

FYI[®]

For Your Information[®]

COVID-19: FSRA Updates Include Option to Freeze DC Contributions

This *FYI* discusses the latest guidance from Ontario's Financial Services Regulatory Authority in response to COVID-19, which includes the ability of defined contribution plan sponsors to temporarily suspend plan contributions.

Volume 02

Issue 07

April 30, 2020

Authors

Karen DeBortoli, BA, LLB
Tom Mudrinic, FCIA, FSA

FSRA Guidance

On April 24, 2020, the Financial Services Regulatory Authority of Ontario (FSRA) released [Information PE200INE](#) (Guidance) on new measures taken by the regulatory in response to COVID-19. The Guidance provides FSRA's responses to questions received from pension stakeholders on the impact of the pandemic on pension plan administration and funding. A number of new Q&As have been added, addressing topics such as:

- Valuation reports and filings for defined benefit (DB) pension plans;
- The ability to temporarily suspend contributions to defined contribution (DC) pension plans;
- Managing requirements for signatures and certified copies;
- Regulatory considerations, including proceedings and filings; and
- Member concerns.

DB valuation reports and filings

Many DB plan sponsors are considering filing an off-cycle valuation report with an effective date of December 31, 2019, to mitigate the impact of COVID-19 on their plan's funding and filing requirements. FSRA does not normally provide filing extensions for such reports. However, in light of the difficulties that plan sponsors may have obtaining data in the current environment, the regulator will consider such extensions for off-cycle valuation reports with an original due date in 2020. In order to obtain an extension, the administrator must notify FSRA of their intention to file an off-cycle valuation report and to request the extension at least two weeks in advance of the filing deadline. The normal filing extension (i.e., up to 60

days) will be available. Requests for longer extensions, with an explanation, must be made by email to the plan's designated Pension Officer, and will be considered on a case-by-case basis.

FSRA has confirmed that it considers the COVID-19 market shock to be a "subsequent event" under actuarial standards, as current events impact the outlook for a DB plan's funded status for a significant period following this event. As a result, actuaries should use professional judgement to establish the best estimate assumptions for a plan valuation in accordance with the Standards of Practice of the Canadian Institute of Actuaries (CIA Standards).

FSRA notes that the CIA Standards require disclosure of subsequent events, as well as new disclosures based on plausible adverse scenarios (PAS). The regulator believes that the PAS selected should reflect plan-specific risks and be developed recognizing all known events – including the COVID-19 market shock and its potential financial impact on the pension plan. Items FSRA believes should be part of a plan's valuation report based on any identified PAS include:

- Impact on funded status, including going concern, solvency, and wind up bases as well as the solvency and transfer ratios;
- Impact on required plan contributions for normal cost, going-concern, and solvency special payments; and
- Considerations on the sustainability of the pension plan in relation to the financial capacity of the employer, reflecting information provided by the employer.

The PAS requirements are new disclosures in valuation reports under the CIA Standards and the related expectations of FSRA or any other regulators is something that requires further review and understanding by actuaries. At the same time, actuaries are required to follow their Standards of Practice and need to work with employers to help them understand the new disclosure requirements under the new PAS Standard.

DC contribution suspension

In response to inquiries regarding whether it is possible for a DC plan to reduce or suspend employer and member contributions in response to the COVID-19 crisis, FSRA notes that employers and plan members are required to make contributions in accordance with the *Pension Benefits Act* (PBA) and the plan text. However, it is possible to change employer- or member-required contributions on a go-forward basis as the result of a plan amendment. FSRA notes that any such amendment requires careful consideration of factors, "including the plan-specific amending provision and any collective agreements that govern the plan, as well as potential employment law implications and member notice requirements."

While subsection 69(1) of the PBA provides that FSRA's CEO may order a plan wound up where there has been a cessation or suspension of employer contributions, FSRA has indicated that it will exercise this power solely because a DC plan has been amended to temporarily reduce or suspend contributions for a portion of the 2020 calendar year in response to COVID-19. To the extent that member contributions are

optional, members can choose to reduce or eliminate those optional contributions in accordance with plan rules, which will reduce any matching employer contributions. Plan sponsors will need to determine if contributions must continue when an employee is on a form of leave or layoff where there are either no or reduced earnings being paid. Despite the foregoing, FSRA may still intervene in a plan if circumstances require.

Pursuant to paragraph 8506(2)(a) of the Income Tax Regulations (ITR), employers in a DC-only plan must contribute at least 1% of total remuneration of active members to the plan. FSRA's note about the suspension of employer contributions is therefore inconsistent with the ITR. However, the Registered Plans Directorate (RPD) has confirmed that the Canada Revenue Agency (CRA) will be removing the 1% minimum contribution requirement for the remainder of 2020. While it is not currently known when this regulatory change will be made, RPD/CRA will not consider a DC plan to be revocable solely due to the temporary suspension of employer contributions pursuant to a validly filed plan amendment as discussed above. Employers wishing to make such an amendment should be sure to have it reviewed by their legal counsel and advisors.

Witnessing and certification issues

In light of social distancing, plan members and holders of locked-in accounts are finding it difficult to obtain a witness signature on family law, unlocking, and other forms. In such situations, FSRA will not object to institutions and administrators proceeding without a witness for these forms while businesses are operating under COVID-19 pandemic conditions, as long as there is no evidence on record that the person(s) signing the forms does not understand what they are signing. However, the regulator cannot comment on how a court or tribunal may rule in response to an individual's claim that this process did not adequately protect their rights. Plan administrators may consider using supplementary processes, including virtual/electronic witnessing, where they cannot obtain a "wet" signature.

FSRA has indicated that certified copies of materials that must be filed with the regulator can be submitted electronically, either through the FSRA portal or via email to the plan's Pension Officer. Any document submitted electronically must be accompanied by an indication that the document being submitted electronically is a true and complete copy of the original document. This means that the person submitting the document must have a copy of the original document or be otherwise able to certify that it is a true and complete copy of the original.

Regulatory considerations: proceedings, filings, etc.

In addition to impacting matters currently before the courts or the Financial Services Tribunal, FSRA notes that Ontario's current state of emergency also impacts matters subject to a Notice of Intended Decision (NOID). As a result, the regulator will generally not be issuing or proceeding with NOIDs, unless it is of the opinion that the benefit of issuing a NOID outweighs any potential prejudice to the parties involved. While the current emergency does not suspend FSRA's regulatory timelines to provide approval or consent to matters not requiring a NOID or court order, administrators can contact their Pension Officer if they feel

they could be prejudiced if the regulator proceeds with any such consent/approval in light of present circumstances.

Despite the state of emergency, all pending transactions are still being reviewed, although there may be some delays. However, any transaction requiring a NOID will generally be on hold, subject to the considerations outlined above.

While COVID-19 disruptions may also impact the filing of assessment certificates and payments for the Pension Benefits Guarantee Fund (PBGF), FSRA does not have authority to permit the non-payment or delay of a PBGF assessment or to waive interest or penalties related to a late payment. However, upon application, FSRA will use its discretion under the PBA to extend the time limit for filing a PBGF assessment certificate for 60 days or, if satisfied that extraordinary grounds exist and that no person will be prejudiced, for additional time. Plans seeking such an extension must contact their Pension Officer.

Member concerns

The Guidance provides members with information on unlocking funds from pension plans, LIFs and LIRAs in response to COVID-19.

- *Pension plans*: Unlocking is only available for shortened life expectancy or, if the plan permits, for small amounts and/or if the account holder is a non-resident of Canada. Deferred members whose benefits remain in the plan may have the option of transferring their funds to a LIF or LIRA, which have their own unlocking options, as described below.
- *LIF/LIRA*: Funds in these accounts can be unlocked due to financial hardship or shortened life expectancy. Funds may be able to be unlocked if they meet the small benefit or non-residency rule.. Finally, a LIF account holder can apply to unlock up to 50% of the funds transferred to a LIF within 60 days of the transfer.

In response to account holder concerns about the impact of COVID-19 on investments in a LIF or LIRA, FSRA notes that individuals can change the investments held within their accounts (if permitted), in accordance with the contract they have entered into with their financial institution.

Implications

For employers with DB plans, FSRA is updating some of their expectations when filing new actuarial valuation reports at the start of the year in advance of the COVID-19 market shock. Some of these expectations are new and will require that plan actuaries carefully consider how to meet regulatory expectations while satisfying the CIA Standards. Fundamentally, these off-cycle valuation measures are not new and do not introduce any new funding relief measures for DB plan sponsors. An off-cycle valuation has the potential to reduce employer contribution requirements in the near term; the hope is that current market losses will be offset by a future market recovery and economic improvement when the next actuarial valuation is required.

For employers with DC plans, FSRA's announcement, combined with promised changes to the ITR, will allow the temporary suspension of employer contributions to such plans for the remainder of 2020. Employers who implement such a suspension will realize temporary cash savings. For employees, the implementation of this measure will temporarily pause the growth of their DC account balances, which have already been negatively impacted by the market shock. Ontario DC plan sponsors will need to carefully consider the impacts of this measure before proceeding with a plan amendment.

Additional changes to FSRA policy or underlying legislation are possible as the COVID-19 situation evolves. On April 28, 2020, the Ontario government launched a [website](#) allowing businesses to request a temporary rule or regulation change to let them better respond to COVID-19.

For more information on this announcement and its impact on your organization, talk to your Buck consultant or contact the Knowledge Resource Centre at talktocanada@buck.com or +1 866 355 6647. For the latest from Buck about the COVID-19 crisis, please refer to: <https://buck.com/ca/expertise/hot-topics/covid-19-key-considerations-for-employers/>.

Produced by the Knowledge Resource Centre

The Knowledge Resource Centre is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*® publications in their entirety.

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.