

Guidance

Interpretation

Approach

Information

Decision



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Proposed Guidance on 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 Guidance includes both Approach Guidance, which is intended to outline FSRA's

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.

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. As of the Effective Date of this Guidance, all FSCO Family Law Q&As and Policies are inactive and should no longer be relied upon. *[NOTE: FSRA to confirm treatment of existing guidance].*

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 a court order made under Part 1 of the *Family Law Act* (court order) as well as valid family arbitration awards and domestic contracts.
- 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 within the post-2011 rules.⁴

² Section 3 of the PBA.

³ *Family Statute Law Amendment Act*.

⁴ Section 67.6 of the PBA; .

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 earned.

3.5.2. 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 separation. The legislation may direct how pension property is to be valued.

3.5.3. 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 Value to ensure that the PBA’s 50 per cent limit⁵ 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.

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 need an Ontario valuation.

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

3.5.4. 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 order⁶ under the Ontario FLA or a domestic contract, if appropriate in the circumstances.⁷

3.5.5. The 2020 Agreement Respecting Multi-jurisdictional Pension Plans provides guidance on which pension legislation applies for division purposes for multi-jurisdictional pension plans. It provides that the member's entire benefit accrual shall be determined by final location⁸. To continue with the Alberta example discussed in the box above, if the 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, then the pension would be both valued and divided in accordance with Alberta's family law rules and Alberta's pension division rules.

3.6. Pension Benefits That Are Not Subject to the PBA

3.6.1. Although all pensions are considered 'family property', not all pensions are subject to the PBA. The FLA⁹ 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 plans, federal government plans, foreign pension plans and non-registered Supplemental Employee Retirement Plans (SERPs).¹⁰ However, administrators are not responsible for calculating the value of pension benefits that are not subject to the PBA.

⁶ 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

⁷ 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.

⁸ Section 7 of the 2020 Agreement Respecting Multi-Jurisdictional Pension Plans

⁹ Section 10.1(2) of the FLA

¹⁰ 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.

3.6.2. Federally Regulated and Federal Government Pension Plans

- 3.6.2.1.** For members of federally regulated pension plans subject to the federal *Pension Benefits Standards Act, 1985* (PBSA) who are subject to the Ontario FLA, 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 former 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 Pension Centre or Government of Canada Pension Centre – Employer Support Services \(for compensation advisors\)](#).

Examples:

Scenario 1: Ontario resident who is a member of a Federally Registered Pension Plan

- The Ontario FLA¹¹ requires that the valuation be determined, where “reasonably possible” in accordance with the Ontario PBA. However, division and distribution rules fall under the federal PBSA.

Scenario 2: Ontario resident who is a member of a Federal Government Plan

- The Ontario FLA¹² requires that the valuation be determined, where “reasonably possible” in accordance with the Ontario PBA. However, division and distribution rules fall under the federal PBDA.

¹¹ Section 10.1(2) of the FLA.

¹² Section 10.1(2) of the FLA.

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 and 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. 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.
- 4.4. FSRA will strive to be transparent and act consistent with its statutory objects¹³ to promote good administration of pension plans and protect and safeguard the pension benefits and rights of all pension plan beneficiaries.
- 4.5. 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
- 4.6. Pension plans must be administered with the care, diligence and skill¹⁵ required of a fiduciary in accordance with the standard of care prescribed by the PBA, the common law and equity. 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.

¹³ *Financial Services Regulatory Authority of Ontario Act, 2016* sections 3(1) and 3(3).

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.

- 4.7.** 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.
- 4.8.** 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.
- 4.9.** It is the administrator’s responsibility to 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 communicated by FSRA, does not preclude a tribunal or court from coming to a contrary decision.

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, all applicable deadlines, information that is required to be provided to members and spouses, fee maximums, correctly calculating the Family Law Value,¹⁶ discharges applicable upon making a transfer or payment to a spouse, and the use of prescribed forms.¹⁷

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 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.

¹⁷ Plan administrators and their authorized agents may request Microsoft Word or unlocked PDF versions of FSRA’s family law forms.

5.4. Court Orders, Arbitration 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 the instrument.

5.4.2. Administrators must be satisfied that they can administer the settlement as written. In certain cases it may be possible for administrators to administer the settlement even where the administrator has identified an issue. For instance, if the division amount contravenes the PBA's maximum settlement limit, administrators may pay up to the 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.¹⁸
- 7.2.1.2.** Administrators should apply the CIA SOP in effect as of the Family Law Valuation Date (FLVD).¹⁹ 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, 2012²⁰, 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:

¹⁸ Sections 2(3) and 2(3.1) of Regulation 287/11.

¹⁹ 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;"

²⁰ January 1, 2012 is the date when the post-2011 pension valuation and division regime came into force under the PBA.

Family Law Valuation Date	Mortality Table
Prior to February 1, 2011 ²¹	UP94 (generational): UP-94 Table with generational projection using mortality projection scale AA.
February 1, 2011 to September 30, 2015	UP94 (generational): UP-94 Table with generational projection using mortality projection scale AA.
October 1, 2015 to December 31, 2016	CPM2014 (CPM-B1D2014 or CPM-B)²²: 2014 Canadian Pensioners Mortality Table (CPM2014) combined with a one-dimensional improvement scale CPM-B1D2014 or two-dimensional improvement scale CPM-B
On or after January 1, 2017 ²³ :	CPM2014 (CPM-B): 2014 Canadian Pensioners Mortality Table (CPM2014) combined with mortality improvement scale CPM Improvement Scale B (CPM-B)

²¹ Based on the CIA SOP effective January 1, 2012.

²² Must be consistent with the improvement scale used in determining the commuted value for termination payouts.

²³ Based on the CIA SOP effective December 1, 2020.



7.2.1.3. Valuations are calculated as of the FLVD. The preliminary value²⁴ 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 imputed value reflects the portion the preliminary value that accrued during the spousal period.²⁵ In certain cases, the PBA expressly requires that certain assumptions be used or certain benefits be included in calculating the imputed 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

7.3.1.1. Section 3500 of 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 early retirement benefit (the “50/50 assumption”). Prior to December 1, 2020, commuted values were calculated by assuming a 100% probability that retirement will occur at the date that would result in the highest commuted value.

7.3.1.2. Active members on the FLVD (FLVD is before the member’s earliest unreduced retirement date)²⁶: 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 section 3500 of the CIA SOP. As a result, section 6(3)(c) of Regulation 287/11 takes

²⁴ Preliminary valuations are to be determined in accordance with the requirements prescribed in sections 3 to 10 of Regulation 287/11.

²⁵ Section 67.2(5) of the PBA.

²⁶ Section 6 of Regulation 287/11.

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.

- 7.3.1.3. Active members on the FLVD (FLVD is after the member's earliest unreduced retirement date)²⁷:** 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.
- 7.3.1.4. Retired member on the FLVD²⁸:** 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 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).
- 7.3.1.5. Retired member's spouse on the FLVD²⁹:** The preliminary value is the commuted value of the survivor pension as of the FLVD (50/50 assumption is not relevant)
- 7.3.1.6. Former member on the FLVD³⁰:** 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

²⁷ Section 7 of Regulation 287/11

²⁸ Section 9 of Regulation 287/11

²⁹ Section 10 of Regulation 287/11

³⁰ Section 8 of Regulation 287/11

Regulation 287/11 does not mandate a retirement age assumption. As a result, there is no conflict between Regulation 287/11 and section 3500 of 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 is 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 be married and 30 per cent of members will be single, 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.

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. Survivor Benefits (Active Member on FLVD)

7.3.3.1. The preliminary Value of an active member's pension benefit must include the value of any survivor benefit that is payable upon the death of the member after retirement. For example, if the normal form of pension under a

pension plan is a subsidized joint and survivor pension, an assumption should be made as to the probability that the survivor pension will become payable when calculating the preliminary value.

7.3.4. Guarantee Attached to a Joint and Survivor Pension – Retired Member on the FLVD

7.3.4.1. If there is a guarantee attached to the joint and survivor pension, 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.³¹

7.3.5. Guarantee Attached to a Pension Not Paid in a Joint and Survivor Form – Retired Member on the FLVD

7.3.5.1. 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 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.

7.3.6. Bridging Benefits – Active Member on the FLVD

7.3.6.1. If a pension plan provides bridging benefits beyond the normal retirement date, factor “B” must include the CV of any bridging benefits payable to the retired member beyond that date.

7.3.6.2. The PBA requires factor “B” to be calculated consistent with the terms of the pension plan, despite no specific reference to bridging benefits under factor

³¹ See section 9(2)(b) and 10(2) of Regulation 287/11.

“B” in Regulation 287/11.³² The inclusion of bridging benefits reflects the value to the member established by the plan terms.

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.³³

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.³⁴ 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:

1. The plan terms in effect on the FLVD explicitly provide for an automatic reduction on termination of a member’s accrued benefits; and
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.³⁵

³² See section 6 of Regulation 287/11.

³³ Section 14(2) of the PBA. Also, note that multi-employer plans that are JSPPs cannot reduce accrued benefits except upon wind-up.

³⁴ Section 6 of Regulation 287/11.

³⁵ See section 9(2)(a) of Regulation 287/11, and section 40(1) of the PBA.

7.6. Indexation

7.6.1. Contractual increases payable on or after the FLVD are 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 guided by the principles of ensuring good plan administration and avoiding undue burden on plan members and administrators. FSRA is of the view that, in most cases, the administrator of the original pension plan³⁶ will be in the best position to perform this valuation.

7.7.3. 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.

7.7.4. The successor plan administrator would be required to do the calculations in cases of certain plan mergers³⁷ where the original pension plan no longer exists after the transfer. These relate to asset transfers where the successor plan administrator adopts the plan provisions under the previous pension plan(s).

³⁶ 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

³⁷ 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.

- 7.7.5.** The spouse's portion of the Family Law Value is to be paid out by the successor pension plan,³⁸ which will be subject to the maximum limit of the Family Law Value determined in accordance with the terms under the original pension plan.
- 7.7.6.** The successor plan administrator is discharged upon making the payment to the spouse in accordance with the Spouse's Application for Transfer of a Lump Sum (FSRA Family Law Form FL-5), and making the adjustments to the member's pension benefits under the successor pension plan resulting from the transfer to the spouse.³⁹
- 7.7.7.** 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.
- 7.7.8.** An administrator that complies with a member's direction to transfer an entitlement under section 42 of the PBA after the FLVD but before requesting a valuation, would not be responsible for completing the valuation as a result of the discharge provided by s.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. 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.

³⁸ "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.

³⁹ Section 67.3(9) of the PBA.

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. 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.⁴⁰

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 imputed value will reflect service accruals during the spousal period without any modification due to the transfer.

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”).

⁴⁰ When applying the preliminary value formula, any service or entitlement accrued up to the FLVD must be included in the calculation. 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 and any service that is purchased should be included in both H and J when calculating imputed value.

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 upon receipt of an Application for Family Law Value. 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.

7.9.3. In contrast, “buy-out” annuities that are no longer assets of the pension plan. They are administered by an insurer are not subject to the pension valuation and division regime if the administrator has been provided 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 received 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. 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 a division of the retired member’s pension payments under the pension plan.

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. However, this option is contemplated under

section 67.3(2) of the PBA and may be made available under the terms of the pension plan if the government prescribes it.

8.3. Interest on Payments to the Spouse

- 8.3.1.** The Ontario Superior Court of Justice decision in *Heringer v. Heringer*⁴¹ 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. Whether or not interest will be credited on the former 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 proportion 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 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.** A plan administrator cannot adjust the member's defined benefit pension benefits until such time he or she terminates employment or terminates plan membership. In accordance with the principles of good administration and safeguarding the rights of beneficiaries, FSRA recommends that administrators include an explanation in the annual statement that the amount of any pension estimate will be reduced following

⁴¹ 2014 ONSC 7291

the lump sum transfer. Although there is no requirement to do so, this information will keep members informed of the required future adjustment to their pension benefits.

8.4.2. The above recommendation is not relevant or applicable to a defined contribution pension plan.

8.4.3. FSRA also notes that after the 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 fifty percent (50%) assignment 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 (FSRA Family Law Form FL-5) and the settlement agreement, and then adjust the retired member's pension based on section 33 of Regulation 287/11 with respect to the initial reduction, the form of pension in payment if necessary, and section 39 of Regulation 287/11 with respect to converting the arrears into pension instalments to reduce 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 member's retirement 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 Imputed 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

8.6.1. Neither the PBA nor the Regulation 287/11 contemplates a suspension of the pension stream to a spouse once it has commenced if the member is re-employed. 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 the agreement or court order.

8.7. Spouse Dies Before the Retired Member

8.7.1. The PBA does not explicitly address whether in circumstances where the retired member's spouse is receiving a share of the pension and the spouse dies before the retired member, the pension should continue to be paid to the spouse's estate until the death of the member.

8.7.2. In *Meloche v Meloche*, the Ontario Superior Court held that in these circumstances the pension payments cannot continue to the spouse's estate but should instead revert to the member. As a result, the spouse may not receive the full equalization payment from the pension plan.

8.7.3. Administrators should be aware that the Ontario Superior Court's decision on this issue⁴² is being appealed. FSRA notes that the Superior Court's decision did not consider certain relevant provisions of the PBA in its decision. FSRA will consider the outcome of any appeal and reasons provided before updating this Guidance.

⁴² *Meloche v Meloche*, 2019 ONSC 6143.

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). As a result, the spouse may not receive the full equalization payment from the pension plan.
- 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 interest in a survivor benefit vests on the date the first instalment of a member's pension is due. This interest can be waived before the member's retirement under section 46(2) of the PBA. The interest 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.
- 9.1.3.** Administrators must ensure that the following conditions are satisfied to waive a spousal survivor pension after retirement:
- A Statement of Family Law Value must be obtained before waiving the survivor pension.⁴³

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.

- The spouse and the retired member must complete FSRA Family Law Form FL-8, Post-retirement Waiver of Survivor Pension After Separation.
- 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 [TBD] and will be reviewed no later than [TBD].

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.

13. Appendices and Reference

References

- See sections 22 and 67.1 – 67.9 of the PBA, sections 19 and 22 of Regulation 909, and Regulation 287/11.
- See sections 4(1)(c), 5, 10.1, 56.1, 59.4.1 and 58 of the FLA.