BULLETIN NUMBER:	**PENS-10-004**
TITLE:	**Restrictions to Commuted Value Transfers**
LEGISLATION:	***Pension Benefits Standards Act***
DATE:	**August 2010**

Purpose

The purpose of this bulletin is to advise pension plan administrators of the Superintendent of Pensions' (the "Superintendent") position on whether or not restricting commuted value transfers below the solvency ratio established at the most recent actuarial valuation of a defined benefit pension plan ("DB plan") is permitted.

Background

The Superintendent has received a number of requests from plan administrators to restrict commuted value transfers based on current estimates of their plan's solvency ratio.

Such an action on the part of the plan administrator is consistent with the requirements of section 8(5) of the *Pension Benefits Standards Act* (the "Act"), and consent to such measures has been granted based on the written advice of an actuary on the estimated solvency position of a DB plan.

Relevant Sections of the Legislation

Section 8(5) of the Act:

> *In the administration of a pension plan, the administrator must*
>
> > *(a) act honestly, in good faith and in the best interests of the members and former members and any other persons to whom a fiduciary duty is owed, and*
> >
> > *(b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.*

Superintendent of Pensions

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Section 60(3) and (4) of the Act:

> *(3) Despite subsection (1), an administrator must not, without the consent of or without being directed to do so by the superintendent,*
>
> > *(a) transfer money out of the plan under section 33, 34 (5) or 58 (4), or*
> >
> > *(b) transfer money to provide a benefit through an insurance company or other prescribed savings institution if the transfer would impair the solvency of the plan.*
>
> *(4) The superintendent may, in writing, consent to or direct a transfer referred to in subsection (3) on terms and conditions the superintendent considers appropriate in the circumstances.*

Section 25 of the Pension Benefits Standards Regulation

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_433_93#section25

Discussion

Section 25 of the Pension Benefits Standards Regulation sets out the rules for making transfers out of a plan; however, a situation may arise where the plan administrator is aware of a deterioration in the plan's solvency since the last actuarial valuation report.

It is incumbent on the plan administrator to assess whether continuing to transfer commuted values at the established solvency ratio would further impair the solvency of the plan.

Section 60(3) of the Act requires that an administrator **not** transfer money out of a plan where such a transfer would impair the solvency of the plan, unless the consent of the Superintendent is obtained.

Pursuant to section 60(4) of the Act, the Superintendent has consented to reduced commuted value transfers based on an actuary's estimate of a plan's deteriorated solvency ratio and subject to terms and conditions attached to such consent by the Superintendent which have included:

General Terms and Conditions attached to restricted commuted value transfers

(i) An actuary must attest in writing to the deterioration to the DB plan's solvency ratio.

(ii) The plan administrator must ensure that if a new actuarial valuation reveals a higher solvency ratio, then all transfers paid at the lower solvency level would immediately be topped up to the new solvency ratio.

(iii) The plan administrator must ensure that all transfer deficiencies resulting from the restricted payments will be fully paid within five years of the date of the initial payment as required by the statute.

If you have any questions concerning this bulletin, please talk to your plan's pension consultant or actuary.