Regulatory Statement

BCFSA
BC FINANCIAL SERVICES AUTHORITY

TITLE:	**Transfer of Commuted Values by Members**
LEGISLATION:	***Pension Benefits Standards Act* and Regulation**
DATE:	**March 30, 2021**
DISTRIBUTION:	**Pension Plan Administrators, Plan Sponsors, Service Providers and Members**

PURPOSE

This Regulatory Statement establishes the Superintendent of Pensions' (the "Superintendent") position on the application of the transfer of commuted values provision under the *Pension Benefits Standards Act* (the "PBSA") and Pension Benefits Standards Regulation ("PBSR") for pension plans with a Defined Benefit ("DB") component.

This document replaces and supersedes information bulletins PENS-09-005 and PENS-10-004.

BACKGROUND INFORMATION

B.C.'s pension legislation defines commuted value, under a plan with DB provision, as the actuarial present value of benefits, which must be determined in accordance with the Standards of Practice issued by the Canadian Institute of Actuaries.

The commuted value represents the amount that may be provided to a member under a plan with DB provision in the following situations:

1. Termination of active membership prior to the member reaching his or her pension commencement date, subject to restrictions on transfers imposed by the plan if the member terminates within 10 years prior to pension commencement.
2. Termination of the plan which can include retired members if the prescribed conditions in Section 105(b) of the PBSA and section 134 of the PSBR are satisfied.
3. Death of the member before reaching his or her pension commencement date.
4. Marriage breakdown which requires the division and transfer of benefit entitlements subject to court orders or agreements and Part 5 or 6 of the *Family Relations Act* or Part 5 or 6 of the *Family Law Act*.

5. Commutation for shortened life expectancy.
6. Commutation for permanent departure from Canada.

The Questions and Answers (“Q&As”) below relate to the following topics:

- **Locking-in and Exceptions to the Locking-in of Commuted Value of Pension Benefits**
- **Amount of Commuted Value Transfer**
- **Restricted Transfer Based on Solvency Ratio**
- **Restrictions on Transfer of Assets**

All section references are to the PBSA and PBSR of B.C. unless otherwise indicated.

REGULATORY REQUIREMENTS

Locking-in and Exceptions to the Locking-in Commuted Value of Pension Benefits

Q1: How can a member unlock the commuted value of his or her pension benefit from a plan with DB provision?

A1: Pension funds are locked-in to ensure they will be available to provide a source of income when a person retires (Section 68 of the PBSA). However, the legislation provides exceptions under which locked-in funds can be unlocked by the member under a plan with DB provision (Section 69 of the PBSA):

- Small Benefits
- Permanent departure from Canada
- Commutation for shortened life expectancy

Please refer to our Frequently Asked Questions documentation for additional information.

Amount of Commuted Value Transfer

Q2: What adjustment to the commuted value is required between the date of calculation and the date of payment?

A2: A commuted value must be adjusted with interest from the date of calculation to the end of the month immediately preceding the date of payment. The interest applied must be the rate of interest that was used in determining the commuted value of the benefit at the date of calculation (Section 69(3) of the PBSR).

If, however, more than 180 days have passed between the date of calculation and the date of payment, the commuted value must be recalculated. The recalculation date cannot be more than 30 days prior to the transfer or payment date (Section 9(5) of the PBSR).

Restricted Transfer Based on Solvency Ratio

Q3: **Can the administrator restrict transfer of commuted values when the solvency ratio of the plan is one or greater as at the last filed valuation date?**

A3: Yes. Generally, where the solvency ratio of a plan is one or greater, the transfer of a commuted value of benefits from the plan will not be deemed to impair the solvency of the plan.

However, the administrator may restrict the transfer of the commuted value of benefits from the fund, even where the plan has a solvency ratio of one or greater based on the last filed valuation report, if the Superintendent agrees that the transfer would materially impair the solvency of the plan (Section 72(3) the PBSA). Please see Q6 for additional information on Superintendent's expectation.

Q4: **Section 80 of the PBSR provides restriction to the transfer of commuted values based on solvency ratio. Does this provision apply to all commuted value transfers under a plan with DB provision?**

A4: No. Not all commuted value transfers are subject to restrictions based on solvency ratio.

Section 80 of the PBSR requires that, if, at the date of payment, the plan has a solvency ratio of less than one, the plan administrator may initially transfer to the member only the funded portion of the benefit (calculated as the product of commuted value and the solvency ratio). The balance which remains unpaid, and related to the member's benefit entitlement, must continue to be held as a liability under the plan. This transfer deficiency must be transferred, with interest, within no more than five years of the initial transfer.

There are permitted exceptions to the restrictions on the transfer of the commuted value even if solvency ratio is less than one:

- Full commuted value must be transferred outside of the plan if the participating employer fully funds the amount of the transfer deficiency related to the member's benefit (Section 80(3)(a)(ii) of the PBSR).
- Full commuted value of small benefits, regardless of whom the benefit is payable to, must be transferred outside of the plan or paid to members if that total does not exceed 20 per cent of the year's maximum pensionable earnings for the calendar year (Section 69(1) of the PBSA).
- Pre-retirement death benefit payable to the spouse is subject to the "Restricted Transfer based on Solvency Ratio" provision under Section 80 of the PBSR. However, such amount, if payable to a beneficiary (who is not the spouse) or estate must be paid in full (Section 79(1)(b) and (c) of the PBSA). This will avoid administrator's burden to track the record of the beneficiary or estate over the five-year period.
- Full commuted value must be transferred outside of the plan fund for a plan with a prescribed letter of credit (Section 63(17) of the PBSR). See Q5 for additional information.

Q5: Can a plan with a letter of credit restrict commuted value transfers if the solvency ratio is less than one?

A5: No. The full commuted value must be transferred when a person becomes entitled to that lump sum. The participating employer must:

a) Make a lump-sum payment to the plan, in an amount equal to the transfer deficiency, before the administrator may make a transfer, or
b) Include an amount equal to the transfer deficiency in the participating employer's next remittance of contributions. (Section 63(17) of PBSR)

Restrictions on Transfer of Assets

Q6: Can the plan administrator restrict the transfer of the commuted value of a member to a solvency ratio lower than that provided in the last filed valuation?

A6: Yes. An administrator of a pension plan must not, without the consent of, or without being directed to do so by the Superintendent, transfer assets out of the pension fund, if such transfer would impair the solvency of the plan (Section 72(3) of the PBSA).

It is the administrator's responsibility to determine whether a transfer would impair the solvency of the plan and restrict lump-sum transfers, where appropriate. If the administrator intends to i) suspend a commuted value payment, or ii) transfer a lump- sum out of a DB plan based on a lower solvency ratio of the plan, BCFSA expects that the plan will notify the Superintendent of that decision in writing, and include an actuarial cost certification from the plan's actuary attesting to the deterioration in the DB plan's solvency position. A description of the administrator's proposal for suspension of payment of commuted values during the interim period would also be required.

Please note that the Superintendent may impose terms and conditions on any such transfers (Section 72(4) of PBSA).

ADDITIONAL INFORMATION

If you have any questions, please contact the BCFSA at pensions@bcfsa.ca or by phone at 604-660-3555.