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Info*Pensions*

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Info*Pensions* - Issue 9 – May 2013

InfoPensions is the Office of the Superintendent of Financial Institutions' (OSFI) electronic newsletter on pension issues. *InfoPensions* includes announcements and reminders on issues relevant to federally regulated private pension plans as well as descriptions of how OSFI applies selected provisions of the *Pension Benefits Standards Act, 1985* (PBSA), its regulations, directives and OSFI guidance. Plan administrators should obtain appropriate legal and actuarial advice on how the legislation and guidelines affect their particular pension plan.

InfoPensions and *PBSA Update* (OSFI's predecessor pension newsletter) are available under the Pensions Plans link of OSFI's website. To automatically receive new issues of this newsletter and other OSFI pension-related documents by e-mail, please subscribe through the Subscription Centre.

If you have any questions about the articles you read in *InfoPensions* or if you have suggestions for future articles, please contact OSFI at information@osfi-bsif.gc.ca. The next issue of *InfoPensions* will be posted in November 2013.

Info*Pensions* Consultation

As a follow-up to OSFI's survey of pension plan administrators, advisors and consultants in 2011, consultations were conducted in November and December 2012 specific to *InfoPensions*. The consultation found the overall level of satisfaction with *InfoPensions* to be quite high, but also identified many excellent suggestions for changes to the content of the newsletter and for improving its readership among plan administrators and their advisors. Thank you to all the individuals who participated in the consultation.

We have incorporated some of the suggestions into this newsletter by providing: a contact email for questions and suggestions for future articles and information on important dates for plan administrators. We will be incorporating additional changes in future issues of *InfoPensions*.

Pooled Registered Pension Plans and Other Legislative Reforms

The federal *Pooled Registered Pension Plans Act* (PRPP Act) and its Regulations came into effect on December 14, 2012. The PRPP Act and its Regulations were developed in consultation with provincial and territorial governments and are intended to increase access to registered pension plans. Please refer to OSFI's Questions and Answers on Pooled Registered Pension Plans for more information.

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Canada

Pooled Registered Pension Plans and Other Legislative Reforms (cont'd)

Legislative reforms to the *Pension Benefits Standards Act, 1985* (PBSA) were passed in 2010 and a number of amendments to the *Pension Benefits Standards Regulations, 1985* (Regulations) came into force in 2010 and 2011. A final set of changes to the Regulations is required to implement the remaining reforms announced by the federal government in 2009. These concern:

- Investment rules and options for defined contribution plans
- Disclosure to members and former members of all plans
- Variable benefits from defined contribution plans
- Electronic communications by all plans
- Spousal consent when exercising portability

For information on the key amendments to the PBSA and the Regulations, please refer to the document entitled *Key PBSA/PBSR Amendments and In Force Dates* which was published on OSFI's website in November 2011.

Inadvertent Changes When Making Plan Amendments

While revising plan documents to comply with the recent changes to the *Pension Benefits Standards Act, 1985* (PBSA), some plan administrators are taking the opportunity to consolidate their plan texts and clarify the wording of certain provisions. OSFI would like to advise plan administrators to be careful when amending their plan text not to inadvertently change a plan provision. One such change that OSFI is aware of is that amendments intended to clarify the wording of unreduced early retirement benefits have removed wording that indicates that the benefit is subject to the consent of the plan administrator. For example:

- The original plan document stated that:
  - The normal retirement age is 65 (i.e. a member could retire with an unreduced pension at age 65) and
  - A member with 30 years of service could retire with an unreduced pension at age 60, with the administrator's consent.

- The amended plan document removed the requirement for consent, so that the plan now provides that the normal retirement age is 65 and members with 30 years of service can retire at age 60 with an unreduced pension.

The removal of the requirement to receive consent from the plan administrator has the effect of introducing a new 'pensionable age' in the plan. Under the PBSA, pensionable age is the earliest age at which members may receive an unreduced pension without the consent of the plan administrator. In the example above, members who have less than 30 years of service will receive a pension benefit (upon termination, death or retirement) payable at age 65. With the removal of the plan administrator's consent, members who have 30 years of service would be entitled to receive a pension benefit payable at age 60 (on termination, death or retirement). For further information on benefits payable on pensionable age, please see OSFI's Policy Advisory on Vested Benefits Payable to Terminating Employees.

The introduction of a new pensionable age has a significant impact on solvency liabilities. For the plan in this example, benefits of members who have 30 years of service would be valued as being payable at age 60.

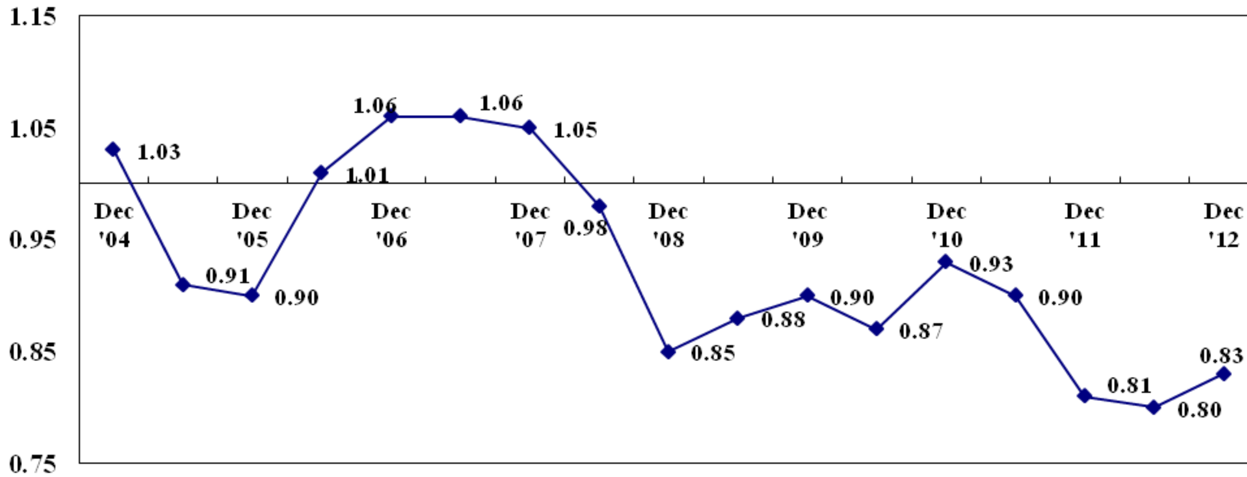
In a situation such as this, where pensionable age is changed in the plan text, any subsequent plan amendment to reintroduce consent would be considered void under section 10.1 of the PBSA unless authorized by the Superintendent through a benefit reduction application. An alternative approach for dealing with such a situation would be for the plan administrator to consider seeking a court ordered rectification of the plan documents.

In order to avoid these kinds of errors, plan administrators and their consultants should carefully review the implications of any amendments they are making to their pension plan documents. As communicated in *InfoPensions* 6, OSFI does not expect formal amendments to plan documents as a result of recent legislative changes to be made until all amendments to the PBSA and the *Pension Benefits Standards Regulations, 1985* announced by the federal government in late 2009 have come into force.

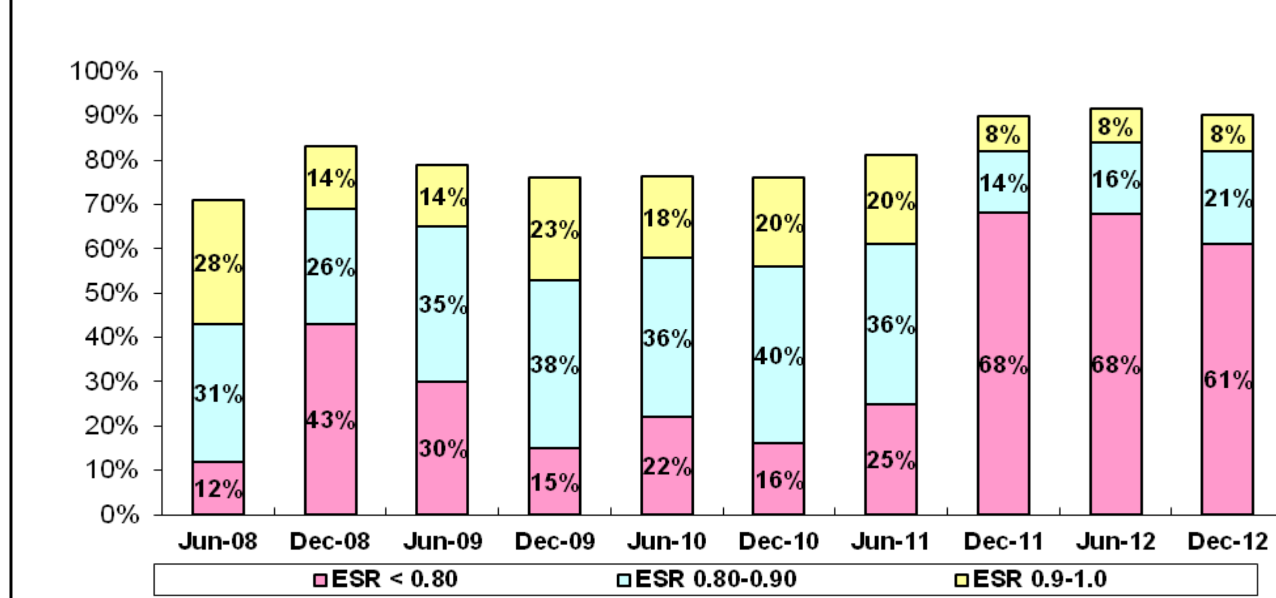
Estimated Solvency Ratio (ESR) Results and Charts

OSFI estimates solvency ratios for approximately 400 defined benefit pension plans that it supervises. The ESRs assist OSFI with the early identification of solvency issues that could jeopardize the security of promised pension benefits. Please refer to *InfoPensions 2* for details on how OSFI calculates ESRs.

The weighted average ESR was 0.83 at December 2012, compared to 0.80 at June 2012 and 0.81 at December 2011. The line graph below shows the current and previous ESRs dating back to December 2003.



As shown in the bar graph below, OSFI estimates that approximately 90% of federally regulated defined benefit plans were underfunded on a solvency basis at December 2012, compared to an estimated 92% at June 2012. At December 2012, 61% of plans had an estimated solvency ratio of less than 0.80, compared to 68% at June 2012.



OSFI Findings—Review of Actuarial Reports

OSFI reviewed approximately 80 actuarial reports between October 1, 2011 and September 30, 2012. OSFI's findings were similar to those from the reviews conducted in 2010/2011, which were communicated in InfoPensions 7 and include the following:

Solvency:

- *Liability settlement method*[1]*:* The actuarial report either did not clearly identify the assumption, or the assumption was not in line with OSFI's expectations.
- *Maximum pension under the Income Tax Act* (ITA)*:* The plan provides that the maximum benefit level automatically reflects future changes in the maximum pension amount defined in the ITA and is determined at the member's retirement date, but the report either did not clearly identify the assumption for a projection of the maximum pension level defined in the ITA, or there was no assumption made.

Going Concern:

- *Expense* assumption*:* The report either did not clearly identify the expense assumption or the stated assumption was too low given the plan's experience.

Asset mix:

- The asset mix or the targeted asset mix was not disclosed in the report.

Terminology:

- The terminology used in the report was not consistent with the terminology used in the *Pension Benefits* Standards *Regulations, 1985* (Regulations). For example, solvency deficiency was defined in the report as the excess of the solvency liabilities over the market value of assets, rather than the excess of the solvency liabilities over the adjusted solvency asset amount. Please refer to the Regulations to ensure that the terminology used in actuarial reports is consistent with the terminology in the Regulations.

For more information on OSFI's expectations with respect to the preparation of actuarial reports, please refer to the Instruction Guide.

Custodial Agreements—What are they?

The *Pension Benefits Standards Regulations, 1985* (Regulations) require that a pension plan's investments are held in a name that clearly indicates that the investment is held in trust for the plan or held for the plan pursuant to a custodial agreement.

When applying to OSFI for plan registration, plan administrators must include, as part of their registration package, a copy of either the custodial agreement or trust agreement pursuant to which plan investments are held.

OSFI has received questions regarding the meaning of "custodial agreement".

Pursuant to subsection 6(2) of the Regulations, a custodial agreement is an agreement that:

- States that an investment made or held on behalf of a plan is part of the plan's pension fund;
- States that the assets will not at any time constitute an asset of the custodian; and
- Provides that the custodian is responsible for maintaining records that are sufficient to allow the ownership of any investment to be traced to the plan at any time.

An agreement between the custodian and the plan may also include other non-custodial responsibilities.

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[1] If it is expected that members eligible for early retirement (i.e. who are within 10 years of pensionable age) would, upon plan termination, be offered the choice of an immediate annuity or commuted value, the actuary should assume that at least 50% of members who have a right to receive either an immediate annuity or a commuted value will choose the option that creates the highest solvency liability.

Custodial Agreements—What are they? (cont'd)

There may also be a trust agreement that exists between the trustees and the employer or administrator of the plan that outlines the responsibilities of the trustees. If such an agreement exists, then it must also be filed with OSFI.

When applying to OSFI for plan registration, please refer to OSFI's Instruction Guides for Registration for more information.

Reporting of Late Remittances

The *Pension Benefits Standards Act, 1985* states that plan administrators must inform their plan custodians in writing of all amounts to be remitted to the pension fund. Most plan administrators inform their custodians of these amounts by submitting a contribution planner. This document allows custodians to compare the money that has been remitted into the pension fund with the amounts that were expected.

If a payment into a pension fund is not remitted within 30 days after it was due, the plan administrator and the plan custodian are required to notify the Superintendent. The custodian notifies the Superintendent by sending a non-remittance letter and OSFI follows up with the plan administrator. In many instances where OSFI receives a non-remittance letter, we find that the plan administrator did, in fact, remit the correct amount into the fund. The issue is that they did not update their contribution planner with their custodian, which led to the custodian's notice to OSFI of non-remittance.

These situations can best be avoided by plan administrators keeping their contribution planners current. When there is a significant change to a pension plan (e.g. a material decrease in plan membership resulting in less money being remitted into the pension fund), then OSFI expects the plan administrator to communicate these changes to their custodian by sending them a revised contribution planner.

Individual Pension Plans and Canada Revenue Agency's Rule on Minimum Payment Withdrawals

Amendments to the *Income Tax Regulations* (ITR) include a new requirement to amend the terms of an individual pension plan (IPP) to provide that a minimum annual amount be paid to the member in each year after that member turns 71 years of age. The minimum annual amount required by the ITR may, in some instances, be greater than the member's annual pension benefit provided by the plan's benefit formula. An amendment to the terms of the plan to provide this minimum annual amount does not comply with the *Pension Benefits Standards Act, 1985* (PBSA) and is not permitted.

The Canada Revenue Agency (CRA) recognizes that the requirements of the PBSA prevent a plan administrator from making this amendment. Please refer to CRA's Questions and Answers for more information on their requirements with respect to making minimum payments from IPPs that are subject to the PBSA.

Designated Pension Plans are subject to Full Funding on Plan Termination

Administrators and employers are reminded that designated pension plans subject to the maximum funding rules of the *Income Tax Act* (ITA) must be fully funded on plan termination in accordance with the *Pension Benefits Standards Act, 1985*.

If a plan administrator of a designated plan is contemplating a reduction in accrued benefits as a consequence of ITA funding restrictions, they are reminded that a pension plan cannot be amended after it has been terminated. Therefore OSFI cannot consider a benefit reduction application received after the date of termination.

Any application submitted by a plan administrator to reduce benefits must meet the requirements set out in OSFI's Instruction Guide for the Authorization of Amendments Reducing Benefits in Defined Benefit Pension Plans. Simply indicating in a termination report that benefits are being reduced is not permitted.

Notice and Filing Requirements before and after Plan Termination

Plan administrators and employers are required to notify the Superintendent in writing, not more than 180 days before and at least 60 days before the plan termination date, of their decision to terminate a pension plan. For example, if the plan termination date is December 31, then the Superintendent must be notified of the plan's termination not sooner than July 4 and not later than November 1. OSFI may require a plan administrator or employer to change the termination date if proper notification is not given.

Plan administrators are required to continue to file an Annual Information Return (OSFI-49) and Certified Financial Statements (OSFI-60) until OSFI receives written notice that all pension assets have been distributed.

Filing Requirements for Terminated Plans Funding a Deficit over Five (5) Years

The requirement for pension plans (other than Negotiated Contribution plans) to fully fund their pension benefit obligations determined on the date of plan termination has been in effect since April 1, 2011. If a pension plan has a deficit on plan termination, then the employer is required to pay the amount owed under subsection 29 (6.1) of the *Pension Benefits Standards Act, 1985* either in a lump sum payment or over a maximum period of five years. The option to pay this amount over a five year period is not available if the employer is being liquidated or is in bankruptcy. The termination report must clearly disclose how the employer will be funding the deficit.

If a plan terminates with a deficit on termination and the employer decides to pay it over a period of up to five years rather than to pay it immediately, the administrator must, in addition to filing the termination report as at the date of termination, file the following documents with OSFI:

1. An annual Actuarial Report as at the termination date anniversary. The last report filed will show the final year's schedule of payments.
2. An Annual Information Return (OSFI-49), Certified Financial Statement (OSFI-60) and an Auditor's Report (if required) filed annually. These documents are to be completed as at the plan year end until the year end before all plan assets have been distributed.
3. An annual plan assessment within 6 months after the end of each plan year until all plan assets have been distributed.
4. An annual Solvency Information Return (OSFI 575) until the year end before all plan assets have been distributed, due 45 days after the plan year end.

Regulatory Filing Software Modernizing in 2014

The current software system used by OSFI for regulatory returns filing for all federally regulated deposit-taking institutions, pension plans and insurance companies is undergoing a modernization.

The renewed system will be known as the Regulatory Reporting System (RSS) and will offer enhanced web access, an optional online data entry facility, up-front data validation and extensive self-service functionality. Electronic file upload capability will continue to be available. The RSS is targeted for completion and use in 2014.

OSFI will communicate additional information on the RSS as the project progresses. In addition, a follow-up article will be included in the November issue of *InfoPensions*. If you have any questions, please contact OSFI at contactinfo@osfi-bsif.gc.ca.

2013 Pension Industry Forum

On February 12, 2013, OSFI held a Pension Industry Forum in Toronto. The forum provided an opportunity for administrators of federally regulated private pension plans, their advisors, and related service providers to hear from OSFI staff about current issues. OSFI provided its perspective on the current pension environment, recent legislative and regulatory reforms, and our supervisory role and expectations. Break-out sessions were also included to address topics specific to defined benefit and defined contribution plans. Some of the topics that were covered included: Pooled Registered Pension Plans, OSFI's Approach to Regulatory Approvals and First Nations' Pension Plan Transfers.

OSFI would like to thank everyone who suggested topics prior to the Forum and who attended the event. Your input, engagement and feedback are much appreciated.

Important Dates

Action or Required Filing	Deadline
Actuarial Reports and Actuarial Information Summary (Form T-1200)	6 months after plan year end
Annual Information Returns (OSFI-49)	6 months after plan year end
Certified Financial Statements (OSFI-60) and Auditor's Report (if required)	6 months after plan year end
Solvency Information Return (OSFI-575)	The later of 45 days after the plan year end or February 15
Annual Member Statements	6 months after the plan year end
Plan administrators are reminded to use the most up-to-date forms when completing the required filings.	