Pensions Division

Transfer Deficiencies: A bulletin designed to assist pension plan administrators and their service providers in the administration of transfer deficiencies in accordance with *The Pension Benefits Act, 1992.*

FCAA
Financial and Consumer Affairs Authority

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Introduction

The purpose of this bulletin is to provide an overview of section 28 of *The Pension Benefits Regulations, 1993* (the Regulations) and how it applies to the transfer of the commuted value of benefits pursuant to section 32 of *The Pension Benefits Act, 1992* (the Act).

Please note that this bulletin has no legal authority. The Act and Regulations should be used to determine specific requirements.

Legislative Requirements

Subsections 32(1) and (2) of the Act prescribe:

(1) A member may make a transfer, in the manner and to the extent prescribed, of the whole of the commuted value of the member's pension with respect to his or her membership in accordance with subsection (2) where:

(a) the member terminates his or her membership in the plan, or the plan is terminated;

(i) on or after January 1, 1993 or any earlier day that the plan may provide;

(ii) while the member is employed in Saskatchewan; and

(iii) before the earliest day on which the member could receive a pension pursuant to the plan; and

(b) an entitlement to receive a pension has vested in the member.

(2) The transfer mentioned in subsection (1) may be made to:

(a) another plan that permits the transfer, if any payment from the other plan is a payment that would otherwise be required by this Act;

(b) a prescribed RRSP;

(c) an insurance company to purchase a deferred pension that is not commutable and that will not commence earlier than the earliest day on which the pension could have commenced pursuant to the plan;

(c.1) a pooled registered pension plan within the meaning of *The Pooled Registered Pension Plans (Saskatchewan) Act*; or

(d) any other prescribed retirement plan that is registered pursuant to the *Income Tax Act (Canada)*.

Section 28 of the Regulations prescribes:

(1) In this section:

(a) “transfer” means a transfer of the commuted value of a benefit pursuant to section 32 of the Act; and

(b) “transfer deficiency” means, where the solvency ratio is less than 1:1 at the date of the last review, the amount by which the commuted value of a benefit exceeds the product of that commuted value and the solvency ratio.

(2) Where a plan has a solvency ratio of less than 1:1, the administrator shall not make a transfer unless:

(a) the employer has remitted sufficient moneys to the plan to eliminate any transfer deficiency relating to the transfer;

(b) the transfer deficiency relating to the transfer is less than 5% of the Year’s Maximum Pensionable Earnings for the year in which the transfer is made and the total of all such transfer deficiencies transferred since the last review date does not exceed 5% of the market value of the assets of the plan at the time of the transfer; or

(c) the transfer is of an amount equal to the commuted value of a benefit less the transfer deficiency relating to the transfer.

(3) Any transfer deficiency that remains untransferred must be transferred within five years of the initial transfer and include interest up to the end of the month preceding the date when the last or only transfer was made.

(4) The administrator shall transfer the transfer deficiency on the conditions of the initial transfer unless notified otherwise by the person who is entitled to have the transfer deficiency transferred.

(5) This section does not apply to the commuted value of benefits or portion of the commuted value of benefits determined in accordance with section 24.1.

(6) This section does not apply to a transfer of the commuted value of benefits or portion of the commuted value of benefits from:

(a) a prescribed plan pursuant to section 36.9; or

(b) the Saskatchewan Teachers' Retirement Plan registered pursuant to the Act as number 0689075.

Transfer Deficiency Overview

Pursuant to clause 28(1)(b) of the Regulations, transfer deficiency means, where the solvency ratio is less than 1:1 at the date of the last review, the amount by which the commuted value of a benefit exceeds the product of that commuted value and the solvency ratio.

A plan's solvency ratio is defined pursuant to clause 2(1)(q) of the Regulations as the fraction obtained by dividing the market value or market related value of the assets currently held in the plan (including any cash balances and accrued and receivable income, less the estimated wind-up expenses) by the liabilities of the plan on a plan termination basis, as of the latest review date. The market related value of the plan's assets is determined by means of an averaging method over a period of not more than five years.

Where a commuted value is transferred pursuant to section 32 of the Act, the administrator must hold back the amount of the transfer deficiency from the transfer amount. The transfer deficiency that has been held back must be transferred within five years of the date of the initial transfer, or when the plan becomes solvent, whichever comes first. The plan sponsor may also remit to the plan the amount required to eliminate the transfer deficiency and pay the transfer deficiency immediately. Under subsections 28(5) and 28(6) of the Regulations, there are two permitted exemptions to the transfer deficiency rules. These subsections provide that on the transfer of a commuted value, limited liability plans and target pension arrangements are not required to hold back an amount based on the solvency ratio of the plan. A further explanation of these exemptions is discussed later in the document.

When a plan is reviewed, the new solvency ratio is not effective until the date the new actuarial valuation report is filed with the Superintendent of Pensions. The date the actuarial valuation report is filed determines the applicable solvency ratio to apply to a transfer.

If a benefit improvement becomes effective after the valuation date of the last filed valuation report but prior to the date as of which the next valuation must be performed, the plan administrator may choose to file a cost certificate instead of a complete valuation report. On the filing of a revised cost certificate, the solvency ratio of the plan calculated as at the effective date of the benefit improvement would not affect the transfer deficiency. The solvency ratio at the last review would continue to be used.

Applicable Solvency Ratio

The solvency ratio that applies to a transfer when the termination statement and election form is sent to a former member before the new valuation is filed depends on several circumstances. Some of the items that would have to be considered are the date on which the new valuation is filed, if the former member was given a deadline for making the election, and whether the election was made within this time frame. For example, the previous solvency ratio applies to the transfer if an election is made before the new valuation is filed as the new solvency ratio is not yet in effect. Also, the previous solvency ratio would apply to the transfer if the former member meets the deadline for making the election even if the new valuation was filed in the time period between the preparation of the termination statement and the election by the member. An example of a situation where the new solvency ratio will apply is when the former member makes an election after the given deadline and after the new valuation report has been filed.

As discussed above, one of the factors that influences whether the new or the previous solvency ratio applies to a transfer is whether an election is made by the deadline given in the termination statement. Some plan administrators, however, do not establish a deadline by which an election must be made or establish deadlines that are so lengthy that there is a risk that there may be significant changes to the plan's solvency position between the date of the termination statement and the date of the election.

The administrator is responsible for establishing a policy or procedure with respect to an election period, as the Act does not prescribe a time period during which an election must be made. When establishing this policy or procedure, the administrator should take into consideration the statutory responsibilities and authorities bestowed upon the administrator:

1. Section 11 of the Act states that the administrator must administer the plan in the best interests of all plan members and former members and must not prefer the interests of one member over the interests of other members.

2. Section 24 of the Regulations provides that the administrator may recalculate the benefit entitlement where the period between the date the commuted value was calculated and the date of the payment or transfer of the benefit entitlement is greater than 120 days. The new commuted value would be as of the date of the transfer or payment. Under subsection 24(4) of the Regulations the administrator may elect to recalculate the commuted value after 120 days instead of adjusting for the interest payable on the transfer deficiency. The administrator must establish a policy for the approach that will be used for purposes of Section 24. This policy should be consistent with any applicable provisions of the plan and would typically be included in the Commuted Value Basis filed with the Superintendent in conjunction with the most recently filed actuarial valuation. Once this policy has been established it must be applied consistently to all transfers.

It is prudent for plan administrators to review the plan text and policies to determine if an election period has been established, and whether it is reasonable with regards to the above.

Example of the Applicable Solvency Ratio

A plan is reviewed as at December 31, 2019 and the new actuarial valuation is filed with the Superintendent of Pensions on September 30, 2020. The solvency ratio in the new valuation as at December 31, 2019 is 85%. The plan's previous solvency ratio was 100%.

A member terminates membership in the plan after becoming vested but prior to being eligible to receive a pension under the plan. Section 32 of the Act applies and the member may elect to transfer the commuted value of the pension out of the plan. The commuted value of the pension is calculated and the statement on termination of membership is prepared on December 15, 2019. Under the terms of the plan, the former member has 90 days from this date to make an election with respect to transferring the funds out of the plan.

The scenarios below are based on the above situation and provide some examples of when the previous solvency ratio of 100% would be applied and when the new solvency ratio of 85% would be applied.

Scenario 1: The former member makes an election on January 15, 2020.

The solvency ratio that would apply to this transfer is 100% and, as a result, there would be no transfer deficiency to hold back. The 85% solvency ratio established in the review as at December 31, 2019 would not be applied because the new valuation has not been filed yet.

Scenario 2: The former member makes an election on July 30, 2020, which is more than 90 days after the December 15, 2019 statement on termination of membership.

The 100% solvency ratio would also be applied to this transfer because the election was made prior to the filing of the new valuation on September 30, 2020.

Scenario 3: The former member makes an election on October 15, 2020, which is more than 90 days after December 15, 2015. The new valuation was filed on September 30, 2020, so this election also occurred after the date the new valuation was filed.

In this case the solvency ratio that would be applied to the transfer is 85% as the former member did not make the election within the specified time period and the new solvency ratio is now effective as the valuation has been filed.

Payment of the Remaining Transfer Deficiency

The transfer deficiency that has been held back must be paid within 5 years of the date of the initial transfer or when the plan becomes solvent, whichever comes first. The employer may also remit to the plan the amount required to eliminate the transfer deficiency and pay the transfer deficiency immediately.

Interest Payable on the Remaining Transfer Deficiency

Subsection 28(3) of the Regulations requires that interest be credited to any untransferred amounts up to the end of the month preceding the date when the last or only transfer was made. In accordance with subsection 24(3) of the Regulations, the interest rate applied cannot be less than the discount rate used to calculate the commuted value of the benefit in accordance with the guidelines established by the Canadian Institute of Actuaries (CIA).

Exemptions to Section 28

There are two types of plans to which section 28 does not apply.

1. Limited Liability Plans (LLPs)
   Defined by clause 2(1)(i.1) of the Regulations, LLPs are plans that are mentioned in subsection 40(5) of the Act, but do not include a plan to which section 36.7 of the Regulations applies. Section 24.1 of the Regulations provides that LLPs are allowed to calculate commuted values using the going concern assumptions used in the plan's most recently filed actuarial valuation report (hereinafter referred to as a GC CV), provided the plan documents specifically indicate this. It is subsection 28(5) of the Regulations that excludes LLPs from the transfer deficiency rules.

2. Target Pension Arrangements (TPAs)
   Section 3570 of the Canadian Institute of Actuaries Standards of Practice (CIA SOP) permit plans that are considered TPAs to use the GC CV. The CIA SOP defines a target pension arrangement as a pension plan for which applicable legislation contemplates the reduction to the accrued pensions of plan members and beneficiaries while the pension plan is ongoing as one of the available options for maintaining the funded status of the pension plan, and where the reduction in accrued pensions is not necessarily caused by the financial distress of the plan sponsor or sponsors. Subsection 28(6) of the Regulations excludes the Saskatchewan Teachers' Retirement Plan, the Target Retirement Income Plan for the Regina Police Service, the Saskatoon Fire Fighters' Pension Plan and the Saskatoon Police Pension Plan from the transfer deficiency rules. These plans meet the definition of a TPA.

You will note that subsection 28(6) of the Regulations separates prescribed plans and the Saskatchewan Teachers' Retirement Plan (STRP). This is because STRP is not a prescribed plan.

Please be advised that LLPs are TPAs. However, as noted above, the exemption section which applies to them is different. This is because commuted values for LLPs are not calculated in accordance with the CIA SOP; rather, the Regulations determine how the commuted values for LLPs are calculated.

Transfers Which are Not Made Pursuant to Section 32 of the Act

The following are some examples of when the transfer deficiency rules do not apply (this list may not be exhaustive).

- a refund of voluntary member contributions to the plan
- a return of member contributions, plus interest, when membership in the plan terminates prior to the member being vested in the plan
- excess member contributions refunded to a member as a result of the 50% test found in section 31 of the Act, which requires that the value of a member's contributions cannot exceed one-half of the commuted value of the pension
- the commutation of a pension as a result of the small benefit or shortened life expectancy rules found in section 39 of the Act
- the commutation of a pension as a result of the non-residency unlocking rules found in section 26.1 of the Regulations
- the transfer of the commuted value if the transfer deficiency relating to the transfer is less than 5% of the YMPE for that year and the total transfer deficiencies transferred since the plan's last review date do not exceed 5% of the market value of the plan's assets (clause 28(2)(b) of the Regulations)
- the payment of a death benefit to a surviving spouse
- the payment of a death benefit to a beneficiary, who is not the spouse, or to the estate, provided the initial payment is made on or after June 26, 2013
- an annuity purchase made under a defined benefit provision where the plan does not pay pensions directly from the plan, as this is not considered to be a transfer of the commuted value under section 32 of the Act
- a transfer to another pension plan under a Transfer Agreement (as defined in section 20 of the Act), where the actuarial basis used to determine the amount to be transferred is not in accordance with subclause 24(1)(a)(i) of the Regulations
- a transfer of the commuted value of the pension when the spouse or former spouse of a member or former member is entitled to a division of the pension under Part VI of the Act as a result of the breakdown of the spousal relationship. The amount of pension

entitlement which may be attached pursuant to *The Enforcement of Maintenance Orders Act, 2009* is also not limited to the amount which may be transferred where a transfer deficiency exists pursuant to section 28 of the Regulations.

- a transfer of assets to an insurance company to purchase a buyout annuity.

Quick Reference Summary

The following table provides a quick reference summary of when the transfer deficiency rules in section 28 of the Regulations do and do not apply.

Event	Transfer Deficiency Rules Apply?
Payment of Termination Benefits	
• Commuted values, except for GC CVs	Yes
• refund of employee contributions with interest where member is not vested	No
• excess employee contributions as a result of the 50% employer cost rule	No
• voluntary contributions	No
• transfer under a Transfer Agreement	No
• small benefit or shortened life expectancy commutations	No
• non-residency unlocking withdrawal	No
Transfer Deficiency Less than 5% of YMPE (clause 28(2)(b) of the Regulations.)	No
Refund of excess contributions that arise because of the application of the maximum transfer rules under the *Income Tax Act*	Yes
Pre-Retirement Death Benefit	
• payable to spouse	No
• payable to beneficiary/estate	No*
Post Retirement Death Benefit	
• monthly pension	No
• lump sum of guarantee	No
Spousal Relationship Breakdown	
• transfer to spouse	No
Normal, Early or Late Retirement	
• monthly pension	No

*Provided the initial payment of the death benefit was made on or after June 26, 2013

Frequently Asked Questions

1. If a plan is required under subsection 40(6) of the Act to reduce accrued benefits to meet the prescribed tests for solvency of the plan, could a remaining transfer deficiency hold back also be subject to a reduction?

   Yes. In the case of such a plan, the employer's liability with respect to the funding of the plan is limited pursuant to a collective bargaining agreement or contract. Where the employer's liability is so limited, the plan must provide for the reduction of benefits to ensure that the plan meets the prescribed tests for solvency, subject to the approval of the reduction by the Superintendent.

   Any remaining transfer deficiencies would be treated in the same manner as other accrued benefits and should be taken into consideration when reducing benefits. However, neither the commuted value of the benefit that was initially transferred out of the plan nor the transfer deficiency payments made prior to the reduction of benefits would be subject to a retroactive reduction.

2. If the commuted value of the benefit less the transfer deficiency is transferred out of the plan, can the remaining transfer deficiency be paid out the next day or soon thereafter without the employer remitting sufficient monies to the plan to cover the deficiency?

   No. The transfer deficiency that has been held back must be paid within 5 years of the date of the initial transfer or when the plan becomes solvent, whichever comes first. The hold back may be paid in instalments over the 5-year period; however, the expectation is that the hold back not be paid out faster than the deficiency is expected to be amortized. The employer may also remit to the plan the amount required to eliminate the transfer deficiency and pay the transfer deficiency immediately.

3. Can the administrator of a designated plan transfer 100% of the commuted value out of the plan pursuant to section 32 of the Act even if the solvency ratio is less than 1:1?

   No. There are no exemptions for designated plans in the Act or Regulations. If the solvency ratio of a designated plan is less than 1:1, the transfer deficiency must be calculated and held back as required by section 28 of the Regulations. The transfer of the remaining transfer deficiency would have to be made within 5 years or when the plan becomes solvent, even if additional solvency payments are restricted under the *Income Tax Act* and Regulations.

4. With respect to a plan that does not provide contractual full funding on plan termination, during the ongoing period of the plan, do the transfer deficiency rules apply?

   Yes. With the exception that the transfer deficiency rules do not apply to a GC CV, the transfer deficiency rules in section 28 of the Regulations apply to all transfers of the commuted value under section 32 of the Act.

5. If a plan has a deficit when it terminates with the result that all accrued benefits, including those in payment, are reduced on a proportionate basis, could the reduction in accrued benefits also apply to outstanding transfer deficiencies that have not yet been paid out of the plan?

   Yes. Where a plan's assets are insufficient to fund the plan's accrued benefits at termination, the termination report must outline how assets will be allocated. The priority of allocation is prescribed in section 39 of the Regulations. If the plan has insufficient assets, but has no unamortized unfunded liabilities that can be associated with accrued benefits, all accrued benefits must be reduced on a proportionate basis. This may result in a reduction of any outstanding transfer deficiencies that have not been transferred out of the plan. However, the portion of the original commuted value that was transferred out of the plan prior to plan termination is not subject to a reduction. No accrued benefits may be reduced or assets of the plan used to provide pensions or other benefits prior to the Superintendent approving the termination report.

6. How must outstanding transfer deficiencies be reported in the actuarial valuation report?

   An outstanding transfer deficiency must be reported as a liability in the actuarial valuation. The liability for unpaid transfer deficiencies should be reported as a separate liability unless the actuary confirms that it is reflected in the liabilities for deferred plan members.

7. How is the outstanding transfer deficiency treated if the former member entitled to that benefit passes away?

   In a situation where a transfer was made out of the plan, a transfer deficiency remains in the plan, and the former member who is entitled to the transfer deficiency payment passes away prior to the payment of the outstanding transfer deficiency, the following applies: The outstanding transfer deficiency payment may be paid immediately to the surviving spouse, to a beneficiary or the estate of the deceased former member.

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