



SECTION:	Transfer Values
INDEX NO.:	T800-401
TITLE:	Recalculation of Transfer Values - PBA ss. 42(1) and 73(2) - Regulation 909 ss. 19(1), 20(1), 24(11.1), 24(12) and 29(2)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	C125-500, T800-400

This policy replaces C125-500 and T800-400 as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

QUESTION

Since January 1, 1988, the *Pension Benefits Act* (the "PBA") has provided mandatory portability rights for individual pension plan members on termination of employment (now s. 42) and wind-up of a pension plan (now s. 73). In both circumstances, members are entitled to transfer the commuted value of their deferred pension to another pension fund, if the administrator of that plan agrees to accept the transfer, transfer the commuted value into a prescribed retirement savings arrangement or use the commuted value to purchase a life annuity.

When calculating a commuted value to be transferred on member termination as provided in subsection 42(1) of the PBA, subsection 19(1) of Regulation 909 (the "Regulation") requires that the commuted value shall not be less than the value determined in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans (the "Recommendations") issued by the Canadian Institute of Actuaries and effective on September 1, 1993.

When a person elects to exercise his or her entitlement under subsection 73(2) of the PBA on plan wind-up, subsection 29(2) of the Regulation provides that the commuted value of the pension benefit shall not be less than the value determined in accordance with the Recommendations. Subsection 29(2) of the Regulation became effective on March 3, 2000.

In both situations, some period of time may elapse between the date of computation and the date of transfer. Section 4 of the Recommendations suggests that an actuary should establish the period for which the transfer value applies before recomputation is required. When some period of time has elapsed between the date of computation and the date of transfer, should transfer values calculated under subsections 19(1) and 29(2) of the Regulation be recomputed?

ANSWER

Before addressing this question, a distinction must be made between commuted values calculated for two separate purposes:

- § when a calculation is made with respect to a mandatory portability right that becomes effective on an individual's termination date or the date of plan wind-up; and
- § when a calculation is made with respect to any other portability right provided for under a pension plan which becomes effective after an individual's termination date.

It is FSCO's view that section 4 of the Recommendations does not apply to commuted values calculated in the first instance, when a member has a mandatory right to make a portability election within a prescribed period and has made the election within this period.

Prescribed Election Periods

Section 42 of the PBA stipulates that terminated members (individual members who terminate employment or cease to be members of the pension plan) who are not eligible to receive an immediate pension at date of termination have the right to elect a portability option. Subsection 73(2) of the PBA requires that a person entitled to a pension benefit on the wind-up of a pension plan, other than a person receiving a pension, is also entitled to a portability option. These rights, however, are time-limited.

The required time period for making a transfer election under section 42 of the PBA is prescribed under subsection 20(1) of the Regulation. In accordance with clause 41(1)(p) of the Regulation, the election period must be identified in the termination statement provided to the member. If an individual does not make an election within the prescribed period, the right to require the administrator to transfer the commuted value is extinguished (subsection 42(4) of the PBA). In this case, the default option is a deferred pension payable from the pension plan.

Of course, in circumstances where an administrator fails to provide a written statement within the period prescribed under subsection 41(2) of the Regulation, a terminated member's election period cannot be shortened as a consequence of late notice. Accordingly, the appropriate election period would commence at the date the statement is provided.

The required time period for making a transfer election under section 73(2) is prescribed in subsection 28(3) of the Regulation. In accordance with clause 28(2)(o) of the Regulation, the election period must be identified in the notice statement provided to the member. If an individual does not make an election within the prescribed period, the right to require the administrator to transfer the commuted value is extinguished (subsection 72(2) of the PBA). In this case, the default option is a pension payable from the pension plan.

Computation Dates

Subsections 19(1) and 29(2) of the Regulation specify the method of determining a commuted value for the purposes of section 42 and subsection 73(2) of the PBA. The commuted value of the pension benefit may not be less than the value determined in accordance with the Recommendations issued by the Canadian Institute of Actuaries and effective September 1, 1993.

According to Section 2(C) of the Recommendations, the transfer value should be computed as of the date the beneficiary becomes entitled to a deferred pension. For a transfer under subsection 42(1) of the PBA, this entitlement occurs on the date of termination. Where a person exercises his or her entitlement under subsection 73(2) of the PBA, subsection 29(2) of the Regulation requires the commuted value to be determined as of the date of the wind-up.

When a pension plan provides portability entitlements for terminating members who are entitled to an immediate pension, the computation date will be the date of termination. When a plan provides or is amended to provide portability entitlements for deferred vested members who previously either had no statutory or plan rights or did not make a transfer election within the prescribed period, the computation date will be the date the transfer value is determined in accordance with the plan provisions.

Interest Accrual

Transfer values calculated under subsections 19(1) and 29(2) of the Regulation, where a member has a mandatory right to make a portability election within a prescribed period, should not be recomputed when the transfer occurs after the computation date. These values, however, may be subject to interest adjustment as prescribed in subsections 24(11.1) and 24(12) of the Regulation.

When a commuted value is calculated for the purposes of section 42 of the PBA and time has elapsed between the date of termination and the date of payment, subsection 24(11.1) of the Regulation requires that interest at the rate used to calculate the commuted value at the date of termination be credited from the date of termination to the beginning of the month in which the payment is made.

When a plan administrator fails to provide a written termination statement within the prescribed period, no downward adjustment of the commuted value plus interest is permitted. At the date the transfer is made from the pension plan, the amount transferred with respect to an individual should not be less than the commuted value computed as at the individual's date of termination, plus interest credited at the rate and over the period indicated above.

In accordance with subsection 24(12) of the Regulation, if an individual makes an election under subsection 73(2) of the PBA to transfer a pension benefit, the commuted value of the pension benefit shall accumulate interest at the same rate used to calculate the commuted value of the pension benefit in the wind-up report. This interest shall accumulate from the effective date of the wind-up to the beginning of the month in which the payment is made.