Instruction guide

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- Form - 2018 (PDF, 269 KB)

Introduction

This Instruction Guide sets out the general principles along with the specific requirements that the Office of the Superintendent of Financial Institutions (OSFI) generally considers with respect to an application seeking the Superintendent's permission under section 10.2 of the *Pension Benefits Standards Act, 1985* (PBSA) to transfer assets related to defined benefit provisions from a federally regulated pension plan to another pension plan. With respect to the transfer of assets related to defined contribution provisions from a federally regulated pension plan, please see OSFI's Guidance Note on Asset Transfers related to Defined Contribution Provisions of Pension Plans.

OSFI has developed a standardized Approval Request Form for Asset Transfers related to Defined Benefit Provisions of Pension Plans (Asset Transfer Request Form). This form should be submitted when seeking permission to transfer assets under section 10.2 of the PBSA.

If there is a discrepancy between the Instruction Guide and the PBSA or the Pension Benefits Standards Regulations, 1985 (PBSR), the legislation prevails. When reviewing requests for permission to transfer assets, OSFI may consider factors or require documentation not mentioned in this Instruction Guide.

1.0 Legislative Authority

Asset transfers related to defined benefit provisions of pension plans are addressed in section 10.2 of the PBSA, which reads:

Subject to section 26, the administrator may transfer or permit the transfer of any part of the assets of the pension plan that relate to defined benefit provisions to another pension plan, including a pension plan to which this Act does not apply, only with the Superintendent's permission.

2.0 Asset Transfer Scenarios

An asset transfer occurs when all or any part of the assets of a pension plan are transferred to another pension plan. This can occur between pension plans with different employers and between pension plans established for the same employer.

An asset transfer from a pension plan can occur for a number of reasons including a sale or other transfer of business, a merger or amalgamation as part of a business rearrangement of pension plans or as a result of a transfer of individuals between plans.

If several transfers of assets and liabilities resulting from a single business transaction will be occurring over an extended period, these may be considered together and the transfer amounts aggregated into one transfer approval request.

If the asset transfer involves the transfer of assets related to defined benefit provisions to a defined contribution plan, a conversion of the defined benefits to defined contribution balances should follow OSFI's Conversion Guideline either before or after the transfer, and not be carried out as part of the transfer. If the benefits are converted before the transfer, OSFI expects the administrator to follow OSFI's Guidance Note on asset transfers related to defined contribution provisions of pension plans when making the transfer.

The following scenarios are not considered asset transfers that require the Superintendent's permission under section 10.2 of the PBSA:

- A change to a pension plan's custodial arrangements - documentation supporting a custodial change must be filed with OSFI
- The exercise of portability rights under section 26 of the PBSA[1]

- A transfer of assets to correct an administrative error that occurred in a pension plan - custodians or administrators are expected to inform OSFI in writing of the error and the actions taken to rectify it

3.0 General Principles

When reviewing submissions from plan administrators requesting permission to transfer assets, OSFI will consider the particular circumstances of each case and look to see that the asset transfer is consistent with the following general principles:

1. The asset transfer should not have a material adverse effect on the security of the accrued pension benefits of
    - any members, former members and other persons entitled to benefits under the transferring plan, whether or not that person is transferring or remaining in the transferring plan or
    - any members, former members and other persons entitled to benefits under the receiving plan.
2. There should be no reduction in the accrued benefits of transferring members, former members and other persons entitled to benefits under the plan ("transferring individuals").
3. All transferring individuals should be informed of the asset transfer.
4. The administrator of the transferring plan is expected to review the terms of their own plan documents, trust agreements and any other agreements or undertakings to determine that the asset transfer does not contravene any of these documents, agreements or undertakings. This includes consideration of issues with respect to surplus entitlement in the transferring plan.

This instruction guide has been prepared on the premise that a plan merger or a transfer of assets per se does not result in a crystallization of any rights to a distribution of surplus.

4.0 Criteria and Requirements

This section outlines more detailed criteria and requirements that OSFI would generally expect a proposed asset transfer to meet. OSFI may also consider other factors not listed here. Please note that individual or small group asset transfers that meet the requirements outlined in section 6 of this Guide may be undertaken without a submission to OSFI.

4.1 Actuarial information to be provided

OSFI requires actuarial reports from both the transferring and receiving plans. These reports should clearly disclose the assets and associated liabilities (going concern and solvency) related to the transferring individuals as at the effective date of the transfer. The reports should also clearly disclose the impact of the transfer on the plan's solvency ratio and required contributions. Where a receiving plan is registered provincially and not federally, OSFI may request that the actuarial report from that plan be prepared in accordance with federal requirements if these are significantly different from the applicable provincial requirements.[2]

The assets and liabilities in respect of individuals other than the transferring individuals need not be re-valued in the actuarial report if the most recently filed actuarial report for the plan was prepared at a date that is no more than 12 months prior to the effective date of the transfer.

Until the asset transfer has been permitted by the Superintendent and the assets have been transferred, OSFI expects all subsequent regularly filed actuarial reports for the transferring and receiving plans to clearly disclose the assets and associated liabilities (going concern and solvency) related to these transferring individuals. OSFI's Instruction Guide for the Preparation of Actuarial Reports for Defined Benefit Pension Plans provides further details on subsequent actuarial reporting requirements. Where the receiving plan is registered provincially but not federally, OSFI may request copies of the plan's regularly filed actuarial reports and may request periodic updates to any actuarial report from the receiving plan that was prepared for OSFI in accordance with federal requirements.

4.2 Remittance of current service cost[3] and special payments

After the effective date of the transfer, transferring members' pension benefits accrue under the receiving plan. It is important that plan terms reflect this and that current service cost contributions for transferring members for accruals after the effective date be remitted to the receiving plan.

Unless otherwise notified by OSFI, special payments to both plans may be made based on the assumption that permission is granted for the transfer. Any minimum funding requirement payments owing to either plan following the Superintendent's decision will be due, with interest,[4] immediately following notification of the decision.

4.3 Determination of transfer amount

The transferring plan's actuarial report should disclose the transfer amount and how it was determined. The liabilities underlying the transfer amount may be based on a going concern or solvency basis, as defined in the terms of the transaction, and the transfer amount is subject to the restrictions detailed below.

All references to a plan's solvency ratio in this Instruction Guide are as defined in section 2 of the PBSR. OSFI expects all relevant solvency ratios and solvency surplus/deficits[5] mentioned in this Instruction Guide to

- be based on the most recently filed actuarial report, including any reports filed after the request for permission is submitted to OSFI;
- be based on the fair market value of the plan assets and the face value of letters of credit[6]; and
- include a provision for termination expenses.

Letters of credit

If letters of credit are held by the transferring plan, submissions to OSFI for permission to transfer assets should address how these letters of credit will be treated for purposes of determining the transfer amount.

Transferring plan has a solvency deficit

If the transferring plan has a solvency deficit, the transfer amount cannot exceed the transferring individuals' solvency liabilities multiplied by the solvency ratio of the plan, plus a proportionate share of assumed total termination expenses[7]. The proportion should be determined based on the transferring individuals' pro-rata share of solvency liabilities. OSFI may permit the transfer of a higher amount if the difference between the proposed transfer amount and the maximum transfer amount described above is remitted to the transferring plan prior to the transfer.

Transferring plan has a solvency surplus

If the transferring plan has a solvency surplus, the transfer amount cannot be less than the transferring individuals' solvency liabilities, plus a proportionate share of assumed total termination expenses. The proportion should be determined based on the transferring individuals' pro-rata share of solvency liabilities. An additional amount up to the transferring individuals' pro-rata share of the plan assets, on a going concern or solvency basis, may be transferred provided the solvency ratio for the transferring plan is not reduced below 1.0 as a result of the transfer.

4.4 Receiving plan materially less well funded

In applying the general principle regarding the effect of an asset transfer on the security of accrued benefits, OSFI looks to the funded status of the two plans. OSFI generally considers that where the receiving plan is materially less well funded than the transferring plan, an asset transfer would have a material negative impact on the security of the accrued pension benefits of transferring individuals.

OSFI considers a receiving plan to be materially less well funded than a transferring plan if a receiving plan's solvency ratio[8] (after taking into account the asset transfer) is less than one and is lower than the solvency ratio of the transferring plan by 0.10 or more (assuming a maximum transferring plan solvency ratio of 1.0).

If benefits are being transferred to a plan that is considered materially less well funded, transferring individuals should have the option to retain their pension benefits in the transferring plan. If the transferring plan is merging with the receiving plan, and the option of retaining pension benefits in the transferring plan is therefore not available, annuities may be purchased for affected individuals[9] or portability may be offered to affected members[10]

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4.5 Impact of asset transfer on receiving plan

OSFI will consider the impact of the asset transfer on the members and beneficiaries of the receiving plan and may require that advance notice of the transfer be given to them.[11] OSFI may require additional disclosure to receiving plan members or may refuse to permit the transfer if the transfer would have a material negative impact on the security of benefits of the receiving plan's members and beneficiaries. OSFI generally considers that a decrease in the solvency ratio of the receiving plan by 0.10 or more (assuming a maximum receiving plan solvency ratio of 1.0 before the transfer) would have a material negative impact on the security of benefits.

4.6 Plan's registration vacated as a result of an asset transfer

If the assets and liabilities of two pension plans are being merged, the ongoing registered pension plan, as determined by the parties, will be considered the receiving plan for purposes of this Instruction Guide. The administrator of the transferring plan must continue to file required annual plan filings[12] and pay annual plan assessments until no assets remain in the plan fund.

The transferring plan's registration will be considered vacated when OSFI receives written confirmation from the administrator of the transferring plan of the date and final amount transferred along with a year-to-date financial statement from the custodian of the transferring plan that shows that no assets remain in the plan fund.

4.7 Adjusting the transfer amount after the effective date of the asset transfer

OSFI expects the actuarial report of the transferring plan to disclose the interest rate (a set rate or the fund rate) that will be used to adjust the transfer amount between the effective date and the actual date of the asset transfer. The report may also specify the period of time during which the transfer amount (adjusted with interest) is valid – a recalculation of the transfer amount is required if the transfer occurs after the period has elapsed.

4.8 Provincial legislation

If benefits of any of the transferring individuals are subject to provincial pension legislation, the asset transfer requirements of the appropriate provincial pension legislation, including timing of notices and submissions, must also be respected. OSFI expects the plan administrator to provide, on the Asset Transfer Request Form, a

breakdown of individuals whose benefits are subject to provincial pension legislation. This breakdown should be by province and by category (i.e., members, former members entitled to a deferred pension benefit, retirees and any other persons entitled to benefits under the plan).

If the transferring plan is also registered in Quebec or Newfoundland and Labrador[13], or if the receiving plan is registered in any province, the transfer may require the permission of the provincial regulator. OSFI expects the administrator of the transferring plan to determine whether permission from a provincial regulator is required and to obtain any such required permission. The Asset Transfer Request Form requests information regarding any other such required approvals.

4.9 Information to transferring individuals

The transferring plan administrator should inform each transferring individual in writing of the asset transfer. The notice should include information on the following:

- That their transferred benefit entitlement will be provided in the receiving plan
- How, as new members of the receiving plan, transferring members and their spouses or common law partners will receive a written explanation of the provisions of the receiving plan[14]
- How any defined contribution benefits that may have been accrued under the transferring plan by a transferring individual will be provided (e.g. whether or not these benefits will be transferred to and provided under the receiving plan)
- The solvency ratios of the transferring and receiving plans, both before and after the asset transfer, as at the date(s) of the most recently filed actuarial reports and
- Their right to make representations to the Superintendent regarding the proposed asset transfer and the period available to them to make such representations. Generally, a period of 30 days from the notice distribution date is appropriate.

If the receiving plan is materially less well funded than the transferring plan, OSFI expects the notice to transferring individuals to also include the following:

- Clear disclosure of the extent to which the transferring individual's benefit would be reduced if the receiving plan were terminated and wound up with its post-transfer solvency ratio
- Information on the transferring individual's option to retain their pension benefit in the transferring plan or, in the case of a plan merger, the options available to them in lieu of retaining their pension benefit in the transferring plan.

The notice may also describe, in a fair and reasonable manner, any potential advantages to a transferring individual of transferring their benefit to the receiving plan, e.g. if a member's final benefit would be larger due to future salary increases applying to the benefit accrued as at the effective date of the transfer.

Plan administrators are strongly encouraged to submit a draft notice to OSFI for comments to help ensure that a supplemental information notice is not subsequently required.

5.0 Documentation Requirements

OSFI requires that plan administrators seeking permission to transfer assets under section 10.2 of the PBSA file the following documentation:

1. The Asset Transfer Request Form
2. Actuarial reports[15] from the transferring and receiving plans
3. A copy of the notice(s) to transferring individuals notifying them of the asset transfer and their options, if any
4. A copy of any amendment(s) to the transferring plan recognizing the asset transfer and/or any board resolution authorizing the asset transfer

5. A copy of any board resolution authorizing the assumption of liabilities along with the amendment(s) to the receiving plan addressing

    - that the transferred benefit entitlements will be provided in the plan; and
    - how service with the transferring plan will be recognized in the receiving plan[16].

6. A copy of any pension transfer agreement as well as all relevant sections of any purchase and sale agreement and any applicable collective agreements, including any interpretation / definitions sections of the agreements

7. If the transferring plan is in a surplus position as at the effective date of the asset transfer, a declaration by the administrator of the transferring plan that the asset transfer does not contravene any provisions of the transferring plan, trust agreement or any other agreements or undertakings.

6.0 Individual and Small Group Transfers

Assets related to defined benefit provisions for individuals or small groups of individuals (generally fewer than 10) may be transferred with no submission to OSFI provided that the following conditions are met.

1. There is no reduction in the accrued benefit of the transferring individual(s).

2. The combined transfer amount for all individual or small group transfers occurring in the same plan year does not exceed 5% of the transferring plan's assets as at the most recent plan year end.

3. The receiving plan is not materially less well funded[17] than the transferring plan.

    or

    If the receiving plan is materially less well funded than the transferring plan, the individual(s) has been given the appropriate information and been given the option to retain their benefit entitlement in the transferring plan.

4. The amount transferred from the plan does not exceed the transfer value of the pension benefit credit(s) as calculated in accordance with section 8(b) of the Directives of the Superintendent. A larger amount may be transferred provided that funds equal to the difference between the transfer value and the amount transferred are first remitted to the transferring plan.

5. There are no individuals whose benefits are subject to provincial pension legislation included in the transfer. [18]

6. The individual has been informed of the transfer in writing.

7.0 Permission

After reviewing all relevant information, OSFI will notify the administrator of the transferring plan whether permission is given under section 10.2 of the PBSA. This permission may be subject to terms and conditions.

Communication and correspondence regarding an asset transfer are generally between the transferring plan's administrator and OSFI since it is the transferring plan administrator who is seeking permission under section 10.2 of the PBSA. OSFI expects that the transferring plan's administrator will keep the receiving plan's administrator informed regarding the status of the asset transfer application and any relevant issues that may arise throughout the process.

1 Where a transfer under section 26 would be considered to impair the solvency of the plan, restrictions are contained in the Directives of the Superintendent.

2 For example, given that solvency assets and liabilities may be valued differently under provincial and federal rules, OSFI may request that the actuarial report from the receiving plan include a solvency valuation showing the solvency assets and liabilities using assumptions and methods consistent with federal requirements.

3 Also referred to as normal cost.

4 Interest is in accordance with PBSR ss. 10(2).

5 For purposes of this Instruction Guide, a plan has a solvency surplus/deficit if its solvency assets as defined in the PBSR (i.e. sum of market value of assets and face value of certain letters of credit net of assumed termination expenses) exceeds /is less than its solvency liabilities as defined in the PBSR.

6 The face value of all letters of credit in effect on the valuation date, other than those being used to fund a plan under Part 3 of the Solvency Funding Relief Regulations or Part 3 of the Solvency Funding Relief Regulations, 2009, up to a maximum of 15% of the solvency liabilities of the plan as determined at the valuation date (as per the PBSR definition of solvency assets).

7 Also referred to as wind-up expenses.

8 Where the receiving plan is registered provincially, OSFI may consider the solvency ratio determined in accordance with federal requirements in order to determine whether or not the receiving plan is considered materially less well funded.

9 Pensions in pay are not eligible for any of the portability options since they cannot be surrendered or commuted (see ss. 18(1)(b) and 36(4) of the PBSA).

If the receiving plan is sponsored by a successor employer as described in section 30 of the PBSA, the annuity or the pension benefit credit must reflect benefits from the transferring plan that the member could become entitled to by including subsequent service with the successor employer. Reasonable probabilities of termination, death and retirement, consistent with the going concern assumptions used in the most recent

10 actuarial valuation of the transferring plan can be applied.

11 Receiving plan members who are subject to federal pension legislation and their spouses or common-law partners are entitled to receive notice of any amendments to their plan, including any related to the transfer of assets, within 60 days after the amendment is made (see paragraph 28(1)(a) of the PBSA). Similar disclosure requirements may apply with respect to plan members who are subject to provincial pension legislation.

12 i.e., actuarial reports and accompanying actuarial information summaries (and, if required, replicating portfolio information summaries), solvency information returns, annual information returns (OSFI 49/49A), and certified financial statements (OSFI 60) (and, if required, auditor's reports).

13 Dual registration is required because the Government of Canada does not have a bi-lateral agreement with Newfoundland and Labrador and the agreement with Quebec covers only federal members who are employed in included employment in the Northwest Territories, Nunavut or Yukon.

14 See ss. 28(1)(a)(i) of the PBSA.

15 See section 4.1 of this Instruction Guide.

16 Including any recognition of service with the transferring plan required by paragraph 30(2)(b) of the PBSA (successor employer rules).

17 As defined under section 4.3 of this Instruction Guide.

18 Please contact OSFI for instructions where an individual or small group asset transfer includes anyone whose benefits are subject to provincial pension legislation.