FTR Now

Prior Approval for Commuted Value Transfers Now Required

Date: July 27, 2009

Due to recent changes to the Regulations under the Ontario *Pension Benefits Act*, administrators of underfunded defined benefit pension plans registered in Ontario must in certain situations obtain the approval of the Superintendent of Financial Services of Ontario (the "Superintendent") before transferring **any** part of the commuted value of a terminated member's deferred pension or making an annuity purchase. The changes to the Regulations came into effect on June 19, 2009.

OLD RULES

When a member terminates employment, the member may elect to transfer the commuted value of his or her deferred pension to another pension plan, a prescribed retirement savings arrangement or to purchase an annuity. The plan administrator must comply with this election within a certain timeframe. Until these amendments, if a plan had a transfer ratio (a measure of assets to liabilities) of less than 1.0, the plan administrator could transfer only the portion of the commuted value equal to the plan's transfer ratio, with the remainder payable within five years. However, there were exceptions to this rule which allowed 100% of the commuted value to be transferred if:

- the amount of the transfer deficiency was paid into the pension fund in a lump sum prior to the payment of the commuted value, or,
- the total of all transfer deficiencies for transfers since the valuation date of the most recently filed valuation report was less than 5% of the assets of the plan at that time.

In many cases, plan administrators were able to routinely use these exceptions to avoid a partial commuted value payment to the terminating member. The purchase by a plan administrator of an annuity to pay a pension fell under similar rules.

THE AMENDMENTS

The amended Regulations require an administrator to seek the Superintendent's approval before transferring any part of the commuted value when:

- the transfer ratio set out in the most recently filed valuation report is equal to or greater than 1.0 and the administrator knows, or ought to know, that the transfer ratio has dropped to a value less than 0.9; or
- the transfer ratio set out in the most recently filed valuation report is less than 1.0 and the administrator knows, or ought to know, that the transfer ratio has dropped by 10% or more.

The economic events of the last year or so have negatively affected the funded status of many plans. Even if a valuation has not been completed recently, many plan administrators will find that these new rules prompt an examination of how their plan's transfer ratio has changed since the last filed valuation before making any further commuted value transfers or annuity purchases.

- If no terminations or annuity purchases are expected in the near future, it may not be necessary to undertake the review and application process immediately. However, plans where terminations occur regularly or plans expecting a large number of terminations (for example, where the employer is downsizing) will need to complete the review and make the request for approval sooner rather than later, to avoid delays in completing pending transfers.

APPLICATION PROCESS

The Financial Services Commission of Ontario ("FSCO") recently published Policy T800-402, effective July 7, 2009 (the "Policy") to discuss the review and application process. According to the Policy, the request must include an actuarial certification which contains the updated transfer ratio. Administrators must also include a completed prescribed "Request for Approval" form that is signed by the plan's actuary. On the form, the administrator must indicate whether top-up payments will be made, whether the administrator will track the transfer deficiencies to ensure they stay within the 5% limit, or whether only partial commuted value transfers will be made. The administrator may also make other proposals to FSCO for its consideration, although approval of unique proposals may take longer.

The Superintendent may approve the transfer of either full or only partial commuted values, and may impose terms and conditions he considers appropriate in the circumstances. The Superintendent's approval will remain in effect until a new valuation with a determination date later than the date used in the request for approval is filed, or until a new request for approval is made.

FREQUENCY OF REVIEW

The amended Regulations do not specify how often the transfer ratio must be reviewed. However, the Policy states that it would be appropriate for the administrator of a pension plan to review the plan's transfer ratio on a "regular basis" and that the administrator should review the transfer ratio **whenever** a commuted value transfer or annuity purchase is to be made, unless a review has been done in the past three months.

The implication of the Policy is that a review of the transfer ratio (and possibly, additional requests for approval) may be needed as often as quarterly, depending on how frequently transfers must be made and the health of the fund. Administrators and pension committees will need to establish protocols to ensure that the review requirement is satisfied.

The Policy also clarifies which transfer ratio must be used for plans currently undergoing valuations as at determination dates late in 2008 or early 2009, which will not be filed until later in 2009. Once an updated transfer ratio is determined as of a more current date than the date of the new valuation, that updated ratio is substituted for the ratio in the later filed valuation report, even if the ratio in the report is higher.

If you have any questions as to the application of the amended Regulations and how you might be affected, please contact any member of the Hicks Morley Pension & Benefits Group.
