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Family law - Questions & Answers

Archived Content

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Archived on January 13, 2021

Q1010. Effective December 10, 2015, section 2(3) of Ontario Regulation 287/11 was amended to reference the March 31, 2015 version of section 3500 of the Canadian Institute of Actuaries Standards of Practice, instead of the June 3, 2010 version. How does this amendment affect how Family Law Values are to be determined?

A1010. Section 67.2(1) of the Pension Benefits Act (PBA) provides that preliminary values must be determined “in accordance with the regulations and as of the family law valuation date of the member, former member or retired member and his or her spouse”. Since the PBA governs how a plan administrator must determine the preliminary values and provides that the plan administrator must do so “in accordance with the regulations”, the amendment to section 2(3) of Regulation 287/11 changed the basis upon which preliminary value calculations must be determined from the June 3, 2010 version of section 3500 of the Canadian Institute of Actuaries Standards of Practice (2010 Standard) to the March 31, 2015 version (2015 Standard), effective December 10, 2015.

Section 67.2(8) of the PBA provides that the plan administrator must calculate the Family Law Value (imputed value) once the plan administrator receives a complete Application for Family Law Value (FSCO Family Law Form 1). This means that:

- if the complete Application was received before December 10, 2015, the calculations must be determined using the 2010 Standard;
- if the complete Application was received on and after December 10, 2015, the calculations must be determined using the 2015 Standard. -08/2016

Q1011. A plan administrator is in receipt of a complete Application for Family Law Value (FSCO Family Law Form 1) and is ready to calculate the Family Law Value (imputed value). Is the Family Law Valuation Date relevant to determining which version of the Canadian Institute of Actuaries Standards of Practice must be used?

A1011. No. The key factor to consider when determining which version of section 3500 of the

Canadian Institute of Actuaries Standards of Practice (CIA SOP) to apply when calculating a Family Law Value (imputed value) is the date on which the plan administrator receives a complete Application for Family Law Value (FSCO Family Law Form 1). The Family Law Valuation Date (FLVD) is not relevant when making this determination.

Although there is reference to the FLVD in section 67.2(1) of the Pension Benefits Act (PBA), the PBA does not require that preliminary values be determined in accordance with the version of the CIA SOP that would otherwise be in effect on the FLVD. The reference to the FLVD is not intended to indicate what version of the regulations a preliminary value calculation must be based on, but to indicate the effective date of calculation of the preliminary value. This in turn must be determined in accordance with the regulations in effect on the date the plan administrator performs the calculation. -08/2016

Q1012. What mortality tables must be used for purposes of family law calculations?

A1012. The Family Law Valuation Date (FLVD), as defined in the Pension Benefits Act (PBA), is the actuarial valuation date under section 3500 of the Canadian Institute of Actuaries Standards of Practice (CIA SOP). Therefore while the PBA itself does not directly require that the economic and demographic assumptions (including mortality rates) to be applied for purposes of family law calculations stem from the valuation date/FLVD, the CIA SOP do. Therefore, if a complete Application for Family Law Value (FSCO Family Law Form 1) was received by the plan administrator on or after December 10, 2015, the March 31, 2015 version of the CIA SOP (2015 Standard) applies, and the economic and demographic assumptions as of the FLVD must be determined in accordance with the 2015 Standard. Accordingly, for purposes of family law calculations, the following mortality tables must be used:


Family Law Valuation Date	Complete applications received on or after December 10, 2015 [Mortality tables based on section 3500 of CIA SOP (March 31, 2015 version)]
On or before December 9, 2015	UP94 (generational): mortality rates equal to the UP-94 Table with generational projection using mortality projection Scale AA must be used.
December 10, 2015 to December 31, 2016	CPM2014 (CPM-B1D2014 or CPM-B): CPM2014 mortality rates with either the one-dimensional or two-dimensional improvement scale (CPM-B1D2014 or CPM-B respectively) must be used.
On or after January 1, 2017	CPM2014 (CPM-B): mortality rates CPM2014 combined with mortality improvement scale CPM-B scale must be used.

If a complete Application for Family Law Value (FSCO Family Law Form 1) was received by the plan administrator before December 10, 2015, the June 3, 2010 version of the CIA SOP (2010 Standard) applies, and the economic and demographic assumptions as of the FLVD must be determined in accordance with the 2010 Standard. Accordingly, for purposes of family law calculations, the following mortality tables must be used:

Family Law Valuation Date	Complete applications received before December 10, 2015 [Mortality tables based on section 3500 of CIA SOP (June 3, 2010 version)]
Prior to February 1, 2011	UP94 (2020): mortality rates equal to the UP-94 Table projected forward to the year 2020 using mortality projection Scale AA must be used.
February 1, 2011 to December 9, 2015	UP94 (generational): mortality rates equal to the UP-94 Table with generational projection using mortality projection Scale AA must be used.

-08/2016

Q1013. How should interest rates be determined for purposes of calculating the preliminary value of defined pension benefits?

A1013. Interest rates must be determined using the methods described in section 3540 of the [Canadian Institute of Actuaries' Standards of Practice](#)  (CIA SOP) for purposes of calculating the preliminary value of defined pension benefits, consistent with section 3 of Ontario Regulation 287/11 (Family Law Matters).

Specifically, the interest rates must be calculated based on the applicable Canadian Socio-Economic Information Management System (CANSIM) series, as set out in section 3540.05.

As outlined in section 3540.02 of the CIA SOP, if the Family Law Valuation Date is:

- on or before January 31, 2011, the reported rates for the applicable CANSIM series should be determined with a lag of two months;
- on or after February 1, 2011, the reported rates for the applicable CANSIM series should be determined with a lag of one month. -11/2016

Archived on November 21, 2016

Q500. How should interest rates be determined for purposes of preliminary value (i.e. family law) calculations?

A500. Consistent with section 3 of Ontario Regulation 287/11 (Family Law Matters), for purposes of preliminary value (family law) calculations, interest rates must be determined using the Canadian Socio-Economic Information Management system (CANSIM) series V122515 and methods that are outlined in section 3540.02 of the Canadian Institute of Actuaries' Standards of Practice [New Window] that are applicable on the Family Law Valuation Date (FLVD), and the assumptions described in section 3540.

Specifically, if the FLVD is:

- on or before January 31, 2011, the reported CANSIM rates should be determined with a lag of two months;
- on or after February 1, 2011, the reported CANSIM rates should be determined with a lag of one month. -08/2016

Archived on August 19, 2016

Q500. How should interest rates be determined as of January 1, 2012?

A500. Interest rates must be determined using the Canadian Socio-Economic Information Management system (CANSIM) series V122515 and methods that are outlined in section 3540.02 of the [Canadian Institute of Actuaries' Standards of Practice](#) [PDF] (2010 version) that are applicable on the Family Law Valuation Date, and the assumptions described in section 3540. Specifically, if the Family Law Valuation Date is on or before January 31, 2011, the reported CANSIM rates should be determined with a lag of two months. If the Family Law Valuation Date is on or after February 1, 2011, the reported CANSIM rates should be determined with a lag of one month. -08/2012

Q1003. Effective January 1, 2012, section 3500 of the Canadian Institute of Actuaries' Standards of Practice must be used to calculate the Preliminary Value. How should the Preliminary Value be calculated if the Family Law Valuation Date (separation date) is before January 1, 2012?

A1003. In FSCO's view, section 3(2) of [Ontario Regulation 287/11](#) [PDF] requires that section 3500 of the [Canadian Institute of Actuaries' Standards of Practice](#) [PDF] (2010 version) be applied when calculating the Preliminary Value, regardless of the Family Law Valuation Date. This means that the methods and actuarial assumptions in section 3800 of the Canadian Institute of Actuaries' Standards of Practice or in any older version of standards of practice should not be used, even if the Family Law Valuation Date is a date before January 1, 2012. -08/2012

Q1004. How should mortality rates be determined as of January 1, 2012?

A1004. Mortality rates must be determined using the demographic assumptions outlined in section 3530 of the [Canadian Institute of Actuaries' Standards of Practice](#) [PDF] (2010 version). Specifically, if the Family Law Valuation Date is on or before January 31, 2011, mortality rates equal to the UP-94 Table projected forward to the year 2020 using mortality projection Scale AA should be used. If the Family Law Valuation Date is on or after February 1, 2011, mortality rates equal to the UP-94 Table with generational projection using mortality projection Scale AA should be used. -08/2012

Archived on June 5, 2015

Q501. A former spouse of a member or former (deferred vested) member is entitled to receive his or her share of the Family Law Value as a lump sum. When interest is paid on this lump sum, will it reduce the member's or former member's accrued pension entitlement under the plan?

A501. No. A former spouse's interest in a pension fund arises on the parties' Family Law Valuation Date (separation date). When the former spouse's lump sum is paid out of the pension fund, it is paid with interest from the Family Law Valuation Date to the beginning of the month in which the lump sum is paid. The interest reflects the fact that the lump sum payable to the former spouse of a member or former member remained in the pension plan, earning interest . The payment of the interest does not reduce the member's or former member's accrued pension entitlement under the pension plan. -02/2014

Archived on March 19, 2015

Q15.3. Must a pension plan always pay interest to a former spouse of a member or former member when his or her share of the Family Law Value is paid out of the pension plan as a lump sum?

A15.3. Yes. Section 30 of Ontario Regulation 287/11 provides that lump sum payments must be credited with interest, from the Family Law Valuation Date (separation date) to the beginning of the month in which the lump sum is paid to the former spouse. This requirement to credit interest applies whether the former spouse's share of the Family Law Value is specified as a dollar amount, or as a percentage of the Family Law Value in the parties' settlement instrument (court order, family arbitration award, or domestic contract) and regardless of the terms of the settlement instrument. A settlement instrument cannot override the requirements of the Regulation.

The rate of interest for defined benefit plans is the same rate that is applied to calculate the preliminary value of the pension benefits or deferred pension. For defined contribution plans, the rate of interest is calculated at such rate of return as can be reasonably attributed to the member's or former member's individual account (i.e. reflects the actual gain or loss of the individual account). See sections 30(5) and 33 of Ontario Regulation 287/11. -02/14

Q46. Must pension assets be divided on the breakdown of a spousal relationship?


A46. The division of pension assets on the breakdown of a spousal relationship is not mandatory under the current rules in the Pension Benefits Act, nor will it be mandatory when the new rules come into effect. -06/11




Q47. Must pension assets be included in family property for purposes of equalization of net family property under the Ontario Family Law Act?

A47. Under the Ontario Family Law Act (FLA), the value of married spouses' pension assets must be included in family property for purposes of the calculation and division of net family property. However, there is no requirement under the FLA for common-law spouses to divide net family property (including the value of any pension assets) on breakdown of their spousal relationship. This will not change when the new rules come into effect. -06/11




Q48. How do the new family law provisions of the Ontario Pension Benefits Act (PBA) apply to Ontario employees of federally regulated pension plans?

A48. Section 10.1(2) of the Ontario Family Law Act (FLA) provides that federal pension plan assets must be valued, "where reasonably possible", in accordance with section 67.2 of the PBA with "necessary modifications".

Ontario employees of federally regulated pension plans are subject to the federal [Pension Benefits Standards Act, 1985 \(PBSA\)](#) . The plan administrator must comply with the minimum legislative standards under the PBSA relating to vesting rules, transfer options, the maximum amount that may be assigned or paid to the former spouse, etc.

The [Office of the Superintendent of Financial Institutions](#)  (OSFI) regulates federally registered pension plans in Canada. [Issue 3 of OSFI's InfoPensions](#)  newsletter explains [section 25 of the PBSA](#) , as it relates to the applicability of provincial property law to pension benefits and pension benefit credits under a private pension plan that is federally regulated. Federal plan administrators and plan members may contact OSFI in order to get further information on the proper application of section 10.1(2) of the FLA. -08/12

Archived on December 14, 2012

Effective January 1, 2012, [Ontario Regulation 467/11](#)  amends [Ontario Regulation 287/11](#)  (Family Law Matters) by temporarily adding the unproclaimed section 1.1 Pension Benefits Act (PBA) definitions of "retired member" and "former member. Once the new ([Bill 236](#) ) section 1.1 PBA definitions come into force, the definitions in the Family Law Matters regulation will automatically be revoked.

Q40. A terminated member has made an election to transfer the commuted value of his pension to his locked-in account. Because the pension plan has a transfer ratio of 70%, 70% will be transferred immediately and the remainder will be transferred in 5 years. Our reading of 2.1(4) of Ontario Regulation 287/11 (Family Law Matters), as amended by Ontario Regulation 467/11, is that the person is not a "former member" for purposes of the regulation. How do we calculate the Family Law Value?

A40. The person in this situation should be treated as a deferred member when determining the Family Law Value of the 30% of the commuted value that remains in the pension plan. The definition of "former member" should not be interpreted in a way to exclude this class of plan member. -12/11

Archived on August 17, 2012

Q15. Effective January 1, 2012, section 3500 of the Canadian Institute of Actuaries Standards of Practice must be used to calculate the Preliminary Value. What must be used if the Family Law Valuation Date (separation date) is before January 1, 2012?

A15. In FSCO's view, section 3(2) of Ontario Regulation 287/11 requires that section 3500 of the Canadian Institute of Actuaries Standards of Practice must be applied when calculating the Preliminary Value, regardless of the Family Law Valuation Date. This means that section 3500 applies, even if the Family Law Valuation Date is a date before January 1, 2012.

For example, if the Family Law Valuation Date is in 1996, the interest rates must be determined using the methods and CANSIM series outlined in section 3500 in effect at the Family Law Valuation Date in 1996. Those same rates will be used to update the Family Law Value to the date of transfer. Similarly, the mortality table used must also be in accordance with section 3500. -03/12