

Draft *Pension Benefits Regulations*
made under the *Pension Benefits Act*

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PART 1 – GENERAL

[For definitions specific to the funding of pension plans, annual statements and information available to members and others on request, see the **Draft Pension Benefits Regulations made under the Pension Benefits Act**, posted for consultation to the website of the Department of Labour and Advanced Education on December 7, 2011.]

Citation

1 These regulations may be cited as the *Pension Benefits Regulations*.

Definitions

2 In these regulations,

“domestic contract” means an agreement in writing within the meaning of Section 74 of the Act, being an agreement made between spouses, including a marriage contract as defined in the *Matrimonial Property Act*, that provides for a division of a pension benefit, deferred pension or pension;

“financial institution” means

- (i) a bank,
- (ii) a body corporate to which the *Trust and Loan Companies Act* applies,
- (iii) a cooperative credit society to which the *Co-operative Associations Act* applies,
- (iv) an insurance company to which the *Insurance Act* applies,
- (v) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,
- (vi) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,
- (vii) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province that is primarily engaged in dealing in securities, including portfolio management and investment counselling, or
- (viii) a foreign institution;

“foreign institution” means an entity that is

- (i) engaged in the business of banking, the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and
- (ii) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province;

“individual pension plan” means a pension plan that is an individual pension plan for the purposes of the *Income Tax Act* (Canada);

“LIF” means a life income fund, being an RRIF that meets the requirements set out in sections 95 to 102 and Schedule IV;

“LIRA” means a locked-in retirement account, being an RRSP that meets the requirements set out in sections 90 to 94 and Schedule III, including a contract made before January 1, 2003, to establish an RRSP for the purposes of a transfer under clause 61(1)(b) of the Act;

“owner” means the former member of a pension plan who has made a transfer pursuant to Section 61(1)(b) of the Act to a LIF or LIRA and, unless otherwise stated, includes the spouse of a member or former member if the spouse has made a transfer of a pension benefit as a result of the death of the member or former member or as a result of a division of a pension or pension benefits pursuant to Section 74 (pension division) of the Act;

“plan” means a pension plan;

“post-judgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent;

“qualifying annuity contract” means an annuity contract for the purpose of providing benefits under a plan, with the following characteristics:

- (i) The contract does not contain a provision allowing for the redistribution of benefits on a wind up or partial wind up of the pension plan.
- (ii) The contract was entered into before the 1st day of January, 1988.
- (iii) The contract was issued by an insurance company or under the *Government Annuities Act* (Canada).

- (iv) The benefits provided under the contract consist only of pensions and pension benefits purchased before the 1st day of January, 1993;

“RRIF” means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada);

“RRSP” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada);

“significant shareholder” means an individual who alone or in combination with a parent, spouse or child, owns or has a beneficial interest, directly or indirectly, in shares that represent 10 per cent or more of the voting rights attached to the shares of the employer who contributes to the pension plan;

“special allowance” means a bridging benefit that is adjusted according to the income of the retired member resulting from employment of the retired member subsequent to termination.

Division 1 – Exemptions

Exemptions

- 3** (1) The pension plans established by or under the following legislation are excepted from the application of the Act and the regulations:
- (a) the *Public Service Superannuation Act*;
 - (b) the *Teachers' Pension Act*;
 - (c) the *Members' Retiring Allowances Act*;
 - (d) the *Judges of the Provincial Court Act*.
- (2) The following pension plans are excepted from the application of the Act and the regulations:
- (a) the Pension Plan for Salaried Employees of Sydney Steel Corporation;
 - (b) the Sydney Steel Corporation Non-Contributory Union Pension Plan 1968 (for Members of Locals 1064, 6537 and 6516 of the United Steelworkers of America and Local 2 of The Bricklayers and Allied Craftworkers);
 - (c) the Sydney Steel Corporation Non-Contributory Union Pension Plan 1974 for Members of Local 1675 of the Canadian Union of Public Employees;

- (d) a retirement compensation arrangement as defined in subsection 248(1) of the *Income Tax Act* (Canada);
 - (e) a plan that provides only benefits that exceed the maximum benefit limits applicable to a pension plan that is registered under the *Income Tax Act* (Canada);
 - (f) a plan that permits only contributions that are in excess of the maximum contribution limit applicable to a pension plan that is registered under the *Income Tax Act* (Canada).
- (3) The administrator of a pension plan is exempt from the following provisions with respect to benefits provided under qualifying annuity contracts:
- (a) subsection 61(1) of the Act.
 - (b) Section 68 of these regulations.
- (4) The administrator of a pension plan need not comply with section [draft funding regulations, section 17 – Actuarial valuation reports and certificates – review] with respect to a plan under which all benefits are provided under qualifying annuity contracts.
- (5) Subject to subsection (5), subsection 24(1) of the Act does not apply to a pension plan with respect to an amendment that is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- (6) Subsection (3) does not apply with respect to an amendment unless, at least 60 days before the amendment is effective, the administrator of the pension plan gives the Superintendent notice of the amendment together with evidence that the amendment is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- (7) Subject to subsection (6), subsection 87(1) of the Act does not apply to a refund of contributions to a member, former member or retired member of a pension plan if the refund is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- (8) Subsection (5) does not apply with respect to a refund unless, at least 60 days before the refund is made, the administrator of the pension plan gives the Superintendent notice of the refund together with evidence that the refund is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- (9) Subject to subsection (8), subsection 103(1) of the Act does not apply to a pension fund with respect to a payment of money to an employer if the payment is

required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).

- (10) Subsection (7) does not apply with respect to a payment unless, at least 60 days before the payment is made, the administrator of the pension plan gives the Superintendent notice of the payment together with evidence that the payment is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- (11) A pension plan established before [*the date these regulations come into force*], that is maintained for the employees of two or more employers, and that is neither a multi-employer pension plan nor a pension plan in which all employers are affiliates of each other, is exempt from Section 8 of the Act, if the plan provides that the administrative duties of the employer and the administrator as specified in the Act are totally assumed by a financial institution; and
- (12) A pension plan referred to in subsection (11) may permit different employers to establish different prescribed classes of employees for the purposes of Section 45 of the Act.
- (13) A pension plan in which the only member is an individual employee who, but for this subsection, falls within a class described in clause 42(1)(g), (h) or (i) is exempt from Section 45 of the Act, and that employee must be treated for the purposes of the Act and these regulations as not falling within that class.

Exemption for NewPage Port Hawkesbury pension plans

- 4** (1) For the purpose of this section, “the NewPage pension plans” means all of the following pension plans:
- (a) Pension Plan for Mill Employees of NewPage Port Hawkesbury Corp. Registration No.: 0522722;
 - (b) Pension Plan for the Office and Clerical Hourly Employees of NewPage Port Hawkesbury Corp.—Registration No.: 0401059;
 - (c) Pension Plan for the Woodland Hourly Employees of NewPage Port Hawkesbury Corp.—Registration No.: 0379008;
 - (d) Pension Plan for the Salaried Non-Union Employees of NewPage Port Hawkesbury Corp. and Associated and Affiliated Companies—Registration No.: 0522714.
- (2) The circumstances in which the administrator for the NewPage pension plans was appointed, on October 5, 2011, is a prescribed circumstance for the purpose of subsection 18(6) of the Act.

- (3) The NewPage pension plans are exempt from the application of Section 108 of the Act and, for greater certainty, each of,
- (a) Pacific West Commercial Corporation;
 - (b) any designate, assignee or subsidiary of Pacific West Commercial Corporation;
 - (c) the limited partnership that ultimately acquires the business and assets of NewPage Port Hawkesbury Corp.; and
 - (d) the general partner of the limited partnership referred to in clause (c),

is deemed not to be a successor employer of any member of one of the NewPage pension plans who is or becomes an employee of any of the entities referred to in clauses (a), (b), (c) or (d), upon the sale, assignment or disposition of all or part of the business or all or part of the assets of NewPage Port Hawkesbury Corp. to any entity referred to in clauses (a), (b), (c) or (d).

Significant shareholder plans

- 5** Subsection 24(1) of the Act (amendment void) does not apply to a member of a defined benefit pension plan who is a significant shareholder, if the employer providing the pension plan and the significant shareholder consent in writing to the non-application of Section 24 of the Act and file the consent.

Conflict of interest—multi-employer pension plan

- 6 (1)** Subsection 33(3) of the Act (Care, diligence, knowledge and skill) does not apply to an administrator of a multi-employer pension plan who enters into a transaction with a trade union, council of trade unions, employer, employers' association or an employee benefit trust fund in which a member of the board of trustees or committee holds any office or position, where the transaction is,
- (a) only for purchase or lease of office space, for legal, accounting or other services, materials or equipment necessary for the administration and operation of the pension plan, provided that the compensation paid therefor is reasonable in the circumstances; and
 - (b) permitted under the documents that create and support the pension plan or any amendments thereto.
- (2)** Subsection 33(3) of the Act does not apply to an administrator of a multi-employer pension plan or, if the administrator is a pension committee or a board of trustees, to a member of the committee or board who enters into a transaction, other than a transaction referred to in subsection (1), related to the administration of the pension plan or pension fund that,

- (a) is in the interest of the members, former members and retired members of the pension plan;
- (b) is protective of the rights of the members, former members and retired members of the pension plan;
- (c) is permitted under the documents that create and support the pension plan;
- (d) is disclosed to members, former members and retired members of the plan prior to entering into the transaction; and
- (e) confers no direct or indirect personal benefit upon the administrator or member of the pension committee or board of trustees.

Notices and summaries respecting contributions—multi-employer pension plan

7 The following provisions do not apply with respect to a multi-employer pension plan established pursuant to a collective agreement, a trust agreement, a statute or a municipal by-law:

- (a) Subsection 78(2) of the Act (notice that contributions not paid when due);
- (b) Section 79 of the Act (summary of required contributions, etc.).

Reciprocal agreements – exemption from registration or audit

- 8 (1) This section applies if there is an agreement under section 8 of the Act between the Minister and authorized representatives of one or more designated jurisdictions.
- (2) If the agreement so provides, a pension plan with the plurality of members employed in a designated jurisdiction is exempted from registration or audit under the Act.
- (3) For the purpose of ascertaining where the plurality of the members is employed, only those members who are employed in Nova Scotia or in any of the designated jurisdictions shall be counted.

Division 2 – Designated Jurisdictions

Designated jurisdictions

- 9 (1) For the purposes of the definition of “designated jurisdiction” in Section 2 of the Act, each of the following jurisdictions in Canada is prescribed as a jurisdiction in which there is in force legislation substantially similar to the Act:
- (a) Canada;
 - (b) the Province of Alberta;
 - (c) the Province of Quebec;

- (d) the Northwest Territories;
 - (e) the Province of Saskatchewan;
 - (f) the Province of Manitoba;
 - (g) the Province of Ontario;
 - (h) the Province of Newfoundland and Labrador;
 - (i) the Province of New Brunswick;
 - (j) the Province of British Columbia;
 - (k) the Yukon Territory;
 - (l) the Territory of Nunavut.
- (2) The status of Canada as a designated jurisdiction applies in respect of “included employment” as defined in subsection 2(1) of the *Pension Benefits Standards Act, 1985* (Canada) but not in respect of any other employment in Canada.

PART 2 – PLAN REGISTRATION AND AMENDMENT AND DOCUMENT FILING

*[For regulations in respect of **Plan Amendments** see the **Draft Pension Benefits Regulations made under the Pension Benefits Act**, posted for consultation to the website of the Department of Labour and Advanced Education on December 7, 2011.]*

Registration of a pension plan

- 10**
- (1) An application under subsection 19 of the Act for registration of a pension plan must be made within 60 days after the plan is established.
 - (2) An application for registration of a pension plan must be accompanied by a fee for each member of the pension plan in Nova Scotia or a designated jurisdiction, in an amount prescribed by the Minister.
 - (3) The documents that must be filed under Section 19(3)(b) of the Act are:
 - (a) certified copies of the documents that create and support the pension plan;
 - (b) certified copies of the documents that create and support the pension fund;
 - (c) a certified copy of any reciprocal transfer agreement related to the pension plan;

- (d) a certified copy of the explanations and other information provided under subsection 38(1) of the Act; and
 - (e) for a plan that provides defined benefits, an actuarial valuation report and cost certificate.
- (4) The documents that create and support a pension plan shall set out the following information:
- (a) the method of appointment and the details of the appointment of the administrator;
 - (b) the conditions of membership in the pension plan;
 - (c) the benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death;
 - (d) the normal retirement age under the pension plan;
 - (e) the requirements for entitlement under the pension plan to any pension benefit or ancillary benefit or optional benefit;
 - (f) the contributions or the method of calculating the contributions required by the pension plan;
 - (g) the method of determining benefits payable under the pension plan
 - (h) the method of calculating interest to be credited to contributions under the pension plan;
 - (i) the mechanism for payment of the cost of administration of the pension plan and pension fund
 - (j) the mechanism for establishing and maintaining the pension fund;
 - (l) the treatment of surplus during the continuation of the pension plan and on the wind-up of the pension plan;
 - (m) the obligation of the administrator to provide members with information and documents required to be disclosed under the Act and the regulations;
 - (n) the method of allocation of the assets of the pension plan on wind up;
 - (o) particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits;

- (p) the persons who may amend the plan and the means by which such amendment must be made
- (5) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan.
- (6) The document that create and support a multi-employer pension plan shall create and support a multi-employer pension plan shall specify the consequences, if any, of the withdrawal of a participating employer from the pension plan in respect of the funding and payment of pension benefits of a member, a former member, a retired member or any other person affected by the withdrawal and must satisfy such requirements as may be imposed by this Act and these regulations.
- (7) The documents that create and support a jointly sponsored pension plan shall also set out the following information:
 - (a) the obligation of members to make contributions under the plan, including their obligations in respect of any going concern unfunded liability and solvency deficiency;
 - (b) the obligation of employers to make contributions under the plan or the obligation of other persons or entities to make the contributions under the plan on behalf of employers, including obligations in respect of any going concern unfunded liability and solvency deficiency; and
 - (c) the consequences, if any, of the withdrawal of a participating employer from the plan in respect of the funding and payment of pension benefits of a member, former member, or retired member affected by the withdrawal, including the consequences which may be imposed by this Act and these regulations.

Registration of an amendment

- 11** The administrator of a pension plan shall apply to the Superintendent, within 60 days after the date on which the pension plan is amended, for registration of the amendment.

Filing of reciprocal transfer agreements

- 12** The administrator of a pension plan must submit for filing a certified copy of any reciprocal agreement entered into on or after the date these regulations come into force, within 60 days after the execution of the agreement.

PART 3 – PLAN ADMINISTRATION AND ADVISORY COMMITTEE

Division 1 – General Provisions for Administrators and Employers

Plan fiscal year end

- 13** (1) Unless otherwise stated in the pension plan documents, the fiscal year of a pension plan is deemed to commence on January 1 and end on December 31.
- (2) No fiscal year of a pension plan shall exceed twelve months.

Division 2 – Advisory Committee

Notice and information concerning establishment of advisory committee

- 14** (1) Within 30 days following the receipt of written notice of an intent to establish an advisory committee in accordance with subsection 36(6) of the Act, the administrator must give notice in writing to all members and retired members of the plan that,
- (a) a vote for the establishment of an advisory committee will be held and that they will be given an opportunity to participate in the vote; and
 - (b) the determination as to whether an advisory committee will be established will be made by a majority of the members and retired members who participate in the vote.
- (2) For the purpose of clause 36(6)(a) of the Act, the following information must be provided to the members and retired members at the same time as the written notice is provided to them in accordance with subsection (1):
- (a) the date that the vote will be held for the establishment of the advisory committee;
 - (b) the means by which the vote will be held;
 - (c) if the vote is to be held in person, the location and the time of the meeting for purposes of holding the vote; and
 - (d) a list of the responsibilities of the advisory committee, as set out in subsection 36(5) of the Act.
- (3) The administrator may give the notice under subsection (1), and the information under subsection (2), to the members of a plan who are represented by a trade union by giving the written notice and information to the trade union instead of to the members.

- (4) The administrator may give the notice under subsection (1), and the information under subsection (2), to the retired members who are members of an association of retired members of the plan by giving the written notice and information to the executive of the association, instead of or in addition to those retired members, if the administrator has received a request in writing from the association that the notice and information may be provided in this manner.
- (5) The notice referred to in subsection (1), and the information referred to in subsection (2), must be provided to the members, retired members, trade union and association of retired members, as the case may be, by one or more of the following means:
 - (a) by mail, if sent to the most recent address of the member, retired member, trade union or association of retired members maintained in the records of the administrator concerning the pension plan;
 - (b) by email, if the member, retired member, trade union or association of retired members has previously requested in writing that information concerning the pension plan be provided by email to a specified email address; or
 - (c) to the members of a plan who regularly work at the employer's workplace, by posting it in one or more areas of the workplace that are regularly accessed by them instead of as set out in clauses (a), (b) or (c).

Establishment of advisory committee

- 15** (1) The date set for the vote of the members and retired members of the plan for purposes of establishing an advisory committee must be a date that is no earlier than 30 days following the date on which the notice and information is provided to the members and retired members under section 14(1).
- (2) A vote for the establishment of the advisory committee must be conducted,
 - (a) at a meeting of members and retired members and other beneficiaries;
 - (b) electronically;
 - (c) by mail;
 - (d) by the casting of ballots at a specified location; or
 - (e) by any combination of the methods set out in clauses (a) through (d).
 - (3) For the purpose of clause 36(6)(b) of the Act, if the vote will be taken for the establishment of the advisory committee by means of an in-person meeting of the members and retired members, the administrator must make arrangements for a suitable location for the meeting if requested to do so by the persons who

provided written notice to the administrator of their intent to establish an advisory committee.

Notice concerning result of vote to establish advisory committee

- 16** (1) The persons who provided notice to the administrator of their intent to establish an advisory committee must provide notice in writing to the administrator of the result of the vote as soon as practicable following it.
- (2) Within 5 days following receipt of the notice referred to in subsection (1), the administrator must provide the following information, in writing, to the members, former members and retired members:
- (a) the result of the vote held concerning the establishment of the advisory committee;
 - (b) if the vote of the members and retired members resulted in the establishment of an advisory committee, the rules governing the composition of the advisory committee as set out in subsection 36(3) and (4) of the Act;
 - (c) if the vote of the members and retired members resulted in the establishment of an advisory committee the means by which, and the time period within which each class of employees and the retired members may nominate representatives to the advisory committee, in accordance with section 17.
- (3) The information in subsection (2) may be provided by one or more of the means set out in subsection 14(5).

Procedure for appointment of advisory committee representatives

- 17** (1) Any member of each class of members of the pension plan may nominate one or two members of the class to be a representative of that class on the advisory committee.
- (2) Any retired member of the pension plan may nominate one or two retired members to be a representative of the retired members on the advisory committee.
- (3) Any former member of the pension plan may nominate a member to be a representative of the former members on the advisory committee.
- (4) Nominations must be provided in writing to the administrator within 10 days of receipt of the information referred to in subsection 16(2).
- (5) Within 10 days following the expiry of the time period within which nominations must be provided to the administrator, the administrator must provide an opportunity to each member of a class of members, and to each retired member

and former member, to vote by secret ballot on the nominees provided by the class of members, retired members and former members for purposes of appointing a representative or representatives in accordance with subsection 36(3) or (4) of the Act, as the case may be.

- (6) Within 5 days following the conclusion of the vote referred to in subsection (5), the administrator must provide the results of the vote, in writing, to the members, retired members and former members of the plan, and must do so by one or more of the means set out in subsection 14(5).
- (7) The pension plan may establish the procedure and timing for the conduct of the vote by secret ballot and, where it does not do so, the administrator must determine the appropriate procedure and timing.

Term of office for advisory committee

- 18**
- (1) The term of office of a person appointed as an advisory committee member must be for such period as is established by the committee in accordance with its rules of procedure, governance and operations, but must not exceed three years.
 - (2) The term of office of each of the initial representatives on the advisory committee is three years.
 - (3) A member of the advisory committee continues to hold office after the end of his or her term until he or she is reappointed or a successor is appointed.
 - (4) A vacancy must be filled for the balance of the unexpired term within 120 days after it arises, unless the unexpired term is less than 120 days.

Participation in advisory committee

- 19**
- (1) A member of pension plan who is a member of the advisory committee is entitled to take time off from his or her regular work duties, without loss of pay or other benefits, in order to carry out his or her duties on the advisory committee.
 - (2) The pension plan may provide for payment out of the pension fund of,
 - (a) the reasonable costs, if any, associated with the rental of a facility for any meeting that may be held
 - (i) to establish the advisory committee;
 - (ii) to vote for representatives to the advisory committee; or
 - (iii) for purposes of meetings of the committee; and
 - (b) the reasonable costs associated with attendance by a committee member at a meeting of the committee and for other expenses reasonably incurred by

a committee member in carrying out his or her duties as a committee member.

Operations of advisory committee

- 20** (1) An advisory committee must establish written rules of procedure, governance and operations for exercising its powers and discharging its duties in accordance with the Act and these regulations.
- (2) The rules of procedure, governance and operations must
- (a) provide for the election or appointment of a chair, and a secretary, and any other officers that the committee considers advisable;
 - (b) set out the powers and duties of the committee's officers;
 - (c) provide for the appointment of representatives to the committee to replace representatives who are unable or no longer wish to act or whose term of office is about to expire or has expired;
 - (d) govern the means by which,
 - (i) the administration of the pension plan must be monitored;
 - (ii) recommendations to the administrator respecting the administration of the pension plan must be made; and
 - (iii) awareness and understanding of the pension plan must be promoted;
 - (e) include provisions respecting meetings of the committee, including
 - (i) the means by which, and time periods within which notice of meetings must be provided;
 - (ii) requiring meetings at regular intervals, and set the dates, times and places of those meetings,
 - (iii) establishing procedures for changing the date, time or place of a regular meeting and govern the notice to be given of the change,
 - (iv) establishing procedures for calling and holding special meetings of the committee, and
 - (v) governing the conduct and procedures of meetings, including the voting and quorum requirements for the transaction of business; and

- (f) require the rules to be reviewed at least once every three years;
- (3) The rules of procedure and governance may include any other rules that the advisory committee considers necessary or advisable for the fulfillment of its powers and duties under the Act and these regulations.
- (4) The advisory committee may require the administrator to
 - (a) provide notice to the representatives of the committee, in such form and within such period as the committee may direct, of any meeting of the committee despite the absence of rules of procedure, governance and operations for the committee; and
 - (b) meet with the committee upon the provision of reasonable notice, at all reasonable times that the committee may direct, and when the committee provides such notice it is deemed to be acting in accordance with clause 36(7)(a) of the Act.

Division 3 – Pension Fund Investment and Administration

Pension fund trustee

21 A pension fund must be administered

- (a) by a government;
- (b) by an insurance company;
- (c) by a trust in Canada governed by a written trust agreement under which the trustees are
 - (i) a trust corporation registered under the *Trust and Loan Companies Act*,
 - (ii) 3 or more individuals, at least 3 of whom reside in Canada and at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner, proprietor, director, officer, nor an employee of an employer contributing to the fund or an affiliate of the employer, or
 - (iii) a corporate pension society established under the *Pension Fund Societies Act (Canada)*;
- (d) under the *Government Annuities Act (Canada)*;

- (e) by the board, agency, commission, or corporation made responsible by an Act of the Legislature for the administration of the pension fund; or
- (f) by any combination referred to in clauses (a) to (e).

Investment requirements

- 22** (1) Despite the provisions of any pension plan or any instrument governing a plan, the assets of a plan must be invested and the investments made in accordance with this Division and Schedule I.
- (2) The administrator of a pension plan shall establish a statement of investment policies and procedures for the plan that meets the requirements of Schedule I.
- (3) Schedule I is incorporated into and forms part of these regulations.
- (4) The administrator or fund holder must maintain a current record clearly identifying each of the plan's investments and the name in which each investment is registered.
- (5) If any provisions of Schedule I differ from the corresponding provisions under the laws of a designated jurisdiction, the Superintendent may, in the case of a plan having members in that designated jurisdiction, apply in whole or in part those corresponding provisions instead of the provisions of Schedule I.
- (6) Every pension plan must provide that the moneys of the pension fund are to be invested in accordance with Schedule I and invested,
- (a) in a name that clearly indicates that the investment is held in trust for the pension plan and, if the investment is capable of being registered, registered in that name;
 - (b) in the name of a financial institution or its nominee, in accordance with a custodial agreement or trust agreement, entered into on behalf of the pension plan with the financial institution, that clearly indicates that the investment is held for the pension plan; or
 - (c) in the name of The Canadian Depository for Securities Limited or its nominee, in accordance with a custodial agreement or trust agreement, entered into on behalf of the pension plan with a financial institution, that clearly indicates that the investment is held for the pension plan.
- (7) For the purposes of subsection (6), “custodial agreement” means an agreement providing that
- (a) an investment made or held on behalf of a pension plan pursuant to the agreement

- (i) constitutes part of the pension plan's pension fund, and
 - (ii) will not at any time constitute an asset of the custodian or nominee; and
 - (b) records will be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the pension plan at any time.
- (8)** The administrator of a pension plan must, before the later of July 1, 1996, and the day on which the pension plan is registered, establish, on behalf of the pension plan, a written statement of investment policies and procedures in respect of the pension plan's portfolio of investments and loans, having regard to all factors that may affect the funding and solvency of the pension plan and the ability of the pension plan to meet its financial obligations, including all of the following:
- (a) categories of investments and loans, including derivatives, options and futures;
 - (b) diversification of the investment portfolio;
 - (c) asset mix and rate of return expectations;
 - (d) liquidity of investments;
 - (e) the lending of cash or securities;
 - (f) the retention or delegation of voting rights acquired through investments;
 - (g) the method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange; and
 - (h) related party transactions permitted under Section 16 of Schedule I and the criteria to be used to establish whether a transaction is nominal or immaterial to the pension plan, having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligation.
- (9)** The statement of investment policies and procedures referred to in subsection (8) must include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.
- (10)** The administrator of a plan must submit the statement of investment policies and procedures referred to in subsection (8)
- (a) to any pension committee that has been established, within 60 days after the

later of

- (i) the day on which the statement is established, and
 - (ii) the day on which the pension committee is established; and
 - (b) if a plan is a defined benefit plan, of the actuary to the plan on or before the day that is the later of
 - (i) 60 days after the day on which the statement is established, and
 - (ii) the day on which the actuary is appointed.
- (11)** Investments made on or before January 1, 1996, that are not in compliance with this section, Schedule I and the investment policy of the pension plan
- (a) may be retained until the earlier of the fixed maturity date and January 1, 1999, if they are investments with a fixed maturity date; or
 - (b) must be in compliance by no later than January 1, 1999, if they are not investments with a fixed maturity date.
- (12)** Every investment made after January 1, 1996, must comply with this section, Schedule I and the investment policy of the pension plan.
- (13)** The administrator of a pension plan must review and confirm or amend the statement of investment policies referred to in subsection (8) at least once in each pension plan fiscal year.
- (14)** A copy of each amendment to the statement of investment policies and procedures must be submitted, within 60 days after the statement is amended,
- (a) to any pension committee that has been established; and
 - (b) if the plan is a defined benefit plan, to the actuary of the plan.

Schedule I – Permitted Investments**Interpretation**

1 In this Schedule,

- (a) “child”, in respect of a person, means
 - (i) the child of the person,
 - (ii) the child of the person’s spouse, or
 - (iii) the spouse of a-child of the person;
- (b) “debt obligation” means a bond, debenture, note or other evidence of indebtedness of an entity;
- (c) “entity” means
 - (i) a corporation, trust, partnership or fund or an unincorporated association or organization, or
 - (ii) Her Majesty in right of Canada or of a province or the government of a foreign country or of a political subdivision of a foreign country, or an agency thereof;
- (d) “investment corporation”, in respect of a plan, means a corporation that
 - (i) is limited in its investments to those that are authorized for the plan under this Schedule,
 - (ii) holds at least 98 per cent of its assets in cash, investments and loans,
 - (iii) does not issue debt obligations,
 - (iv) obtains at least 98 per cent of its income from investments and loans, and
 - (v) does not lend any of its assets to, or invest any of its moneys in, a related party of the plan;
- (e) “loan” includes a deposit, financial lease, conditional sales contract, repurchase agreement and any other similar arrangement for obtaining money or credit, but does not include investments in securities or the making of an acceptance, endorsement or other guarantee;
- (f) “market terms and conditions”, in respect of a transaction, means terms and

conditions, including those relating to price, rent or interest rate, that would apply to a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting prudently, knowledgeably and willingly;

- (g) "person" includes an entity;
- (h) "public exchange" means
 - (i) the Alberta Stock Exchange,
 - (ii) the Montreal Stock Exchange,
 - (iii) the Toronto Stock Exchange,
 - (iv) the Vancouver Stock Exchange,
 - (v) the Winnipeg Stock Exchange,
 - (vi) in France, the Stock Exchange (Paris),
 - (vii) in the United Kingdom, The Stock Exchange (London), and
 - (viii) in the United States,
 - (A) the American Stock Exchange,
 - (B) the Boston Stock Exchange,
 - (C) the Chicago Board of Trade,
 - (D) The Cincinnati Stock Exchange,
 - (E) the Detroit Stock Exchange,
 - (F) the Midwest Stock Exchange,
 - (G) The National Association of Securities Dealers Automated Quotation System,
 - (H) the National Stock Exchange,
 - (I) the New York Stock Exchange,
 - (J) the Pacific Coast Stock Exchange,
 - (K) the Philadelphia-Baltimore-Washington Stock Exchange,

- (L) the Pittsburgh Stock Exchange,
 - (M) the Salt Lake Stock Exchange, or
 - (N) the Spokane Stock Exchange;
- (i) “real estate corporation” means a corporation incorporated to acquire, hold, maintain, improve, lease or manage real property other than real property that yields petroleum or natural gas;
- (j) “real property” includes a leasehold interest in real property;
- (k) “related party”, in respect of a plan, means a person who is
- (i) the administrator of the plan or who is a member of a pension committee, board of trustees or other body that is the administrator of the plan,
 - (ii) an officer, director or employee of the administrator of the plan,
 - (iii) a person responsible for holding or investing the assets of the plan, or any officer, director or employee thereof,
 - (iv) an association or union representing employees of the employer, or an officer or employee thereof,
 - (v) an employer who participates in the plan, or an employee, officer or director thereof,
 - (vi) a member of the plan,
 - (vii) where the employer is a corporation, a person who directly or indirectly holds, or together with the spouse or a child of the person holds, more than 10 per cent of the voting shares carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation,
 - (viii) the spouse or a child of any person referred to in any of subclauses (i) to (vii),
 - (ix) where the employer is a corporation, an affiliate of the employer,
 - (x) a corporation that is directly or indirectly controlled by a person referred to in any of subclauses (i) to (viii),
 - (xi) an entity in which a person referred to in subclauses (i), (ii), (v) or (vii), or the spouse or a child of such a person, has a substantial investment, or

(xii) an entity that holds a substantial investment in the employer,

but does not include Her Majesty in right of Canada or of a province, or an agency thereof, or a bank, trust company or other financial institution that holds the assets of the pension plan, if that person is not the administrator of the pension plan;

- (l) “resource corporation” means a corporation that has, at all times since the date on which it was incorporated,
- (i) limited its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties,
 - (ii) restricted its investments and loans, other than investments in Canadian resource properties or property to be used in connection with Canadian resource properties owned by it and loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties, to investments and loans authorized for a pension plan under this Schedule, and
 - (iii) not borrowed money other than for the purpose of earning income from Canadian resource properties;
- (m) “security” means
- (i) in respect of a corporation, a share of any class of shares of the corporation or a debt obligation of the corporation, and includes a warrant of the corporation, but does not include a deposit with a financial institution or an instrument evidencing such a deposit, and
 - (ii) in respect of any other entity, any ownership interest in or debt obligation of the entity;
- (n) “transaction” includes
- (i) the making of an investment in securities,
 - (ii) the taking of an assignment of, or otherwise acquiring, a loan made by a third party,
 - (iii) the taking of a security interest in securities, and
 - (iv) any modification, renewal or extension of a prior transaction,

but does not include a payment of pensions or other benefits, a transfer of pension benefits or a withdrawal of contributions from a plan;

- (o) “voting share” means a share of any class of shares of a corporation that carries voting rights under all circumstances, by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled.

2 For the purposes of this Schedule, the making, holding or acquiring of an investment indirectly by an administrator on behalf of a plan, the holding, acquiring or owning of property indirectly by an administrator on behalf of a plan or the lending of money indirectly by an administrator on behalf of a plan includes the holding, making, acquiring, owning or lending of an investment, a property or money, as the case may be, by

- (a) a real estate corporation, resource corporation or investment corporation in which the moneys of the pension plan have been invested in accordance with Section 12, 13 or 14;
- (b) a real estate corporation, resource corporation or investment corporation of which a corporation referred to in clause (a) holds securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the real estate corporation, resource corporation or investment corporation; or
- (c) a mutual or pooled fund or trust fund in which the moneys of the pension plan have been invested.

3 **(1)** For the purposes of this Schedule,

- (a) a person or plan controls a corporation if securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect the directors of the corporation are beneficially owned by the person or plan and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;
- (b) a person or plan controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests into which the unincorporated entity is divided are beneficially owned by the person or plan and the person or plan is able to direct the business and affairs of the unincorporated entity;
- (c) the general partner of a limited partnership controls the limited partnership; and
- (d) a trustee of a trust controls the trust.

(2) For the purposes of this Schedule, a person or plan that controls an entity controls

any other entity that is controlled by the entity.

- 4 For the purposes of this Schedule, a corporation is a subsidiary of another corporation if it is controlled by the other corporation.
- 5 For the purposes of this Schedule, one entity is affiliated with another entity if the entity is controlled by the other entity or if both entities are controlled by the same person.
- 6 For the purposes of this Schedule, a person or pension plan has a substantial investment in
 - (a) an unincorporated entity if the person, the pension plan or an entity controlled by the person or pension plan beneficially owns more than 25 per cent of the ownership interests in the unincorporated entity; and
 - (b) a corporation if
 - (i) the voting rights attached to voting shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the corporation, or
 - (ii) shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, represent ownership of more than 25 per cent of the shareholders' equity of the corporation.
- 7 For the purposes of this Schedule, a person or plan is associated with
 - (a) a corporation that the person or plan controls and every affiliate of every such corporation;
 - (b) a person who controls the person or plan;
 - (c) a partner who has a substantial investment in a partnership in which the person or plan has a substantial investment;
 - (d) a trust or estate in which the person or plan has a substantial investment or for which the person or plan serves as trustee or in a similar capacity to a trustee;
 - (e) the spouse of the person; and
 - (f) a brother, sister or child or other descendant of the person, or the spouse thereof.

Application

8 This Schedule does not apply in respect of

- (a) an insured plan or a plan in respect of which all benefits are provided through an annuity contract issued by the Government of Canada; or
- (b) investments held in an unallocated general fund of a person authorized to carry on a life insurance business in Canada.

Quantitative limits

- 9** (1) The administrator of a plan shall not directly or indirectly lend moneys of the plan equal to more than 10 per cent of the total book value of the plan's assets to, or invest moneys equal to more than 10 per cent of the total book value of the plan's assets in,
- (a) any one person;
 - (b) two or more associated persons; or
 - (c) two or more affiliated corporations.
- (2) Subsection (1) does not apply in respect of moneys of a plan held by a bank, trust company or other financial institution to the extent that the moneys are fully insured by the Canada Deposit Insurance Corporation, by the Canadian Life and Health Insurance Compensation Corporation or by any similar provincial body established for the purpose of providing insurance against loss of deposits with trust companies or other financial institutions.
- (3) Subsection (1) does not apply in respect of investments in
- (a) a segregated fund, mutual fund or pooled fund that complies with the requirements applicable to a plan that are set out in this Schedule;
 - (b) an unallocated general fund of a person authorized to carry on a life insurance business in Canada;
 - (c) an investment corporation, real estate corporation or resource corporation;
 - (d) securities issued or fully guaranteed by the Government of Canada, the government of a province, or an agency thereof;
 - (e) a fund composed of mortgage-backed securities that are fully guaranteed by the Government of Canada, the government of a province, or an agency thereof; or

- (f) a fund that replicates the composition of a widely recognized index of a broad class of securities traded at a public exchange.
- 10**
 - (1)** Subject to subsection (2), the administrator of a pension plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation.
 - (2)** Subsection (1) does not apply in respect of investments in securities of
 - (a) a real estate corporation;
 - (b) a resource corporation; or
 - (c) an investment corporation.
- 11**
 - (1)** The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will
 - (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
 - (i) copies of its annual financial statements,
 - (ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1996,
 - (iii) a list clearly identifying the assets of the corporation and the market value of each asset,
 - (iv) a list of the names of its officers, directors and shareholders, and
 - (v) a certificate stating that the corporation is complying with its undertaking;
 - (b) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
 - (c) limit its activities to acquiring, holding, maintaining, improving, leasing or managing real property other than real property that yields petroleum or natural gas;

- (d) not carry on the activities referred to in clause (c) in respect of any real property that is not owned by, or on behalf of, or mortgaged to,
 - (i) the plan,
 - (ii) the corporation,
 - (iii) any other real estate corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the pension plan pursuant to this subsection, or
 - (iv) any other real estate corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation are owned by the corporation or by a real estate corporation referred to in subclause (iii);
 - (e) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any parcel of real property owned by it or on its behalf;
 - (f) not lend any of its assets to, or invest any of its moneys in, a related party of the plan;
 - (g) restrict its investments and loans, other than investments in real property or in the securities of other real estate corporations, to those authorized for the plan under this Schedule; and
 - (h) not invest, or hold an investment, in securities of any other real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other real estate corporation not to invest, or hold an investment, in the securities of any other real estate corporation.
- (2) A list of assets referred to in subclause (1)(a)(iii)
- (a) shall not include any asset, other than an asset referred to in clause (1)(g), that is not authorized under this Schedule; and
 - (b) shall value any securities that are included in the assets of the corporation at a value not exceeding the market value thereof.
- (3) Any financial statement of a plan filed under subsection 12(2) of the Act shall value the common shares of the real estate corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

- (a) an amount equal to the total assets of the corporation less the sum of its total liabilities and its preferred capital stock

by

- (b) the number of common shares of the corporation held by, or on behalf of, the pension plan divided by the total number of the issued and outstanding common shares of the corporation.

- 12 (1)** The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a resource corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will
- (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
 - (i) copies of its annual financial statements,
 - (ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1996,
 - (iii) a list clearly identifying the assets of the corporation and the market value of each asset,
 - (iv) a list of the names of its officers, directors and shareholders, and
 - (v) a certificate stating that the corporation is complying with its undertaking;
 - (b) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
 - (c) limit its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties;
 - (d) not carry on the activities referred to in clause (c) in respect of any Canadian resource property that is not owned by, or on behalf of,
 - (i) the plan,
 - (ii) the corporation,

- (iii) any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the pension plan pursuant to this subsection, or
 - (iv) any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation are owned by the corporation or by a resource corporation referred to in subclause (iii);
 - (e) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any Canadian resource property owned by it;
 - (f) not lend any of its assets to, or invest any of its moneys in, a related party of the pension plan;
 - (g) restrict its investments and loans, other than investments in Canadian resource property or properties to be used in connection with Canadian resource properties owned by it, loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties and investments in the securities of other resource corporations, to investments and loans authorized for the pension plan under this Schedule;
 - (h) not borrow money other than for the purpose of earning income from Canadian resource properties; and
 - (i) not invest, or hold an investment, in securities of any other resource corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other resource corporation not to invest, or hold an investment, in the securities of any other resource corporation.
- (2)** A list of assets referred to in subclause (1)(a)(iii)
- (a) shall not include any asset, other than an asset referred to in clause (1)(g), that is not authorized under this Schedule; and
 - (b) shall value any securities that are included in the assets of the corporation at a value not exceeding the market value.
- (3)** Any financial statement of the plan filed under subsection 12(2) of the Act shall value the common shares of the resource corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

- (a) an amount equal to the total assets of the corporation set out in the balance sheet less the sum of its liabilities and its preferred capital stock
- by
- (b) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.

13 The administrator of a plan shall not, directly or indirectly, invest the moneys of the pension plan in the securities of an investment corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

- (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
 - (i) copies of its annual financial statements,
 - (ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1996,
 - (iii) a list clearly identifying the assets of the corporation and the market value of each asset,
 - (iv) a list of the names of its officers, directors and shareholders, and
 - (v) a certificate stating that the corporation is complying with its undertaking;
- (b) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
- (c) hold at least 98 per cent of its assets in cash, investments and loans;
- (d) not issue debt obligations;
- (e) obtain at least 98 per cent of its income from investments and loans;
- (f) not lend any of its assets to, or invest any of its moneys in, a related party of the plan; and
- (g) not invest, or hold an investment, in securities of any other investment corporation if there are attached to those securities more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the

corporation first obtains and deposits with the Superintendent an undertaking by the other investment corporation not to invest, or hold an investment, in the securities of any other investment corporation.

- 14** For the purposes of Sections 15 and 16,
- (a) where a transaction is entered into by, or on behalf of, a plan with a person who the administrator of the plan, or any person acting on the administrator's behalf, knows will become a related party to the plan, the person is considered to be a related party of the plan in respect of the transaction; and
 - (b) the fulfilment of an obligation under the terms of any transaction, including the payment of interest on a loan or deposit, is part of the transaction and not a separate transaction.
- 15** (1) Subject to Sections 16 and 17, the administrator of a pension plan must not, directly or indirectly,
- (a) lend the moneys of the pension plan to a related party or invest those moneys in the securities of a related party; or
 - (b) enter into a transaction with a related party on behalf of the plan.
- (2) Subject to Sections 16 and 17, during the period of twelve months after the day on which a person ceases to be a related party of a plan, the administrator of the plan must not, directly or indirectly,
- (a) lend the moneys of the plan to that person or invest those moneys in the securities of that person; or
 - (b) enter into a transaction with that person on behalf of the plan.
- 16** (1) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if
- (a) the transaction is required for the operation or administration of the plan; and
 - (b) the terms and conditions of the transaction are not less favourable to the plan than market terms and conditions.
- (2) The administrator of a plan may invest the moneys of the plan in the securities of a related party if those securities are acquired at a public exchange.
- (3) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if the value of the transaction is nominal or the transaction is immaterial to the plan.

- (4) For the purposes of subsection (3), in assessing whether the value of a transaction is nominal or whether a transaction is immaterial, two or more transactions with the same related party shall be considered as a single transaction.

General

17 Sections 9 to 15 do not apply in respect of

- (a) investments in a corporation that are held by, or on behalf of, a plan as a result of an arrangement, within the meaning of subsection 192(1) of the *Canada Business Corporations Act*, for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, if the investments are to be exchanged for shares or debt obligations;
- (b) assets that are acquired by, or on behalf of, a plan through the realization of a security interest held by, or on behalf of, the plan and that are held for a period not exceeding two years from the day on which the assets were acquired.

Division 4 – Reporting to the Superintendent

Annual information return

- 23** (1) Subject to subsection 78(4), the administrator of a pension plan shall file the annual information return required under Section 31 of the Act not later than 6 months after the end of the fiscal year of the plan.
- (2) An annual information return must be accompanied by a fee prescribed by the Minister.
- (3) If an annual information return is delivered to the Superintendent more than 6 months following the end of a fiscal year of a pension plan, a fee must be paid for each member of the pension plan in Nova Scotia or a designated province, in an amount prescribed by the Minister.

Financial statements – filing requirements

- 24** (1) Except as otherwise provided in this section, within 6 months after the end of the fiscal year of the pension plan, the administrator must file audited financial statements for the pension fund as at the plan's fiscal year end.
- (2) The Superintendent may, by written notice to the administrator, require the financial statements to be filed within a shorter period after the end of the fiscal year, and the administrator must file them within the period specified in the notice.
- (3) Subject to subsection (4), subsection (1) does not apply to a pension plan if
- (a) the market value of the plan's assets as at the end of the fiscal year is less than \$5,000,000; or
 - (b) all of the funds of the plan are held
 - (i) by one insurance company in any type of account,
 - (ii) in the pooled funds of one trust company, or
 - (iii) in a life annuity.
- (4) The exemptions in subsection (3) do not apply to a multi-employer pension plan or a plan established by a pension fund society.
- (5) Subsection (1) does not apply in respect of a fiscal year that ended before this section came into force.

Financial statements – content and preparation requirements

- 25** (1) The financial statements which are required to be filed under section 24 must

- (a) disclose each investment of the pension fund that has a market value greater than one per cent of the market value of all of the investments of the pension fund;
 - (b) be prepared in accordance with the principles and standards set out in the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time, and include all of the information which the Handbook of the Canadian Institute of Chartered Accountants requires be set out in the financial statements of a pension fund;
 - (c) be accompanied by the report of the auditor of the financial statements, which must be prepared in accordance with the principles and standards set out in the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time; and
 - (d) be approved by the administrator and the approval shall be evidenced by the manual or facsimile signature of
 - (i) the administrator;
 - (ii) where the administrator is a pension committee, board of trustees or a board, agency or commission acting as the administrator, two members duly authorized to signify the approval; or
 - (iii) where the administrator is an insurance company, an officer of the company duly authorized to sign on behalf of the insurance company.
- (2)** The auditor's report referred to in clause (1)(c) shall be prepared
- (a) by an accountant; and
 - (b) in accordance with generally accepted auditing standards.
- (3)** The financial statements must be comprised of,
- (a) a statement of net assets; and
 - (b) a statement of changes in net assets.
- (4)** The financial statements shall be prepared
- (a) on the accrual basis of accounting; and
 - (b) in accordance with generally accepted accounting principles.

- (5) The financial statements shall identify,
- (a) the name of the pension plan for which the statements have been prepared;
 - (b) the registration number of the pension plan in Nova Scotia; and
 - (c) the fiscal period for which the financial statements have been prepared.

Additional requirements for auditor

- 26 (1) The auditor shall report to the administrator immediately when, in the course of reporting on the financial statements, he or she becomes aware that there are circumstances that indicate that there has or may have been a contravention of this Part.
- (2) The auditor shall report to the Superintendent any matter reported under subsection (2) that in the opinion of the auditor is significant and has not been corrected within thirty days after the date that the matter was first reported to the administrator.

Division 5 – Information to Members and Others

[Draft regulations respecting the provision by an administrator of an annual statement to members (Section 40 of the Pension Benefits Act), and the information made available to members and others by the administrator, on request (Section 42 and 43 of the Pension Benefits Act), were posted for consultation to the website of the Department of Labour and Advanced Education on December 7, 2011.]

Membership information

- 27 (1) The information referred to in subsection 38(1) of the Act must be provided
- (a) to a person who becomes a member of a pension plan on the date the plan is established, within sixty days after the date the plan is established;
 - (b) to an employee who will become eligible to become a member of a pension plan, within sixty days prior to the date on which the person will become eligible; and
 - (c) to a person who is eligible to become a member of a plan upon commencing employment, within sixty days after the person commences employment.

Information to be provided where plan permits optional contributions

- 28 (1) For a pension plan that permits a member to make optional contributions, the following information is prescribed pursuant to clause 38(1)(c) of the Act to be provided by the administrator:

- (a) the optional benefits available on conversion;
- (b) a summary of the method used to convert the optional contributions;
- (c) the terms and conditions for making an election for conversion; and
- (d) the risk of forfeiture if there are insufficient benefits available at the time of conversion to completely use all the optional contributions.

Notice and explanation of plan amendment

29 (1) The administrator must transmit to each member, former member, retired member and other person who is or will be affected by the amendment that is registered, within sixty days after the date on which the pension plan is amended, the following information:

- (a) notice that the amendment has been made;
 - (b) a summary and explanation of the amendment; and
 - (c) the administrator's contact information.
- (2) The administrator must also give a notice to a trade union that represents members, and the notice must be given within the time period set out in subsection (1) and contain the information referred to in subsection (1).

Statement on termination

30 (1) A written statement required to be given under Section 41 of the Act to a member of a pension plan who terminates employment or ceases to be a member for reasons other than retirement or death and who is entitled to a deferred pension shall contain, as recorded on the records of the administrator, at least,

- (a) the name of the pension plan and its provincial registration number;
- (b) the member's name and date of birth;
- (c) the date on which the member joined the pension plan and the years of employment credited under the plan for the purpose of calculating the pension benefit;
- (d) the date on which the member was employed by the employer, if the pension plan is not a multi-employer pension plan;
- (e) the number of years of employment credited under the pension plan for the purpose of calculating the pension benefit;

- (f) the member's normal retirement age under the plan;
- (g) the amount of the pension benefits and ancillary benefits to which the member is entitled on termination and any options respecting such benefits, including early, normal and postponed dates for commencement of the payment of benefits;
- (h) where applicable, the name of the person recorded as the member's spouse;
- (i) any person designated by the member as a beneficiary for purposes of the pre-retirement death benefit under section 67 of the Act;
- (j) benefits provided on the death of a member other than those required under section 63 or 67 of the Act and the name of any person designated as beneficiary;
- (k) where applicable, the formula by which the deferred pension will be integrated with a pension payable under the *Canada Pension Plan*, *Quebec Pension Plan* or the *Old Age Security Act* (Canada) and the reduction or increase to the deferred pension as a result of such entitlement;
- (l) any bridging benefit or special allowance and the date on which the benefit or allowance ceases to be paid;
- (m) any indexation provisions applicable to the deferred pension;
- (n) any benefit payable in the event of the member's death, should the death occur prior to the commencement of payment of pension benefits;
- (o) any benefit payable in the event of the member's death, should the death occur after the commencement of payment of pension benefits;
- (p) the transfer value of the deferred pension determined in accordance with subsection 49(4);
- (q) any options with respect to transfers available under Section 61 of the Act and
 - (i) the application of the transfer ratio determined under Section 49 to the transfer option, and
 - (ii) if the transfer ratio is less than 1.00, the amount that may be transferred out immediately and the manner in which the balance will be paid;

- (r) the time periods in which any option must be exercised; and
 - (s) the amount of any refund to which the member is entitled under subsection 55(4) or 87(2) or (5) of the Act, any options available with respect to such a refund and the time period in which the options must be exercised;
 - (t) information about the effect, if any, that the member's election to receive a refund under subsection 55(4) or 87(2) or (5) of the Act would have on his or her pension or deferred pension; and
 - (u) any options available to the member under subsection 55(5) or 87(7) of the Act and the time period in which the options must be exercised.
- (2) Despite subsection (1), if the plan provides for a payment under subsection 70(1) of the Act to the member, the written statement shall contain at least the following information, as recorded on the records of the administrator, instead of the information required by subsection (1):
- (a) The name of the pension plan and its provincial registration number.
 - (b) The member's name and date of birth.
 - (c) The date on which the member joined the pension plan and the years of employment or membership credited under the plan for the purpose of calculating the pension benefit.
 - (d) The amount of the member's pension benefits and ancillary benefits which are vested under the pension plan.
 - (e) Any options available to the member under subsection 70(3) of the Act, where applicable, and the time period in which the options must be exercised.
 - (f) The amount of any refunds to which the member is entitled under subsection 55(4) or 87(2) or (5) of the Act, any options available with respect to such a refund and the time period for delivering a direction to the administrator concerning the refund.
- (3) The administrator shall provide the written statement referred to in subsection (1) or (2) within 60 days following the member's termination of employment or cessation of membership in the plan or, where notice of termination or cessation is not provided to the administrator prior to the event, within sixty days after the administrator's receipt of such notice.

Death benefits statement

- 31** (1) This section applies if, as a result of the death of a member or a former member, his or her spouse, beneficiary or estate becomes entitled to a benefit.
- (2) If a member or a former member who is not receiving payments from the pension fund dies and the death results in the spouse, beneficiary or estate of the member or former member becoming entitled to a benefit, the administrator of the plan must, within 60 days following receipt by the administrator of notice of the death, the administrator must provide the spouse, beneficiary or legal representative with a statement that sets out at least the following information,
- (a) the name of the pension plan and its provincial registration number;
 - (b) the amount and method of payment of the benefit;
 - (c) the amount, if any, payable under subsection 55(4) of the Act (50 per cent rule);
 - (d) where applicable, the basis for indexation of a pension;
 - (e) where applicable, the amount of the pension resulting from additional voluntary contributions and optional contributions;
 - (f) if applicable, the amount of the pension purchased with contributions resulting from a transfer made on behalf of the member from another pension fund; and
 - (g) in the case of a spouse, the options available under Section 63 or 67 of the Act.
- (3) For purposes of subsection 67(1) or (2) of the Act (pre-retirement death benefit), a spouse must make an election within 90 days after receipt of the notice referred to in subsection (2).
- (4) The administrator of the plan must comply with an election under subsection (3) within 60 days following receipt of the direction from the spouse.

Retirement statement

- 32** (1) At least 60 days prior to a member's normal retirement age or the date at which a member of a pension plan has indicated that he or she intends to retire, the administrator of the plan must advise the member of any options respecting payment of the pension available to the member under the pension plan, the Act or the regulations and the time period in which the options may be exercised.
- (2) An administrator who does not receive adequate advance notice of the intended retirement necessary to comply with subsection (1) must provide the information

referred to in subsection (1) within 60 days following receipt by the administrator of a completed application required for commencement of the pension.

- (3) The written statement required under Section 41 of the Act, upon the retirement of a member of a pension plan, must contain at least the following information as recorded on the records of the administrator:
- (a) the name of the pension plan and its provincial registration number;
 - (b) the member's name and date of birth;
 - (c) the date on which the member joined the plan and the years of employment credited under the plan for purposes of calculating the pension benefit;
 - (d) where applicable, the name of the person recorded as the member's spouse;
 - (e) the date pension benefits commence payment;
 - (f) the amount of the pension to which the member is or will be entitled according to the records of the administrator and based on elections made by the member;
 - (g) any increase or reduction in the pension resulting from early or postponed retirement;
 - (h) the amount of the pension benefit purchased with additional voluntary contributions made by the member;
 - (i) the optional benefits available to the member to enhance the pension and, if optional contributions exceed the maximum value of the optional benefits available for purchase, the amount of that excess and that the excess is retained in the plan;
 - (j) the amount of the pension benefit purchased with contributions resulting from a transfer made on behalf of the member from another pension fund;
 - (k) any integration of the pension entitlement with pensions payable under the *Canada Pension Plan*, *Quebec Pension Plan* or the *Old Age Security Act* (Canada) and the effect of the integration;
 - (l) any bridging benefits or special allowances and the date on which such ancillary benefits cease to be paid;
 - (m) any indexation provisions applicable to the pension or deferred pension;

- (n) any benefit payable in the event of the member's death and the name of the person designated as the beneficiary of that benefit; and
 - (o) any other refunds under the plan to which the member is entitled.
- (4) The administrator must provide the statement referred to in subsection (3) within 60 days after the member's retirement or, where the administrator has not received notification prior to retirement, within 60 days following the administrator's receipt of a completed application required for commencement of the pension.

Division 6 – Records

Retention of records

- 33 (1) In this section, "record" includes
- (a) accounts, books, files, returns, statements, reports, financial documents or other memorandums of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by any other means; and
 - (b) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.
- (2) Records respecting a plan that are in the possession or control of the administrator, an employer or any other person other than a member or other beneficiary must be retained by the person for the longest of the following applicable periods:
- (a) in the case of a record relating to the creation of the plan or any Predecessor of the plan, a period of seven years after the later of
 - (i) the day on which the last assets of the pension fund have been distributed, and
 - (ii) the day on which the superintendent approves the winding up of the plan;
 - (b) in the case of a record relating to a benefit under the plan, a period of seven years after the benefit has been paid in full or the entitlement to it has been otherwise extinguished;
 - (c) in the case of a record not described in clause (a) or (b), a period of seven years after the later of

- (i) the date of the last transaction to which it relates occurred, and
 - (ii) the date that the record ceases to be effective.
- (3) The requirement in subsection (1) may be satisfied by the retention of an electronic record if
 - (a) it is retained in a format that accurately represents the information contained in the original record;
 - (b) it is accessible so as to be usable for subsequent reference by any person entitled to have access to it or a copy of it; and
 - (c) if the record is a document that was sent or received, the record includes information that identifies the origin and destination of the document and the date and time when it was sent or received.

PART 4 – FUNDING OF PENSION PLANS

[These draft regulations are supplemental to the “Draft Pension Benefits Regulations made under the Pension Benefits Act”, posted for consultation to the website of the Department of Labour and Advanced Education on December 7, 2011.]

Division 1 – Payment and Refund of Contributions

Notices and summaries re. contributions

- 34** Notice under section 78(2) of the Act that a contribution was not paid when it became due must be given to the Superintendent within 60 days after the day on which the required contribution became due.
- 35** (1) A summary under subsection 79(1) of the Act of the contributions required to be made in respect of a pension plan for a fiscal year must be given to the persons specified by that subsection,
- (a) within 90 days after the plan is established, for the first fiscal year; and
 - (b) within 60 days after the beginning of the second fiscal year and of each subsequent fiscal year of the plan.
- (2) If there is a change in the summary of contributions, the administrator shall give the persons specified by subsection 79(1) of the Act a revised summary within 60 days after the administrator becomes aware of the change.
- (3) The summary or revised summary must be in a form approved by the Superintendent.

- (4) Notice under subsection 79(3) of the Act that a person was not given the summary of contributions in accordance with subsection 79(1) of the Act must be given to the Superintendent within 30 days after the day on which the summary was required to be given.
- (5) Notice under subsection 79(4) of the Act that a contribution was not paid when it became due must be given to the Superintendent within 60 days after the day on which the contribution became due.

Division 2 – Letters Of Credit

- 36 (1) A letter of credit that satisfies the requirements set out in Schedule II – Letters of Credit, complies with subsection 77(2) of the Act.
- (2) Schedule II – Letters of Credit, is incorporated into and forms part of these regulations.
- 37 (1) Section 77 of the Act applies with respect to all employers who are required to make payments into a pension plan that provides defined benefits, except as otherwise specified by subsection 77(11) of the Act.
- 38 A letter of credit may be provided under subsection 77(1) of the Act to the trustee of a pension fund that is administered under a trust described in clause 21(c).
- 39 The following rules apply with respect to the determination of the amount of the solvency liabilities of a pension plan for the purposes of subsection 77(3) of the Act:
 - (a) The amount of the solvency liabilities must be determined as of the valuation date of the report filed most recently under section [*draft funding regulations, section 11 - Amendment to a pension plan, 12 - Payments – general, 16 - Actuarial valuation reports and certificates, or 17-Actuarial valuation reports and certificates - review*].
 - (b) The amount of the solvency liabilities must exclude the liabilities described in subclauses (i) to (iv) of the definition of “solvency liabilities” in [*draft funding regulations, subsection 2(1)*].
- 40 (1) If a letter of credit relates to special payments described in clause [*draft funding regulations, clause 14(1)(c)*], the letter of credit must be provided under subsection 77(5) of the Act to the trustee at least 15 days before the first instalment of the special payments to which the letter of credit relates is due.
- (2) If a letter of credit relates to a payment required by subsection [*draft funding regulations, section 13 - contribution requirements in year of report*], the letter of

credit must be provided under subsection 77(5) of the Act to the trustee at least 15 days before the payment is due.

- (3) If a letter of credit is being amended, the amended letter of credit must be provided under subsection 77(5) of the Act to the trustee at least 15 days before any amendment takes effect.
 - (4) If a letter of credit is being renewed, notice of the renewal must be provided under subsection 77(5) of the Act to the trustee at least 15 days before the date on which the letter of credit would have expired.
 - (5) If a letter of credit is being replaced by another letter of credit, the replacement letter of credit must be provided under subsection 77(5) of the Act to the trustee at least 15 days before the original letter of credit expires.
 - (6) Within five days after receiving a copy of the letter of credit, the amended letter of credit, the replacement letter of credit or the notice of the renewal of the letter of credit, the administrator shall give the Superintendent the notice required by subsection 77(6) of the Act by filing the following documents:
 - (a) A certified copy of
 - (i) the letter of credit,
 - (ii) the amended letter of credit,
 - (iii) the replacement letter of credit or
 - (iv) the notice of the renewal.
 - (b) A certificate indicating whether the letter of credit satisfies the requirements of the Act and regulations and the requirements of the *Income Tax Act* (Canada).
- 41** (1) The trustee who holds a letter of credit in trust for a pension plan is required by subsection 77(8) of the Act to demand payment of the amount of the letter of credit into the pension fund by the issuer if any of the following circumstances exist:
- (a) the letter of credit does not satisfy the requirements of the Act and regulations or the requirements of the *Income Tax Act* (Canada).
 - (b) the administrator of the pension plan gives written notice to the trustee that the employer intends to wind up the pension plan under subsection 92(1) of the Act.

- (c) the Superintendent issues an order under subsection 93(1) of the Act requiring the wind-up of the pension plan.
 - (d) the employer is subject to bankruptcy proceedings under the *Bankruptcy and Insolvency Act* (Canada).
 - (e) an application or petition has been filed under the *Winding-up and Restructuring Act* (Canada) by the employer or against the employer.
 - (f) under the terms of an agreement under section 9 of the Act between the Crown and a designated jurisdiction whose pension benefits legislation applies to the pension plan, the trustee is otherwise required to demand payment of the amount of the letter of credit.
 - (g) under the terms of the trust agreement related to the letter of credit, the trustee is otherwise required to demand payment of the amount of the letter credit.
- (2) If the issuer does not pay the amount of the letter of credit upon receiving the trustee's demand,
- (a) the employer must immediately pay that amount into the pension fund; and
 - (b) the employer must give written notice to the Superintendent that the issuer has not paid the amount of the letter of credit.

Schedule II – Letters of Credit**Letter of credit**

- 1** (1) A letter of credit provided under section 77 of the Act must be an irrevocable and unconditional standby letter of credit made in accordance with the rules set out in *International Standby Practices* ISP98, International Chamber of Commerce Publication No. 590.
- (2) It must be made payable to the trustee of the pension fund, in trust for the pension fund.
- (3) It must be payable in Canadian currency.
- (4) It must make the issuer contractually liable to pay out money under its terms if payment is demanded under it by the trustee of the pension fund.
- (5) It must be subject to a trust agreement described in section 4 of this Schedule between the issuer and the administrator of the pension plan.

Issuer

- 2** (1) The issuer of a letter of credit must be a member of the Canadian Payments Association and must be
- (a) a bank as defined in section 2 of the *Bank Act* (Canada);
- (b) a credit union within the meaning of the *Credit Union Act*;
- (c) a credit union or caisse populaire incorporated under the laws of any other province of Canada; or
- (d) a cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies.
- (2) The issuer of a letter of credit to be held in trust for a pension fund cannot be the employer or an affiliate of the employer within the meaning of the *Companies Act*.
- (3) When the letter of credit is issued or renewed, the issuer must have a credit rating, given by a credit rating agency, that is at least equal to one of the following ratings:
- (a) A, from Dominion Bond Rating Service Limited;
- (b) A, from Fitch Ratings;
- (c) A2, from Moody's Investors Service;

- (d) A, from Standard & Poor's Ratings Services.

Terms

3 The letter of credit must provide for the following matters:

- (a) Effective date: The date on which the letter of credit becomes effective must be specified. That date must not be later than,
 - (i) the date on which the first instalment of the special payments to which the letter of credit relates is due, if the letter of credit relates to special payments described in [*draft funding regulations, clause 14(1)(c)*], or
 - (ii) the date a payment required by [*draft funding regulations, section 13 – contribution requirements in year of report*] is due, if the letter of credit relates to such a payment.
- (b) Expiry date: The date on which the letter of credit expires must be specified, and it cannot be later than the first anniversary of the date on which the letter of credit takes effect.
- (c) Demand for payment: When the trustee for the pension fund demands payment under the letter of credit, the issuer is required to promptly pay the face amount of the letter of credit without further inquiry.
- (d) Assignment: The letter of credit cannot be assigned except by the issuer to another issuer.
- (e) Effect of assignment: If the issuer assigns the letter of credit without the consent of the employer, the issuer who assigned it remains obligated to pay, on demand, an amount demanded under the letter of credit by the trustee of the pension fund.
- (f) Amendment: The letter of credit cannot be amended except as follows:
 - (i) to reflect a change in the name of the pension plan, the name of the employer or the name of the administrator.
 - (ii) to reflect a change in the trustee of the pension fund.
 - (iii) to reflect the assignment of the letter of credit to another issuer.
 - (iv) to decrease the amount of the letter of credit in the circumstances permitted under this Regulation.
 - (v) to increase the amount of the letter of credit when it is renewed.

- (g) Notice of amendment: The issuer is required to give written notice of any amendment to the employer within five days after the amendment is made.
- (h) Effect of change in issuer's status: If the issuer of the letter of credit ceases to satisfy any of the requirements set out in section 2 of this Schedule while the letter of credit is in effect, the issuer remains obligated to pay, on demand, an amount demanded under the letter of credit by the trustee of the pension fund.
- (i) Effect of employer's insolvency, etc.: It must provide that the insolvency, liquidation or bankruptcy of the employer has no effect on the rights or obligations of the issuer or the rights or obligations of the trustee of the pension fund.
- (j) Notice of non-renewal: It must provide that, if the issuer does not intend to renew the letter of credit, the issuer is required to notify the trustee and the employer at least 60 days before the letter of credit expires.

Trust agreement

- 4** (1) The trust agreement to which a letter of credit is subject must provide for the following matters:
- (a) the trustee of the pension fund holds the letter of credit in trust for the pension fund;
 - (b) the trustee is required to demand payment of the amount of the letter of credit if the administrator notifies the trustee that the letter of credit does not satisfy the requirements of the Act and regulations or the requirements of the *Income Tax Act* (Canada);
 - (c) the trustee is required to demand payment of the amount of the letter of credit if the administrator or the employer notifies the trustee that
 - (i) the employer intends to wind up the pension plan under subsection 92(1) of the Act; or
 - (ii) the Superintendent has issued an order under subsection 93(1) of the Act requiring the wind-up of the pension plan;
 - (iii) the employer is subject to bankruptcy proceedings under the *Bankruptcy and Insolvency Act* (Canada); or
 - (iv) an application or petition has been filed under the *Winding-up and Restructuring Act* (Canada) by or against the employer;
 - (d) if the trustee receives notice from a person or entity other than the administrator or the employer that a circumstance described in clause (c)

exists, the trustee is required to notify the administrator, the employer and the Superintendent. Thirty-one days after giving this notice, the trustee is required to demand payment of the amount of the letter of credit unless the administrator has notified the trustee that the circumstance does not exist; and

- (e) Fourteen days before the letter of credit expires, the trustee is required to demand payment of the amount of the letter of credit unless one or more of the following events has occurred:
 - (i) the employer has paid into the pension fund an amount equal to the amount of the letter of credit;
 - (ii) the letter of credit has been renewed, in an amount at least equal to the original letter of credit, and the trustee has received notice of the renewal;
 - (iii) the letter of credit is being replaced, in an amount at least equal to the original letter of credit, and the trustee has received the replacement letter of credit;
 - (iv) the administrator has notified the trustee that the amount of the letter of credit is reduced and the trustee has received the following documents:
 - A. either a replacement letter of credit in the reduced amount or notice of the renewal of the current letter of credit in the reduced amount; and
 - B. either notice that the employer has paid into the pension fund the amount by which the letter of credit is reduced or notice that no such payment is required because the requirement described in subsection (2) is satisfied.
 - (f) If the trustee demands payment of the amount of the letter of credit, the trustee is required to promptly notify the administrator, the employer and the Superintendent;
 - (g) If the issuer does not pay the amount of the letter of credit after the trustee demands payment, the trustee is required to promptly notify the administrator, the employer and the Superintendent;
 - (h) The administrator is required to give a copy of the trust agreement to the employer and the Superintendent within 10 days after it is entered into or is amended, as the case may be.
- (2) If the amount of the letter of credit is reduced, the employer is not required to make the payment referred to in paragraph 4(1)(e)(iv)B into the pension fund if,

as of the date of the most recent report filed under section [*draft funding regulations, section 11 - Amendment to a pension plan, 12 - Payments – general, 16 - Actuarial valuation reports and certificates, or 17-Actuarial valuation reports and certificates - review*] of the regulations, “A” minus “B” is less than or equal to “C” where,

“A” is the sum of the solvency liabilities and the solvency liability adjustment,

“B” is the sum of the solvency assets and the amount, which may be positive or negative, by which the value of the solvency assets are adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets, calculated over a period of not more than five years, and

“C” is the present value of the total amount of all letters of credit held in trust for the pension fund, after the reduction in the amount of the letter of credit.

- (3) The present value of the total amount of all letters of credit held in trust for the pension fund must be determined, for the purposes of the definition of “C” in subsection (2), using the same interest rates as those used to determine the amount of the solvency deficiency set out in the report referred to in that subsection.

PART 5 – MEMBERSHIP, BENEFITS, AND INTEREST

Division 1 – Membership

Prescribed classes

- 42 (1)** For purposes of Section 45 of the Act (Eligibility for membership), prescribed classes of employees are
- (a) employees who are paid a salary;
 - (b) employees who are paid on an hourly basis;
 - (c) employees who are members of a trade union;
 - (d) employees who are not members of a trade union;
 - (e) supervisory employees;
 - (f) management employees;
 - (g) executive employees;
 - (h) employees who are officers of the employer;
 - (i) employees who are significant shareholders of the employer;
 - (j) persons who fall within clause (c) or (d) and also any of clauses (a) or (b) or (e) to (i);
 - (k) employees who belong to such other identifiable group of employees as is deemed acceptable by the Superintendent.
- (2)** For the purposes of Section 45 of the Act, different employers in a multi-employer plan may have different prescribed classes of employees covered by the plan.
- (3)** A pension plan in which the only member is an individual employee who, but for this subsection, falls within a class described in clause (1)(g), (h) or (i) is exempt from Section 45 of the Act, and that employee must be treated for the purposes of the Act and these regulations as not falling within that class.

Division 2 – Benefits

Variation of pension benefits

- 43** (1) If a pension plan provides that a pension benefit may be varied as the result of retirement benefits payable under the *Canada Pension Plan* or the *Quebec Pension Plan* and the pension plan does not state the specific age at which the variation is to occur, the age is deemed to be the attainment of sixty-five years of age.
- (2) Subsection (1) does not apply to a pension plan that is amended after December 31, 1987, to establish a specific age or to provide for the occurrence of a specific event for variation of the pension benefit prior to the recipient attaining sixty-five years of age.
- (3) A pension plan that provides a pension benefit that may be varied as a result of a recipient's entitlement to a retirement pension under the *Canada Pension Plan* or the *Quebec Pension Plan* prior to attaining the age of 65 years must take into account the adjustment made to the retirement pension under the *Canada Pension Plan* or the *Quebec Pension Plan*.

Integration formula

44 For purposes of Section 73 of the Act (CPP/QPP offsets), the reduction of a pension or a deferred pension that may be required by a pension plan in relation to benefits under the *Canada Pension Plan* (Canada) (“CPP”), the *Quebec Pension Plan* (Quebec) (“QPP”) or the *Old Age Security Act* (Canada) (“OAS”) must not exceed the following amounts:

- (a) if the plan has a CPP or QPP offset, the amount calculated according to the following formula:

$$A \times \frac{B}{35}$$

where,

A = amount of pension that would be payable to the person under the CPP or the QPP, calculated as of the date of termination of the person's employment or membership and calculated as if the person had reached 65 years of age at the date of termination, and

B = number of years, not exceeding 35, including parts of a year, of employment credited to the person under the pension plan; and

- (b) if the plan has, prior to January 1, 1988, an offset for the OAS, in an amount calculated according to the following formula:

$$C \times \frac{D}{35}$$

where,

C = the amount of pension payable under the OAS, calculated as of the date of termination of the person's employment or membership,

D = the number of years, not exceeding 35, including parts of a year, of employment credited to the person under the pension plan before January 1, 1988.

Reduction of bridging benefits

- 45** (1) If a member or former member has satisfied all of the eligibility requirements to receive a bridging benefit or if a retired member is receiving a bridging benefit, the amount or value of the bridging benefit shall not be reduced only because the member, former member or retired member is eligible or entitled, under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada), to receive actuarially reduced payments before reaching 65 years of age.
- (2) If a pension plan provides a bridging benefit without specifying the age at which the benefit is reduced or ceases, the plan is deemed to specify that the bridging benefit is reduced or ceases when the member, former member or retired member reaches 65 years of age.
- (3) Subsection (2) does not apply if the pension plan is amended after December 31, 1987, to specify that the bridging benefit is reduced or ceases in one, or both, of the following circumstances:
- (a) when the member, former member, or retired member reaches a specified age that is younger than 65 years of age.
 - (b) when a specified event occurs.

Individual level-premium contracts

- 46** A deferred pension referred to in sections 52 and 53 of the Act provided under a pension plan that is insured by individual level-premium contracts may, in the case of an individual level premium contract issued prior to the qualification date, be equal to the paid up annuity under the contract arising from contributions made with respect to employment on or after the qualification date if the special payments required with respect to the deferred pension under the contract have all been paid or will continue to be paid.

Apportionment of benefits – final average or best average earnings plans

- 47** For purposes of section 55 of the Act, if a pension plan provides a pension benefit based on a rate of remuneration of a plan member as of the date the plan member

terminates employment, or based on an average of the rates of remuneration of a plan member over a specified or limited time period up to the date the plan member terminates employment, the portion of the pension benefit attributable to employment after January 1, 1988, is

(a) the pension benefit,

less,

(b) the pension benefit calculated in accordance with the terms of the plan at the December 31, 1987, using the rate of remuneration of the plan member as of the date of termination of employment or the average of the rates of remuneration of the plan member over the specified or limited time period, as the case may be.

Offsets from pre-retirement death benefits

- 48** (1) A pension plan may provide for the reduction of an entitlement under Section 67 of the Act (pre-retirement death benefit), by an amount equal to that part of a group life insurance payment payable on the death of the member, former member or retired member that can be considered to have been paid by employer premiums.
- (2) The entitlement under section 67 of the Act shall not be offset by an amount greater than the group life insurance payment multiplied by the ratio of the employer-paid cost of the group life insurance policy to the total cost of the policy for the relevant class of employees, taking into account in both the numerator and the denominator the ratio of any experience or other refunds.
- (3) The ratio referred to in subsection (2) shall be averaged over a period not exceeding five years.
- (4) The actuarial present value of a reduction to an entitlement under section 67 of the Act may not exceed the amount of the payment under the group life insurance plan.
- (5) In the case of a pension plan that provides contributory benefits, the reduction referred to in subsection (1), must not reduce an entitlement under section 67 of the Act to less than the aggregate of the required contributions of the member, former member or retired member, with interest in accordance with section 67.
- (6) A reduction under this section must not be made unless the group life insurance contract provides for payment of the insurance payment to the spouse of a member, former member or retired member, if there is a spouse at the date of death or the spouse has waived the insurance payment.

- (7) Subsection 67(15) of the Act does not apply to pension plans that provide defined contribution benefits.

Commuted value and portability of pension benefits

- 49 (1) For the purposes of subsection 61(1) of the Act, the commuted value of a pension, deferred pension, or ancillary benefit must not be less than the value determined in accordance with section 3800 of the *Canadian Institute of Actuaries Standards of Practice*, which is available to the public from the offices of the Canadian Institute of Actuaries or, electronically, on its website.
- (2) Subsection (1) does not apply if a pension plan is being wound up in whole or in part.
- (3) For purposes other than those of subsection 61(1) of the Act and subsection 78(2), the commuted value of a pension, deferred pension or ancillary benefit must be calculated using methods and actuarial assumptions that are consistent with accepted actuarial practice.
- (4) That portion of the commuted value of a pension, deferred pension or ancillary benefit that can be transferred from a pension plan as of a given date must be determined by multiplying the commuted value, as determined in accordance with subsection (1), by the lesser of
- (a) the most recently determined transfer ratio; and
 - (b) one.
- (5) Subject to subsection (6), where the transfer ratio of a pension plan is equal to or greater than one, the administrator may transfer the commuted value of a pension, deferred pension or ancillary benefit in accordance with Section 61(transfer), 62(purchase of pension from insurance company), 67(pre-retirement death benefit) or 74 (division of pension or pension benefit) of the Act.
- (6) Where the administrator of a pension plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the pension plan under [*draft funding regulations, section 11 or 18 or subsections, 16(2 or 17(2))*], events have taken place that may result in the reduction of the transfer ratio of the plan to a value less than 0.9, the administrator must not undertake the transfer described in subsection (5) without the prior approval of the Superintendent under subsection 61(11) of the Act.
- (7) If the transfer ratio of a plan is less than one and the administrator of the plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section [*draft funding regulations, section 11 or 18 or subsections, 16(2 or 17(2))*], events have taken place that may result in the reduction of the transfer ratio by 10 per cent or more of the most

recently determined transfer ratio, the administrator shall not undertake a transfer of any part of the commuted value without the prior approval of the Superintendent under subsection 61(11) of the Act.

- (8) If the commuted value of the pension, deferred pension or ancillary benefit is calculated on a basis that produces a commuted value higher than the value calculated on the basis prescribed under subsection (1), the administrator shall not make any transfer calculated on the higher basis until the administrator files a statement describing in detail the basis for calculating the commuted value.
- (9) Subject to subsections (7) and (8), the administrator may transfer 100 per cent of the commuted value of a pension, deferred pension or an ancillary benefit from a pension plan that has a transfer ratio that is less than one where,
 - (a) the administrator of the plan is satisfied that an amount equal to the transfer deficiency has been remitted to the pension fund; or
 - (b) the aggregate of transfer deficiencies for all transfers made since the last review date does not exceed 5 per cent of the assets of the plan at the time.
- (10) If less than 100 per cent of the commuted value of a pension, deferred pension or ancillary benefit is transferred, the balance must be transferred by the administrator within 5 years after the date of the initial transfer.
- (11) Interest must accumulate, at the same rate used to calculate the commuted value of the pension, deferred pension or ancillary benefit, on the balance to be transferred under subsection (10).
- (12) A transfer under subsection (10) after the initial transfer must be made in accordance with subsection (9).
- (13) Subsections (4) to (10) do not apply to any
 - (a) amounts transferred pursuant to a reciprocal transfer agreement that is filed;
 - (b) amounts that are paid under subsection 63(7) of the Act;
 - (c) amounts that are paid under subsection 70(1) of the Act.

Exclusion from commuted value

50 For the purposes of clause 55(8)(d) of the Act, “benefits that result from voluntary contributions for past service” means, with respect to a member of a pension plan, benefits credited to the member as a result of his or her election under the plan to make voluntary contributions in order to purchase pension benefits relating to a period of employment before the date on which the member made the election.

Reciprocal transfer agreement – 50% rule

51 Subsection 55(3) of the Act does not apply to the transfer of money or credits from one pension plan to another plan in accordance with a reciprocal transfer agreement.

Conversion of defined benefits

- 52** (1) This section applies if an amendment to a pension plan with defined benefits converts them to defined contribution benefits.
- (2) A member with defined benefits who elects to convert them in accordance with the amendment to the pension plan referred to in subsection (1) is entitled to require the administrator to pay to the member that portion of the amount of the commuted value of the defined benefits that exceeds the amount prescribed under the *Income Tax Act* (Canada) for the conversion of defined benefits under the plan to defined contribution benefits.

Additional ancillary benefits

53 The following are prescribed as ancillary benefits for purposes of Section 58 of the Act:

- (a) survivor benefits in excess of those required under subsection 58(3) of the Act.

Survivor benefits

54 A bridging benefit need not be taken into account when calculating,

- (a) the amount of a pension for purposes of Section 63(3) of the Act (joint and survivor pension benefit); or
- (b) the commuted value of a deferred pension or a pension benefit under Section 67 of the Act (pre-retirement death benefit).

Division 3 – Phased Retirement Option

Phased retirement option – information to be provided

55 Information concerning the phased retirement option provided under a pension plan must be provided by the administrator to the member who requests the information within 30 days after the request has been made.

56 For purposes of subsection 51(3) of the Act, the administrator shall approve an application that satisfies the requirements of the Act and these regulations within 60 days after receiving the application.

57 For purposes of subsection 51(5) of the Act, a member must continue to accrue benefits under the pension plan during his or her participation in the phased retirement

option under circumstances to which subsection 8503(19) of the *Income Tax Regulations* (Canada) applies.

- 58** Where the period of participation in the phased retirement option ceases due to the death of the member, the member is deemed to have retired immediately before the date of death for purposes of the joint and survivor pension in Section 63 of the Act, and that section applies to the determination of the pension entitlement of a surviving spouse or other beneficiary.

Division 4 – Variable Benefits

Definitions

59 In this Division,

- (a) "defined contribution account" of a member or former member means the portion of the member's or former member's pension benefit under a pension plan that is attributable to the plan's defined contribution provision and has not been transferred or credited to the member's or former member's variable benefits account;
- (b) "specified beneficiary", in relation to a defined contribution provision of a pension plan as it relates to a member or former member, means an individual who is a specified beneficiary under subsection 8506(8) of the *Income Tax Regulations* (Canada) in relation to that provision and that member or former member;
- (c) "variable benefits account" means an account under the defined contribution provision of a pension plan that is used, or is to be used, for providing variable benefits to the member or former member for whom the account was established, or to a beneficiary of that member or former member;
- (d) "variable benefits participant", in relation to a variable benefits account, means
 - (i) the member or former member of the pension plan for whom the account has been, or is to be, established; and
 - (ii) after the member's or former member's death, if the plan so permits, the specified beneficiary in whose name the variable benefits account is, or is to be, continued.
- (e) "variable pension benefits" means pension benefits that are provided for by a pension plan with a defined contribution provision that provides for the payment of variable benefits referred to in paragraph 8506(1)(e.1) of the *Income Tax Regulations* (Canada).

Prescribed arrangement

60 An arrangement under which variable pension benefits are or are to be provided is prescribed for the purpose of section 56 of the Act (defined contribution benefits) if the arrangement meets the requirements of this Part.

Provision for variable pension benefits

61 (1) A pension plan that provides for variable pension benefits must provide that

- (a) all or any part of the pension benefits under a member's defined contribution account may be transferred to his or her variable benefits account, but only in accordance with this Division and the provisions of the plan;
- (b) only a member or former member who has reached the early retirement age under the defined contribution provision of the plan may elect to transfer the member's or former member's pension benefit to a variable benefits account;
- (c) if the member or former member has a spouse, no pension benefits in the member's or former member's defined contribution account shall be transferred to the variable benefits account of the member or former member unless the spouse of the member or former member has consented to the transfer of the variable benefits account, in a form approved by the Superintendent.
- (d) when a member or former member elects to transfer pension benefits to the member's or former member's variable benefits account, the member or former member is deemed not to have commenced his or her pension with respect to any amount in the defined contributions account that is not transferred to the variable benefits account.
- (e) in accordance with section 87 of the Act, the balance in the variable benefits account will be administered as locked-in money under the Act until paid out or transferred as permitted by this Part;
- (f) the variable pension benefits payable to a member or former member for a calendar year must be
 - (i) not less than the minimum amount determined for that year under subsection 8506(5) of the *Income Tax Regulations* (Canada), and
 - (ii) not more than the maximum amount determined for that year under the plan's provisions for determining that maximum amount, in accordance with Section 64;

- (g) the variable benefits participant may notify the administrator in writing, within 60 days after receiving the annual statement required under section 65, (annual statement to variable benefits participant) of the amounts to be paid as variable pension benefits, and the frequency and method of payment,
 - (i) during the current year, or
 - (ii) if the variable benefits account rate of return is guaranteed by the plan for a period longer than one year, during any longer period ending not later than the end of the period for which the rate of return is guaranteed;
 - (h) subject to the minimum and maximum referred to in clause (f), the variable benefits participant may at any time, by written notice to the administrator, increase or decrease the amounts to be paid as variable pension benefits pension in the year;
 - (i) if the variable benefits participant does not notify the administrator of the amounts to be paid as variable pension benefits, the amounts to be paid will be as set out in the latest annual statement provided to the participant under section 65;
 - (j) after the death of the member or former member, the balance of the variable benefits account must be paid to the person to whom a deferred pension or pension is to be paid in accordance with Section 67 of the Act, and in the manner in which a deferred pension or pension is to be paid under that Section;
- (2) A pension plan may provide for the deceased member's or former member's variable benefits pension to continue to be paid, after his or her death, to his or her surviving spouse if that spouse
- (a) is a specified beneficiary in relation to the deceased member or former member; and
 - (b) elects to continue receiving the variable pension benefits instead of requiring the benefits to be paid or transferred as provided for in the plan

Additional transfers to variable benefits account

- 62** (1) Subject to subsection (2), a pension plan that provides for variable pension benefits may provide that a member or former member may transfer to his or her variable benefits account, to the extent permitted by or under the *Income Tax Act* (Canada), the following amounts or assets:
- (a) the amount transferred under clause 61(1)(a) of the Act;

- (b) the amount transferred under section 74 of the Act;
 - (c) the assets in a LIRA;
 - (d) the assets in a LIF; or
 - (e) the assets in a prescribed retirement savings arrangement other than a LIRA or a LIF.
- (2) The member or former must have the written consent of his or her spouse in order to make the transfer but,
- (a) the consent of a spouse who is living separate and apart from the member or former member on the date of the transfer with no reasonable prospect of the resumption of cohabitation, is not required; and
 - (b) the consent of a spouse is not required if none of the money to be transferred into the variable benefits account is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the purchaser.

Transfers from variable benefits account

- 63** (1) A pension plan that provides for variable benefits must provide that the variable benefits participant may transfer all or any part of the balance of the variable benefits account in accordance with Section 61 of the Act, as applicable, and subject to the provisions of the *Income Tax Act* (Canada).
- (2) An administrator must not transfer all or any part of the balance of the variable benefits account unless the transfer is made in accordance with Section 61 of the Act.
- (3) A variable benefits participant who transfers any or all of the balance of the variable benefits account is entitled to the rights pursuant to Section 61 of the Act of a member who terminates employment and, for that purpose, subsection 61(4) of the Act does not apply to the transfer.
- (4) Within 60 days after receiving a written request from a variable benefits participant to transfer an amount from a variable benefits account, the administrator must provide to the participant a statement containing the following information, as of the date of receipt of the request (the "request date"):
- (a) the name of the pension plan and its Canada Revenue Agency number;
 - (b) the participant's name;

- (c) the date the variable pension benefits commenced;
- (d) the variable benefits account balances as at the beginning of the year and at the request date;
- (e) the income and gains, net of losses, earned during the year up to the request date;
- (f) the total of the amounts paid as variable pension benefits to the participant in the year up to the request date;
- (g) the amounts transferred to the participant's variable benefits account during the year up to the request date, and their source;
- (h) the amount and nature of the fees charged to the variable benefits account during the year up to the request date;
- (i) the amount available to be transferred;
- (j) the minimum and maximum amounts that may be paid in the year, as set out in the latest annual statement provided under section 65;

Maximum income payable

- 64 (1)** The provisions in a pension plan for determining the maximum amount of variable pension benefits payable in a calendar year must provide that the maximum amount payable is the greatest of the amount determined by the following formula:

$$\text{Maximum} = F \times B$$

In this formula,

F is the factor from the table in Schedule V for the reference rate for the fiscal year and the variable benefits participant's age at the end of the immediately preceding year,

B is the balance of the variable benefits account at the beginning of the year plus the total of all amounts transferred to the variable benefits account in the year, other than amounts transferred directly or indirectly from a LIF or another variable benefits account; and the minimum amount determined for the year under subsection 8506(5) of the *Income Tax Regulations* (Canada).

Annual statement to variable benefits participant

- 65** Within 60 days after the end of each year, the administrator must provide to each variable benefits participant who received a variable pension benefit in that year a statement containing the following information:

- (a) the name of the pension plan and its Canada Revenue Agency number;
- (b) the participant's name;
- (c) the date of birth used to determine the minimum variable pension benefits payable for the year;
- (d) if the pension is being paid to the member or former member, the name of the member's or former member's spouse or named beneficiary, if any;
- (e) the date the variable pension benefits commenced;
- (f) the account balances at the beginning and end of the year for which the statement is provided;
- (g) the income and gains, net of losses, earned by the variable benefits account during the year;
- (h) the total of the amounts paid as variable pension benefits to the participant during the year;
- (i) the amounts transferred to the participant's variable benefits account during the year and their source;
- (j) the amount and nature of the fees charged to the participant's variable benefits account in the year;
- (k) information about the election that the participant may make regarding the amount to be paid, including information about
 - (i) the minimum and maximum amounts payable,
 - (ii) how the participant may make the election, and the deadline for making it,
 - (iii) the amount that will be paid if the participant does not make the election, and
 - (iv) how the participant may change his or her election.

Statement after death of variable benefits participant

66 Within 60 days after being properly notified of the death of a variable benefits participant who died while in receipt of a variable benefits pension, the administrator must provide to the person entitled to receive the balance of the variable benefits account a statement containing the following information:

- (a) the name of the pension plan and its Canada Revenue Agency number;
- (b) the participant's name;
- (c) the date the variable pension benefits commenced;
- (d) the account balances as at the beginning of the year and the date of death;
- (e) the income and gains, net of losses, earned during that year before the date of death;
- (f) the total of the amounts paid as a variable pension benefits to the participant in that year;
- (g) the amounts transferred to the participant's variable benefits account during the year and their source;
- (h) the amount and nature of the fees charged to the variable benefits account during the year;
- (i) information about the payment and transfer options available to the recipient, including,
 - (i) how the recipient is to make an election, and the deadline for making it, and
 - (ii) the balance in the account that will be paid or transferred if the recipient does not make an election.

Division 5 – Interest

Crediting Interest on Contributions

67 (1) In this section,

- (a) “bank deposit rate” means, as of a particular date, the rate calculated on the basis of the average of the yields of five-year personal fixed-term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122515 compiled by Statistics Canada and available on the website maintained by the Bank of Canada, over a reasonably recent period such that the averaging period does not exceed 12 months.

- (b) “pension fund rate of return” means, as of a particular date in relation to a particular pension plan, such rate of return, over a reasonably recent period that does not exceed 12 months, as can be reasonably be attributed to the operation of the pension fund or to the part of the pension fund to which the contribution is made.
- (2) The following rules govern the crediting of interest on contributions made by or on behalf of members, former members and retired members to a pension plan that provides defined contribution benefits:
- (a) Crediting of interest: The contributions and additional voluntary contributions made to the pension fund by or on behalf of members, and former members and retired members must be credited, at least annually, with interest calculated in accordance with this subsection;
 - (b) Accrual: The interest on contributions begins to accrue no later than the first day of the month after the month in which the contribution must be paid into the pension fund, or in the case of additional voluntary contribution or optional contribution, no later than the first day of the month after the month in which the contribution is paid into the pension fund;
 - (c) Rate: The interest on contributions, other than additional voluntary contributions and optional contributions, must be calculated at a rate that is not less than the pension fund rate of return. However, if the pension benefits are guaranteed by an insurance company, interest on the contributions must be calculated at a rate not less than the bank deposit rate;
 - (d) Rate for additional voluntary contributions or optional contributions: The interest on additional voluntary contributions must be calculated at a rate that is not less than the pension fund rate of return.
 - (e) Averaging the rate: When crediting contributions, additional voluntary contributions or optional contributions made during a fiscal year of a pension plan, the administrator may use an average rate for that fiscal year determined in accordance with clause (c) or (d) instead of the particular rate in effect when the interest is accrued.
- (3) The following rules govern the crediting of interest on contributions made by members, former members and retired members to a pension plan that provides defined benefits:
- (a) Crediting of interest: The contributions and additional voluntary contributions made to the pension fund by members, former members and retired members must be credited, at least annually, with interest calculated in accordance with this subsection.

- (b) **Accrual:** The interest on a contribution begins to accrue no later than the first day of the month after the month in which the contribution must be paid into the pension fund or, in the case of an additional voluntary contribution or optional contribution, no later than the first day of the month after the month in which the contribution is paid into the pension fund.
 - (c) **Rate:** The interest on contributions, other than additional voluntary contributions or optional contributions, must be calculated at a rate that is not less than the bank deposit rate. However, there are two exceptions to this requirement. If the pension plan so provides, the interest on the contributions may be calculated at a rate that is not less than the pension fund rate of return. If the pension benefits are guaranteed by an insurance company, interest on the contributions must be calculated at a rate that is not less than the bank deposit rate.
 - (d) **Rate for additional voluntary contributions:** The interest on additional voluntary contributions must be calculated at such rate of return as can be reasonably attributed to the operation of the pension fund or to the part of the pension fund to which the contributions are made.
 - (e) **Averaging the rate:** When crediting contributions, additional voluntary contributions or optional contributions made during a fiscal year of a pension plan, the administrator may use an average rate for that fiscal year determined in accordance with clause (c) or (d) instead of the particular rate in effect when the interest is accrued.
- (4) For a pension plan that provides both defined benefits and defined contribution benefits, the contributions must be credited with the interest described in clause (c) or (d), whichever is appropriate in the circumstances.
 - (5) Upon the termination of employment or membership of a member, the contributions, if any made by or on behalf of the member during that fiscal year must be credited with interest at the rate most recently calculated in accordance with subsection (2) or (3), as the case requires, and interest must be credited at least to the month in which the termination occurred.
 - (6) This section applies with respect to contributions made after December 31, 1987.
 - (7) This section applies with respect to contributions made before January 1, 1988 that remain in a pension fund after December 31, 1987.

Interest on Other Payments

- 68** (1) If a person is entitled to be paid a lump sum from a pension plan, the amount owing to him or her accumulates interest from the date of termination until the beginning of the month in which the lump sum is paid.

- (2) If a person is entitled to be paid a lump sum from a pension plan, the interest is calculated at the same rate that is used to calculate interest on contributions to the plan made by members and former members.
- 69 (1) If an amount equal to the commuted value of a former member's deferred pension becomes payable under subsection 61 of the Act, the amount accumulates interest from the date on which the former member terminates his or her membership in the pension plan until the beginning of the month in which the amount is paid.
- (2) The interest is calculated at the same rate that was used to calculate the commuted value.
- 70 An order made by the Superintendent for repayment of money under subsection 61(12) or 62(5) of the Act or for a return of assets under subsection 107(14) of the Act must include interest at the rate set out in subsection 2(1) of the *Interest on Judgments Act*, calculated from the date of the transfer of funds to which the order relates.
- 71 (1) If under subsection 96(2) of the Act (determination of amount of benefits on wind up), an amount equal to the commuted value of a person's pension benefit becomes payable, the amount accumulates interest from the effective date of the wind up of the pension plan until the beginning of the month in which the amount is paid.
- (2) The interest is calculated at the same rate that was used to calculate the commuted value for the purposes of the wind up report.
- 72 An order under subsection 107(14) of the Act for the return of assets to a pension fund must include interest at the post judgment interest rate as defined in subsection 2(1) of the *Interest on Judgments Act*, calculated from the date of the transfer of assets to which the order relates.

Surplus withdrawal application - continuing plan

- 73 (1) The following information is prescribed for the purposes of a notice respecting an application under subsection 103(2) of the Act:
- (a) the name of the pension plan and its provincial registration number;
 - (b) the valuation date of the report provided with the application and the amount of surplus in the pension plan;
 - (c) the amount of surplus withdrawal requested;
 - (d) a statement that submissions in respect of the application may be made in writing to the Superintendent within thirty days after receipt of the notice;

- (e) the contractual authority for surplus withdrawal; and
 - (f) notice that copies of the report and certificates filed with the Superintendent in support of the surplus request are available for review at the offices of the employer and information on how copies of the report may be obtained.
- (2) The employer shall file a copy of the notice required by subsection 103(2) of the Act before transmitting it to the persons required by that subsection.
- (3) An application under subsection 103(2) of the Act must be accompanied by the following information and documents:
- (a) A certified copy of the notice of the application.
 - (b) Details as to the classes of persons who received the notice and the date on which the last notice was distributed.
 - (c) A statement indicating that the requirements of subsection 103(2) of the Act are satisfied.
 - (d) A current report demonstrating that a surplus, as determined in accordance with section 74 of these regulations, exists and that there are no special payments required to be made to the pension fund.
- 74** (1) For purposes of determining surplus in a continuing pension plan,
- (a) the value of the assets of the pension plan shall be calculated on the basis the market value of investments held by the pension fund plus any cash balances and accrued or receivable items; and
 - (b) the value of the liabilities of the pension plan shall be the greater of the calculation of,
 - (i) the going concern liabilities, and
 - (ii) the solvency liabilities.
- (2) For purposes of subclause 105(1)(d)(ii) of the Act, the liabilities of the pension plan are the sum of,
- (a) the solvency liabilities; and
 - (b) the liabilities for benefits, other than pension benefits and ancillary benefits payable under a qualifying annuity contract, that are excluded in calculating the solvency liabilities.

PART 6 – WIND-UP OF PENSION PLANS

Notices and statements required on wind-up

- 75 (1)** A notice of proposal to wind up a pension plan required under section 92 of the Act must include,
- (a) the name of the plan and its provincial registration number;
 - (b) the proposed date of wind up;
 - (c) notice that each member, former member, retired member or any other person entitled to a pension, deferred pension, any other benefit or a refund will be provided with an individual statement setting out entitlements and options under the plan; and
 - (d) where a plan provides contributory benefits, notice of the member's right to make contributions in respect of the period of notice of termination of employment required under the *Labour Standards Code*.
- (2)** In addition to setting out the applicable person's entitlement under the plan and the options available to the person, the statement required by sub-section 95(1) of the Act must include the following information,
- (a) the name of the pension plan and its provincial registration number;
 - (b) the name and date of birth of the member, former member or retired member;
 - (c) the date of plan wind-up;
 - (d) the date on which the member, former member or retired member joined the plan, and, except in the case of multi-employer pension plans, the date on which he or she was employed by the employer;
 - (e) if applicable, the name of the spouse of the member, former member or retired member as indicated on the records of the administrator;
 - (f) the amount of required contributions made to the pension fund by the member, former member or retired member since the date of the last annual statement provided under section 40 of the Act;
 - (g) the accumulated amount of required contributions made to the pension fund by the member, former member or retired member including interest credited to such contributions, to the date of plan wind-up;

- (h) the amount of additional voluntary contributions made by the member, former member or retired member to the pension fund since the date of the last annual statement provided under section 40 of the Act;
- (i) the accumulated amount of additional voluntary contributions made by the member, former member or retired member to the pension fund, including interest credited to such contributions, to the date of wind-up;
- (j) any amount transferred since the date of the last annual statement provided under section 40 of the Act from another pension plan on behalf of the member, former member or retired member and the pension benefit under the plan attributable to that amount;
- (k) in the case of a plan providing defined contribution benefits,
 - (i) the amount of employer contributions allocated to the member, former member or retired member since the date of the last annual statement provided under section 40 of the Act, and
 - (ii) the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member, former member or retired member on the plan records, to the date of wind-up;
- (l) in the case of a plan providing defined benefits,
 - (i) the member's years of employment or membership for the purpose of the calculation of pension benefits including any period credited under subsection 97(5) of the Act, and
 - (ii) where salary is a factor in determining a pension benefit, the salary level utilized for the purpose of determining the benefit;
- (m) the rate of interest credited to contributions required to be made by the member, former member or retired member since the date of the last annual statement required under section 40 of the Act;
- (n) an explanation of any amendments made to the pension plan during the period covered by the statement for which an explanation has not previously been provided under section 39 of the Act and *[draft funding regulations, subsection 11(10)]*;
- (o) the time period in which any option must be exercised;
- (p) if there are insufficient assets to pay all pension benefits, a description of any reductions made to the person's benefits;

- (q) notice about where copies of the wind-up report are available and information on how copies of the report may be obtained;
 - (r) notice about the person who the recipient of the statement may contact with respect to any questions arising out of the statement; and
 - (s) notice that the entitlements and options are subject to the approval of the Superintendent and the approval of the Canada Revenue Agency, and may be adjusted accordingly.
- (3) Subject to subsection (4), the statement required by subsection 95(1) of the Act must be given to the specified persons within 60 days after the administrator receives notice that the Superintendent has approved the wind-up report.
- (4) If the Superintendent approves the payment of benefits under subsection 94(3) of the Act, the statement required by subsection 95(1) of the Act must be given to the persons affected by the approval within 60 days after the administrator receives notice of it.
- (5) A recipient of a statement referred to in subsection (2) who is entitled to elect an option shall forward the election to the administrator within 90 days after receipt of the statement.
- (6) Subject to subsection (7), the payment required by subsection 95(4) of the Act be made within 60 days after the later of
- (a) the day on which the administrator receives the applicable person's election under subsection (3) or, if no election is made, the day on which the person is deemed to have made the election; and
 - (b) the day on which the administrator receives notice that the Superintendent has approved the wind-up report.
- (7) If the Superintendent approves the payment of benefits under subsection 94(3) of the Act, the payment required by subsection 95(4) of the Act must be made within 60 days following the later of
- (a) the day on which the administrator receives the election under subsection (5) by the person affected by the approval or, if no election is made, the day on which the person is deemed to have made the election; and
 - (b) the day on which the administrator receives notice of the approval.
- (8) A notice required under subsection 103(2) of the Act for a plan that is being wound up must contain,

- (a) the name of the pension plan and its provincial registration number;
 - (b) the valuation date of the report provided with the application and amount of surplus in the pension plan;
 - (c) the amount of surplus withdrawal requested;
 - (e) a statement that submissions may be made in writing to the Superintendent within thirty days of receipt of the notice;
 - (f) the contractual authority, if any, for payment of the surplus; and
 - (g) notice that copies of the wind-up report filed with the Superintendent in support of the surplus request are available for review at the offices of the employer and information on how copies of the report may be obtained.
- (9) The employer shall file a copy of the notice required by subsection 103(2) of the Act before transmitting it to the persons required by that subsection.
- (10) An application by an employer for the consent of the Superintendent to a payment from a pension plan that is being wound up must be accompanied by a certified copy of the notice referred to in subsection (8), a statement that subsection 103(2) of the Act has been complied with, the date the last notice was distributed and details as to the classes of persons who received notice.

Claim to surplus on wind-up

- 76** (1) This section applies if there is a surplus on the wind-up of a pension plan in whole or in part.
- (2) The administrator of the pension plan shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the following information:
- (a) the name of the pension plan and its provincial registration number;
 - (b) the name and date of birth of the member, former member or retired member;
 - (c) the method of distributing the surplus assets;
 - (d) the formula for allocating the surplus among the plan beneficiaries;
 - (e) an estimate of the amount allocated to the person;

- (f) the options available to the person concerning the method for distributing the amount allocated to the person and the period within which any election respecting the options must be made;
 - (g) the method of distribution that will be used, if an election is not made within the specified period;
 - (h) the name and details of the person to be contacted with respect to any questions arising out of the statement; and
 - (i) notice that the allocation of surplus and the options available for distributing it are subject to the approval of the Superintendent and of the Canada Revenue Agency, and may be adjusted accordingly.
- (3) The statement must be given to the specified persons within 60 days after the administrator receives notice that the Superintendent has approved the wind-up report.
- (4) A person who is entitled to elect an option described in the statement shall give the administrator his or her election within 90 days after the person receives the statement. If the person does not do so, he or she shall be deemed to have elected the method of distribution specified in the statement.
- (5) The administrator shall make payment in accordance with the election or deemed election within 60 days after the later of,
- (a) the day on which the administrator receives the applicable person's election or, if no election is made, the day on which the person is deemed to have made the election; and
 - (b) the day on which the administrator receives notice that the Superintendent has approved the wind-up report.

77 For the purposes of clause 93(1)(h) of the Act, the following are prescribed as events and circumstances in which the Superintendent by order may require the wind up of a pension plan:

- (a) where the pension plan does not have any members, and has only former members, retired members and other beneficiaries who are not members; and
- (b) members of the pension plan no longer accrue pension benefits or ancillary benefits under the plan, and the employees are no longer permitted to become members of the pension plan under section 45 of the Act.

Requirements for plan wind-up

- 78** (1) A wind-up report required to be filed under subsection 94(1) of the Act must be prepared by a person authorized to prepare a report for the plan under Section *[draft funding regulations, subsection 19(1) - Preparation of reports, certificates of actuaries]*.
- (2) If a pension plan is being wound up in whole or in part, the minimum commuted value of a pension, deferred pension or ancillary benefit in respect of a person who exercises his or her entitlement under subsection 96(2) of the Act is the amount determined as of the effective date of the wind-up in accordance with section 3500 (“Pension Commuted Values”) of the *Standards of Practice* of the Actuarial Standards Board, published by the Canadian Institute of Actuaries, which is available to the public at the offices of the Canadian Institute of Actuaries or, electronically, on its website.
- (3) The administrator must file the wind-up report within six months following the effective date of the wind-up of the plan in whole or in part.
- (4) In addition to the wind-up report required under subsection 94(1) of the Act, the administrator of the plan must file all outstanding annual information returns required to be filed up to the effective date of the wind-up of the pension plan within six months after the effective date.
- (5) Payments of refunds of employee contributions with interest to persons not entitled to a pension, deferred pension, or ancillary benefit are prescribed for purposes of subsection 94(3) of the Act.
- (6) Subject to the requirements of subsection (7), the administrator of a pension plan that is terminated and that provides defined benefits may, after the wind-up report required under subsection (1) has been approved by the Superintendent, and prior to the completion of any additional funding required under Section 99 of the Act (liability of employer on wind-up), pay
- (a) the accumulated value of any additional voluntary contributions;
 - (b) the accumulated value of required contributions made by a member or former member; and
 - (c) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of the wind-up with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with clause (b).
- (7) Where an employer is required to make payments into a pension plan under section 99 of the Act,

- (a) no funds of the pension plan shall be used to purchase a life annuity for any person entitled thereto; and
- (b) where an election is made under clause 61(1) (a) or (b) of the Act, the maximum portion of the commuted value of the deferred pension that may be transferred is the amount, if any, of the contributions the employee was required to make under the plan plus any additional voluntary contributions made by the employee,

until a report is filed under section 83 certifying that there is no further amount to be funded.

- (8) Where a pension plan is wound up in whole or in part and the assets of the pension plan are not sufficient to pay all pensions, deferred pensions or ancillary benefits,
 - (a) where the employer is making payments in accordance with Section 99 of the Act, the pension benefits to which a person may be entitled but that had not vested under the terms of the plan before the effective date of the wind-up of the plan must be reduced to an amount proportionate to the extent that the benefits had been funded;
 - (b) in all cases, other than those referred to in clause (a), the pension, deferred pension or ancillary benefit to which a person would otherwise be entitled must be reduced to an amount proportionate to the extent that the benefits had been funded.
- (9) If a pension plan is wound up in whole or in part, the benefits provided under Section 97 of the Act must be paid only if the full amount of all pensions, deferred pensions, ancillary benefits or other benefits to which persons are entitled have been funded and paid.
- (10) If a university pension plan is wound up in part during the time period referred to in subclause *[draft funding regulations, s. 15(9)(a) –temporary special payments – solvency deficiency, university pension plan]*, the employer, or any person required to make contributions on behalf of the employer, must pay into the pension plan in respect of members, former members and retired members affected by the partial wind-up, the amount required
 - (a) to liquidate all solvency deficiencies existing at the date of the partial wind-up of the pension plan; and
 - (b) to pay for the benefits provided under Section 97 of the Act.

- (11) If a municipality pension plan is wound up in whole or in part during the time period referred to in *[[draft funding regulations, claus 15(8)(a) – temporary special payments – solvency deficiency, municipality pension plan]*, the employer or any person required to make contributions on behalf of the employer, must pay into the pension plan in respect of members affected by the partial wind-up, the amount required,
- (a) to liquidate all solvency deficiencies existing at the date of the partial wind-up of the pension plan; and
 - (b) to pay for the benefits provided under Section 97 of the Act.
- 79 (1) The administrator shall file the following documents within six months after the effective date of the wind-up for the period from the most recent fiscal year end to the effective date:
- (a) An annual information return under section 23.
 - (b) Financial statements under section 24 for the pension fund or plan.
- (2) Within thirty days after final distribution of the assets of a pension plan under section 94 of the Act, the administrator shall give the Superintendent written notice that all the assets of the plan have been so distributed.

Employers' Payments on Wind-up

- 80 (1) If an employer is required or liable to make payments into the pension fund in accordance with subsection 99(1) of the Act, the employer must make the payments within 30 days of the effective date of the wind-up or partial wind-up of the plan or such longer period as may be approved by the Superintendent.
- (2) The payments required to be made by an employer to a pension fund under subsection 99(2) of the Act must cover the amount necessary to fund benefits for the following persons:
- (a) for a plan that is wholly wound up, members, former members and retired members, and any other persons entitled to a benefit from the pension plan;
 - (b) for a plan that is partially wound up those members, former members and retired members, and any other persons entitled to a benefit from the plan that are affected by the partial wind up.
- (3) The liability to be funded under Section 99 of the Act shall be funded by annual special payments commencing at the effective date of the wind-up or partial wind-up and made by the employer to the pension fund.

- (4) The special payments under subsection (3) for each year must be at least equal to the greater of,
 - (a) the amount required in the year to fund the employer's liabilities under subsection 99(2) of the Act in equal payments, payable annually in advance, over not more than 5 years; and
 - (b) the minimum special payments required for the year in which the plan is wound up, in whole or in part, as determined in the reports filed or submitted under *[draft funding regulations, sections 11 and 18 and subsections 16(2) and 17(2)]*
- (5) The special payments referred to in subsection (3) shall continue until the liability is funded.
- (6) A wind-up report in respect of a defined benefit pension plan that is wound up in part must, where the assets allocated to the wind-up are not sufficient to pay all pension benefits and the benefits included in the wind-up, be prepared as if the pension plan were being wholly wound up.

Requirements on partial wind-up

- 81** (1) A wind up report in respect of a defined benefit pension plan that is wound up in part shall, where the assets allocated to the windup are not sufficient to pay all pension benefits and the benefits included in the wind-up, be prepared in accordance with the requirements of Section 94(1) of the Act as if the pension plan were being wholly wound up.
- (2) The liability required to be funded under section 99 of the Act on the wind-up in part of a pension plan providing defined benefits shall be the amount described in subsection 99(2) of the Act as determined in the wind-up report referred to in subsection (1) of this section attributable to members, former members, retired members and any other persons entitled to a benefit from the pension plan affected by the partial plan wind-up.
- (3) The liability determined under subsection (2) shall be funded by the employer by special payments payable in equal amounts annually in advance over a period not exceeding five years from the effective date of the partial plan wind-up.

Funding of liability on wind-up, JSPP's

- 82** (1) Any liability to be funded under clause 100(1)(b) or (2)(b) of the Act must be funded by equal monthly instalments for five years or less or by payments determined in accordance with a schedule of payments.
- (2) The instalments or payments required under subsection (1) must be made to the pension fund by the employer or, if another person or entity is required to make payments on behalf of the employer, that person or entity and, if applicable, by

the members of the pension plan, commencing on the effective date of the wind-up.

- (3) The schedule of payments referred to in subsection (1) must be determined as follows:
 - (a) The present value of the scheduled payments at the effective date of the wind-up is equal to the liability to be funded.
 - (b) The amortization period for the scheduled payments must end not later than five years after the effective date of the wind-up.
 - (c) The present value of the scheduled payments is determined using the interest rates used in the wind-up report.

Administrator’s responsibilities during wind-up where additional funding required

- 83** (1) Until the employer’s liability under Section 99 of the Act is funded, the administrator of the plan must annually cause the plan to be reviewed and a valuation report to be prepared by a person authorized by [*draft funding regulations, section 19*] and must file the report within 6 months after the valuation date of the report.
- (2) A report required under subsection (1) must show:
- (a) the gain or loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and
 - (b) the increase or decrease in the remaining special payments that will liquidate the gain or loss referred to in clause (a) over the remainder of the five-year period commencing from the effective date of the wind-up.
- (3) Any special payments required as a result of a loss referred to in clause (2)(a) must be included as payments required to be made by the employer under section 99 of the Act, and, for each year, must be at least equal to the greater of,
- (a) the amount required in the year to fund the employer’s liabilities under subsection 99(2) of the Act in equal payments, payable annually in advance, over not more than 5 years; and
 - (b) the minimum special payments required for the year in which the plan is wound up, in whole or in part, as determined in the reports filed or submitted under [*draft funding regulations, sections 11 and 18 and subsections 16(2) and 17(2)*].

- (4) If a report required under subsection (1) shows that there is no further amount to be funded, any money remaining in the pension fund may be paid to the employer in accordance with section 86 of the Act as if that money was an overpayment into the pension fund by the employer within the meaning of clause 86(1)(b) of the Act.

Administrator's responsibilities during wind-up, JSPP

- 84** (1) Until any liability under section 100 of the Act is funded, the administrator of a jointly sponsored pension plan shall annually cause the plan to be reviewed and a report to be prepared by a person authorized by [*draft funding regulations, section 19*] and shall file the report within six months after the valuation date of the report.
- (2) A report required under subsection (1) shall show,
- (a) the gain or the loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and
- (b) the increase or decrease in the remaining special payments that will liquidate the gain or loss referred to in clause (a) over the remainder of the five-year period commencing from the effective date of the wind-up.
- (3) Any special payments required as a result of a loss referred to in clause (2)(a) shall be included as payments required to be made according to section 100 of the Act.
- (4) Where a report made under this section shows that there is no further amount to be funded, any surplus shall be dealt with according to the terms and conditions of the pension plan.

PART 7 – WITHDRAWALS AND TRANSFERS

Division 1 – Withdrawals and Transfers - General

- 85** (1) A member of a pension plan who makes an election under Section 61 of the Act (transfer) or a person who is entitled to make an election under Section 74 of the Act (division of pension or pension benefit) must deliver a completed direction to the administrator within 90 days following the later of termination of employment and the receipt of the statement required to be provided under subsection 41(1) of the Act or, in the case of a person entitled to make an election under Section 74 of the Act, within 90 days after receipt of notice of termination.
- (2) The administrator must comply with an election made under subsection (1) within

60 days after the receipt of all information required by the administrator to comply with the direction.

- (3) The administrator must not transfer the commuted value of a pension or deferred pension except where the transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with the Act and these regulations.
- 86**
- (1) This section governs the transfer of an amount equal to the commuted value of a deferred pension under clause 61(1)(b) of the Act into a prescribed retirement savings arrangement.
 - (2) The following are the prescribed retirement savings arrangements:
 - (a) A LIF.
 - (b) A LIRA.
 - (c) An RRIF.
 - (d) An RRSP.
 - (3) If the amount to be transferred does not exceed the amount prescribed for such a transfer under the *Income Tax Act* (Canada), it must be transferred into a LIF or a LIRA.
 - (4) Section 88 applies if the amount to be transferred is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada). In that circumstance, the amount prescribed must be transferred into a LIF or a LIRA.

Direction to administrator to transfer into prescribed retirement savings arrangement

- 87**
- (1) This section applies when a person is authorized under subsection 55(5), 63(8), 67(4) or (10), 70(3) or 87(7) of the Act to deliver a direction to the administrator of a pension plan requiring the administrator to pay an amount into a registered retirement savings arrangement.
 - (2) The person must deliver the direction to the administrator within 90 days after the administrator notifies the person that the person is entitled to require the amount to be paid into a registered retirement savings arrangement.
 - (3) The administrator must pay the amount into the registered retirement savings arrangement in accordance with section 71 of the Act within 60 days after receiving the direction.

Limits on transfers

- 88**
- (1) In this section, “excess amount” means the portion of the amount transferable under clause 61(1)(b) of the Act into a prescribed retirement savings arrangement

that is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada).

- (2) This section applies if the amount to be transferred under clause 61(1)(b) of the Act into a prescribed retirement savings arrangement is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada).
- (3) The portion of the amount to be transferred that does not exceed the amount prescribed for such a transfer under the *Income Tax Act* (Canada) must be transferred into a LIF or a LIRA.
- (4) If the excess amount has been transferred directly or indirectly into a LIF or a LIRA, the owner of the LIF or LIRA may, upon application in accordance with this section, withdraw money from the LIF or LIRA in an amount not greater than the sum of,
 - (a) the excess amount; and
 - (b) any subsequent investment earnings, including any unrealized capital gains or losses, attributable to the excess amount as calculated by the financial institution that administers the fund or account.
- (5) The amount that may be withdrawn under subsection (4) is calculated as of the date on which the financial institution pays the money to the owner from the LIF or LIRA, in accordance with this section.
- (6) An application to withdraw money from a LIF or LIRA must be given to the financial institution that administers the LIF or LIRA.
- (7) The application must be made on a form approved by the Superintendent.
- (8) The application form must be signed by the owner and accompanied by one of the following documents:
 - (a) A written statement from the administrator of the pension plan from which money was transferred into the fund or account setting out the excess amount that was transferred into the LIF or LIRA.
 - (b) A written statement from the Canada Revenue Agency setting out the excess amount that was transferred into the LIF or LIRA.
- (9) The contract governing the LIF or LIRA must include the following terms and, if it does not, the contract shall be deemed to include them:
 - (a) The financial institution is entitled to rely upon the information provided by the owner in an application made under this section.

- (b) An application that meets the requirements of this section constitutes authorization to the financial institution to make the payment from the fund or account, as the case may be, in accordance with this section.
- (c) The financial institution is required to make the payment to which the owner is entitled under this section within 30 days after the financial institution receives the completed application form and accompanying document.

Division 2 – Life Annuities, LIRAs and LIFs

Life annuities

- 89 (1)** An insurance contract under which a deferred or immediate life annuity will be provided resulting from the transfer of the commuted value of a pension benefit or as the result of a purchase from a LIRA or LIF must set out that:
- (a) no money transferred, including interest, will be assigned, charged, anticipated or given as security except as permitted by Section 74 or 90, or subsection 88(3) of the Act, or these regulations, and any transaction purporting to assign, charge, anticipate or give the money transferred as security is void;
 - (b) an order under Section 74 of the Act (Division of pension entitlement on breakdown of relationship), or a domestic contract that provides for the division of a deferred pension or a pension is not effective to the extent that it purports to entitle a spouse or former spouse of the annuitant to a share that exceeds 50 per cent of the life annuity earned during the marriage or cohabitation, as determined in accordance with Section 74 of the Act and these regulations.
 - (c) a transaction that contravenes clause (a) is void;
 - (d) where the annuitant has a spouse at the time payments commence, the annuity will be in the form of a joint and survivor annuity as required by Section 63 of the Act unless the circumstances in clause 63(4)(b) of the Act apply;
 - (e) for the purposes of the purchase of an immediate life annuity, a determination as to whether the annuitant has a spouse is to be made on the date the annuity is purchased;
 - (f) the amount of the life annuity will be determined on a basis that does not take into account the sex of the annuitant, except,

- (i) in the case of a contract that is based entirely upon an amount or amounts transferred from a defined contribution pension plan administered in accordance with clause 72(2)(b) of the Act (employer contribution varying based on sex of employee); or
 - (ii) in the case of a contract that is purchased with funds from a LIRA or a LIF, if the purchase is in accordance with Schedule III or IV to these regulations; and
- (g) payments under a life annuity purchased with funds from a LIF governed by these regulations, may commence immediately.
- (h) payments under a life annuity purchased with funds from a LIRA governed by these regulations, must not begin before the earlier of,
- (i) the earliest date on which the owner of the annuity would have been entitled as a former member to receive pension benefits under the Act as a result of termination of employment or termination of membership in any pension plan, from which money was transferred directly or indirectly into a LIRA; or
 - (ii) the earliest date on which the owner of the annuity would have been entitled as a former member to receive pension benefits under any pension plan described in clause (a) as a result of termination of employment or termination of membership in the plan; and
- (j) on the death of the annuitant before payment of the annuity, the annuity will be administered in accordance with Section 67 of the Act.

LIRA Requirements

General LIRA requirements

- 90** (1) A LIRA must comply with the conditions for registration under the *Income Tax Act* (Canada) to be an RRSP and, once registered, must remain registered.
- (2) LIRA money must be invested in a manner that complies with the rules for the investment of RRSP money contained in the *Income Tax Act* (Canada) and the regulations thereunder.

Persons who may purchase a LIRA

- 91** (1) The following persons may purchase a LIRA in accordance with this section:
- (a) A former member who is entitled to make a transfer under clause 61(1)(b) of the Act.

- (b) A spouse or former spouse of a person who was a member who is entitled to make transfer under clause 61(1) (b) of the Act.
 - (c) A person who has previously transferred an amount under clause 61(1)(b) of the Act into a LIF or LIRA.
 - (d) A person who has previously transferred an amount under section 74 of the Act (pension entitlement on breakdown of relationship), into a LIRA.
 - (e) A spouse who is entitled to transfer a lump sum under section 74 of the Act.
- (2) The LIRA must be purchased using all or part of
- (a) the amount transferred under clause 61(1)(b) of the Act;
 - (b) the amount transferred under section 74 of the Act; or
 - (c) the assets in a LIF; or
 - (d) the assets in a LIRA.

Contractual requirements

- 92 (1)** A contract establishing a LIRA must include the following:
- (a) a statement as to the name and address of the financial institution providing the LIRA;
 - (b) a copy of the Nova Scotia LIRA Addendum attached as Schedule III to these regulations;
 - (c) a description of the owner's powers, if any, respecting investment of the assets in the LIRA;
 - (d) a statement by the financial institution that it agrees to provide the information described in Section 6 of Schedule III: Nova Scotia LIRA Addendum, to the persons indicated in that Section;
 - (e) a statement by the financial institution providing the LIRA that it agrees not to amend the contract except as provided in these regulations;
 - (f) a description of the method for determining the value of the assets in the LIRA;

- (g) a statement as to whether the commuted value of the pension benefit that was transferred into the LIRA was determined in a manner that differentiated on the basis of sex; and
 - (h) a statement that the financial institution is entitled to rely upon the information provided by the owner in application made to purchase a LIRA.
- (2) The Nova Scotia LIRA Addendum in Schedule III is incorporated into and forms part of these regulations.

Transferring Assets from a LIRA

- 93** (1) A financial institution shall not make a transfer of any or all of the assets in a LIRA except where,
- (a) the transfer is permitted under the Act, these regulations and the Nova Scotia LIRA Addendum, in Schedule III; and
 - (b) the transferee agrees to administer the amount transferred in accordance with the Act, these regulations and the Nova Scotia LIRA Addendum, in Schedule III.
- (2) The financial institution shall advise the transferee in writing that the amount transferred must be administered in accordance with the Act, these regulations and the Nova Scotia LIRA Addendum, in Schedule III.

Amending the LIRA

- 94** (1) A financial institution must not amend its LIRA contract except as provided in this section.
- (2) The financial institution must give the owner of the LIRA at least 90 days notice of a proposed amendment, other than an amendment described in subsection (3).
- (3) The financial institution must not amend the contract governing the LIRA if the amendment would result in a reduction in the owner's rights under the contract unless,
- (a) the financial institution is required by law to make the amendment; and
 - (b) the owner is entitled to transfer the assets in the LIRA under the terms of the contract that exist before the amendment is made.
- (4) When making an amendment described in subsection (3), the financial institution must notify the owner of the LIRA of the nature of the amendment and allow the owner at least 90 days after the notice is given to transfer all or part of the assets in the LIRA.

- (5) Notices under this section must be in writing and must be sent to the owner's address as set out in the records of the financial institution.

Schedule III – Nova Scotia LIRA Addendum

Interpretation

- 1 (1) In this Schedule,
- (a) “Act” means the *Pension Benefits Act*;
 - (b) “domestic contract” means an agreement in writing within the meaning of Section 74 of the Act, being an agreement made between spouses, including a marriage contract as defined in the *Matrimonial Property Act*, that provides for a division of a pension benefit, deferred pension or pension;
 - (c) “owner” means the former member of a pension plan who has made a transfer pursuant to Section 61(1)(b) of the Act to a LIRA and, unless otherwise stated, includes the spouse of a member or former member if the spouse has made a transfer of a pension benefit as a result of the death of the member or former member or as a result of a division of a pension or pension benefits pursuant to Section 74 (pension division) of the Act.
 - (d) “regulations” means the *Pension Benefits Regulations*, made under the *Pensions Benefits Act*; and
 - (e) “spouse” means either of two persons who
 - (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, if they have ceased to cohabit, have cohabited within the twelve-month period immediately preceding the date of entitlement, and
 - (iv) are domestic partners within the meaning of Section 52 of the *Vital Statistics Act*, or
 - (v) not being married to each other, cohabited in a conjugal relationship with each other
 - (A) for a period of at least three years, if either of them is married, or
 - (B) for a period of at least one year, if neither of them is married.

- (2) This Schedule forms part of and is enacted under the *Pension Benefits Regulations*.

Prohibitions

- 2** (1) Money held in a LIRA must not be commuted, withdrawn or surrendered in whole or in part, except as permitted by Part 8 of the regulations and, in particular, the following sections of the regulations:
- (a) section 117 (non-residency);
 - (b) section 118 (small amounts at age 65);
 - (c) section 116 (considerably shortened life expectancy); or
 - (d) sections 103 through 114 (financial hardship).
- (2) The value of the assets in the LIRA is subject to division in accordance with
- (a) the terms of an order of the Supreme Court of Nova Scotia;
 - (b) a written agreement that provides for the division of a pension benefit, deferred pension or pension; or
 - (c) these regulations.
- (3) Nothing in subsection (1) prohibits the transfer of an excess amount within the meaning of subsection 10(1) of these regulations.
- (4) Any transaction that contravenes subsection (1) is void.
- 3** Money held in a LIRA must not be assigned, charged, or given as security except as permitted by subsection 88(3) or Section 90 of the Act, and any transaction purporting to assign, charge, anticipate or give such money in the LIF as security is void.
- 4** Money held in a LIRA is exempt from execution, seizure or attachment except as permitted by Section 90 of the Act.

Transferring assets from a LIRA

- 5** (1) The owner of a LIRA may transfer all or part of the assets in the LIRA to,
- (a) the pension fund of a pension plan registered under the pension benefits legislation in any Canadian jurisdiction or to a pension plan provided by a government in Canada;
 - (b) a LIRA held by another financial institution;
 - (c) purchase a LIF; or

- (d) purchase an immediate or deferred life annuity under an insurance contract that meets the requirements of the regulations.
- (2) The date of transfer must not be more than 30 days after the owner requests it, unless:
 - (a) the financial institution is not at that time in receipt of all information necessary to complete the transaction, in which case the 30 day period begins to run from the date the financial institution is in receipt of all such information; or
 - (b) the transfer is in respect of assets held as securities whose term of investment extends beyond the 30-day period.
- (3) If assets in the LIRA consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the owner.
- (4) The financial institution must advise the financial institution to which the assets are transferred that the assets were held in a LIF in the current year.

Information to be Provided by Financial Institution

- 6** (1) At the beginning of each fiscal year, the financial institution must provide the following information to the owner:
- (a) with respect to the previous fiscal year,
 - (i) the sums deposited,
 - (ii) any accumulated investment earnings, including any unrealized capital gains or losses,
 - (iii) the payments made out of the account,
 - (iv) the withdrawals taken out of the account, and
 - (v) the fees charged against the account;
 - (b) the value of the assets in the account as of the beginning of the fiscal year;
- (2) If the assets in the account are transferred as described in subsection 5(1), the owner must give the information described in subsection (1) determined as of the date of the transfer;

- (3) Upon the death of the owner, the person entitled to receive the assets in the account must be given the information described in subsection (2) determined as of the date of the owner's death.

Death Benefits

- 7 (1) Upon the death of the owner of a LIRA,
- (a) the owner's spouse or,
 - (b) if there is no spouse or if the spouse is otherwise disentitled, the owner's named beneficiary or,
 - (c) if there is no named beneficiary, the owner's estate,
- is entitled to receive a benefit equal to the value of the assets in the LIRA.
- (2) The benefit described in subsection (1) may be transferred to an RRSP or an RRIF in accordance with the *Income Tax Act* (Canada).
- (3) Subsection (1) only applies to a spouse of the owner if the owner was a member or former member of a pension plan from which the assets were transferred directly or indirectly to purchase the LIRA.
- (4) A spouse who is living separate and apart from the owner without a reasonable prospect of the resumption of cohabitation on the date of the owner's death is not entitled to receive the value of the assets in the LIRA if the spouse,
- (a) delivered a written waiver to the financial institution in the form and manner set out in subsection 68(1) of the Act with respect to the assets in the LIRA, before the death of the owner;
 - (b) is not entitled to receive the an amount in respect of the assets in the LIRA in accordance with the terms of a written agreement that provides for the division of pension entitlements; or
 - (c) is not entitled to receive an amount in respect of the assets in the LIRA, by court order.
- (5) For the purposes of subsection (1), a determination as to whether the owner has a spouse is to be made on the date of the owner's death.
- (6) For the purposes of subsection (1), the value of the assets in the LIRA includes all accumulated investment earnings, including any unrealized capital gains and losses, of the LIRA from the date of death until the date of payment.

- 8**
- (1)** A spouse of the owner of a LIRA may waive his or her entitlement to receive the death benefit described in section 8 from the LIRA by delivering to the financial institution a written waiver in a form approved by the Superintendent and including the content set out in the form.
 - (2)** A spouse who has delivered a waiver under subsection (1) may cancel it by delivering a written and signed notice of cancellation to the financial institution before the date of the death of the owner of the LIRA.

LIF Requirements

Definitions

95 For purposes of sections 99 and 100, “list” means the appropriate list established and maintained by the Superintendent under subsection 99(2);

General LIF requirements

- 96** (1) A LIF must comply with the conditions for registration under the *Income Tax Act* (Canada) to be a RRIF and, once registered, must remain registered.
- (2) LIF money must be invested in a manner that complies with the rules for the investment of RRIF money contained in the *Income Tax Act* (Canada) and the regulations thereunder.

Persons who may purchase a LIF

- 97** (1) The following persons may, in accordance with this section, purchase a LIF:
- (a) A former member who is entitled to make a transfer under clause 61(1)(b) of the Act.
 - (b) A spouse or former spouse of a person who was a member who is entitled to make a transfer under clause 61(1) (b) of the Act.
 - (c) A person who has previously transferred an amount under clause 61(1)(b) of the Act into a LIF or a LIRA.
 - (d) A person who has previously transferred an amount under Section 74 of the Act (pension entitlement on breakdown of relationship), into a LIRA.
 - (e) A spouse who is entitled to transfer a lump sum under section 74 of the Act.
- (2) The LIF must be purchased using all or part of
- (a) the amount transferred under clause 61(1)(b) of the Act;
 - (b) the amount transferred under section 74 of the Act;
 - (c) the assets in a LIRA; or
 - (d) the assets in a LIF.
- (3) The purchaser must have the written consent of his or her spouse in order to make the purchase but,

- (a) the consent of a spouse who is living separate and apart from the purchaser on the date of the purchase with no reasonable prospect of the resumption of cohabitation, is not required; and
- (b) the consent of a spouse is not required if any of the money to be transferred into the LIF are derived, directly or indirectly, from sources other than a pension benefit provided in respect of any employment of the purchaser.

Contractual requirements

98 (1) A contract establishing a LIF must include the following:

- (a) a statement as to the name and address of the financial institution providing the LIF;
 - (b) a description of the owner's powers, if any, respecting investment of the assets in the LIF;
 - (c) a copy of the Nova Scotia LIF Addendum attached as Schedule IV to these regulations;
 - (d) a statement by the financial institution that it agrees to provide the information described in Section 12 of Schedule IV: Nova Scotia LIF Addendum, to the persons indicated in that Section;
 - (e) a statement by the financial institution providing the LIF that it agrees not to amend the contract except as provided in these regulations;
 - (f) a description of the method for determining the value of the assets in the LIRA;
 - (g) a statement as to whether the commuted value of the pension benefit that was transferred into the LIRA was determined in a manner that differentiated on the basis of sex; and
 - (h) a statement that the financial institution is entitled to rely upon the information provided by the owner in application made to purchase a LIF.
- (2)** The Nova Scotia LIF Addendum in Schedule IV is incorporated into and forms part of these regulations.

LIF filing requirements and Superintendent's list

99 (1) A financial institution must file with the Superintendent, for approval

- (a) a specimen certified copy of its LIF contract, together with a filing fee in an amount prescribed by the Minister and payable to the Minister of Finance; and
 - (b) specimen certified copies of any subsequent amendments to its LIF contract together with a filing fee in an amount per amendment as prescribed by the Minister and payable to the Minister of Finance.
- (2) The Superintendent must establish and maintain a list of
- (a) the financial institutions for which contracts filed under subsection (1) are approved; and
 - (b) the LIFs that are approved for financial institutions referred to in clause (a).
- (3) A financial institution is permitted to issue a LIF only when it has been notified in writing by the Superintendent that its name and LIF are on the list, and has not been notified in writing by the Superintendent that it has been removed from the list pursuant to subsection (4).
- (4) The Superintendent may, without affecting the duties or liability of a financial institution in relation to any transfer or LIF, remove the financial institution's name or LIF from the list if a specimen certified copy of a LIF contract or amendments thereto have not been filed with the Superintendent or if the financial institution has breached any of its obligations under this Section.

Administrator's duties respecting transfer to a LIF

- 100** (1) An administrator must not effect a transfer to a LIF issued by a financial institution unless the administrator has ascertained that the financial institution's name and LIF are currently on the list maintained in accordance with subsection 99(2).
- (2) An administrator must advise the financial institution as to whether the commuted value of a pension benefit transferred to the financial institution was determined in a manner that differentiated on the basis of sex.
- (3) An administrator must advise the financial institution of the earliest date on which a former member would have been entitled to receive payment of a pension under the pension plan from which the funds have been transferred.

Transferring Assets from a LIF

- 101** (1) The financial institution shall not make a transfer described in subsection (1) except where,
- (a) the transfer is permitted under the Act and these regulations; and

- (b) the transferee agrees to administer the amount transferred in accordance with the Act and these regulations.
- (2) The financial institution shall advise the transferee in writing that the amount transferred must be administered in accordance with the Act and these regulations.

Amending a LIF

- 102**
- (1) A financial institution must not amend its LIF contract except as provided in this section.
 - (2) The financial institution must give the owner of the LIF at least 90 days notice of a proposed amendment, other than an amendment described in subsection (3).
 - (3) The financial institution must not amend the contract governing the LIF if the amendment would result in a reduction in the owner's rights under the contract unless,
 - (a) the financial institution is required by law to make the amendment; and
 - (b) the owner is entitled to transfer the assets in the LIF under the terms of the contract that exist before the amendment is made.
 - (4) When making an amendment described in subsection (3), the financial institution must notify the owner of the LIF of the nature of the amendment and allow the owner at least 90 days after the notice is given to transfer all or part of the assets in the LIF.
 - (5) Notices under this section must be in writing and must be sent to the owner's address as set out in the records of the financial institution.

Schedule IV – Nova Scotia LIF Addendum

Interpretation

- 1** **(1)** In this Schedule,
- (a) “Act” means the *Pension Benefits Act*;
 - (b) “domestic contract” means an agreement in writing within the meaning of Section 74 of the Act, being an agreement made between spouses, including a marriage contract as defined in the *Matrimonial Property Act*, that provides for a division of a pension benefit, deferred pension or pension;
 - (c) “owner” means the former member of a pension plan who has made a transfer pursuant to Section 61(1)(b) of the Act to a LIF and, unless otherwise stated, includes the spouse of a member or former member if the spouse has made a transfer of a pension benefit as a result of the death of the member or former member or as a result of a division of a pension or pension benefits pursuant to Section 74 (division of pension entitlement on breakdown of relationship) of the Act.
 - (d) “regulations” means the *Pension Benefits Regulations*, made under the *Pensions Benefits Act*.
 - (e) “spouse” means either of two persons who
 - (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, if they have ceased to cohabit, have cohabited within the twelve-month period immediately preceding the date of entitlement, and
 - (iv) are domestic partners within the meaning of Section 52 of the *Vital Statistics Act*, or
 - (v) not being married to each other, cohabited in a conjugal relationship with each other
 - (A) for a period of at least three years, if either of them is married, or
 - (B) for a period of at least one year, if neither of them is married.

- (2) This Schedule forms part of and is enacted under the *Pension Benefits Regulations*;
- (3) In this Schedule, “fiscal year” means the fiscal year of a LIF, which must end on December 31 and must never exceed 12 months.
- (4) A reference rate referred to in this Schedule for the fiscal year of a LIF
 - (a) is based on the month-end nominal rate of interest earned on long-term bonds issued by the Government of Canada for the month of November preceding the beginning of the fiscal year, as compiled by Statistics Canada and published in the Bank of Canada Review as CANSIM Series V122487, with the following adjustments applied successively to that nominal rate:
 - (i) an increase of 0.5 per cent,
 - (ii) the conversion of the increased rate, based on interest compounded semi-annually, to an effective annual rate of interest,
 - (iii) the rounding of the effective interest rate to the nearest multiple of 0.5 per cent; and
 - (b) must not be less than 6 per cent.

Prohibitions

- 2 (1) Money held in a LIF must not be commuted, withdrawn or surrendered in whole or in part, except as permitted by Part 8 of the regulations and, in particular, the following sections of the regulations:
 - (a) section 117 (non-residency);
 - (b) section 118 (small amounts at age 65);
 - (c) section 116 (considerably shortened life expectancy); or
 - (d) sections 103 through 114 (financial hardship).
- (2) The value of the assets in the LIF is subject to division in accordance with
 - (a) the terms of an order of the Supreme Court of Nova Scotia;
 - (b) a domestic agreement that provides for the division of a pension benefit, deferred pension or pension; or
 - (c) these regulations.

(3) Nothing in subsection (1) prohibits the transfer of an excess amount within the meaning of subsection 88(1) of the regulations.

(4) Any transaction that contravenes subsection (1) is void.

3 Money held in a LIF must not be assigned, charged, or given as security except as permitted by subsection 88(3) or Section 90 of the Act, and any transaction purporting to assign, charge, anticipate or give such money in the LIF as security is void.

4 Money held in a LIF is exempt from execution, seizure or attachment except as permitted by Section 90 of the Act.

Periodic payments out of the LIF

5 (1) The owner must be paid an income from the LIF, the amount of which may vary annually.

(2) Payment of the income from the LIF to the owner must begin no earlier than the earliest date the owner was entitled to receive a pension under any pension plan from which the money was transferred into the LIF, directly or indirectly.

(3) Despite subsection (2), if all of the money in a LIF is derived from sources other than a pension benefit provided in respect of any employment of the owner, payments out of the LIF may begin no earlier than the date of which the owner reaches 55 years of age.

(4) Payments must begin no later than the end of the second fiscal year of the LIF.

(5) The minimum amount of income paid during a fiscal year must not be not less than the minimum amount prescribed for a RRIF under the *Income Tax Act* (Canada).

(6) The owner must establish the amount of income to be paid during each fiscal year at the beginning of that fiscal year and after receipt of the information specified in section 12.

(7) The owner must notify the financial institution of the amount to be paid out of the LIF each year and, if the owner does not do so, the minimum amount determined under section 6 must be paid out of the LIF that year.

(8) The notice respecting the amount to be paid out of the LIF must be given either at the beginning of the fiscal year of the LIF or at another time agreed to by the financial institution.

(9) The notice expires at the end of the fiscal year to which it relates.

(10) If the financial institution guarantees the rate of return of the LIF over a period that is greater than one year, that period must end at the end of a fiscal year and the

owner may establish the amount of income to be paid during that period at the beginning of that period.

Minimum LIF withdrawal

- 6** (1) The amount of the income paid out of a LIF during the fiscal year of a the LIF must not be less than the minimum amount prescribed by the *Income Tax Act* (Canada) for an RRIF, determined on the basis of the owner's age or the age of the owner's spouse where that person is younger than the owner.
- (2) If the minimum amount specified by subsection (1) is greater than the maximum amount determined under section 8, 9 or 10, the minimum amount must be paid out of the LIF during the fiscal year.

Pro-rating

- 7** If the initial fiscal year of the fund is not 12 months long, the maximum amount determined under section 8, 9 and 10 shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month.

Maximum LIF withdrawal - no provision for temporary income

- 8** The maximum lifetime income (M) to be paid from a LIF from which no temporary income is paid, is determined by the following formula:

$$M = F \times C$$

where

"F" is the factor in Schedule V for the reference rate for the fiscal year and the owner's age at the end of the preceding year; and

"C" is the balance of the LIF at the beginning of the fiscal year, increased by any money transferred to the LIF after that date and reduced by any money transferred from another LIF to the LIF in the same year.

Maximum LIF withdrawal - with temporary income

- 9** (1) A LIF may provide that the owner is entitled to temporary income if the owner meets the following requirements:
- (a) the owner makes an application in a form approved by the Superintendent, entitled, Application to a Financial Institution for Payment of Temporary Income from a LIF, to the financial institution that administers the LIF for payment of a temporary income under the LIF;
 - (b) the owner is at least age 54 but under age 65 at the end of the year preceding the date of application; and
 - (c) temporary income may not be paid until the owner is at least 55.

- (2) The temporary income must not be paid after the end of the year in which the owner reaches age 65.
- (3) No temporary income is payable if any portion of a LIF payment is transferred to an RRSP or a RRIF.
- (4) The definitions of “F”, “C”, “T” and “D” in subsection (4) are applicable to subsections (5) and (6).
- (5) The maximum temporary income (A) for the fiscal year is the lesser of
- (a) (40 per cent of the years maximum pensionable earnings) - T; and
 - (b) $F \times C \times D$,

where

“F” is the factor in Schedule V for the reference rate for the fiscal year and the owner’s age at the end of the preceding year;

“C” is the balance of the LIF at the beginning of the fiscal year, increased by any money transferred to the LIF after that date and reduced by any money originating during the same year from another LIF;

“T” is the total of temporary income from a pension plan for that fiscal year and temporary income from other LIFs of the owner; and

“D” is the factor in Schedule VI for the owner’s age at the end of the year preceding the current fiscal year.

- (6) Despite subsection (4), if $F \times C \times D$ is equivalent to less than 40 per cent of the Year’s Maximum Pensionable Earnings the maximum temporary income (“A”) is the lesser of
- (a) 40 per cent of the Year’s Maximum Pensionable Earnings – T; and
 - (b) C.
- (7) The maximum life income (E) to be paid from a LIF from which a temporary income is paid is determined by the following formula, provided that “E” must not be less than zero:

$$E = (F \times C) - (A \div D).$$

where

“F” is the factor in Schedule V for the reference rate for the fiscal year and the owner’s age at the end of the preceding year;

“C” is the balance of the LIF at the beginning of the fiscal year, increased by any money transferred to the LIF after that date and reduced by any money originating during the same year from another LIF.

“A” is the maximum temporary income;

“D” is the factor in Schedule VI for the owner’s age at the end of the year preceding the current fiscal year.

- (8) The maximum income (M) payable from a LIF from which temporary income is paid is determined by the following formula:

$$M = A + E$$

where

“A” is the maximum temporary income for the fiscal year, as determined in accordance with subsection (4);

“E” is the maximum lifetime income to be paid from a LIF from which temporary income is paid;

Maximum income payable when the financial institution guarantees the rate of return of the LIF

10 (1) If the financial institution has guaranteed the rate of return of the LIF over a period greater than one year, and the owner establishes the amount of income to be paid during that period, the maximum income that may be paid during each of the fiscal years of that period is determined at the beginning of each of those fiscal years.

(2) For the first fiscal year, the maximum income is determined in accordance with Section 7.

(3) For each subsequent year, the maximum income is equal to the lesser of

- (a) the balance of the LIF at the time of payment in that year; and
- (b) the result of the formula $(M \times J) \div K$

where

“M” represents the maximum income determined for the initial fiscal year,

“J” represents the balance of the LIF at the beginning of the fiscal year, and

“K” represents the reference balance determined at January 1 of the year, calculated as

- (i) the reference balance at the beginning of the previous year, reduced by M, plus
- (ii) the amount determined under subclause (i) multiplied by the reference rate for the year, if it is one of the first 16 fiscal years of the fund, or by 6 per cent in any other case,

and in applying this formula to the second year of the period, the reference balance referred to in subclause (i) is the LIF balance at the beginning of the first year of the period.

Excess income paid

- 11** If the income paid to the owner during the fiscal year of the fund exceeds the maximum that may be paid, the balance of the fund must not be reduced by the excess, unless the payment is attributable to incorrect information provided by the owner.

Information to be provided by the financial institution at beginning of fiscal year

- 12** At the beginning of each fiscal year, the financial institution must provide to the owner a statement indicating,

- (a) with respect to the previous fiscal year,
 - (i) the sums deposited;
 - (ii) any accumulated investment earnings including any unrealized capital gains or losses;
 - (iii) the payments made out of the LIF;
 - (iv) any withdrawals taken out of the LIF pursuant to Part 8 of the regulations - Withdrawals in exceptional circumstances;
 - (v) any transfers made out of the LIF; and
 - (vi) the fees charged against the LIF.
- (b) the value of the assets in the LIF at the beginning of the fiscal year;
- (c) the minimum amount that must be paid out as income to the owner during the current fiscal year;

- (d) the maximum amount that may be paid out as income to the owner during the current fiscal year;
- (e) that if the beginning of the fiscal year is later than the beginning of the calendar year, the sums deposited that were held in another LIF during the year;
- (f) if the LIF provides for payment of a temporary income and the owner was at least 54 but less than 65 at the end of the preceding year,
 - (i) the terms and conditions the owner must meet to be entitled to payment of the temporary income under Section 9, and
 - (ii) that payment of temporary income will reduce the income that would otherwise be paid to the owner after age 65;
- (g) that the maximum amount of income that may be paid to the owner will not be increased if a transfer is made to the LIF of assets held in another LIF during that year;
- (h) that if the owner wishes to transfer, in whole or in part, the balance of the LIF and still receive from the LIF the income determined for the fiscal year, an amount must be retained in the LIF at least equal to the difference between the income determined for the fiscal year and the income already received from the LIF since the beginning of the fiscal year;
- (i) that if the owner dies before the balance in the LIF is used to purchase a life annuity contract or is transferred under Section 13, the financial institution must provide to the owner's spouse, beneficiary or estate the information in clauses 12(a) and (b), determined as of the owner's date of death;
- (j) that if the balance of the LIF is transferred to another financial institution or used to purchase a life annuity, the financial institution must provide the owner the information in clauses (1)(a) and (b), determined as of the date of the transfer or annuity purchase; and
- (k) that if the balance of the LIF is transferred to another financial institution or used to purchase a life annuity, the financial institution must comply with the requirements of an administrator under subsections 100(1), (2) and (3) of the regulations.

Transferring assets from a LIF

13 (1) The owner of a LIF may transfer all or part of the assets in the LIF

- (a) to another LIF;

- (b) to purchase an immediate life annuity contract that meets the conditions of Section 89 of the regulations; or
 - (c) to a LIRA, if permitted under the *Income Tax Act* (Canada).
- (2) The date of transfer must not be more than 30 days after the owner requests it unless the transfer is in respect of assets held as securities whose term of investment extends beyond the 30-day period.
 - (3) If assets in the LIF consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the owner.
 - (4) If a transfer is made to a LIF of assets held in another LIF at any time in the current fiscal year, the maximum amount of income that may be paid to the owner must not be increased.
 - (5) The value of the assets in the LIF is subject to division in accordance with
 - (a) the terms of an order of the Supreme Court of Nova Scotia;
 - (b) a domestic agreement that provides for the division of a pension benefit, deferred pension or pension; or
 - (c) the regulations.
 - (6) The financial institution must advise the financial institution to which the assets are transferred that the assets were held in a LIF in the current year.
 - (7) If the balance of the LIF is transferred to another financial institution or used to purchase a life annuity, the financial institution must comply with the requirements of an administrator under subsections 100(1), (2) and (3) of the regulations.

Information to be provided upon transfer of balance of LIF

- 14** If the balance of the LIF is transferred to another financial institution or used to purchase a life annuity, the financial institution must provide the owner the information in clauses (1)(a) and (b), determined as of the date of the transfer or annuity purchase.

Information to be provided upon transfer of additional amounts to a LIF

- 15** Within 30 days following a transfer to a LIF of money in locked-in funds that have not been held in a LIF at any time in the current year, the financial institution must provide the owner with a statement providing the following information, determined as of the date of the transfer:

- (a) the information required to be provided by clauses 12(a), (b), (c), (d), (f), (g) and (h);

- (b) the value of the assets in the LIF at the beginning of the fiscal year; and
- (c) the balance of the LIF used to determine the maximum amount that may be paid to the owner as income during the fiscal year.

Death Benefits

- 16** (1) Upon the death of the owner of a LIF,
- (a) the owner's spouse or,
 - (b) if there is no spouse or if the spouse is otherwise disentitled, the owner's named beneficiary or,
 - (c) if there is no named beneficiary, the owner's estate,
- is entitled to receive a benefit equal to the value of the assets in the LIF.
- (2) The benefit described in subsection (1) may be transferred to an RRSP or an RRIF in accordance with the *Income Tax Act* (Canada).
 - (3) Subsection (1) only applies to a spouse of the owner if the owner was a member or former member of a pension plan from which the assets were transferred directly or indirectly to purchase the LIF.
 - (4) A spouse who is living separate and apart from the owner without a reasonable prospect of the resumption of cohabitation on the date of the owner's death is not entitled to receive the value of the assets in the LIF if the spouse,
 - (a) delivered a written waiver to the financial institution in the form and manner set out in subsection 68(1) of the Act with respect to the assets in the LIF, before the death of the owner;
 - (b) is not entitled to receive the an amount in respect of the assets in the LIF in accordance with the terms of a written agreement that provides for the division of pension entitlements; or
 - (c) is not entitled to receive an amount in respect of the assets in the LIF, by court order.
 - (5) For the purposes of subsection (1), a determination as to whether the owner has a spouse is to be made on the date of the owner's death.
 - (6) For the purposes of subsection (1), the value of the assets in the LIF includes all accumulated investment earnings, including any unrealized capital gains and losses, of the LIF from the date of death until the date of payment.

Waiver of spousal entitlement to death benefits

- 17** (1) A spouse of the owner of a LIF may waive his or her entitlement to receive the death benefit described in section 16 from the LIF by delivering to the financial institution a written waiver in a form approved by the Superintendent and including the content set out in the form.
- (2) A spouse who has delivered a waiver under subsection (1) may cancel it by delivering a written and signed notice of cancellation to the financial institution before the date of the death of the owner of the LIF.

Information to be provided by the financial institution upon the death of the owner

- 18** If the owner dies before the balance in the LIF is used to purchase a life annuity contract or is transferred under Section 13, the financial institution must provide to the owner's spouse, beneficiary or estate the information in clauses 12(a) and (b), determined as of the owner's date of death.

Schedule V – Life Income Fund Factor F
 (Sections 8 and 9 of Schedule IV, Nova Scotia LIF Addendum)
Reference Rate 6% 6.5% 7% 7.5%

Age	6.00%	6.50%	7.00%	7.500%	8.00%	8.50%	9.00%	9.50%
under 55	0.061	0.063	0.066	0.069	0.072	0.075	0.078	0.081
55	0.064	0.067	0.070	0.073	0.076	0.079	0.082	0.085
56	0.065	0.067	0.070	0.073	0.076	0.079	0.082	0.085
57	0.065	0.068	0.071	0.074	0.077	0.080	0.083	0.086
58	0.066	0.069	0.071	0.074	0.077	0.080	0.083	0.086
59	0.067	0.069	0.072	0.075	0.078	0.081	0.084	0.087
60	0.067	0.070	0.073	0.076	0.079	0.082	0.085	0.088
61	0.068	0.071	0.074	0.077	0.079	0.082	0.086	0.089
62	0.069	0.072	0.074	0.077	0.080	0.083	0.086	0.089
63	0.070	0.073	0.075	0.078	0.081	0.084	0.087	0.090
64	0.071	0.074	0.076	0.079	0.082	0.085	0.088	0.091
65	0.072	0.075	0.077	0.080	0.083	0.086	0.089	0.093
66	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.094
67	0.074	0.077	0.080	0.083	0.086	0.089	0.092	0.095
68	0.076	0.078	0.081	0.084	0.087	0.090	0.093	0.096
69	0.077	0.080	0.083	0.086	0.089	0.092	0.095	0.098
70	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.100
71	0.081	0.084	0.087	0.089	0.092	0.095	0.098	0.102
72	0.083	0.086	0.089	0.092	0.095	0.098	0.101	0.104
73	0.085	0.088	0.091	0.094	0.097	0.100	0.103	0.106
74	0.088	0.091	0.094	0.097	0.099	0.102	0.105	0.108
75	0.091	0.094	0.097	0.100	0.102	0.105	0.108	0.111
76	0.094	0.097	0.100	0.103	0.106	0.109	0.112	0.114
77	0.098	0.101	0.104	0.107	0.110	0.112	0.115	0.118
78	0.103	0.106	0.109	0.111	0.114	0.117	0.120	0.123
79	0.108	0.111	0.114	0.117	0.119	0.122	0.125	0.128
80	0.115	0.117	0.120	0.123	0.125	0.128	0.131	0.133
81	0.121	0.124	0.127	0.129	0.132	0.135	0.137	0.140

Age	6.00%	6.50%	7.00%	7.500%	8.00%	8.50%	9.00%	9.50%
82	0.129	0.132	0.134	0.137	0.139	0.142	0.145	0.147
83	0.138	0.140	0.143	0.146	0.148	0.151	0.154	0.156
84	0.148	0.151	0.153	0.156	0.159	0.161	0.164	0.167
85	0.160	0.163	0.165	0.168	0.171	0.173	0.176	0.179
86	0.173	0.176	0.179	0.182	0.184	0.187	0.190	0.193
87	0.189	0.191	0.194	0.197	0.200	0.200	0.200	0.200
88 or over	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200

Age	10.00%	10.50%	11.00%	11.50%	12.00%	12.50%	13.00	13.50%
under 55	0.084	0.087	0.090	0.093	0.097	0.100	0.103	0.107
55	0.088	0.091	0.094	0.097	0.101	0.104	0.107	0.111
56	0.088	0.091	0.095	0.098	0.101	0.104	0.108	0.111
57	0.089	0.092	0.095	0.098	0.102	0.105	0.108	0.112
58	0.090	0.093	0.096	0.099	0.102	0.106	0.109	0.112
59	0.090	0.093	0.097	0.100	0.103	0.106	0.110	0.113
60	0.091	0.094	0.097	0.101	0.104	0.107	0.110	0.114
61	0.092	0.095	0.098	0.101	0.105	0.108	0.111	0.115
62	0.093	0.096	0.099	0.102	0.105	0.109	0.112	0.115
63	0.094	0.097	0.100	0.103	0.106	0.110	0.113	0.116
64	0.095	0.098	0.101	0.104	0.107	0.111	0.114	0.117
65	0.096	0.099	0.102	0.105	0.108	0.112	0.115	0.118
66	0.097	0.100	0.103	0.106	0.110	0.113	0.116	0.119
67	0.098	0.101	0.104	0.108	0.111	0.114	0.117	0.121
68	0.100	0.103	0.106	0.109	0.112	0.115	0.119	0.122
69	0.101	0.104	0.107	0.111	0.114	0.117	0.120	0.123
70	0.103	0.106	0.109	0.112	0.115	0.119	0.122	0.125
71	0.105	0.108	0.111	0.114	0.117	0.120	0.123	0.127
72	0.107	0.110	0.113	0.116	0.119	0.122	0.125	0.129
73	0.109	0.112	0.115	0.118	0.121	0.124	0.127	0.131
74	0.111	0.114	0.117	0.120	0.124	0.127	0.130	0.133

Schedule VI – Life Income Fund**Temporary Income Factor D**

(Section 9 of Schedule IV, Nova Scotia LIF Addendum)

Age

under 54	1.000
54	1.691
55	1.706
56	1.804
57	1.953
58	2.151
59	2.379
60	2.705
61	3.202
62	4.090
63	5.811
64	10.989
65 or over	1.000

PART 8 – WITHDRAWALS IN EXCEPTIONAL CIRCUMSTANCES

Division 1 – Withdrawals in Circumstances of Financial Hardship

Interpretation

103 In this Division,

- (a) “application fee” means a fee prescribed by the Minister for an application for a withdrawal under this Part;
- (b) “child” includes a person for whom the owner, or the owner’s spouse is legal guardian.
- (c) “circumstance of financial hardship” means a circumstance prescribed in subsection 104(1) for the purposes of subsection 91(5) of the Act;
- (d) “dentist” means a dentist who is licenced to practice dentistry in a jurisdiction in Canada;
- (e) “dependant” means a person who
 - (i) is dependent on the owner or the owner’s spouse for support on the date an application is signed by the owner, or was dependent on the owner or the owner’s spouse at any time during the 12-month period immediately preceding the date the application is signed by the owner; and
 - (ii) is the child, step-child, grandchild, parent, step-parent, grandparent, brother, half-brother, step-brother, sister, half-sister, step-sister, uncle, aunt, niece or nephew of
 - A. the owner, or
 - B. the owner’s spouse, unless the owner and the owner’s spouse are living separate and apart on the date the application is signed by the owner, and there is no reasonable prospect of the resumption of cohabitation.
- (f) “medical expenses” means expenses for goods or services of a medical or dental nature that are certified by a physician or dentist as necessary to treat an illness or disability and that are not covered by insurance, a benefit plan, a government program or any other source;
- (g) “medical expense circumstance” means a circumstance of financial hardship as prescribed in clause 104(1)(b);

- (h) “mortgage default circumstance” means a circumstance of financial hardship as prescribed in clause 104(1)(a);
- (i) “net amount” means the amount allowed by the Superintendent to be withdrawn by an owner from a LIF or LIRA under an application consented to by the Superintendent, net of any applicable withholding tax and the application fee;
- (j) “physician” means a physician who is licensed to practice medicine in a jurisdiction in Canada;
- (k) “principal residence” of an owner who makes an application means a property that is ordinarily inhabited by the owner on the date the owner signs the application;
- (m) “reduced income circumstance” means a circumstance of financial hardship as prescribed in clause 104(1)(c).

Prescribed circumstances of financial hardship

- 104** (1) Subject to subsection (2), the following circumstances of financial hardship are prescribed for the purposes of subsection 91(5) of the Act:
- (a) the owner or the owner’s spouse has received a written demand in respect of a default on a that is secured against the owner’s principal residence, and the owner could face legal eviction or forced sale if the debt remains unpaid;
 - (b) the owner, the owner’s spouse or a dependant has incurred or will incur medical expenses;
 - (c) the owner’s anticipated total income from all sources before taxes for the 12-month period immediately following the date the owner signs the application is less than 40 per cent of the Year’s Maximum Pensionable Earnings for the year in which the application is signed.
- (2) A circumstance relating to expenses incurred or to be incurred for the benefit of a spouse does not constitute a circumstance of financial hardship if the owner and the spouse are living separate and apart on the date the owner signs the application, and there is no reasonable prospect of the resumption of cohabitation.
- (3) For the purposes of the mortgage default circumstance, an owner has only one principal residence.
- (4) For the purposes of a reduced income circumstance, an owner’s anticipated total income from all sources before taxes does not include any of the following:

- (a) a withdrawal under this Part;
- (b) a refund or repayment of taxes paid to a Canadian jurisdiction;
- (c) a refundable tax credit;
- (d) income from sources enumerated in Section 52 of the *Employment Support and Income Assistance Regulations* made under the *Employment Support and Income Assistance Act* and categorized in that Section as “not chargeable income”;
- (e) child support payments received under a court order or an agreement.

Application for withdrawal

- 105** (1) An owner may make application, under this Part, for consent by the Superintendent to the commutation or surrender, in whole or in part, of a retirement savings arrangement, pursuant to Section 91(5) of the Act and these regulations.
- (2) If the Superintendent, upon application, consents to the commutation or surrender, in whole or in part, of a retirement savings arrangement, the owner is authorized to receive payment of the approved funds in accordance with these regulations.
- (3) An owner must pay an application fee in an amount prescribed by the Minister, at the time of a withdrawal.
- (4) An application for a withdrawal under this section must be
- (a) completed in the form approved by the Superintendent and containing the information required by the form;
 - (b) signed and dated by the owner; and
 - (c) submitted to the Superintendent.
- (5) An application must be accompanied by a copy of the most recent statement for the LIF or LIRA issued to the owner of the LIF or LIRA by the financial institution that administers the LIF or LIRA.
- (6) An application must request consent for withdrawal of all of the following:
- (a) the amount requested for withdrawal, calculated in accordance with section 56, which shall not be less than \$500;
 - (b) the amount of any applicable withholding tax;

- (c) the application fee.
- (7) The application form must include one of the following statements:
- (a) a statement of the owner's spouse, if any, that
 - (i) the spouse is aware of the pension entitlements under the LIF or LIRA;
 - (ii) the spouse is aware of the consequences of withdrawing funds from the LIF or LIRA, and
 - (iii) the spouse agrees to the withdrawal.
 - (b) a statement signed and dated by the owner attesting to the fact that the owner does not have a spouse; or
 - (c) a statement signed by the owner attesting to the fact that, on the date that he or she signs the application to make the withdrawal from the LIF or LIRA, he or she is living separate and apart from his or her spouse, with no reasonable prospect of the resumption of cohabitation, and the spouse,
 - (i) delivered a written waiver to the administrator in the form and manner set out in subsection 68(1) of the Act with respect to the amount that is the subject of the withdrawal, before the date that payment of the first instalment of the LIF or LIRA is due,
 - (ii) is not entitled to receive an amount in respect of the LIF or LIRA in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been entered into before the date that payment of the first instalment of the LIF or LIRA is due, or
 - (iii) is not entitled to receive an amount in respect of the LIF or LIRA by court order issued prior to the date that payment of the first instalment of the LIF or LIRA is due.
- (8) The application form containing a statement of the owner's spouse referred to in clause (7)(a) must be signed and dated by the spouse in the presence of a witness other than the owner.
- (9) The application form must include a statement by the owner that the owner understands that any funds withdrawn from the retirement savings arrangement are not exempt from execution, seizure or attachment under Section 89 of the Act.

- (10) In an application under a mortgage default circumstance, the owner must include a copy of the written demand in respect of the default on the debt secured against the owner's principal residence, setting out
- (a) the amount required to pay the arrears, as of the date the application was signed;
 - (b) all directly related enforcement costs to bring the debt into good standing;
 - (c) a statement from the mortgagee or lender setting out the date that foreclosure or legal action will be commenced;
 - (d) a statement of the amount of the regular monthly payments required to be made in relation to the debt secured against the owner's principal residence; and
 - (e) the civic address of the owner's principal residence.
- (11) In an application under a medical expense circumstance, the owner must include
- (a) copies of receipts or estimates for the medical expenses;
 - (b) a written opinion of a physician or dentist indicating that, in his or her opinion, the expenses are necessary to treat an illness or disability; and
 - (c) a statement, signed and dated by the owner, indicating that there is no coverage available to the owner for the medical expense circumstance from insurance or from a benefit plan, government program or other source.
- (12) In an application under a reduced income circumstance, the owner must include all of the following:
- (a) a statement, signed and dated, setting out the owner's anticipated total income from all sources before taxes for the 12-month period immediately following the date the application is signed by the owner;
 - (b) copies of any documents showing income received by the owner in the 12-month period immediately preceding the date the application is signed by the owner;
 - (c) copies of any documents showing income expected to be received by the owner in the 12-month period immediately following the date the application is signed by the owner; and

- (d) a copy of the owner's most recent notice of assessment or reassessment, or such equivalent documents, issued by the Canada Revenue Agency.
- (13) An owner must provide accurate and complete information in the application and any accompanying documents.

Superintendent may require additional information

- 106** (1) Following receipt of an application, and before consenting or refusing consent, the Superintendent may require
- (a) evidence of the circumstance of financial hardship in addition to the evidence submitted with the application under Section 105; and
 - (b) any information relating to the application and accompanying documents that the Superintendent considers necessary to assist in understanding them and to verify their authenticity.
- (2) An owner must provide any additional evidence and information required under subsection (1) in the form and manner that the Superintendent specifies.

Superintendent entitled to rely on information

- 107** The Superintendent is entitled to rely on the information provided in an application and accompanying documents as well as any additional evidence and information provided under Section 106.

Nullity of stale-dated document

- 108** A document to be submitted to the Superintendent is a nullity for the purposes of an application made under a circumstance of financial hardship if it is
- (a) a document that requires the signature of the owner or the owner's spouse and is signed more than 60 days before the date the Superintendent receives it; or
 - (b) a document other than as described in clause (a) that is signed or dated more than 12 months before the date the Superintendent receives it.

Only 1 application in 12-month period

- 109** (1) Only 1 application in each circumstance of financial hardship may be made during any 12-month period in relation to a particular person.
- (2) For the purposes of subsection (1), a 12-month period begins on the date that an application with respect to the relevant circumstance of financial hardship and in relation to the particular person is received by the Superintendent.
- (3) Despite subsection (1), an application that does not result in a withdrawal from a LIF or LIRA is not relevant for the purposes of subsection (1).

Calculating net amount

- 110** (1) In an application under a mortgage default circumstance, the net amount may not exceed an amount sufficient to pay the arrears, as of the date the application is signed, and all directly related enforcement costs required to bring the debt into good standing.
- (2) In an application under a medical expense circumstance, the net amount may not exceed the aggregate of
- (a) an amount sufficient to pay any medical expenses actually incurred within the 12-month period immediately preceding the date the application is signed by the owner; and
 - (b) an amount sufficient to pay any medical expenses anticipated to be incurred within the 12-month period immediately following the date the application is signed by the owner.
- (3) In an application under a reduced income circumstance, the net amount may not exceed the amount by which “E” exceeds “F”, in which
- (a) “E” is 40 per cent of the Year’s Maximum Pensionable Earnings for the year in which the application is signed by the owner; and
 - (b) “F” is 75 per cent of the owner’s anticipated total income from all sources before taxes determined in accordance with subsection 104(4) for the 12-month period immediately following the date the application is signed by the owner.

Net amount may be lower than requested

- 111** (1) Subject to subsection (2), a net amount may be less than the amount requested by the owner in his or her application.
- (2) A net amount must be at least \$500.

Subsequent application related to mortgage default denied

- 112** The Superintendent must deny an owner’s application in a mortgage default circumstance if the Superintendent has previously consented to an application from the owner under a mortgage default circumstance and funds have been withdrawn from the owner’s LIF or LIRA under that previous application.

Superintendent’s decision

- 113** (1) The Superintendent may grant or refuse consent to an application.
- (2) The Superintendent’s decision on an application is final and not subject to appeal.

Notification and payment

- 114** (1) The Superintendent must notify an owner in writing of the Superintendent's decision concerning the owner's application within a reasonable period following receipt by the Superintendent of the owner's completed application, together with all documents and any additional evidence and information required by the Superintendent.
- (2) A written consent by the Superintendent, under section 91(5) of the Act, to the withdrawal of funds from a LIF or LIRA authorizes the financial institution that administers the LIF or LIRA to pay to the owner the net amount, and to pay to the Minister of Finance the application fee.
- (3) The net amount may be paid to the owner
- (a) as a lump sum payment; or
 - (b) as a transfer to a non-locked-in retirement savings arrangement designated by the owner.
- (4) A financial institution must pay or transfer the net amount no later than 30 days after the date it receives the Superintendent's written consent.
- (5) A consent is a nullity if the financial institution receives it more than 12 months after the date the consent is signed by the Superintendent.

Division 2 – Withdrawals in Circumstances of Shortened Life Expectancy

Withdrawals from the pension plan

- 115** (1) This section applies with respect to a variation in the terms of payment of a pension or deferred pension under subsection 69(2) of the Act (considerably shortened life expectancy).
- (2) The following are prescribed as the circumstances of shortened life expectancy in which a pension plan shall be deemed to permit variation in the terms of payment a pension of deferred:
- (a) A former member or retired member has an illness or physical disability that is likely to shorten is or her life expectancy to less than two years.
- (3) The following are the prescribed conditions that must be satisfied for the purposes of subsection 69(2) of the Act:
- (a) An application must be made to the administrator of the pension plan for the withdrawal from the pension fund of the commuted value of the former member's deferred pension or the retired member's pension.

- (b) The application must be
 - (i) in a form approved by the Superintendent;
 - (ii) signed by the former member or retired member; and
 - (iii) accompanied by the following documents:
 - (A) A statement signed by a physician who is licensed to practice medicine in a jurisdiction in Canada that, in the physician's opinion, the former member or retired member has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years; and
 - (B) A declaration described in subsection (4), about a spouse.
- (4) Any of the following documents constitutes a declaration about a spouse:
- (a) a statement signed by the member's or former member's spouse, if any, that
 - (i) the spouse is aware of the pension entitlements;
 - (ii) the spouse is aware of the consequences of withdrawing monies from the pension fund; and
 - (iii) the spouse agrees to the withdrawal.
 - (b) a statement signed and dated by the member or former member attesting to the fact that the member or former member does not have a spouse; or
 - (c) a statement signed by the member or former member attesting to the fact that, on the date that he or she signs the application to make the withdrawal from the pension fund, he or she is living separate and apart from his or her spouse, with no reasonable prospect of the resumption of cohabitation, and the spouse,
 - (i) delivered a written waiver to the administrator in the form and manner set out in subsection 68(1) of the Act with respect to the amount that is the subject of the withdrawal, before the date that payment of the first instalment of the pension is due of,
 - (ii) is not entitled to receive an amount in respect of the pension in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been

entered into before the date that payment of the first instalment of the pension is due, or

- (iii) is not entitled to receive an amount in respect of the pension by court order issued prior to the date that payment of the first instalment of the pension is due.
- (5) The application form containing a statement of the owner's spouse referred to in clause (4)(a) must be signed and dated by the spouse in the presence of a witness other than the owner
- (6) A declaration about a spouse is a nullity if it is signed by the member or former member, as the case may be, or by the spouse more than 60 days before the administrator receives it.
- (7) When the administrator receives a document required by this section, the administrator shall give the former member or retired member a receipt for the document stating the day on which it was received.

Withdrawal from LIF or LIRA

- 116** (1) The owner of a LIF or LIRA may, upon application in accordance with this section, withdraw all or part of the money in the LIF or LIRA if, when the owner signs the application, he or she has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years.
- (2) An application to withdraw money from the LIF or LIRA must be given to the financial institution that administers the LIF or LIRA.
 - (3) The application must be made on a form approved by the Superintendent.
 - (4) The application form must be signed by the owner and be accompanied by the following documents:
 - (a) A statement signed by a physician who is licensed to practise medicine in a jurisdiction in Canada that, in the opinion of the physician, the owner has a mental or physical disability that is likely to shorten his or her life expectancy to less than two years.
 - (b) A declaration described in subsection (5), about a spouse, or a statement signed by the owner attesting to the fact that none of the money in the LIF or LIRA is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the owner.
 - (5) Any of the following documents constitutes a declaration about a spouse:
 - (a) a statement signed by the owner's spouse, if any, that

- (i) the spouse is aware of the pension entitlements under the LIF or LIRA;
 - (ii) the spouse is aware of the consequences of withdrawing monies from the LIF or LIRA; and
 - (iii) the spouse agrees to the withdrawal.
 - (b) a statement signed and dated by the owner attesting to the fact that the owner does not have a spouse; or
 - (c) a statement signed by the owner attesting to the fact that, on the date that he or she signs the application to make the withdrawal from the LIF or LIRA, he or she is living separate and apart from his or her spouse, with no reasonable prospect of the resumption of cohabitation and the spouse,
 - (i) delivered a written waiver to the administrator in the form and manner set out in subsection 68(1) of the Act with respect to the amount that is the subject of the withdrawal, before the date that payment of the first instalment of the LIF or LIRA is due,
 - (ii) is not entitled to receive an amount in respect of the LIF or LIRA in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been entered into before the date that payment of the first instalment of the LIF or LIRA is due, or
 - (iii) is not entitled to receive an amount in respect of the LIF or LIRA by court order issued prior to the date that payment of the first instalment of the LIF or LIRA is due.
- (6)** The application form containing a statement of the owner's spouse referred to in clause (5)(a) must be signed and dated by the spouse in the presence of a witness other than the owner.
- (7)** A declaration about a spouse is a nullity if it is signed by the member or former member, as the case may be, or by the spouse more than 60 days before the administrator receives it.
- (8)** The contract governing the LIF or LIRA must include the following terms and, if it does not, the contract is deemed to include them:
- (a) The financial institution is entitled to rely upon the information provided by the owner in an application made under this section.

- (b) An application that meets the requirements of this section constitutes authorization to the financial institution to make the payment from the LIF or LIRA in accordance with this section.
- (c) The financial institution is required to make the payment to which the owner is entitled under this section within 30 days after the financial institution receives the completed application form and accompanying documents.

Division 3 – Withdrawal in Circumstances of Non-Residency

Withdrawal in circumstances of non-residency

- 117** (1) The owner of a LIF or LIRA may, upon application in accordance with this section, withdraw all the money in the LIF or LIRA,
- (a) if, when the owner signs the application, he or she is a non-resident of Canada as determined by the Canada Revenue Agency for the purposes of the *Income Tax Act* (Canada); and
 - (b) if the application is made at least 24 months after his or her date of departure from Canada.
- (2) An application to withdraw the money from the LIF or LIRA must be given to the financial institution that administers the LIF or LIRA.
- (3) The application must be made in a form approved by the Superintendent;
- (4) The application form must be signed by the owner and accompanied by the following documents:
- (a) A written determination from the Canada Revenue Agency that the person is a non-resident for the purposes of the *Income Tax Act* (Canada).
 - (b) A declaration described in subsection (5), about a spouse, or a statement signed by the owner attesting to the fact that none of the money in the LIF or LIRA is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the owner.
- (5) Any of the following documents constitutes a declaration about a spouse:
- (a) a statement signed by the owner's spouse, if any, that
 - (i) the spouse is aware of the pension entitlements under the LIF or LIRA;

- (ii) the spouse is aware of the consequences of withdrawing monies from the LIF or LIRA; and
 - (iii) the spouse agrees to the withdrawal.
 - (b) a statement signed and date by the owner attesting to the fact that the owner does not have a spouse; or
 - (c) a statement signed by the owner attesting to the fact that, on the date that he or she signs the application to make the withdrawal from the LIF or LIRA, he or she is living separate and apart from his or her spouse, with no reasonable prospect of the resumption of cohabitation and the spouse,
 - (i) delivered a written waiver to the administrator in the form and manner set out in subsection 68(1) of the Act with respect to the amount that is the subject of the withdrawal, before the date that payment of the first instalment of the LIF or LIRA is due,
 - (ii) is not entitled to receive an amount in respect of the LIF or LIRA in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been entered into before the date that payment of the first instalment of the LIF or LIRA is due, or
 - (iii) is not entitled to receive an amount in respect of the LIF or LIRA by court order issued prior to the date that payment of the first instalment of the LIF or LIRA is due.
- (6) The application form containing a statement of the owner's spouse referred to in clause (5)(a) must be signed and dated by the spouse in the presence of a witness other than the owner.
- (7) A declaration about a spouse is a nullity if it is signed by the member or former member, as the case may be, or by the spouse more than 60 days before the administrator receives it.
- (8) The contract governing the LIF or LIRA must include the following terms and, if it does not, the contract is deemed to include them:
 - (a) The financial institution is entitled to rely upon the information provided by the owner in an application made under this section.
 - (b) An application that meets the requirements of this section constitutes authorization to the financial institution to make the payment from the LIF or LIRA in accordance with this section.

- (c) The financial institution is required to make the payment to which the owner is entitled under this section within 30 days after the financial institution receives the completed application form and accompanying documents.

Division 4 – Withdrawal of Small Amounts at Age 65

Withdrawal of small amounts at age 65

- 118** (1) The owner of a LIF or LIRA may, upon application in accordance with this section, withdraw all the money in the LIF or LIRA or transfer the assets to an RRSP or RRIF if, when the owner signs the application,
- (a) he or she is at least 65 years of age; and
 - (b) the value of all assets in all LIFs, LIRAs and pension plans providing defined contribution benefits owned by the owner is less than 40 per cent of the Year's Maximum Pensionable Earnings for that calendar year.
- (2) An application for the withdrawal or transfer from the LIF or LIRA must be given to the financial institution that administers the LIF or LIRA, as the case may be.
- (3) The application must be made in a form approved by the Superintendent.
- (4) The application form must be signed by the owner and accompanied by
- (a) a declaration described in subsection (5), about a spouse; or
 - (b) a statement signed by the owner attesting to the fact that none of the money in the LIF or LIRA is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the owner.
- (5) Any of the following documents constitutes a declaration about a spouse:
- (a) a statement signed by the owner's spouse, if any, that
 - (i) the spouse is aware of the pension entitlements under the LIF or LIRA;
 - (ii) the spouse is aware of the consequences of withdrawing monies from the LIF or LIRA; and
 - (iii) the spouse agrees to the withdrawal.
 - (b) a statement signed and dated by the owner attesting to the fact that the owner does not have a spouse; or

- (c) a statement signed by the owner attesting to the fact that, on the date that he or she signs the application to make the withdrawal from the LIF or LIRA, he or she is living separate and apart from his or her spouse, with no reasonable prospect of the resumption of cohabitation and the spouse,
 - (i) delivered a written waiver to the administrator in the form and manner set out in subsection 68(1) of the Act with respect to the amount that is the subject of the withdrawal, before the date that payment of the first instalment of the LIF or LIRA is due,
 - (ii) is not entitled to receive an amount in respect of the LIF or LIRA in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been entered into before the date that payment of the first instalment of the LIF or LIRA is due, or
 - (iii) is not entitled to receive an amount in respect of the LIF or LIRA by court order issued prior to the date that payment of the first instalment of the LIF or LIRA is due.
- (6) The application form containing a statement of the owner's spouse referred to in clause (5)(a) must be signed and dated by the spouse in the presence of a witness other than the owner.
- (7) A declaration about a spouse is a nullity if it is signed by the owner or by the spouse more than 60 days before the administrator receives it.
- (8) If assets in the LIF or LIRA consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the owner.
- (9) The contract governing the LIF or LIRA must include the following terms and, if it does not, the contract is deemed to include them:
 - (a) The financial institution is entitled to rely upon the information provided by the owner in an application made under this section.
 - (b) An application that meets the requirements of this section constitutes authorization to the financial institution to make the payment or transfer from the LIF or LIRA in accordance with this section.
 - (c) The value of all assets in all LIFs, LIRAs and pension plans providing defined contribution benefits owned by the owner when he or she signs the application under this section must be determined using the most recent statement about each LIF or LIRA given to the owner. Each such statement must be dated within one year before the owner signs the application.

- (d) The financial institution is required to make the payment or transfer to which the owner is entitled under this section within 30 days after the financial institution receives the completed application form and accompanying documents.

PART 9 – COMPLIANCE WITH ATTACHMENT

Cost of complying with an attachment

- 119** (1) For the purposes of clause 90(2)(a) of the Act (Enforcement of maintenance order), the cost of complying with an attachment made pursuant to clause 90(1)(b) of the Act must be calculated in accordance with this Section.
- (2) The administrator must calculate the cost of complying with the attachment of a defined benefit as the amount, not to exceed \$500, that reasonably represents the cost to the pension plan of complying with the attachment.
 - (3) The administrator must calculate the cost of complying with the attachment of a defined contribution benefit as the amount, not to exceed \$250, that reasonably represents the cost to the pension plan of complying with the attachment.
 - (4) The cost of complying with the attachment of a deferred life annuity or prescribed retirement savings arrangement must be the amount, not to exceed \$250, that reasonably represents the cost to the transferee of complying with the attachment.

PART 10 – DIVISION OF PENSION ENTITLEMENT

Definitions for Part

120 In this Part,

- (a) “court order” means an order of the Supreme Court of Nova Scotia or an order of a court of competent jurisdiction made outside the Province and enforceable in the Province that provides for a division of a pension benefit, deferred pension or pension;
- (b) “entitlement date” means the date on which the spouse became entitled to a division of the member’s, former member’s or retired member’s pension benefit, deferred pension or pension;
- (c) “limited member” means a person designated as a limited member of a pension plan;
- (d) “net investment returns” means interest, dividends and realized and unrealized capital gains and losses, less related investment expenses normally charged to investment earnings;

- (e) “pensionable service” means the months or parts of months in respect of which a member’s, former member’s or retired member’s pension benefit accrues, and includes the months or parts of months in respect of which a pension benefit, earned by a member, former member or retired member under another pension plan, has been transferred to the pension plan;
- (f) “proportionate share” means,
 - (i) for a pension or a defined benefit, a fraction of the pension or defined benefit calculated in accordance with this Part, or
 - (ii) for a defined contribution benefit, the share of the benefit to which the spouse of the member, former member or retired member is entitled calculated in accordance with this Part;
- (g) “separate pension” means the proportionate share of a member’s, former member’s or retired member’s pension that is established in a separate account in favour of a spouse;
- (h) “spouse”, for purposes of this Part, includes a former spouse of a member, former member or retired member.

Application of Part

- 121 (1)** Subject to subsection (2), if a spouse is entitled to an interest in a pension benefit, deferred pension, or pension,
- (a) the share of the spouse in the pension benefit, deferred pension or pension; and
 - (b) the manner in which the entitlement of the spouse to a proportionate share of the pension benefit, deferred pension or pension,
- must be determined in accordance with this Part.
- (2)** This Part, unless provided otherwise, applies only if a spouse,
- (a) was entitled to an interest in a pension benefit, deferred pension or pension before [*the date these regulations come into force*], and on [*the date these regulations come into force*], the pension benefit, deferred pension or pension has not been allocated as between the member, former member, or retired member and that person’s spouse, by court order or domestic contract; or
 - (b) becomes entitled to an interest in a pension benefit, deferred pension or pension on or after [*the date these regulations come into force*].

- (3) This Part applies to an insurance contract that provides for a deferred or immediate life annuity that results from,
 - (a) the transfer of the commuted value of a pension benefit;
 - (b) the purchase of a LIRA referred to in Sections 90 to 94 and Schedule III; or
 - (c) the purchase of a LIF referred to in Sections 95 to 102 and Schedule IV.

Division determined by court order or domestic contract

- 122** (1) Subject to subsection 74(2) of the Act, a spouse's share of a pension benefit, deferred pension or pension must be determined by a court order or domestic contract.
- (2) The entitlement date must be specified in the court order or domestic contract referred to in subsection (1).
- (3) Nothing in this Part precludes a division of assets pursuant to Section 13 of the *Matrimonial Property Act* in settlement of the value of any pension or other benefit under a pension plan if, by reason of the termination of a relationship, the chance of acquiring it would be lost if the division does not take place;
- (4) This Part does not apply to any unequal division of assets in the circumstances described in subsection (3).

Information from pension plan

- 123** (1) A spouse who claims an interest in a pension benefit, deferred pension or pension and who submits to the administrator a request for information in a form approved by the Superintendent, entitled, Request by Spouse for Information Respecting Pension Entitlement, is entitled to receive from the administrator any information necessary to value the member's, former member's or retired member's pension benefit, deferred pension or pension, as the case may be.
- (2) The administrator must provide the information requested pursuant to subsection (1) within 60 days after receipt of the form referred to in subsection (1).
- (3) Upon receipt of the form referred to in subsection (1), the administrator must send a notice in a form approved by the Superintendent, entitled, Notice of Receipt, to the member, former member or retired member, whose spouse submitted the form referred to in subsection (1).
- (4) Once the information has been provided in accordance with subsection (2), the administrator is required to provide updates to that information only once in each

calendar year upon request from the spouse who submitted the form referred to in subsection (1).

Limited members

- 124** (1) If a pension benefit, deferred pension or pension is to be divided, a spouse may be designated a limited member of the pension plan by submitting to the administrator a request in a form approved by the Superintendent, entitled, Request for Designation as Limited Member of Pension Plan, and a copy of the court order or domestic contract that determines the division.
- (2) A limited member has
- (a) the right to receive payment of a separate pension or a proportionate share of a pension, as the case may be;
 - (b) except as modified by this Part, all of the rights of a member, former member or retired member under the Act;
 - (c) the additional rights that are set out in this Part.
- (3) If the commuted value of the proportionate share of the pension benefit, deferred pension or pension is transferred out of the pension plan to the credit of a spouse pursuant to Section 126, the spouse ceases to be a limited member of the pension plan.
- (4) Upon receipt of a form referred to in subsection (1), the administrator must send a notice in a form approved by the Superintendent, entitled, Notice of Receipt, to the member, former member or retired member whose spouse submitted the form referred to in subsection (1).

Information to be provided to a limited member

- 125** (1) An administrator must provide the following information to a limited member:
- (a) any information available, or notice provided to members, former members or retired members of the pension plan, as the case may be;
 - (b) to the extent that it is not provided under clause (a), information on options available to and elections that may be made by a limited member with respect to the limited member's proportionate share of the pension benefit, deferred pension or pension when such options become available.
- (2) In addition to the information provided under subsection (1), a limited member who is entitled to a defined contribution benefit must receive an annual statement required under Section 40 of the Act.

- (3) If a limited member is receiving a separate pension under the Act, the limited member is entitled to all of the information that the administrator provides to retired members of the pension plan who are in receipt of a pension payable from the pension fund.

Transfer from pension plan to LIRA or LIF

- 126** (1) A transfer of a proportionate share of a pension benefit out of a pension plan to the credit of a spouse must be made in accordance with Section 61 of the Act.
- (2) If a defined contribution benefit, LIRA or LIF has been divided under a court order or domestic contract, whether before, on or after [*the date these regulations come into force*], a spouse who submits to the administrator a copy of the order or contract and a request in a form approved by the Superintendent, entitled, Request for Transfer of a Defined Contribution Benefit, Defined Benefit, LIRA or LIF, is entitled to transfer the spouse's proportionate share of the defined contribution benefit from the pension plan.
- (3) Upon receipt of the form referred to in subsection (2), the administrator must send a notice in a form approved by the Superintendent, entitled, Notice of Receipt, to the member or former member whose spouse submitted the form referred to in subsection (2).
- (4) If a defined benefit has been divided, a limited member who submits to the administrator a request in the form referred to in subsection (2) is entitled to receive a proportionate share of the commuted value of the pension benefit or deferred pension transferred from the pension plan to the credit of the limited member when the member or former member
- (a) retires; or
- (b) terminates membership in the pension plan.
- (5) Subsection (4) does not apply to a limited member unless the plan provides an entitlement as described in subsection (4) to the member or former member.

Limited member's separate pension resulting from division of a defined benefit

- 127** A separate pension in favour of a spouse as a limited member, resulting from division of a defined benefit, must
- (a) be equal to a proportionate share of the pension that the member or former member would have received had there been no division under the Act and the member or former member elected a pension in the normal form of pension provided under the pension plan for the member or former member;

- (b) be converted into
 - (i) a pension payable for the lifetime of the limited member, or
 - (ii) another form or combination of forms of pension that members or former members of the pension plan may elect, such that the commuted value of the separate pension is not less than the commuted value of the limited member's proportionate share of the member's or former member's pension in the normal form of pension provided under the pension plan to the member or former member;
- (c) be actuarially adjusted, taking into account any difference between the age of the limited member and the member or former member; and
- (d) commence at the member's or former member's retirement date.

Benefit split of a pension

- 128** (1) If a pension is to be divided, a limited member is entitled to receive a proportionate share of the pension paid until
- (a) the death of the limited member; or
 - (b) cessation of the pension,
- whichever occurs first.
- (2) If a proportionate share of a pension is paid to a limited member, separate source deductions must be made with respect to deductions required under the *Income Tax Act* (Canada) for the limited member's share and the retired member's share of the pension.

Death of a member or limited member entitled to a defined benefit

- 129** (1) If a member or former member dies before the limited member receives a share of the defined benefit under subsection 126(4), the limited member is entitled to receive a proportionate share of the pre-retirement death benefit.
- (2) If a member or former member dies after the limited member transfers from the pension plan a proportionate share of the defined benefit under subsection 126(4), no pre-retirement death benefit is payable to the limited member unless the member or former member has designated the limited member as a beneficiary.
- (3) If a limited member dies before the member or former member and before transferring from the pension plan a proportionate share of the defined benefit under subsection 126(4), the pension plan must pay to the beneficiary or the estate of the limited member the death benefit payable in respect of the limited

member's proportionate share of the defined benefit as if the member or former member had died.

Variation of payment to disabled person and payment of the commuted value if benefit is small

130 If a limited member is entitled to a separate pension or a proportionate share of a pension benefit or deferred pension, a pension plan may provide for payment to the limited member of the commuted value of the separate pension or proportionate share of the pension benefit or deferred pension, as the case may be, in the same manner that a pension plan may provide for payment to a member or former member under Section 69 (variation of payment on shortened life expectancy), or 70 (commuted value of small benefits) of the Act, or these regulations.

Calculation of proportionate share of a defined contribution benefit

131 (1) This Section applies in respect of a division of a defined contribution benefit.

(2) The proportionate share of a defined contribution benefit must be calculated in accordance with the following formula:

$$\text{proportionate share} = (A/B) \times C \times P$$

where

A = pensionable service accumulated by the member or former member, accruing from,

- (a) the date of the marriage;
- (b) the beginning of the domestic partnership; or
- (c) the beginning of the cohabitation in a conjugal relationship that satisfies the requirements in subclause 2(ax)(iv) or (v) of the Act,

to the entitlement date;

B = the total pensionable service accumulated by the member or former member to the entitlement date of the member's or former member's spouse;

C = the total of

- (a) the contributions to the pension plan to the credit of the member or former member as at the entitlement date, and
- (b) the net investment returns allocated, or that are to be allocated, in respect of those contributions to the date on which the share of the spouse is transferred from the pension plan pursuant to subsection 126(2) or

established in a separate account in the pension plan for the spouse as a limited member;

P = the percentage of the pension benefit or deferred pension to be credited to the spouse under a court order or domestic contract.

- (3) If a member or former member is not entitled to a deferred pension benefit pursuant to Sections 52 or 53 of the Act on the entitlement date, the proportionate share of the member's or former member's contributions and net investment returns must be paid from the pension plan to the member's or former member's spouse.
- (4) A limited member's eligibility for retirement shall be based on the limited member's age.

Calculation of proportionate share of a LIF or LIRA

132 (1) This Section applies in respect of a division of a LIF or LIRA.

- (2) The proportionate share of a LIF or LIRA must be calculated in accordance with the following formula:

$$\text{proportionate share} = (A/B) \times C \times P$$

where

A = pensionable service accumulated by the member or former member, accruing from,

- (a) the date of the marriage,
- (b) the beginning of the domestic partnership; or
- (c) the beginning of the cohabitation in a conjugal relationship that satisfies the requirements in subclause 2(ax)(iv) or (v) of the Act

to the entitlement date;

B = the total pensionable service accumulated by the member or former member to the entitlement date of the member's or former member's spouse;

C = the total of

- (a) the value of the assets in the LIF or LIRA as at the entitlement date, and
- (b) the sum of

- (i) the net investment returns allocated, or that are to be allocated, in respect of the value of the assets in the LIF or LIRA as at the entitlement date, and
- (ii) in respect of the assets that are in the LIF or LIRA as at the entitlement date, the net investment returns allocated, or that are to be allocated, from the entitlement date to the date on which the share of the spouse in the LIF or LIRA is transferred out of the LIF or LIRA.

P = the percentage of the LIF or LIRA to be credited to the spouse under a court order or domestic contract.

Calculation of proportionate share of a pension, defined benefit or pre-retirement death benefit

133 (1) This Section applies in respect of a pension, defined benefit or pre-retirement death benefit.

- (2) The proportionate share of a pension, defined benefit or pre-retirement death benefit must be calculated in accordance with the following formula:

$$\text{proportionate share} = P \times (A/B)$$

where, subject to subsection (3),

P = the percentage of the pension, defined benefit or pre-retirement death benefit to be credited to the spouse under a court order or domestic contract;

A = pensionable service accumulated by the member, former member or retired member, accruing from,

- (a) the date of the marriage,
- (b) the beginning of the domestic partnership, or
- (c) the beginning of the cohabitation in a conjugal relationship that satisfies the requirements in subclause 2(ax)(iv) or (v) of the Act

to the entitlement date;

B = the total pensionable service accumulated by the member or former member to the earlier of the date on which the member or former member retires and the date on which he or she terminates membership in the pension plan.

- (3) If the determination of a proportionate share of a pre-retirement death benefit is required on the death of the member or former member, the proportionate share

must be calculated in accordance with the formula set out in subsection (2), except that:

B = the total pensionable service accumulated by the member or former member to the date of the member's or former member's death.

Adjustment of a member's or former member's defined benefit

- 134** (1) A defined benefit of a member or former member that is subject to a division must be adjusted in accordance with this Section.
- (2) A defined benefit of a member or former member must be adjusted in accordance with subsection (3) if a spouse or the estate of a spouse receives
- (a) a separate pension;
 - (b) a transfer of a proportionate share of the commuted value of a defined benefit pursuant to subsection 126(4); or
 - (c) a death benefit paid in respect of the limited member's proportionate share of the defined benefit pursuant to subsection 129(3).
- (3) A defined benefit referred to in subsection (2) must be adjusted by deducting from it the limited member's proportionate share of the defined benefit.
- (4) The deduction must be carried out on a gender-neutral basis with respect to both the pension plan and the member or former member.

Administrator must give notice to spouse if member's, former member's or retired member's interest may be affected

- 135** If a spouse has submitted a request for information in a form approved by the Superintendent, entitled, Request by Spouse for Information Respecting Member's, Former Member's or Retired Member's Pension or Pension Benefit, pursuant to subsection 71(1), an administrator must provide 30 days advance notice to the spouse of any transaction relating to the applicable member's, former member's or retired member's interest in the pension benefit, deferred pension or pension, as the case may be, by reason of
- (a) the death of the member, former member or retired member;
 - (b) the retirement of the member or former member; or
 - (c) a direction given to the administrator by the member, former member or retired member.

Administrative fees

- 136** (1) A spouse and member, former member or retired member must pay to the administrator an amount to offset administrative fees incurred by the pension plan in satisfying the entitlement of the spouse.
- (2) The amount to be paid to an administrator by a spouse and member, former member or retired member must not exceed whichever of the following is applicable:
- (a) the amount prescribed by the Minister for the division of a defined benefit;
 - (b) the amount prescribed by the Minister for the division of a defined contribution benefit or a LIF or LIRA;
 - (c) the amount prescribed by the Minister for the division of a defined contribution benefit and a defined benefit provided under one pension plan;
 - (d) the amount prescribed by the Minister for the division of a LIF or LIRA.

PART 11 – SUPERINTENDENT’S POWERS

Extension of time limit for filing of document

- 137** For purposes of clause 123(1)(b) of the Act, all documents that are required by the Act or these regulations to be filed are prescribed as documents in relation to which the Superintendent may extend a time limit in relation to the filing of such documents.

PART 12 – REPEAL AND COMING INTO FORCE

Repeal

- 138** The *Pension Benefits Regulations* N.S. Reg. 164/2002, effective January 2, 2003, are repealed.

Coming into Force

- 139** These regulations come into force on [*a date to be named by proclamation*].