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Financial Institutions Commission

*INFORMATION*
**BULLETIN**

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| **BULLETIN NUMBER:** | **PEN - 11- 002** |
| **TITLE:** | **Updated Guidelines for Requests for Solvency Extensions for Defined Benefit Pension Plans** |
| **LEGISLATION:** | ***Pension Benefits Standards Act*** |
| **DATE:** | **August 2011** |

## Overview

Section 6 of the *Pension Benefits Standards Act* (the "Act") permits the Superintendent of Pensions (the "Superintendent") to extend the time period required for solvency payments given "extenuating reasons." At a fundamental level, the Act balances the interests of pension plan sponsors and pension plan members and, consequently, the legislative test of extenuating reasons is particularly challenging in the context of a solvency extension because it decreases the funding security for plan members.

This bulletin provides guidance to plan administrators who may be considering making solvency extension requests for their defined benefit pension plan. A written request that addresses the following topics is required of all applications for solvency extensions:

1. **Is the request for a solvency deficiency payment extension demonstrably in the best interests of plan members?**

   The plan administrator must consider and be in a position to demonstrate whether the extension leads to the continuation of the plan, and improvements in its financial position. Other considerations, discussed in more detail below, include whether the administrator has pursued all other options available under the Act, such as obtaining a letter of credit or applying for a solvency moratorium (for multi-employer, negotiated cost plans), and to what extent the solvency liability relates to active plan members, or to deferred members and pensioners. A further issue is the strength of the plan's going concern funding position. The combination of both a substantial solvency deficiency and going concern deficiency is a greater concern to the Superintendent than a plan with just a solvency deficiency.

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2. **Is the solvency deficiency the result of factors that were largely beyond the control of the plan administrator?**

   The administrator should detail how the solvency deficiency arose. For example, did it arise primarily as a result of extraordinary equities market volatility or low interest rates, or are there other factors, such as a history of significant benefit increases.

3. **Has the actuarial valuation report that the application is based on employed reasonable assumptions?**

   The application should address the reasonableness and prudence of the actuarial assumptions used. In particular, aggressive assumptions or changes in actuarial methods may be a concern for the Superintendent. If solvency asset values are smoothed, the actuary should also provide information on the solvency position of the Plan if non-smoothed asset values had been used.

4. **Does the pension plan have a realistic funding policy?**

   The application should describe the sponsor's financial strategy for funding the plan, and clearly demonstrate that it is realistic.

5. **Would the special payments normally required to eliminate the solvency deficiency result in severe financial hardship for the plan sponsor, which can only be resolved through the solvency extension?**

   The administrator should explain what efforts have been made to finance the required solvency payments, and the results. For example, the administrator should disclose whether the employer is unable to secure other financing, and whether dividends or other distributions by the sponsor have been reviewed.

6. **Has the plan sponsor provided strong assurance of its ongoing financial viability for the period of the solvency extension?**

   The application should include an overview of the particular industry, and the business prospects of the applicant over a period that is at least as long as the period of the solvency extension requested.

7. **Does the plan administrator have a good record with respect to plan administration and regulatory filings?**

8. **Have all required contributions and special payments to the plan's fundholder been remitted within the regulatory deadlines?**

9. **Has the plan administrator reviewed the form and design of its plan to ensure that the benefits are affordable?**

As described above, the administrator should address whether or not the plan's costs are manageable. Is the current service cost of the plan manageable? Has the sponsor reviewed, for example, ancillary benefits or early retirement enhancements?

The Superintendent likely will not approve applications for an extension which results in a solvency amortization period longer than the 15 year period required for amortizing going concern unfunded liabilities.

## Application Requirements

The Superintendent requires the following as part of an application from a plan administrator for an extension to the amortization period for a solvency deficiency:

1. A current actuarial valuation report, prepared in accordance with accepted actuarial practices and acceptable to the Superintendent. In order to be acceptable to the Superintendent, the actuary must disclose the source of and amounts of margins of conservatism used in the preparation of the report.

   The report must show the plan's going concern and solvency status and list the solvency payments required under the five-year amortization period. The report must also include a schedule of payments certified by the actuary as being sufficient to fully amortize the solvency deficiency over the extended period.

2. If the plan has a funding policy, please submit a copy of it.

3. A letter from the plan administrator identifying the extenuating reasons that the plan cannot make the required solvency deficiency payments, and the period of extension to the five year amortization period that the plan is requesting.

4. A commitment from the plan administrator not to increase plan benefits during the solvency deficiency period without the written approval of the Superintendent.

5. Copies of the plan sponsor's financial statements for the last three years of operations.

6. A letter from the plan sponsor providing information on the financial prospects for the plan sponsor over the period of the solvency amortization extension.

7. A confirmation from the plan actuary, plan auditor or fundholder that all required contributions were remitted within the applicable statutory deadlines.

It is strongly recommended that plan administrators discuss their application for an extension with the Superintendent's staff before submitting it.

If a plan is granted an extension, the administrator will be required to disclose details of the extension to all plan members, and provide a confirmation to the Superintendent that this disclosure has been made.