

Pensions as Family Property: Highlights of New FSRA Guidance

FSRA

Financial Services Regulatory
Authority of Ontario

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Ontario

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Agenda

- FSRA Principles & the Family Law Context
- New Resources
- Guidance Highlights
 - Scope & Jurisdiction
 - Valuation
 - Payment and Division
 - Post-Retirement Waiver of Survivor Benefits
- Closing
- Q&A

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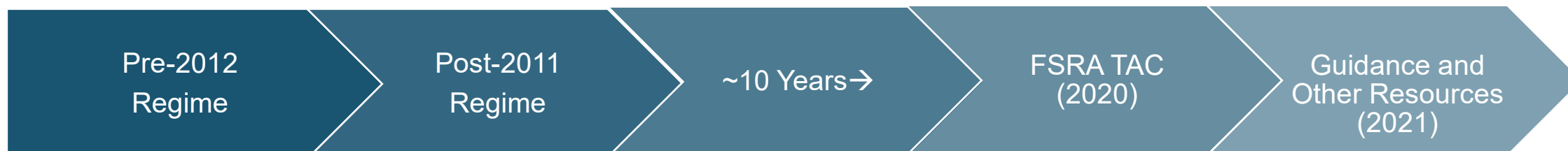
FSRA's Role in the Family Law Context



Background and Process

Why focus on pensions and family law?

- Furthers FSRA's objective to improve regulatory efficiency and effectiveness
- Leading up to FSRA's launch in 2019 the Pension sector identified the valuation and division of pensions on marriage dissolution as a priority



FSRA TAC Process: provide feedback (policy, legal, actuarial and administrative) on the proposed solutions for each of the identified issues.

Pensions as Family Property: FSRA's Role

FSRA

- Administer and enforce PBA and its Regulations
- Guidance
- Family Law Forms
- Rules

**Provincial
Government**

(out-of-scope)

- The Ontario PBA and its Regulations
- The Ontario Family Law Act and its Regulations
- The 2020 Agreement Respecting Multi-Jurisdictional Pension Plans (with other provinces)

**Other Regulators /
Governments**

(out-of-scope)

- Federal government plans, federally regulated plans
- Family and pension law in other provincial jurisdictions

Interpretation

Sets out FSRA's view of requirements under its legislative mandate (i.e. legislation, regulation and rules). Non-compliance can lead to enforcement or supervisory action.

Information

Provides information from FSRA on certain topics, such as best or good practices, without creating compliance obligations for regulated persons.

Guidance Framework

Decision

Sets out FSRA's determination and underlying reasoning for specific regulatory issues. This also will serve as precedential value for others not involved as parties to the specific matter under consideration.

Approach

Describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion (e.g. Guidance Approach or Pensions Supervision Approach).

New Resources

Refreshed Family Law Forms

Key changes:

- Consolidated Application for Family Law Value (FSCO Form 1) and Joint Declaration of Period of Spousal Relationship (FSCO Form 2); Contact Person Authorization (FSCO Form 3) eliminated
- Split up Application to Divide a Retired Member's Pension (FSCO Form 6). Now under FSRA Form FL-6 (basic) and FSRA Form FL-6S (combined pension option)
- Same Statement of Family Law Value (FSRA Form FL-4C) for members with hybrid benefits (greater of DB/DC) or combined benefits (sum of DB and DC)
- Post-retirement Waiver of Survivor Pension After Separation (Optional) (Form FL-8) – added retired member signature
- Redesigned for AODA compliance
- Transition period - FSCO forms available until April 30, 2022

Family Law Forms

There are currently two sets of family law forms that may be used by plan members and their spouses, and plan administrators, throughout the pension valuation and division process. To allow time for transition, the prior FSCO family law forms and updated FSRA family law forms will both be available for use until April 30, 2022. Either sets of forms may be used interchangeably during the transition period. For example, a plan administrator may use FSCO's Statement of Family Law Value even though the plan member may have completed FSRA's Application for Family Law Value. Effective May 1, 2022, the updated FSRA family law forms must be used for all steps in the pension valuation and division process that occur on or after that date.

FSRA Forms

FSCO Forms

FSRA Financial Services Regulatory Authority of Ontario
Application for Family Law Value
Family Law Form FL-1
(Under section 67.2(8) of the Pension Benefits Act)

What you need to know before completing this application form

- Pensioners are family properly. Complete this form to request the plan administrator to calculate the value of a pension that accrued during your spousal relationship. This value is called the "family law value" or "regulated value" under the Pension Benefits Act.
- Consider seeking legal advice about the dates that your spousal relationship started and ended. These dates are used for the calculation.
- This form may be completed by a member, former member or retired member of a pension plan (Plan Member). It can also be completed by the married spouse of a Plan Member.
- You cannot use this application form if you have a court order, family arbitration award or domestic contract (e.g. separation agreement) dated before January 1, 2012, which required one spouse to make an equalization payment.
- Send your completed application form to the plan administrator. Do not send it to the Financial Services Regulatory Authority of Ontario (FSRA). FSRA does not calculate family law values.
- See [Financial Services Regulatory Authority of Ontario \(FSRA\) - A Guide for Members and their Spouses](#) for information about the pension valuation and division process.

Part A - Applicant Information

Last Name _____ First Name _____ Initials _____

I am the: ☐ Plan Member ☐ Plan Member's spouse

Part B - Pension Plan Information

Name of Pension Plan _____

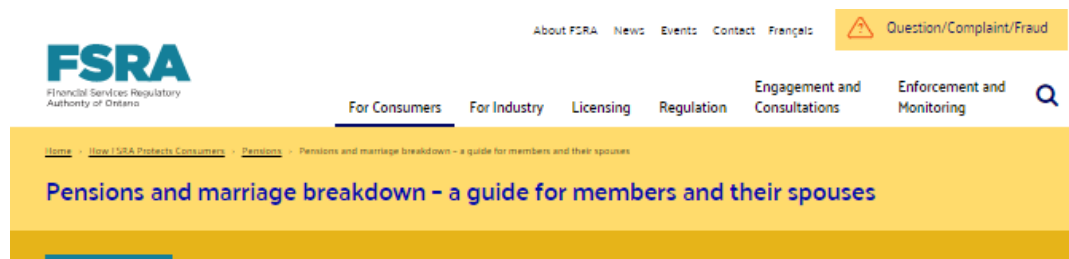
Name of Employer/Union/Professional Association _____ Registration Number _____

Plan Administrator _____

Note: Use the [Plan Search](#) feature on FSRA's website to search for the plan administrator's contact information. You may also contact FSRA for assistance at personnel@fsra.on.ca.

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Guide for Members and their Spouses



Purpose

This Guide provides members and their spouses an overview of valuing and dividing a member's pension upon marriage breakdown. It is also a helpful resource for plan administrators and other professionals. Sections of this Guide may also apply to common law spouses (see: [Common Law Spouses](#)).

For questions not covered in this guide, members and spouses should contact the plan administrator. They may also obtain professional advice. FSRA encourages plan administrators and other professionals with technical questions to review [FSRA's Guidance on Administration of Pension Benefits upon Marriage Breakdown](#).

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- [How do I deal with my pension after separation?](#)
- [What are the steps in the process?](#)
- [What rules apply to me?](#)
- [Where do I start?](#)
- [Step one: apply for a statement of Family Law Value](#)
- [Step two: plan administrator prepares the statement of Family Law Value](#)
- [Step three: deciding on dividing the pension](#)
- [Step four: prepare the settlement instrument and apply for payment of the pension assets](#)
 - [Part A: considering the settlement instrument](#)
 - [Part B: applying to divide the pension](#)
- [Step five: plan administrator pays the spouse](#)
- [Step six: plan administrator adjusts the plan member's remaining share](#)
- [What if the money is held in a locked-in account?](#)
- [Roles and responsibilities: who does what?](#)
- [Can pensions be garnished for support?](#)
- [Additional resources](#)
- [Appendix A: summary checklist for plan members](#)

If Ontario rules apply to you

- Step One¹ ➔ Spouse or Member applies for a Statement of Family Law Value
- Step Two ➔ Plan administrator prepares the Statement of Family Law Value
- Step Three ➔ Spouse and Member decide whether to divide the pension

If using pension to equalize

- Step Four ➔ Spouse applies for a payment from the plan
- Step Five ➔ Plan administrator pays the spouse
- Step Six ➔ Plan administrator adjusts the plan member's remaining share



☒ Interpretation

☒ Approach

☐ Information

☐ Decision



Effective Date: November 9, 2021

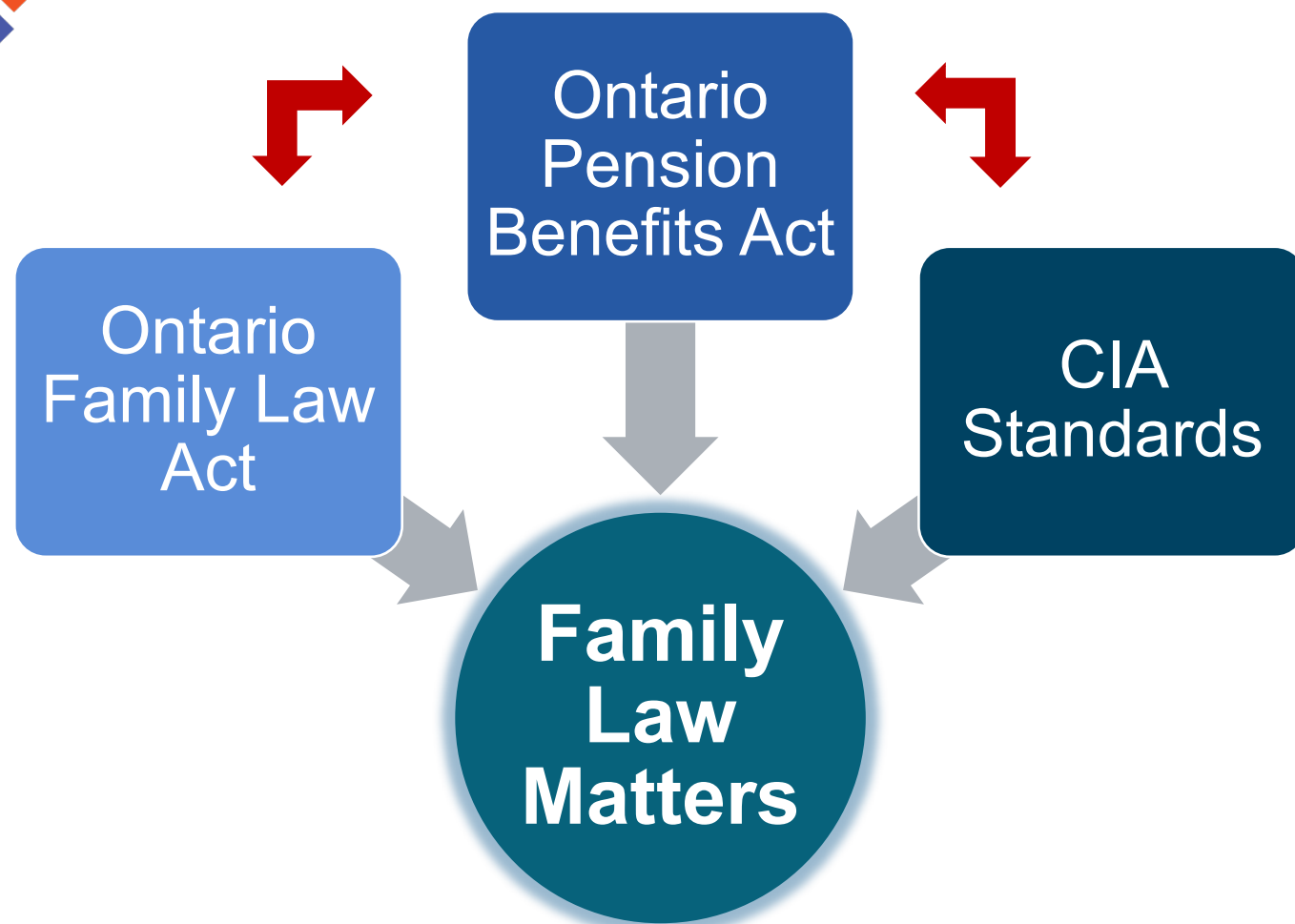
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Introducing the Guidance

Quick Refresh on Foundational Concepts




Principles Applied to Family Law Matters:

- key principle of the FLA: the orderly and equitable settlement of spouses' property on marriage breakdown
- applying the legislation to support a fair valuation and equitable division
- reasonableness in considering solutions
- awareness of complexity in marriage breakdown and intersection of various areas of law and stakeholder interests
- process should avoid undue burden for all stakeholders

Administration of Pension Benefits upon Marriage Breakdown

Addresses key areas of concern (within FSRA's scope)

Not intended to address every issue that may arise. FSRA's expectation is that administrators will decide on a course of action in a particular case, acting as a fiduciary, in compliance with both the PBA and FLA and after consultation with its professional advisors where appropriate.



Guidance

☒ Interpretation
 ☒ Approach
 ☐ Information
 ☐ Decision

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Guidance Highlights (Scope & Jurisdiction)

Jurisdiction (Section 3 of the Guidance)

Analytical framework for determining which pension valuation and division rules apply when spouses separate while living in a different jurisdiction from where the benefit accrued

Benefits accrued in single jurisdiction

Step One: Valuation

Determine applicable family law legislation for valuation

If a former ON member separates in AB (and AB FLA applies), valuation of ON's pension assets based on AB's rule.



Step Two: Division

Determine applicable pension legislation

If ON pension assets will be used to satisfy equalization debt, member would also need a valuation based on ON's rules. ON's pension division rules apply.

Benefits accrued in multiple jurisdictions

Step One: Valuation

Determine applicable family law legislation for valuation

If ON member moves to AB, continues to accrue and then separates in AB (and AB FLA applies), valuation based on AB's rules (including ON pension assets)



Step Two: Division

MJPPA* states that member's entire benefit accrual is determined by final location

*(excludes MB & NF&L)

AB pension division rules apply (no need to circle back to ON for a PBA valuation).

Scope: Transition Rule (Section 3.4 of the Guidance)

Transition Rule: When can a pre-2012 instrument be amended to fall under new rules?

Previous Policy:

Was the pension
“dealt with”?

New Interpretation:

Was one party required
to make an equalization
payment under FLA s.5?

Yes

Order/arbitration award/domestic contract **cannot** be amended to fall under post 2011 rules

Guidance Highlights (Valuation)

Valuation: Calculation – Preliminary Value (Section 7.2 of the Guidance)

How do administrators determine which version of CIA Standards of Practice applies?

Dec. 1, 2020

(s.3500 of CIA standards amended)

Before

Look to version in
effect on date when
Application for FLV
was received

After

Look to version in
effect on FLVD*

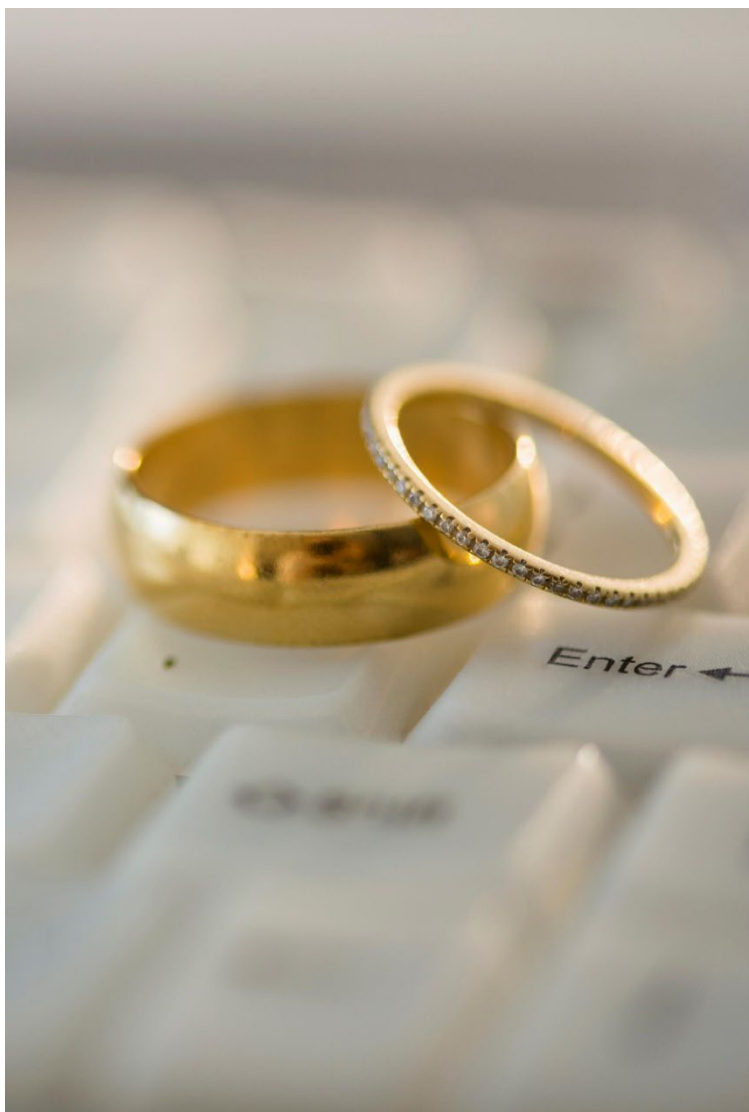
*If FLVD was before Jan. 1, 2012, look
to version in effect at Jan. 1, 2012

Valuation: Retirement Age Assumption (Section 7.3 of the Guidance)

- CIA Standards of Practice amended effective December 1, 2020 to provide that where a terminated member is entitled to a subsidized early retirement pension, a commuted value is calculated using a retirement age assumption based on:
 - i. a 50% probability of retirement on the date that results in the highest commuted value; and
 - ii. a 50% probability of retirement on the earliest date the member would be entitled to an unreduced retirement benefit
- Impact on FLV calculations:

Beneficiary Group	Apply 50/50 Assumption?
Active members on the FLVD	No
Retired member on the FLVD	Assumption not relevant
Retired member's spouse on the FLVD	Assumption not relevant
Former member on the FLVD	Yes, for members whose FLVD was on or after Dec 1, 2020

Valuation: Other Matters



Married assumptions – active and former members on FLVD (s.7.3.2 of the Guidance)

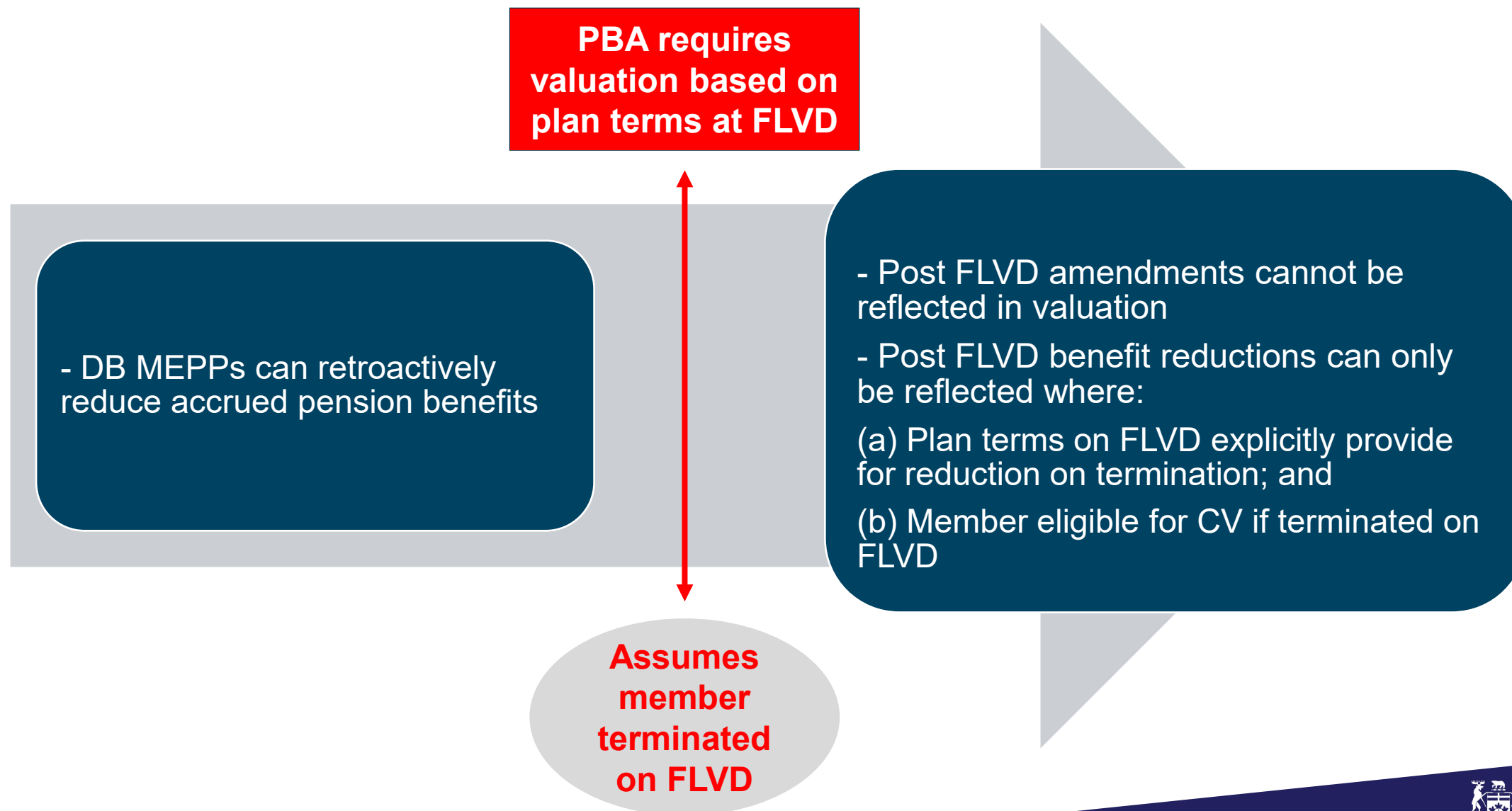
- Preliminary value is prescribed in the legislative framework and is CV based, calculated in accordance with s.3500 of CIA Standards

Example: If the CV calculation under the plan assumes that 70 per cent of members will be married and 30 per cent of members will be single at retirement, then the same assumption should also be used for preliminary value calculations.

Purchased pension credits (s.7.8.2 of the Guidance)

- Preliminary value calculation includes any credit purchased during spousal period
- Captures the increase in value of family property during the spousal period

MEPPs – Retroactive Reduction and Valuation (Section 7.4 of the Guidance)



Valuation: Who calculates FLV? (Section 7.7 of the Guidance)

- Where a member changes plans and transfers assets post FLVD, the FLVD administrator (original plan) is generally responsible for calculating the FLV.

Type of Transfer	Who Performs Valuation
Asset Transfer (where original plan continues to exist)	Original plan – except where the parties agree the Successor plan will perform the valuation
Asset Transfer (certain plan mergers where the original plan no longer exists)	Successor plan
Plan has been wound-up	Independent Actuary
Termination (Section 42 transfer)	Original plan not responsible



Preliminary value and 50% limit are calculated under the original plan terms as of the FLVD, regardless of who performs the valuation.

Guidance Highlights (Payment and Division)

Payment & Division: Section 8 of the Guidance

Issue	Status
Interest	The <i>Heringer</i> decision continues to govern the payment of interest on lump sum transfers. Payment expressed as a dollar amount? No interest. Payment expressed as a percentage? Interest added from FLVD to date of payment.
Arrears	Continue to be calculated in accordance with s.39 of Reg. 287/11.
Spouse Dies Before Retired Member	<p>PBA does not prohibit continuation of pension division to spouse's estate: <i>Meloche v Meloche (ON CA)</i>.</p> <p>FSRA is still reviewing <i>Meloche v Meloche</i> and will update the Guidance with interpretation of administrator's obligations where settlement agreement silent.</p>

Payment and Division: Change in Member Status Post FLVD

Section 8.5 of the Guidance

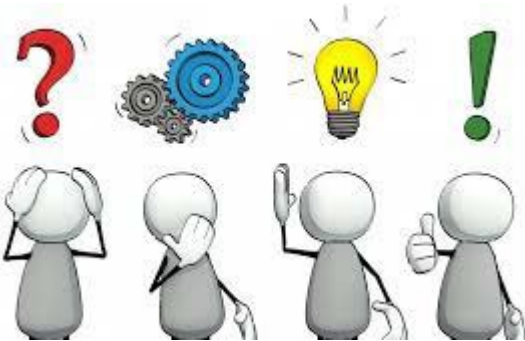
Issue:

Member status on
FLVD determines
division options
(lump sum or
pension division)



Interpretation:

- 1) Plan administrator pays lump sum and then reduces the retired member's future lifetime pension, recouping the pension overpayments from first instalment due, based on Reg.287/11 ss. 33 & 39
- 2) PBA may support other options, with appropriate disclosure



Guidance Highlights (Survivor Benefits)

Waiver of Post Retirement Spousal Survivor Pension (Section 9.1 of Guidance)

Administrators should provide retired members and their spouses with information required to make an informed decision. They must also ensure the following conditions are satisfied:

- Separation occurred after pension payments started
- A Statement of Family Law Value was provided to both spouses
- The retired member's pension has not yet been divided
- The spousal waiver form is correctly completed (Family Law Form FL-8)



Incorporation or reference of the waiver in a settlement instrument is good practice but not a requirement.

Next Steps and Closing

Previous Guidance

- FSCO's policies and Q&A's will continue to be available on FSRA's website for reference.
- Inactive policies will no longer be updated and may not reflect FSRA's current interpretation.

Inactive Guidance

Search



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Section	Guidance Name	Guidance Number	Reason for Inactivation	Date Deactivated
Pensions	Interim Pension Fund Payments	PF0000046	Expired/Not Applicable	2009-01-01
Pensions	Joint Pension Return for Defined Benefit Pension Plans	PF0000045	Expired/Not Applicable	2009-01-01
Pensions	Adjusted Guidance Consultations	PF0000044	Expired/Not Applicable	2009-01-01
Pensions	Consistent Value Transfer Substandard's Review	PF0000043	Expired/Not Applicable	2009-01-01
Pensions	Annual Information Return for Unfunded	PF0000042	Expired/Not Applicable	2009-01-01
Pensions	Information for Pension Plan Administrators	PF0000041	Expired/Not Applicable	2009-01-01
Pensions	Reinvestment to Last Approved Terms	PF0000040	Expired/Not Applicable	2009-01-01
Pensions	Resolution Changes to the Pension Benefits Guarantees Fund (PBGF)	PF0000039	Expired/Not Applicable	2009-01-01

What's Next?

In 2022-23, FSRA will begin development of new rules through existing rulemaking powers. May include:

- Proof documents and other application requirements
- Interest
- Arrears
- Fees



Your Questions Answered