 30 days after the last day of the third month.

Subsequent updates are required on the last day of every third month thereafter. These updates should be prepared by the plan actuary and filed no later than 30 days after the last day of the particular month.

Updates are no longer required once FSRA has been informed that all deferred payments have been repaid with interest.

The Regulation sets out the information that must be included in the update.

Updates must also include a statutory declaration made by an officer of the employer in a form satisfactory to the CEO of FSRA. To support employers and administrators, FSRA has prepared a template statutory declaration which is available in Appendix A of this Guidance. If circumstances require administrators or employers to deviate or propose an alternate to the template in the Appendix, the administrator should contact FSRA in advance to discuss the approach before filing the declaration. Employers must provide the statutory declaration to their plan administrator at least 15 days before the update is due to FSRA.

**Q4. \*NEW\*** Do the conditions set out in the Regulation affect pre-existing contracts? Are any compensation increases allowed (like a performance bonus) during a period of deferred contributions?

**A4.** The Regulation prohibits certain activities and payments by employers that have made an election, from the day the election is filed until all deferred payments are repaid in full with interest to the pension plan. The purpose of Regulation and the restrictions is to help

ensure that deferred contributions can facilitate the continuation of employers' businesses during a time of stress and to protect plan members' benefits. Pension plan administrators / the Board of Directors and senior managers of the employers should, as plan fiduciaries, ensure that cash freed by the deferred contributions are used for this purpose and to continue to support employment and not benefit other stakeholders at the expense of employees or pension plan members. FSRA will strictly supervise those prohibited activities where an election to defer contributions is made and review filed updates and statutory declarations.

The Regulation restricts an employer from any the following activities where an election to defer contributions has been made:

- Declare or pay any amount, whether as a dividend or a return of capital, on any issued and outstanding share capital of the employer.
- Buy-back or otherwise purchase or redeem any issued and outstanding share capital of the employer.
- Pay a bonus, however described, whether non-discretionary or discretionary, and whether in cash or otherwise, to any executive of the employer.
- Increase the compensation of any executive of the employer.
- Repay the principal amount of any debt or other obligation of the employer in excess of amounts previously scheduled and agreed to before September 21, 2020.
- Pay or credit any amount as a loan or advance to or for the benefit of,
  - any person or entity that beneficially owns any issued and outstanding share capital of the employer or of any related person or entity of the beneficial owner, or
  - any executive of the employer and any related person or entity of the executive.
- Enter into any transaction with a related person or entity in the normal course of business and under terms and conditions that are less favourable to the employer than market terms and conditions.
- Additionally, administrators are not able to file plan amendments to increase benefits or ancillary benefits, unless the amendment is made to confer a benefit improvement that is required by law or the amendment implements a benefit improvement agreed to in a collective agreement before September 21, 2020.

Administrators or employers should contact FSRA if they are uncertain if, or how, their circumstances fall within the restrictions set out in the Regulation.

**Q5. \*NEW\*** My business circumstances have improved since I took advantage of the deferral.

Can I accelerate my repayments?

**A5.** Yes. Under the Regulation, once an election is made and a payment schedule has been filed with FSRA, that payment schedule cannot be amended, except when a new valuation with a valuation date before March 31, 2021 is filed, and becomes the basis for required contributions to the plan. However, an employer may repay the full outstanding amount of deferred payments with interest to the plan. Employers should ensure they have appropriately captured the interest accruing in making this payment. If an employer has repaid the full amount, they should provide an update to FSRA.

**Q6. \*NEW\*** My company has total compensation that includes long-term incentives, short-term incentives, base pay and benefits including certain perks. Can you help me understand what it means to “not increase compensation”?

**A6.** The Regulation prohibits paying a bonus to any executive of the employer. Executive is defined in the Regulation. Employers should contact FSRA if they’re uncertain about whether an individual is an executive or an individual with more limited managerial authority. FSRA considers both short-term or long-term incentives as bonuses.

FSRA will supervise filed updates against any increases to the base compensation relative to the period before the Regulation was filed.

The following example may be helpful. Company A provides the following compensation package to their CEO in 2020: \$200,000 base compensation, \$250,000 in short-term incentives for achieving performance targets, \$300,000 in long-term incentives awards including stock options, and \$100,000 in benefits.

Because bonuses are prohibited, the employer should not pay any short-term incentives (\$250,000 in the example above), award long-term incentives (\$300,000 in the example) or increase or improve the benefits during the deferral period. Because increases in compensation are prohibited, the base pay of \$200,000 cannot increase.

**Q7. \*NEW\*** As a plan administrator, do I need to tell any members or retirees about the

deferral?

**A7.** Yes, the Regulation requires pension plan members, retirees and deferred membersto be informed that the employer has elected to defer payments and the date by which all deferred payments will be repaid with interest. This information must be included in annual or biennial pension benefit statements.

**Q8.** If a new valuation report is filed before April 1, 2021, are there any other changes to the regulation that could affect employer contributions?

**A8.** Yes, the regulations are also amended to provide that any “catch-up” contributions that are owing with respect to changes in required contributions between the effective date of the new valuation and the date it is filed, those catch-up contributions can be paid over a 120 day period rather than over the usual 60 days.

**Q9. \*NEW\*** How do the restrictions set out in subsections 4.1(11) and(16) of Regulation 909 apply to parent companies, including foreign parent companies?

**A9.** The restrictions in subsection 4.1(11) of Regulation 909 apply only to employers that make elections to defer contributions under section 4.1 of Regulation 909; such restrictions do not apply to a parent company, regardless of where a corporate parent is located (assuming that the parent company is not itself a participating employer in the Canadian subsidiary company’s pension plan which has made the election to defer contributions under section 4.1).The restriction in subsection 4.1(16) of Regulation 909 applies to the pension plan administrator.

**Q10.** Plan administrators may need **extensions for upcoming regulatory filings** (for example, financial statements, valuation reports, etc.). Will FSRA grant extensions?

**A10.** On June 18, 2020, the government filed Regulation 287/20 and Regulation288/20, which amended Regulation 909 and Regulation 310/13, respectively. These regulation



changes provide extensions to deadlines for certain filings.

Many provisions in Regulation 287/20 and 288/20 are effective on June 18, 2020 or some period relative to that date. FSRA recognizes this may mean that the regulation changes will not provide relief to some administrators because their deadlines are outside the relief period.

[See Q19](#), below, for more information on the extensions.

Where these regulation changes do not provide an extension in the circumstances of a particular plan, administrators should contact their Pension Officer and describe the circumstances and relief sought.

Section 105 of the PBA allows pension plan administrators and their authorized agents to request a filing extension of up to 60 days beyond the prescribed timeline under the PBA. Plan administrators or their authorized agents who are registered on FSRA's Pension Services Portal (PSP) may submit filing extension requests of up to 60 days via the PSP. If the filing extension request is for a period beyond 60 days, we ask you to submit your request **by email (preferably) or regular mail** to your designated Pension Officer.

If extensions are not available under section 105 of the PBA, and an administrator has contacted FSRA with respect to its difficulty complying with a deadline in advance of the deadline, where appropriate, FSRA will not levy administrative monetary penalties for non-compliance. However, the administrator should still consider other possible effects of filing late.

**Q11.** If Plan administrators are unable to provide **member disclosure information** within the prescribed timelines of the PBA (for example, annual and biennial pension benefit statements, termination statements and retirement statements), how will FSRA respond?

**A11.** Member statements are an important tool for plan members. Receiving complete, accurate and timely information about pension benefits and available options is key to

making well-informed decisions.

On June 18, 2020, the government filed Regulation 287/20 and Regulation 288/20, which amended Regulation 909 and Regulation 310/13, respectively. These regulation changes provide extensions to deadlines for issuing certain member notices and statements.

Regulation 287/20 requires administrators to provide notice to FSRA in advance of when statements would otherwise have been required that statements issued to plan members, former members or retired members will be delayed. Administrators should email this notice to their Pension Officer as soon as they know statements will be delayed and note:

- Pension plan name and registration number
- When they expect to send the statements
- Whether notice of delays has been provided to bargaining agents, if applicable

[See Q19.](#) below, for more information on the extensions.

For member-focused communications for which the deadlines have not been extended, FSRA understands many businesses are operating under their business continuity plans and disruption to regular course operations may cause delays in the production of member disclosure information within the prescribed timelines of the PBA. If a plan administrator or their agents are facing challenges in complying with the prescribed timelines, we ask that you let your designated Pension Officer know via email as soon as possible and in advance of the deadline.

While in most cases FSRA does not have discretionary powers to extend the prescribed timelines as they relate to member disclosures, provided FSRA has been notified of challenges and received a reasonable proposed plan of action, administrative monetary penalties will not be levied with respect to late member communications. However, in some circumstances sending a notice to a member by a certain deadline is a pre-condition to receiving FSRA's consent. The exercise of discretion by FSRA not to impose a penalty does not result in that application being compliant.

**Q12.** We are a plan administrator and we have become aware that the transfer ratio of our defined benefit pension plan may have deteriorated by 10% or more and is now below 0.9.

What should we do?

**A12.** Financial market conditions are changing rapidly and may result in significant volatility in the funded status of pension plans. As always, the security of pension benefits remains a priority. If the administrator of a defined benefit pension plan registered in Ontario knows or ought to know that the plan's transfer ratio may have fallen by 10% or more since the most recently determined transfer ratio (or if the most recently determined transfer ratio was above 1 and may have fallen to 0.9 or less), the administrator shall not transfer any part of the commuted value of a pension, deferred pension or ancillary benefit to which a member or former member is entitled, without first obtaining FSRA's prior written approval.

Please use our [Pension Form 10](#) to seek FSRA's approval, and where possible, please submit the form electronically to [CVTransfers@fsrao.ca](mailto:CVTransfers@fsrao.ca). Please refer to section 19 of Regulation 909 made under the PBA and to FSRA's new Approach Guidance, Limitations on Commuted Value Transfers and Annuity Purchases [Limitations on Commuted Value Transfers and Annuity Purchases \(DB Pension Plans\)](#) for further detail with respect to this requirement.

**Q13.** I am a pension consultant. My client's pension plan is in the process of requesting the CEO's consent to a **specific transaction** and has filed an application in that regard. Will that application continue to be processed?

**A13.** All pending transactions filed with FSRA such as pension asset transfers or wind up applications, will continue to be reviewed by FSRA staff, although we expect there will be some delays due to the current disruptions.

In addition, any transaction that requires a NOID to be issued under the PBA will generally not proceed until the EMPCA order expires or otherwise ceases to have effect (see [Q8 above](#)). This is because that regulation has suspended the timeframe to request a hearing before the FST.

If you have any questions regarding pension transactions, please contact your designated

Pension Officer via email by visiting the [FSRA Pension Plan Information](#) Access or submit your inquires to our pension inquiries email at [PensionInquiries@fsrao.ca](mailto:PensionInquiries@fsrao.ca). If you are submitting new applications or additional documents, please do so electronically via email or through the FSRA portal, where available. If you are unable to submit your application electronically, please contact your designated Pension Officer to make alternate arrangements.

**Q14.** In preparing an **actuarial valuation report** for funding purposes as at December 31,2019, that will be filed later this year, should the significant stock market and economic decline in 2020 (Market Shock) be classified as a **subsequent event**?

**A14.** Yes, FSRA considers the Market Shock to be a subsequent event that provides additional information about the pension plan, because the shock impacts the outlook for the funded status of the plan for a significant period following this event. FSRA does not expect any changes in asset values after the valuation date to be reflected in the balance sheet. The actuary should exercise professional judgement to establish the best estimate assumptions for the valuation in accordance with the Canadian Institute of Actuaries (CIA) Pension Standards (Standards).

**Q15.** In preparing an **actuarial valuation report** for funding purposes as at December 31,2019, that will be filed later this year, what **disclosures** related to theMarket Shock should be included in the valuation report?

**A15.** As noted in Q13, FSRA considers the Market Shock to be a subsequent event. The CIA Standards require the disclosure of subsequent events. In addition, subsection 3260 of the CIA Standards requires the actuary to select and make disclosures based on plausible adverse scenarios (PAS). The CIA's Education Note entitled "*Guidance on Selection and Disclosure of Plausible Adverse Scenarios*" states that the selection and application of PAS is a stress-testing process on various risks to the funded status and service cost of a pension plan.

The CIA Standards relating to PAS enhance the usefulness of actuarial reports and make

PAS a valuable tool not only for measuring the financial position of a plan, but also for establishing appropriate contribution levels and providing information on plan risks. Consequently, FSRA considers the selection and disclosure of PAS to be very important *for users of the report to understand the risks to the plan and enable plan fiduciaries to properly* manage these risks and make prudent decisions to deliver on the pension promises made to plan beneficiaries. The PAS should reflect plan specific risks and be developed recognizing all known events such as the Market Shock and its potential financial impact on the pension plan. When developing a PAS, it may be appropriate in some circumstances (e.g. where there is more than an immaterial risk) to consider financial stresses to the employer that may affect its ability to make required pension plan contributions when due.

FSRA expects the following disclosures to be included in the valuation report based on any PAS that have been identified to the extent the information is available in performing the valuation or from other work created in connection with the risk of the funded status of the plan to risks outlined in a PAS:

- Impact on the funded status, including going concern, solvency, and wind up bases as well as the solvency and transfer ratios
- Impact on the required contributions to the pension plan in respect of the normal cost, going-concern and solvency special payments

FSRA may request the administrator to provide such information if it is not included in the valuation report.

**Q16.** Given the COVID-19 pandemic, our office is closed and we are unable to send certain required member communications by regular mail within the timeframe established by the PBA or its regulations. Can we send such **communications by electronic means**?

**A16.** FSRA understands that plan administrators may not have staff in offices to be able to prepare and send out required documents to members and other beneficiaries via regular mail as a result of the COVID-19 pandemic. We expect plan administrators and their advisors to understand the requirements of the PBA as it relates to electronic

communications as well as the *Electronic Commerce Act, 2000*.

FSRA has no discretion over these requirements, and administrators should refer to the Q&A above regarding FSRA's approach to sending notices outside of prescribed timelines.

We also refer you to [Q8](#) above regarding Regulation 73/20.

**Q17.** A financial institution holds Ontario locked-in retirement (LIRA) accounts and life income fund (LIF) accounts for individuals who wish to use the Financial Hardship Unlocking rules to access a portion of their LIRA or LIF funds. If the individuals cannot get a **witness** to sign the required form in the physical presence of the owner or other relevant person, what options are available? Can you proceed without a witness? We have the same questions for processing various family law forms.

**A17.** In the situations described above, FSRA will not object to institutions and administrators proceeding without a witness for these forms while businesses are operating under COVID-19 pandemic conditions, as long as there is no evidence that the person(s) signing the forms does not understand what they are signing.

Note, however, that we cannot comment on what a court or tribunal might decide if an owner, member or other affected person claims that his or her rights were not appropriately protected because of proceeding in this manner. We therefore understand that some financial institutions and plan administrators may consider using supplementary processes (e.g. follow-up correspondence; virtual witnessing using electronic means) where obtaining physical "wet ink" witnesses is not practicable during the disruption. Financial institutions and plan administrators should obtain appropriate legal advice in this regard.

**Q18.** Our company sponsors an Ontario registered pension plan and we need to file a plan amendment. Due to the COVID-19 pandemic, we are unable at this time to send in the actual board resolution or an original certified copy. Can we submit a **certified copy electronically**?

**A18.** Yes. You can submit the "certified copy" through the FSRA portal or via email to the

Pension Officer for the plan. The submission or email must indicate that the certified copy of the document being submitted electronically is a true and complete copy of the original document.

The same approach applies to other requirements under the PBA to file a “certified copy” of a document.

We note that in order for a document to be a certified copy, the person certifying the document must have a copy of the original document or be otherwise able to certify that it is a true and complete copy of the original document.

**Q19.** What filings and member communications have been extended by the government?

**A19.** Regulations 287/20 and 288/20 amended Regulation 909 and Regulation 310/13 under the PBA. A short summary is provided below. Administrators, sponsors and their advisors should consult the regulations for full details and limitations as ultimately the regulations will govern. The regulations are filed with the Registrar of Regulations on **June 18, 2020**.

## Regulation 909 General, under the PBA

Item	Current Deadline	New Deadline
<p><b>Plan Amendment Valuation Report</b></p>	<p>6 months after the date required for amendment to be submitted for registration</p>	<p>12 months if due date for amendment submission is on or after the day that is 6 months before <b>June 18, 2020</b> and before July 1, 2020</p>
<p><b>Multi-Employer Pension Plan options when contributions not sufficient for benefits</b></p>	<p>30 days after submitting to administrator and within 9 months of valuation date</p>	<p>30 days after submitting to administrators and within 12 months of valuation date if valuation date is December 31, 2019 or January 1, 2020</p>
<p><b>Plan establishment: valuation</b></p>	<p>90 days</p>	<p>180 days if effective date is 90 days before <b>June 18, 2020</b> and on or before July 1, 2020</p>



<b>Valuation Report</b>	9 months after valuation date	12 months after valuation date if valuation date is December 31, 2019 or January 1, 2020
<b>Annual Information Return (AIR)</b>	6 months after plan fiscal year end for DC or 9 months for DB	December 31, 2020 if due on or after <b>June 18, 2020</b> and before December 31, 2020
<b>Wind Up Report and outstanding AIRs and post wind up AIR and financial statements</b>	6 months after effective date of wind up	9 months after effective date of wind up if effective date is on or after the day that is 6 months before June 18, 2020 and before October 1, 2020
<b>Annual wind up valuation review report</b>	6 months after valuation date	Earlier of 9 months after valuation date and December 31, 2020 if valuation date is on or after January 1, 2020 and before July 1, 2020

<b>Notice to members of plan amendments</b>	60 days after registration	120 days if due on or after <b>June 18, 2020</b> and before November 1, 2020
<b>Member Annual Statements and Biennial statements to former and retired members</b>	6 months after plan fiscal year end	December 31, 2020 if due on or after June 18, 2020 and before December 31, 2020 and FSRA is notified in advance that statements will be delayed
<b>Financial Statements and Auditors Report if required</b>	6 months after plan fiscal year end	December 31, 2020 if due on or after <b>June 18, 2020</b> and before December 31, 2020
<b>Investment Information Summary</b>	6 months after plan fiscal year end	December 31, 2020 if due on or after <b>June 18, 2020</b> and before December 31, 2020

<b>Statement of Investment Policies and Procedures (SIPP) and SIPP Amendments</b>	60 days after registration of plan or amendment of SIPP	120 days if due on or after <b>June 18, 2020</b> and before November 1, 2020
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**Regulation 310/13 Asset Transfers Under Sections 80 and 81 of the *Pension Benefits Act***

<b>Application to CEO consent for asset transfers</b>	9 months after effective date of transfer	12 months if due on or after <b>June 18, 2020</b> and before November 1, 2020
<b>Filings when asset transfer is completed</b>	60 days after transfer complete	120 days if due on or after <b>June 18, 2020</b> and before November 1, 2020
<b>Complete transfer of assets after CEO consent</b>	120 days after consent	180 days if due on or after <b>June 18, 2020</b> and before November 1, 2020

<p><b>Notice to members and others (defined benefit and defined contribution)</b></p>	<p>6 months after effective date of transfer</p>	<p>9 months if due on or after <b>June 18, 2020</b> and before November 1, 2020</p>
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## Pension Plan Sponsors

We understand that disruption of physical operations, economic uncertainty and supply chain issues may be impacting your business and putting strain on cash flow and operations, in particular if your business is temporarily closed. We also understand that offering a pension plan is voluntary; however, contributing to the pension plan, once it has been established, is not.

If you are experiencing challenges and may be unable to meet your obligations, contact FSRA immediately via your designated Pension Officer at the [FSRA Pension Plan Information Access](#)

**Q20.** Our company sponsors a **defined contribution (DC) pension plan** for our Ontario employees. Because of the COVID-19 pandemic, our corporate revenue has dropped drastically and we expect that we will not have sufficient funds to keep making our required contributions as set out in the pension plan text. Our employees also are facing reduced earnings and would rather not contribute at this time.

Can we **reduce or completely suspend our company’s contributions as well as our employees’ contributions?**

**A20.** Employers and plan members are required to contribute in accordance with the PBA and the plan text that governs their pension plan.

To the extent that member contributions are optional, members can choose to reduce or eliminate those optional contributions in accordance with plan rules and any matching employer contributions will then be reduced accordingly.

Plan sponsors will need to determine if contributions must continue when an employee is on a form of leave or layoff where there are reduced earnings or no actual earnings being paid. The determination of the requirement to continue contributions (or not) will depend in part on employment law considerations, the specific fact situations involved and the terms of the plan text. Plan sponsors and administrators should obtain the necessary employment law and pension law advice in this regard.

Employers cannot simply stop making required contributions to DC pension plans in which they participate. Any change to employer or member-required contributions can only be on a go-forward basis and must be supported by an amendment to the plan text and notice to affected plan members. Such an amendment must be filed with FSRA before its effective date. Amending the provisions of a pension plan text requires careful consideration and analysis of a number of factors, including the plan specific amending provision and any collective agreements that govern the plan, as well as potential employment law implications.

FSRA initially indicated that until further notice, and subject always to our ability to act upon the facts of any particular case, FSRA would not order a plan to be wound up solely because the plan has, as a result of the Covid-19 disruption, been amended to temporarily suspend contributions for a portion of the 2020 calendar year.

FSRA understands that the COVID-19 pandemic continues to affect the corporate revenues of many companies. As a result, until further notice, FSRA will continue to refrain from ordering a plan to be wound up where the plan has been validly amended to temporarily suspend contributions for all or any part of 2021, provided the supporting amendment and member notice requirements are met. Plan sponsors are also

encouraged to obtain advice or contact the Canada Revenue Agency with respect to any Income Tax Act requirements or implications.

**Q21.** Our company sponsors a **defined benefit (DB) pension plan** for our employees. The last valuation filed with FSRA has an effective date of December 31, 2017 and revealed that the ratio of the solvency assets to the solvency liabilities was above 85%, and therefore, the next filed valuation must have an effective date of not later than December 31, 2020.

Given the impact of the COVID-19 pandemic, we are considering filing a valuation report with an **effective date of December 31, 2019**. However, we anticipate having more difficulty than usual in obtaining the necessary data and our service providers have informed us that their activities will likely also take more time than usual due to the disruption of their work places and the expected demand for similar services from many clients.

Will we be able to obtain a filing extension for our off-cycle December 31, 2019 valuation report, that must otherwise be filed by September 30, 2020?

**A21.** Regulation 287/20 under the PBA has amended the deadline for filing a valuation report for those reports with a valuation date of December 31, 2019, or January 1, 2020, only. Please note that filing this valuation (or any valuation under an extended timeline) may result in a change in your PBGF assessment and the need to refile a PBGF Assessment Certificate. The extension to the filing date for valuations with a valuation date of December 31, 2019 or January 1, 2020 applies whether the filing is off- cycle or not.

Regulation 287/20 provides administrative relief and does not affect funding requirements. Normal cost and special payment contributions should continue to be paid as set out in the regulations under the PBA. For clarity, plan administrators choosing a valuation date of December 31, 2019 or January 1, 2020 have until December 31, 2020 to file their valuation reports under Regulation 287/20. Any increase in normal cost contributions in respect of calendar year 2020 which have not yet been paid into the pension fund must be remitted with interest within 60 days of filing the valuation report; and special payments established to fund new plan deficiencies, where applicable, begin in January 2021.

For off-cycle valuation reports with other valuation dates, in normal circumstances FSRA does not provide filing extensions for off-cycle valuation reports, but while businesses are operating under COVID-19 pandemic conditions, extensions may be granted. However, we do ask that you inform FSRA of your intention to file the off-cycle valuation report and to request the extension at least two weeks in advance of the filing deadline.

The normal filing extension that would be granted is for up to 60 days, and we expect that this should be sufficient for most plans in this situation. If a longer extension is required, a request for an additional extension can be made by email to your designated Pension Officer; your request should describe the reason why an additional extension is required. Such requests will be considered on a case-by-case basis.

This approach will be taken for off-cycle valuation reports with an original due date in the 2020 calendar year. We will revert to our usual position after this calendar year, subject to any future determination in this regard.

Finally, regardless of whether a plan administrator selects an on- or off-cycle valuation report, we note that FSRA has the power to order an administrator to prepare a new valuation report if the assumptions or methods used in the preparation of a report required under the PBA, or any regulation thereunder, regarding the pension plan are inappropriate or are not consistent with accepted actuarial practice. FSRA may also specify the assumptions and methods to be used.

**Q22.** We sponsor a single employer defined benefit pension plan. We are experiencing operational and financial disruptions as a result of the COVID-19 emergency. Are we able to delay the filing of our certificate of assessment for the Pension Benefits Guarantee Fund (PBGF) and the payment of our PBGF assessment?

**A22.** FSRA acknowledges that operational disruptions may cause an inability to file a PBGF certificate of assessment. Section 105 of the PBA permits FSRA, upon application, to extend the time limit for filing documents under the PBA and its regulations for 60 days or, if satisfied that extraordinary grounds exist and that no person will be prejudiced, for

additional time. FSRA will use its discretion if you are unable to file your PBGF assessment certificate due to the COVID-19 disruption. Requests for filing extensions must be made in writing to FSRA. Please email your Pension Officer if you would like to request a filing extension.

While FSRA does not have authority to delay a PBGF assessment or to waive interest or penalties related to a late payment, [Regulation 187/20](#) has amended Regulation 909 to remove the 20% penalty that would otherwise be payable on the late payment of PBGF assessments that are due on or after April 30, 2020, if the PBGF assessment amount, plus interest, is paid on or before December 31, 2020. Interest will accrue on the outstanding amount, at the chartered banks' rate on prime business loans as of the date the amount is due, plus 3 per cent. Please notify your Pension Officer by email if your PBGF assessment payment will not be made within the usual 9-month timeframe.

## Pension Plan Members

We understand that your pension is an important asset in planning for your retirement and that economic uncertainty may result in anxiety and stress. We encourage you to be knowledgeable, seek professional advice and exercise caution before taking any action which may affect this important asset.

**Q23.** I am a **retiree from a defined benefit** pension plan regulated by FSRA and I have stopped receiving my pension payments. What should I do?

**A23.** We regret to learn of the disruption in your retirement income. We understand you are relying on your pension payments as a key source of income. As a first step, please contact your pension plan administrator right away to inform them of your situation. If the situation persists, please contact FSRA by sending an email to [PensionInquiries@fsrao.ca](mailto:PensionInquiries@fsrao.ca) and we will work with you to restore your pension.



**Q24.** I am experiencing a loss of income and inability to pay my bills due the COVID-19 pandemic. Can I access the money in my pension plan or in a locked-in retirement account (LIRA) or life income fund (LIF), to help with my daily expenses?

**A24.** Generally, money held in a pension plan, LIRA, or LIF is required to be used to provide retirement income and cannot be withdrawn for other purposes. This restriction is often referred to as “locking-in”. That said, there are certain exceptions that are outlined below.

### **Pension Plan Members – Shortened Life Expectancy**

The PBA only permits money that is held in a pension plan to be accessed and used for non-retirement purposes (i.e., be “unlocked”) in limited situations of shortened life expectancy.<sup>4</sup> Depending on plan terms, this option may be available for active plan members, deferred vested members and retired members. If you think this option might be appropriate for you, please contact the administrator of the pension plan that holds your pension and they can advise you of any options that are available.

### **Terminated Members – if your benefit remains in the pension plan**

If you are a pension plan member whose employment and plan membership has terminated, then depending on the terms of your plan and your age, you may have the option to transfer the value of your pension to a LIRA or LIF. You should ask your plan administrator if this option is available to you.

If you do have that option and elect to make that transfer, then the money held in the LIRA or LIF can be accessed as described below.

If you are eligible and elect to transfer to a LIF, then you are able to “unlock” up to 50% of the amount transferred into the LIF - but only if you do so within 60 days after the transfer. You should ask the financial institution that holds your LIF about this option.

If your pension benefit remains in the pension plan, it can only be accessed in limited situations of shortened life expectancy, as described under the “Shortened Life

Expectancy” heading above.

### **Terminated Members who have already transferred their pension to a LIRA or LIF**

If a pension plan member terminated employment in the past and has already transferred the value of their pension into a LIRA or LIF, then, normally, the money held in the LIRA or LIF must remain “locked-in” and can only be used to provide retirement income. However, if you transferred money into a LIF less than 60 days ago, you may be able to “unlock” up to 50% of the transferred amount. You should ask the financial institution that holds your LIF about this option.

As well, the PBA and its regulations set out rules permitting the unlocking of specified amounts of money in LIRAs and LIFs in situations of financial hardship.<sup>5</sup> The “Financial Hardship” unlocking rules are administered by the financial institution that holds your LIRA or LIF (not FSRA), and they are flexible enough to apply to many situations resulting from COVID-19 pandemic.

For instance, a LIRA or LIF owner who has fallen behind on their rent, due to being laid off as a result of the COVID-19 pandemic, may apply to the financial institution to unlock enough money in the LIRA or LIF to pay the rent arrears and 12 months worth of future rent, as long as the owner has been given a written demand by the landlord to pay the arrears.

Other situations of financial hardship that allow for unlocking of money in LIRAs and LIFs include low expected future income, family medical expenses and the need for first and last months’ rent for a new rental residence.

LIRA and LIF owners applying for financial hardship unlocking should keep in mind that they can only make one unlocking application each calendar year per category of financial hardship and per individual (medical expenses do allow for withdrawals related to multiple individuals). However, COVID-19 financial hardship could lead to permitted unlocking under multiple categories – for example, an individual who is unlocking due to rent arrears may also qualify for unlocking due to low expected income.

It is also important to understand that when funds are withdrawn from a LIRA or LIF, those withdrawn funds will no longer be creditor protected by the PBA and will be included in taxable income for the individual in the year they are withdrawn; tax will be withheld from the withdrawn amount in accordance with Canada Revenue Agency requirements and the federal Income Tax Act.

Individuals who are having financial difficulties and who have a LIRA or LIF should discuss financial hardship unlocking options with the financial institution that holds their LIRA or LIF. Your financial institution can provide you with the necessary forms – which can also be obtained on our [website](#).

We encourage you to obtain independent financial and/or investment advice to discuss your personal circumstances before unlocking your LIRA or LIF.

**Q25.** I am nervous about the impact of COVID-19 on the **investments** that are held in my Ontario locked-in retirement account (“LIRA”) or life income fund (“LIF”) – do I have control over those investments?

**A25.** Individuals are able to change the investments that are held within their LIRAs or LIFs, if permitted in accordance with the contract they have entered into with their financial institution. Funds generally do not need to be withdrawn from a LIRA or LIF in order to change how they are invested – unless you have agreed to those terms. You should contact the financial institution that holds your LIRA or LIF to determine what investment options are available to you. We encourage you to obtain independent financial and/or investment advice to discuss your personal circumstances before rebalancing your portfolio.

**Q26.** I recently requested a commuted value (CV) transfer, but I got less than I expected. Why did I not get my full CV?

**A26.** The COVID-19 pandemic has resulted in many pension plans experiencing a

deterioration in their funded status and, with it, the transfer ratio of their plan (defined as the ratio of solvency assets to solvency liabilities). When a pension plan administrator knows or ought to know their plan's transfer ratio has declined by 10 per cent or more and the resulting transfer ratio is below 0.9, the legislation requires that they stop transferring CVs, until they apply for and obtain FSRA approval to continue.

FSRA's approval may come with certain conditions to protect the sustainability of the pension plan and the entitlements of beneficiaries. If your pension plan paid less than the full CV, the remainder must be paid over, at most, five years.

However, if you are a member of what is called, a multi-employer pension plan, then the plan is permitted to reduce benefits and sometimes does so in situations where the plan has insufficient assets. In this situation, your CV may be reduced, such that you have received the full amount you are entitled to.

FSRA has issued a new Approach for administrators on this subject, [Limitations on Commuted Value Transfers and Annuity Purchases \(DB Pension Plans\)](#). Please contact your administrator for more information.

## Timing of Events, Consultations and Communications

We are, during the COVID-19 disruption, temporarily suspending our on-site examinations, certain pension sector consultations, and certain stakeholder engagement activities to recognize the resource limitations of those we regulate. Further, we are using our resources, which have also been disrupted due to physical distancing, to focus on the responsibilities of FSRA which matter most given the current turmoil.

However, even during this unprecedented time, FSRA will still work to be transparent and consultative. For example, FSRA may call "ad hoc" meetings with our standing committees as a way to continue to engage and listen to the challenges faced by the sector. We are interested in hearing about the challenges faced by our stakeholders and will strive to develop appropriate and timely responses within the current legal framework. We will contact members of our committees directly when these "ad hoc" meetings are being scheduled.

## Effective Date and Future Review

This Guidance is effective September 21, 2020 and until further notice. Newly added content will be noted as such in updated versions of this Guidance. Please refer to the version date to ensure you have the most recent version.

## About this Guidance

This document is issued pursuant to FSRA's [Guidance Framework](#). As Information guidance, it describes FSRA's views on certain topics without creating new compliance obligations for regulated persons.

## Appendices and Reference

### References

- See FSRA's existing pension unlocking webpages at <https://www.fsrao.ca/consumers/pensions/withdrawing-locked-accounts-because-financial-hardship> and unlocking forms at <https://www.fsrao.ca/industry/pension-sector/pensions-forms#unlocking>
- See additional resources on FSCO's legacy website at [http://www.fSCO.gov.on.ca/en/pensions/financial\\_hardship/Pages/fhu.aspx](http://www.fSCO.gov.on.ca/en/pensions/financial_hardship/Pages/fhu.aspx)

### Appendix: Template for Statutory Declaration by Employer

#### STATUTORY DECLARATION FOR CONTRIBUTION DEFERRAL

*Made under the Pension Benefits Act, R.S.O 1990, c. P. 8 ("Act") and Regulation 909, R.R.O. 1990 (Regulation 909) in particular, section 4.1*

To: Financial Services Regulatory Authority of Ontario ("FSRA")

**AND REGARDING** the \_\_\_\_\_ ("Employer");

**AND REGARDING** the \_[insert plan name and registration #]\_\_\_\_\_  
("Plan").

**WHEREAS** the Employer is the employer under the Plan within the meaning of the Act;

**AND WHEREAS** the Employer filed an election with FSRA to defer certain contributions to the Plan in accordance with section 4.1 of Regulation 909 and to make such deferred payments and interest thereon in accordance with the payment schedule filed therewith ("Payment Schedule");

**AND WHEREAS** section 4.1 of Regulation 909 reflects an intent that deferred contributions should be used to facilitate continued operations of the employer during COVID-19 related stress (and not for purposes which are not to the benefit of the employees who are pension plan members) and therefore prohibits an employer which files an election from taking certain actions prior to all of the deferred payments being paid to the pension plan fund together with interest in accordance with the payment schedule;

**AND WHEREAS** section 4.1 of Regulation 909 requires an employer which files an election to file quarterly updates which include a statutory declaration made by an officer of the employer indicating that the employer has complied with the Payment Schedule with respect to the three-month period to which the update relates and has been in compliance with the conditions for the deferral of contributions;

**NOW THEREFORE**, I hereby solemnly declare that:

1. I am an officer of the Employer which is the employer under the Plan within the meaning of the Act, and, as a result of my position with the employer and diligently informing myself, have knowledge of the matters covered by this declaration..
2. The quarterly update of which this statutory declaration is a part relates to the period from \_\_\_\_\_ to \_\_\_\_\_.
3. During the three-month period to which the quarterly update relates the Employer has complied with section 4.1 of Regulation 909 and, in particular:
  - a. The Employer has complied with the Payment Schedule;
  - b. The Employer has not:
    - a. Declared or paid any amount, whether as a dividend or a return of capital, on any issued and outstanding share capital of the employer;

- b. Bought back or otherwise purchased or redeemed any issued and outstanding share capital of the Employer;
- c. Paid a bonus, however, described, whether non-discretionary or discretionary, and whether in cash or otherwise, to any executive of the employer;
- d. Increased the compensation, within the meaning of Regulation 909, of any executive of the Employer;
- e. Repaid the principal amount of any debt or other obligation of the Employer in excess of amounts previously scheduled and agreed to before **September 21, 2020**.
- f. Paid or credited any amount as a loan or advance to or for the benefit of,
  - i. Any person or entity that beneficially owns any issued and outstanding share capital of the employer or any person or entity with whom the beneficial owner of the share capital is related within the meaning of Regulation 909, or
  - ii. Any executive of the Employer and any person or entity with whom the executive is related within the meaning of Regulation 909; or
- g. Entered into any transaction with a related person or entity within the meaning of Regulation 909 in the normal course of business and under terms and conditions that are less favourable to the employer than market terms and conditions.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

(Please Print)

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

**DECLARED BEFORE ME** at \_\_\_\_\_, Ontario, on the \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_

(Seal)

Signature

## A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ONTARIO

**Effective Date:** September 21, 2020

**Last Updated:** December 14, 2020

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<sup>1</sup> See Regulation 520/20 for more information.

<sup>2</sup> All special payments determined in accordance with section 5 of Regulation 909.

<sup>3</sup> Under Section 2 of Ontario Regulation 73/20, any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, *subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding*, be suspended. (emphasis added)

<sup>4</sup> If permitted by your plan, unlocking may also be available where the total value of the funds in your pension plan is less than 20% of the Year's Maximum Pensionable Earnings or for non-residents of Canada who have been living outside of Canada for at least 24 months and meet the requirements.

<sup>5</sup> Unlocking may also be available where the total value of the funds in all of your locked-in accounts is less than 40% of the Year's Maximum Pensionable Earnings, or for non-residents of Canada who have been living outside of Canada for at least 24 months and meet the requirements.