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Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

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Opting out of the new grow-in provisions by JSPPs and MEPPs

Updated as at March 2014

Changes to Section 74 of the Pension Benefits Act

In 2010, section 74 of the Pension Benefits Act (PBA) was amended such that, subject to certain limited exceptions, grow-in benefits must be provided to every member whose employment is terminated by the employer. This applies if the effective date of the termination is on or after July 1, 2012. The amendment was proclaimed in force effective on July 1, 2012.

In conjunction with the amended section 74, section 74.1 of the PBA was also proclaimed in force effective July 1, 2012. This provision permits employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or the representatives of the members) of jointly sponsored pension plans (JSPPs) and administrators of multi-employer pension plans (MEPPs) to elect to exclude their pension plans and their members from the operation of section 74 of the PBA, i.e. to opt out of providing grow-in benefits to their members.

Changes to General Regulation 909

Regulation 178/12 amended the General Regulation 909 under the PBA (the Regulation) to include the mechanics of the opting out process. Among other things, the Regulation sets out deadlines for the making and filing of an election under section 74.1 of the PBA. The Regulation provides that for a pension plan that was a JSPP or a MEPP on July 1, 2012, the deadline for making and filing an election was July 1, 2013.

As at July 1, 2013, eight of the ten JSPPs registered with FSCO have opted out of providing grow-in benefits to their members. Similarly, as at July 1, 2013, of the 76 MEPPs registered with FSCO providing defined benefits, 52 elected to opt out of providing grow-in benefits to their members. The 24 MEPPs that did not file an election with the Superintendent as at July 1, 2013 may no longer elect to opt out of providing grow-in benefits to their members.

The Regulation also provides that a pension plan that becomes a JSPP or a MEPP after July 1, 2012 has one year after the date on which the administrator files a statement certifying that the pension plan satisfies the criteria to be a JSPP in the case of a JSPP, or one year after the date the pension plan is

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registered as or is amended to become a MEPP in the case of a MEPP, to make and file an election under section 74.1 of the PBA, to opt out of providing grow-in benefits to its members. Therefore, those JSPPs and MEPPs that became JSPPs or MEPPs after July 1, 2012 that wish to elect to opt out of providing grow-in benefits to their members and who satisfy the requirements in the Regulation in connection with the election, must make and file their elections with the Superintendent within the prescribed time set out above. However, until such time as the election to opt out is filed with the Superintendent, they must provide grow-in benefits to eligible members in accordance with section 74 of the PBA.

Election

The election to be filed with the Superintendent may be contained in a letter to the Superintendent and must include the following information:

- The name and registration number of the pension plan;
- A statement that an election is being made to exclude the pension plan (insert full name and registration number) and its members from the operation of section 74 of the PBA.
- The name and contact information of the administrator and the name and contact information of a representative of the administrator who is able to respond to questions from FSCO relating to the election; and
- The effective date of the election – this date cannot be earlier than the date on which the election is filed.

In the case of a JSPP, the election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In addition, the election must be signed by an individual authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In the case of a MEPP, the election must also include a confirmation that the decision to exclude the plan and its members from the operation of section 74 of the PBA was made by the administrator of the plan. In addition, the election must be signed by the administrator of the MEPP or an individual authorized to sign the election on behalf of the administrator of the MEPP.

Providing Notice of Election to Affected Persons

The plan administrator must provide notice of the election of the plan to opt out of providing grow-in, as well as the effective date of the election, to members, unions and any advisory committee as required under section 30.2(6) of the Regulation. For more information on this, see [FAQs on Opting out of grow-in](#) (Question 16). Within 60 days of providing this notice, the administrator must certify to the Superintendent that each required notice was given and the date it was given.

JSPPs and MEPPs not registered with FSCO

Plan administrators of those JSPPs and MEPPs that are registered in other jurisdictions and have Ontario members may also elect to opt out of providing grow-in benefits to their Ontario members. As in the case of JSPPs and MEPPs registered with FSCO, the deadline for making and filing an election under section 74.1(1) or 74.1(2) for pension plans with Ontario members that are registered in other jurisdictions that were JSPPs or MEPPs on July 1, 2012, was July 1, 2013. As at July 1, 2013, nine such MEPPs opted out of providing grow-in benefits to their members.

An administrator of a JSPP or MEPP that became or becomes a JSPP or a MEPP after July 1, 2012 has one year after the date on which the administrator files a statement certifying that the pension plan satisfies the criteria to be a JSPP in the case of a JSPP, or one year after the date the pension plan is registered as or is amended to become a MEPP in the case of a MEPP, to make and file an election to opt out of providing grow-in to its Ontario members. Administrators of such plans may file their elections with the pension plan's province of registration with a copy to FSCO. Until such time as the election to opt out is filed with the plan's province of registration (with a copy to FSCO), such a pension plan must provide any grow-in benefits to eligible members in accordance with section 74 of the PBA.

The notices that are filed must include the information listed above under the heading "Election". In the case of the JSPP, the election must be signed by an individual authorized to sign the election on behalf of the employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or representatives of the members) of the JSPP.

In the case of a MEPP, the election must be signed by the administrator of the MEPP or an individual authorized to sign the election on behalf of the administrator of the MEPP.

MEPPs and JSPPs that do not opt out of providing grow-in

If a JSPP or a MEPP does not make and file an election within the deadline set out in the Regulation, it may no longer do so. Such a pension plan must provide grow-in benefits to eligible Ontario members. This applies whether the pension plan is registered in Ontario or in another jurisdiction.

FSCO Contact Information

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More information can be found under [Questions and Answers on the New Grow-in Rules under Section 74 of the Pension Benefits Act.](#)