



OPSEU Pension Trust

Fiducie du régime de
retraite du SEFPO

April 15, 2011

Pension Policy Branch
Ministry of Finance
5th Floor, Frost Bldg S.
7 Queen's Park Crescent
Toronto ON M7A 1Y7

**Re: Draft Regulations Regarding Pension Asset Division on Marriage
Breakdown, Proposal No. 11-MOF009**

The OPSEU Pension Trust (OPTrust) is pleased that the Ministry of Finance has requested comments on the draft regulations regarding pension asset division on marriage breakdown.

The OPSEU Pension Plan (the Plan) is a contributory defined-benefit pension plan with approximately 82,000 members and pensioners and over \$13 billion in assets. It is a jointly sponsored pension plan sponsored by the Ontario Public Service Employees' Union and the Government of Ontario. Being a large public sector pension plan, we are acutely aware that the treatment of pensions following marriage breakdown is an important matter. We will address the specific sections of the draft regulations where OPTrust has comments.

Significant Improvements in the Draft Regulations

We particularly support the use of prescribed formulas for the calculations as this will create a "level playing field" for the division of pension assets in Ontario pension plans. We like the fact that pension plan administrators have been given the option to provide separate, non-linked pensions to eligible spouses in both pre- and post-retirement divisions. We also like the provision that permits a spouse in a post-retirement pension division case to waive the entitlement to a joint and survivor benefit, which currently is not possible.

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The new regime will alleviate the current administrative disparities surrounding pension asset division and OPTrust looks forward to its implementation. However, it will require a major effort on the part of defined benefit pension plan administrators to update their systems and processes. Since pension plan administrators will require time to design, develop, test and implement new computer systems as well as new business processes, we would suggest that lead time be provided before compliance with the new regime is required.

Major areas of concern

The wording of subsections 2(3) and 3(2) appear to require that a preliminary valuation must be performed using the methods and actuarial assumptions that are consistent with section 3500 of the *Canadian Institute of Actuaries Standards of Practice*, first effective on February 1, 2005, even if the family law valuation date is prior to that effective date. If this is not the case, please clarify this requirement.

Subsection 20(5) requires the Statement of Imputed Value to provide information about the amount of any lump sum payable to the former member or retired member under subsection 39(4) of the *Pension Benefits Act* (PBA) as of the family law valuation date. We are unclear if this refers to lump sums already paid, lump sums that would be payable if termination had occurred on the family law valuation date, or both. Clarification of this requirement would be helpful.

Subsection 24(2) appears to permit an administrator to transfer a former member's benefits out of the pension plan during the period between the issuance of a Statement of Imputed Value and the receipt of an Application for Transfer. This could create additional complexity and expense for an eligible spouse who applies for a transfer, only to discover that the funds are no longer available from a pension plan, leading to possible legal action by the eligible spouse against the administrator. We would respectfully suggest that, if at any time within the one year period following the issuance of the latest Statement of Imputed Value the former member wishes to transfer his or her benefits out of the pension plan, the new regulations should require the following before the requested transfer is processed:

- i.) that the former member provide proof that all family law issues relating to the pension benefit have been resolved; and
- ii.) that the former member indemnify the pension plan administrator against any claims from either party.

Personal privacy protection

Subsection 18(2) requires the Application for Statement of Imputed Value to show the contact information, as well as proofs of the dates of birth, for both the applicant and the spouse. We would respectfully point out that this requirement may prove problematic in contentious family law cases where the spouses are not in contact with one another (e.g., where a restraining order is in effect). This would be addressed by permitting the spouses' lawyers or other representatives to make the application on their behalves and to be the contacts in such cases.

Other suggestions

Subsection 20(8) requires the Statement of Imputed Value to contain a certificate of the administrator that the information is accurate. It is our understanding that the intent of the new rules is to ensure that similar Statements should be provided by all Ontario-registered pension plans. We therefore think that the wording of the certificate should be prescribed.

We note that the new forms required by these regulations must be approved by the Superintendent of Financial Institutions. In order that all pension plan administrators in Ontario will not need to seek approval of their individual forms, we would respectfully suggest that, as above, prescribed wording should be included in the final regulations.

Subsection 29(2) provides that the calculations to adjust a member's post-division pension benefits under this section will be done "as of the date on which the member terminates employment or membership, except where otherwise indicated." There does not appear to have been any consideration to the problem of providing members with accurate and meaningful annual pension statements, as required by section 40 of Regulation 909 during the period between the transfer of a lump sum and the date of termination of employment or membership. It would appear that, in order to do this, a defined benefit pension plan administrator would have to make the adjustment calculations as of December 31st of every year. A methodology for providing accurate annual pension statements to member whose benefits have been subject to division should be prescribed in section 40 of Regulation 909 in order to permit members to plan for retirement. Prescribing this in the regulations will ensure compliance from all pension plan administrators.

Technical suggestions

In subsection 15(2), the italicized word is missing from the draft regulations:

2. In any other case,
 - i. a date chosen by the spouses, which cannot be earlier *than* the date on which the spouses' cohabitation began...

Subsection 29(3) provides for the indexation of "...the transferred portion of the member's accrued pension benefits (other than bridging benefits, if any)..." However, subsection (4) does *not* provide for similar indexation "...of the member's accrued bridging benefits, if any..." While this may have been intentional, it appears to be inconsistent.

Again, thank you for asking us to provide input; we hope the Ministry of Finance will find our comments to be helpful.



William G. Foster
Chief Administrative Officer