



Instruction Guide

Subject: Asset Transfers Between Defined Benefit Pension Plans

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Introduction

This instruction guide is intended for plan administrators of defined benefit pension plans registered under the *Pension Benefits Standards Act, 1985* (PBSA). The guide sets out the general principles as well as more detailed criteria and requirements that the Office of the Superintendent of Financial Institutions (OSFI) will generally expect to be satisfied before granting permission to transfer assets from one pension fund to another under section 10.2 of the PBSA. The criteria include acceptable methods to determine asset transfer values as well as requirements to ensure the protection of members' rights and interests under the PBSA. This guide also sets out OSFI's approach to individual transfers and describes the information OSFI requires to be filed when a request for permission to transfer assets is made.



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Table of Contents

	Page
I. Legislative Authority	3
II. Asset Transfer Scenarios.....	3
III. General Principles	4
IV. Criteria and Requirements	4
V. Individual Transfers (other than portability transfers between plans)	6
VI. Information Requirements for Asset Transfer Submissions.....	6
VII. Permission.....	8

I. Legislative Authority

Asset transfers between defined benefit pension plans are permitted under section 10.2 of the PBSA, which reads:

Subject to section 26 of the PBSA, the administrator of a pension plan shall not transfer or permit the transfer of any part of the assets of the pension fund to another pension fund, including a pension fund to which this Act does not apply, without the Superintendent's permission.

II. Asset Transfer Scenarios

The asset transfers contemplated by section 10.2 of the PBSA cover the value of the benefit entitlements of members or former members moving from one pension plan to another. A pension fund, in relation to a pension plan, means a fund maintained to provide pension benefits under or related to the pension plan.

Asset transfers occur when all or any part of the assets of a fund are transferred from one pension fund to another pension fund. This can occur between pension plans with different plan administrators and between different pension plans administered by the same pension plan sponsor.¹ This guide deals with four different types of asset transfers:

1. Asset transfers from a pension fund resulting from a sale or other transfer of business.² This does not include a sale or transfer of shares of the pension plan sponsor.
2. Mergers or other asset transfers from a pension fund as part of a business rearrangement of pension plans initiated by the plan sponsor or a rearrangement arising out of collective bargaining. Such asset transfers are within the same employer group and could include transfers resulting from an amalgamation of pension plan sponsors.
3. Asset transfers under reciprocal transfer agreements – including individual transfers under these agreements. These asset transfers do not include scenarios described in 1 or 2.
4. Asset transfers relating to individual transfers from one plan to another of the same employer. These asset transfers do not include scenarios described in 1 or 2. In these

¹ The exercise of portability rights under section 26 of the PBSA is not considered an asset transfer under section 10.2 of the PBSA. A custodial change within a pension fund is also not considered an asset transfer under section 10.2 of the PBSA; therefore the Superintendent's permission is not required. However, documentation supporting this custodial change must be filed with OSFI.

² If assets are not transferred to a successor fund, portability may be offered to the affected members provided that a deferred pension option is also offered and the commuted value reflects benefits that the member would become entitled to by including service with the successor employer for eligibility purposes in the calculation of the pension benefit credit. In that circumstance, it would be acceptable to apply reasonable probabilities of termination, death and retirement, consistent with the going concern assumptions used in the most recent actuarial valuation of the relevant plan.

cases membership does not cease in accordance with subsection 2(2) of the PBSA and consequently the asset transfer is not made under section 26 of the PBSA (portability).

III. General Principles

When reviewing requests from plan administrators for permission to transfer assets, OSFI will consider the particular circumstances of each case and look to see that the asset transfer is consistent with the following general principles.

1. The asset transfer should not have a material adverse effect on the security of the accrued pension benefits of any individual member, former member or beneficiary in the transferring plan, whether transferring or remaining in the transferring plan.
2. There should be no reduction in the accrued benefits of transferring members.
3. Transferring members and former members should be informed of the asset transfer and of the receiving plan provisions.
4. The transferring plan administrator is expected to review the terms of the plan documents, trust agreements and any other agreements or undertakings to determine that the asset transfer does not contravene any of these documents, agreements or undertakings.

This instruction guide has been prepared on the premise that a plan merger or a transfer of assets per se does not result in a crystallization of any rights to a distribution of surplus.

IV. Criteria and Requirements

This section outlines more detailed criteria and requirements that OSFI would generally expect a proposed asset transfer to meet. OSFI may also consider other factors, including the circumstances related to the receiving plan.

1. Information to Members

The transferring plan administrator must inform the transferring members of the asset transfer and their options including their ability to make representations to the Superintendent regarding the proposed asset transfer. The notice to members must also include the solvency ratio of the transferring and receiving plans, how their benefit entitlement will be protected in the receiving plan and the period available to them to make representations to the Superintendent. Generally, a period of 30 days from the notice distribution date is appropriate.

The administrator of the transferring plan may submit a draft notice to OSFI for comments to help ensure that a supplemental information package is not required.

2. Full or Partial Wind-ups

- a) If all (or substantially all) of the members are transferred and surplus assets remain in the fund, OSFI may require the transferring plan administrator to

submit a proposal for the treatment of the remaining surplus assets and, if appropriate, may require the termination of the pension plan.

- b) An application for the approval of the transfer of assets may not proceed if a partial wind-up is declared for the transferring group. If OSFI receives representations that the Superintendent should declare a partial termination of the pension plan pursuant to subsection 29(2) of the PBSA, then this situation must first be resolved.
3. Method of Valuing Transfer Amounts Based on Benefit Entitlements
- a) The liabilities underlying the transfer can be valued based on a going concern, solvency or wind-up basis as defined in the terms of the transaction.
 - b) If there is a solvency deficiency at the valuation date, the maximum transfer of assets allowed would equal the solvency liability multiplied by the solvency ratio. However, OSFI may permit the transfer of an amount of assets equal to the total solvency liability where the deficiency amount is remitted to the transferring fund.
 - c) If the solvency ratio is one or greater, the asset transfer can be based on a solvency or going concern basis. However, the solvency ratio for remaining members cannot be reduced below one, unless the deficiency amount is remitted to the transferring fund.
4. Recalculation of Liabilities
- a) The valuation report should specify the period of time during which the valuation of the liabilities is valid for the purpose of determining the assets to be transferred. Assets transferred after the period specified in the report should be recomputed to recognize the later transfer.
 - b) The valuation report should disclose the criteria, for example the interest rate (a set rate or the fund rate) that will be used to adjust the valuation between the effective date and the actual month of the asset transfer.
5. Transferring plan in Surplus Position
- a) In its written request to the Superintendent for permission to transfer assets, the administrator of the transferring plan must address whether the plan documents, trust agreements and any other agreements or undertakings place restrictions on the use of ongoing surplus attributable to the members being transferred.
 - b) The transfer amount should not be more than the transferring members' pro rata share of the plan assets, based on either the solvency or going concern basis. OSFI expects that the minimum transfer amount would be the amount of the solvency liability in respect of the affected members.
6. Receiving Plan in Deficit Position
- a) The asset transfer should not cause the transferring members' benefits to be materially less well funded or otherwise less secure in the receiving plan unless members have an option of retaining their pension benefits in the transferring plan and have received adequate information on this option. The transferring members'

benefits may be considered materially less well funded if the receiving plan's solvency ratio (after taking into account the asset transfer) is less than one and is lower than the solvency ratio of the transferring plan (before the asset transfer) by 0.05 or more.

- b) An asset transfer to a plan in a solvency deficit position must include clear disclosure of the potential risks for transferring members in the event that the receiving plan was subsequently wound up. This disclosure must include the information prescribed in subsection 23(1)(q)(i) of the *Pension Benefits Standards Regulations, 1985*. This disclosure may also describe, in a fair and reasonable manner, the potential benefits of transferring, e.g. where the member's potential benefits may be larger due to salary increases applying to past service benefits.

V. Individual Transfers (other than portability transfers between plans)

Asset transfers between pension funds resulting from individual transfers, whether they are covered by a reciprocal agreement or not, may not require the filing of a formal application to the Superintendent.

For such individual transfers, the Superintendent's permission is automatically granted and no filing of a formal application is required provided, i) there is no reduction in accrued benefits³, ii) the combined transfer amount for all individual transfers occurring in the same plan year for a plan does not exceed 5% of the transferring plan's assets at the most recent year end, and iii) one of the following conditions is met:

- a) The solvency ratios of the transferring and receiving plan are greater than one;
- b) The solvency ratio of the transferring plan is less than one and the amount of the individual transfer does not exceed an amount equal to the solvency ratio multiplied by the amount of the solvency liability for transferred members; or
- c) The receiving plan is materially less well funded than the transferring plan, as defined under subsection IV. 6(a) of this instruction guide, the member is provided with an option to retain his/her benefit entitlement in the transferring plan (having received adequate information on this option) and he/she chooses to transfer his/her benefit entitlement to the receiving plan.

VI. Information Requirements for Asset Transfer Submissions

OSFI requires that the following information be prepared and filed when a request is made for permission to transfer assets under section 10.2 of the PBSA:

1. A written request to the Superintendent for permission to transfer assets from one pension fund to another.

³ If the amount transferred to the other plan is less than the commuted value of the member's pension benefit, then the difference must be provided to the member in the form of a transfer to one of the locked-in vehicles available under section 26 of the PBSA and Regulations.

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2. Valuation reports for the transferring plan and the receiving plan, showing in each report the position of the plan both before and after the asset transfer, as at the closing date of the event causing the asset transfer.

The reports must show the minimum funding requirements under both scenarios – including the transfer and not including the transfer. Unless notified by OSFI, both plans may make contributions based on the assumption that permission is granted for the transfer. Any minimum funding requirement payments owing will be due immediately following notification of the Superintendent's decision.

If the transfer amount is less than 5% of the transferring or receiving plan's assets and if a valuation report has been filed within 12 months of the effective date of the transfer, an actuarial opinion may be acceptable instead of a full report.

3. A copy of the amendment to the receiving plan stating how the transferred benefit entitlements will be protected within the plan and any board resolution authorizing the assumption of liabilities.
4. A copy of the amendment to the transferring plan recognizing the asset transfer or any board resolution authorizing the asset transfer.
5. A copy of all relevant sections of any relevant purchase and sale agreement and any applicable collective agreements, including interpretation sections, along with a declaration that all provisions of the documents relating to the pension plan have been included.
6. If the transferring plan is in a surplus position as at the effective date of the asset transfer, a declaration by the plan administrator that the asset transfer does not contravene any provisions of the transferring plan, trust agreement or any other agreements or undertakings.
7. A copy of the information package to be provided to members notifying them of the asset transfer and their options.
8. Confirmation that contact information concerning the members for whom the asset transfer is made will be retained by the administrator of the transferring plan.
9. A copy of any applicable reciprocal agreement between the transferring and receiving plans specifying the terms of the individual transfers.

VII. Permission

After reviewing all relevant information, OSFI will notify the administrator of the transferring plan whether permission is given under section 10.2 of the PBSA.