



The Pension Benefits Act, 1992

Consultation Paper

Financial Hardship Unlocking from a Locked-In Retirement Account

Consultation Period: March 11, 2021 – April 16, 2021

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Purpose of Consultation Paper

The Government is considering amending *The Pension Benefits Regulations, 1993* (the Regulations) to establish a new unlocking rule for all new and existing locked-in retirement account (LIRA) contracts which hold locked-in pension monies pursuant to *The Pension Benefits Act, 1992* (the Act). For the purposes of this paper, this proposed new unlocking rule will be referred to as Financial Hardship Unlocking.

Under the new rule, LIRA holders would be able to apply to the financial institution which issued the LIRA, for withdrawal of an amount which is within a prescribed limit, if they meet one of the following criteria:

- Have low expected income in the upcoming year.
- Are facing a threat of eviction or foreclosure.
- Have high incurred or expected medical costs.
- Require funds to secure a new principal rental residence.

The above criteria are explained further starting on page 5.

According to the rules in the Regulations, the spouse of a LIRA holder is entitled to a pension of at least 60% of the original amount of the pension payable to the LIRA holder upon the LIRA holder's death, unless that right is waived. If the LIRA holder who is applying for Financial Hardship Unlocking has a spouse, as defined in the Act¹, they would have to obtain their spouse's consent to withdraw the funds from the LIRA, and the spouse would have to waive their entitlement to receive a continuing pension of at least 60% of the LIRA holder's monthly pension after death of the LIRA holder.

Pension benefit entitlement matters, such as unlocking rules, are governed by the pension laws of the jurisdiction in which the member was employed at the time they terminated employment and transferred their pension entitlement to a LIRA. The Financial Hardship Unlocking provision will be available for a LIRA which is subject to the rules of the Act regardless of where the LIRA holder now lives or where the financial institution who issued the LIRA contract is located.

¹ Spouse means:

- a. A person who is married to a member or former member; or
- b. If a member or former member is not married, a person with whom the member or former member is cohabiting as spouses at the relevant time and who has been cohabiting continuously with the member or former member as his or her spouse for at least one year prior to the relevant time.

Based on the feedback received, the Financial and Consumer Affairs Authority (FCAA) will consider making recommendations to the Government regarding amending the Regulations to allow Financial Hardship Unlocking.

Question 1: Do you agree the Government should amend the Regulations to allow for Financial Hardship Unlocking from a LIRA?

Question 2: Do you agree with the four criteria under which money could be withdrawn? Do you feel there should be any additional criteria?

Rationale for Financial Hardship Unlocking

With only three exceptions, locked-in pension monies cannot be withdrawn from a LIRA as a lump-sum. The purpose of locking-in is to ensure that pension monies are utilized for their original intent: to provide a lifetime retirement income to pensioners and their spouses.

The three exceptions to this locking-in rule are the small benefit unlocking provision, the shortened life expectancy unlocking provision, and the non-residency unlocking provision. In addition to these unlocking provisions, once a person reaches the earliest retirement age in the pension plan under which a pension entitlement has accrued, that person may transfer their pension monies to a prescribed registered retirement income fund held at a financial institution or into a variable pension benefit account held pursuant to a defined contribution pension plan (if applicable) and withdraw their monies. These unlocking provisions can be reviewed in greater detail in our bulletin titled "[Unlocking Pension Money](#)".

The Financial Hardship Unlocking provision would be a new exception to the locking-in rule. It is proposed that this new provision be added in order to address a significant number of requests from LIRA owners who are experiencing financial hardship. These requests have increased due to COVID-19.

A similar Financial Hardship Unlocking provision exists in the pension standards legislation of most other Canadian jurisdictions.

The amount of times a LIRA owner could apply for Financial Hardship Unlocking would be limited. In some jurisdictions, it is limited to one application for each category, under each LIRA account, once in a calendar year.

The payment would be subject to withholding tax pursuant to the *Income Tax Act* (Canada).

Question 3: Do you agree that there should be a limit on how frequently a LIRA holder can withdraw money under Financial Hardship Unlocking? If so, what do you feel the limit should be?

Criteria for Unlocking

1. Low Expected Income

In other jurisdictions, a person's expected income in the one-year period following the date of application must be below a certain amount before qualifying to unlock due to financial hardship. Typically, that amount is 2/3 of the YMPE. The YMPE² for 2021 is \$61,600; therefore, to qualify, expected income would have to be less than \$41,067 in 2021.

If a person qualifies to unlock, the amount that can be unlocked would be determined by subtracting a percentage of expected income from a percentage of the YMPE. In most jurisdictions, the amount that can be unlocked is determined by subtracting 75% of expected income from 50% of the YMPE (\$30,800).

As an example, using the rules in most other jurisdictions, if we assume a person's expected income is \$30,000, the maximum amount which could be unlocked is \$8,300. This is determined as follows:

Expected income over the next year:	\$30,000 (A)
Multiply A by 0.75:	\$22,500 (B)
\$30,800 (50% of YMPE) minus B:	\$ 8,300 (C)

The maximum amount which could be withdrawn in this example is \$8,300.

Question 4: Do you agree with the formula for determining the maximum withdrawal for low income which is used in the example? If not, what do you think the formula should be?

² YMPE means year's maximum pensionable earnings. The YMPE is set each year by the Government of Canada.

2. Threat of Foreclosure or Eviction

If the LIRA owner is facing a threat of foreclosure on their principal residence, or if the LIRA owner's spouse is facing a threat of foreclosure on their principal residence, the LIRA owner could apply to unlock the amount of the mortgage arrears, and any associated legal fees. The LIRA owner would have to provide the financial institution with a copy of a demand for mortgage payments in default and documents showing the amount of mortgage arrears owing plus associated legal fees.

Question 5: Do you agree that the LIRA owner should be able to withdraw an amount equal to the amount of mortgage arrears, plus legal fees, for either their principal residence or that of their spouse?

If the LIRA owner is facing eviction from their principal residence due to rent arrears, or if the LIRA owner's spouse is facing eviction from their principal residence due to rent arrears, the LIRA owner could apply to unlock the amount of the rent arrears. The LIRA owner would have to provide the financial institution with a copy of a written demand which states the following: that they will be evicted if they don't pay the rent arrears, the amount of the arrears and the address of the home the eviction notice is for.

Question 6: Do you agree that the LIRA owner should be able to withdraw an amount equal to the amount of rent arrears, if either they or their spouse are facing eviction?

3. High Medical Costs

If the LIRA owner, their spouse, or a dependent of either has medical costs already incurred or to be incurred in the one-year period following the date of application, an application can be made to withdraw funds from the LIRA. If payment of the medical cost has been made by, or is reimbursed by, a third party, then the LIRA money cannot be withdrawn. A third party would include an insurance company, a benefit plan or a government support program. The medical cost would have to be with respect to treatment of an illness or disability for the LIRA owner, their spouse, or a dependent. This would include costs for prescriptions, medical or dental treatments, or home renovations due to medical reasons. The most that could be withdrawn from the LIRA is the total medical cost in the last year not already withdrawn plus the estimated cost for the next year.

The documents which would have to be submitted to the financial institution are:

Receipts: a copy of prescription receipts, medical or dental treatment receipts, or invoices or estimates for home renovations required due to medical reasons.

Medical opinion: a written opinion from a medical practitioner indicating that the treatment or renovation is necessary.

Question 7: Do you agree that the LIRA owner should be able to withdraw an amount equal to medical costs incurred or to be incurred? Do you agree that the medical cost must be with respect to prescriptions, medical or dental treatments, or home renovations, where no payment has been made by a third party?

4. Funds Required to Secure New Principal Rental Residence

The LIRA owner could apply to withdraw an amount necessary for them or their spouse to obtain a new principal rental residence. The maximum amount which could be withdrawn is equal to the first months' rent, security deposit and pet damage deposit. The LIRA owner would have to provide the financial institution with a copy of the lease or rental agreement.

Question 8: Do you agree that the LIRA owner should be able to withdraw an amount equal to the first months' rent, security deposit and pet damage deposit?

Sunset Clause

The FCAA is interested in hearing feedback on whether you feel the ability to unlock from a LIRA for financial hardship should be time limited. In other words, we are asking about a sunset clause, whereby after a number of years, the Financial Hardship Unlocking provisions in the Regulations would expire. A sunset clause would allow the Government to reassess the Financial Hardship Unlocking provisions in the Regulations at a later date to determine if the provisions should be continued or not. At that time, it would be clearer how the provisions in the Regulations have been used in practice and how suitable they are to address the challenges regarding financial hardship.

The FCAA is not aware of sunset clauses in other financial services legislation. However, there are examples of scheduled mandatory reviews in financial services legislation of other jurisdictions in Canada. For example, in some jurisdictions, pension standards legislation must be reviewed every five years. Similarly, in federal legislation respecting banks and trust and loan companies, a review of the provisions is required every five years.

If the Regulations were to include a sunset clause, it would follow that they should include a requirement that financial institutions offering LIRAs would provide a statistical report to FCAA. For example, there could be a requirement that, on a semi-annual or annual basis, the financial institution provide the FCAA with a list of the number of times money was unlocked under each of the criteria, and the amount unlocked. This would provide the necessary information on which a decision would be made by Government on whether financial hardship unlocking should be allowed to sunset or be continued, with or without changes.

Question 9: Should there be a sunset clause in the Financial Hardship Unlocking provisions in the Regulations? If so, what do you feel is the correct number of years for the sunset to take effect?

Question 10: Do you have any concerns with financial institutions providing a statistical report to the FCAA? If you do not have any concerns, should the report be semi-annual or annual?

Mandatory Provision

It is proposed that a financial institution must allow money in a LIRA to be withdrawn in a lump-sum, subject to withholding tax and spousal consent and waiver of pension benefits, if applicable, if the LIRA holder has satisfied the financial institution that they meet the criteria established in the Regulations.

Existing LIRA contracts would not have to be amended. The Financial Hardship Unlocking provisions would be deemed to be included in the contracts.

Question 11: Do you agree with Financial Hardship Unlocking being a mandatory provision in LIRA contracts?

Administration of the Provision

The financial institution would be responsible for determining whether a LIRA holder qualifies for Financial Hardship Unlocking. The FCAA, who is responsible for the administration of the Act and Regulations, will not be involved in the review of the Financial Hardship Unlocking applications. This would be consistent with how Financial Hardship Unlocking is administered in most other jurisdictions which allow Financial Hardship Unlocking.

If the financial institution is satisfied that the person qualifies for the withdrawal, part or all of the LIRA, depending on the circumstances, would have to be unlocked. Once unlocked, the funds must be paid to the person, subject to any withholding taxes. The funds could also be transferred to a tax-deferred savings vehicle such as a registered retirement savings plan (RRSP), subject to any applicable rules under the *Income Tax Act* (Canada).

The application forms would be prescribed in the Regulations.

Question 12: Do you agree that the financial institution who issued the LIRA should be responsible for reviewing the applications for Financial Hardship Unlocking?

Timing of the Amendments

Financial institutions would be given at least two months from the time the amendments to the Regulations are passed, to the time they are in force, to allow processes and systems to be amended.

Question 13: Is two months enough time for financial institutions to prepare for the new rules?

Comments

We are interested in hearing from you. In addition to providing your comments respecting the questions found in this paper, please feel free to provide any additional and relevant information.

Comments can be submitted to pensions@gov.sk.ca or mailed to:

Pensions Division – Financial Hardship Unlocking Consultation
Financial and Consumer Affairs Authority
Suite 601, 1919 Saskatchewan Drive
Regina SK S4P 4H2

Comments must be received by April 16, 2021.

PLEASE NOTE: *The Freedom of Information and Protection of Privacy Act* (the FOIP Act) applies to any submissions made to the Superintendent of Pensions (the Superintendent) in response to this consultation (the Consultation). As such, the information, including personal information, you provide to the Consultation is being collected for purposes of determining potential future changes to legislation, and will be used or/and disclosed for that purpose and in accordance with the provisions of the FOIP Act and applicable provisions of the Act.

PLEASE FURTHER NOTE: All submissions received from organizations in response to this Consultation will be considered public information and may be disclosed to any person or/and published on the website of the FCAA. The Superintendent will consider an individual showing an affiliation with an organization to have given their response on behalf of that organization. Responses from individuals who do not show an affiliation with an organization will not be considered public information. The Superintendent may also publish responses received from individuals. However, your personal information (such as name, email address, mailing address) will not be disclosed unless there is an exemption under the FOIP Act that allows for its disclosure. The Superintendent may use your provided contact information to follow up with you to clarify your responses.

If you have any questions about the above, please contact the Pensions Division of the FCAA at 306-787-7650 or pensions@gov.sk.ca.