



Special Notice

January 17, 2012

Nova Scotia Releases Draft Pension Funding Regulation for Consultation

On December 7, 2011, Nova Scotia's Department of Labour and Advanced Education (Department) **announced** the release of proposed funding regulations (**Draft Regulations**) under the new *Pension Benefits Act* (PBA). **Bill 96**, the legislation creating the new PBA, received Royal Assent on December 15, 2011. For more information on the contents of Bill 96, please refer to Eckler's November 17, 2011 *Special Notice*, ***Nova Scotia releases New Pension Benefits Act and consultation on new regulation.***

The Draft Regulations specify the eligibility criteria that plans must satisfy in order to qualify as a jointly sponsored pension plan (JSPP) or specified multi-employer pension plan (SMEPP), and sets out detailed funding rules and requirements for defined benefit (DB) plans, multi-employer pension plans (MEPPS), JSPPs and SMEPPs. As the Draft Regulations are primarily concerned with funding rules, there are many aspects of both Bill 96 — including letter of credit (LOC) tests and target benefit plan (TBP) rules — and the current *Pension Benefits Regulation* (PBA Regulation) — including forms, information on permitted investments, etc. — that are not found in the Draft Regulations and will presumably be covered in a later draft regulation.

General Funding Rules

There have not been significant changes to the funding rules for single-employer DB plans. Any going concern unfunded liability must be amortized by equal monthly installments over 15 years, beginning on the valuation date of the report that determined the liability. Solvency deficiencies existing before, on or after the effective date of the Draft Regulations must be amortized over five years.

The Draft Regulations make a number of significant changes to the existing rules on the use of smoothing. First, it appears that asset smoothing for going concern funding valuations will no longer be permitted. Second, the Draft Regulations introduce smoothing of solvency liabilities, something that was not contemplated previously and is a departure from the PBA Regulations. Third, while solvency asset smoothing continues to be acceptable practice, if a plan's actuarial valuation uses smoothing to adjust solvency liabilities, smoothing must now also be applied to solvency assets.

The solvency liability smoothing adjustment is determined as the amount by which solvency liabilities are adjusted as a result of using a solvency interest rate that is the average of solvency interest rates over the same period used in the smoothing of solvency assets.

The Draft Regulations provide that actuarial reports are to be filed on a triennial basis for DB plans that do not have solvency concerns. If a plan has solvency concerns, defined as a solvency ratio of less than 0.85 for a regular DB plan or less than 0.80 for a JSPP, the plan must file annual valuations. Designated pension plans and SMEPPs are exempt from these rules.

There are no provisions in the Draft Regulations on the use of letters of credit (LOCs), which Bill 96 provides can be used by plans, other than MEPPs, to fund up to 15% of a plan's solvency liabilities.

Funding Relief

In lieu of the general funding rules discussed above, plans with solvency deficiencies may elect to proceed using the pre-existing temporary special payment rules, which have been incorporated in the Draft Regulations. Under these rules, special payments to fully liquidate a new or existing solvency deficiency must be made within 10 years of the date of the first report prepared between December 30, 2008 and January 2, 2011.

The Draft Regulations do not provide any permanent solvency relief for universities or municipalities. However, they do perpetuate provisions addressing temporary special payments to liquidate a solvency deficiency arising before January 1, 2006 under a university pension plan, and solvency deficiencies arising between prescribed dates and August 30, 2016 for municipality pension plans. Specific permanent funding relief measures are also provided for JSPPs and SMEPPs, as discussed below.

Jointly Sponsored Pension Plans: Eligibility and Funding Rules

Section 7 of the Draft Regulations sets out the requirements that a plan must meet to qualify as a JSPP, which are as follows:

- The administrator must file an election that the plan is a JSPP with the Superintendent of Pensions (Superintendent) containing the prescribed statements.
- Only one election can be made in respect of a plan, and it must be filed no later than the date the first actuarial report is filed after the plan satisfies JSPP eligibility criteria (note that different rules apply for plans that were already JSPPs before the Draft Regulations come into effect).
- All of the eligibility criteria in Bill 96 and section 6 of the Draft Regulations must be met when the election is filed, which include the fact that the employer(s) and member representatives are jointly responsible to make all decisions about the terms of the plan and any amendments to it, and that the members' benefits, other than ancillary benefits and contributions, are directly related to the members' pensionable earnings (note that Bill 96 requires that plan members share in deficit funding).
- Within 60 days after filing the report related to the JSPP election, the administrator must give written notice of the election to all members, former members and retirees containing prescribed information, including the plan's transfer ratio and an explanation of the security of benefits (a copy also must be sent to the Superintendent, employer(s) and employer and employee representatives).

While there is a notification requirement, there is no requirement that members and former members consent to their plan becoming a JSPP. However the governance structure itself will require member and/or union support.

JSPPs are funded on a going concern basis subject to specific funding rules. Any going concern unfunded liability must be amortized over 15 years, similar to other pension plans, but this amortization period begins not later than 12 months after the date of the valuation report that gave rise to the liability. If a solvency deficiency arises before, on or after the date the Draft Regulations become effective, the portion of the solvency deficiency that is greater than 20% of the solvency liabilities must be liquidated over a five year period beginning not later than 12 months after the date of the report that identified the deficiency.

If an amendment to a JSPP changes the amount of its solvency deficiency, it must file an actuarial report containing information on the impact of the amendment.

Multi-Employer and Specified Multi-Employer Pension Plans: Eligibility and Funding Rules

The MEPP provisions in the Draft Regulation are essentially unchanged from those in the PBA Regulations. Notably, while the current temporary funding relief provisions for such plans are continued, no permanent funding relief mechanisms are provided. In order for a MEPP to qualify for a solvency funding exemption, it must be designated as a SMEPP.

In order to qualify as a SMEPP, the administrator of a MEPP must file a written election containing specified information with the Superintendent and satisfy the eligibility criteria in the Draft Regulations. The eligibility criteria are similar, but not identical, to that found in the *Income Tax Act*.

The Draft Regulations provide that SMEPPs must be funded on a going concern basis and are permanently exempt from solvency funding. Any going concern unfunded liability disclosed in a report on or after the date the Draft Regulations become effective must generally be liquidated over the lesser of eight years from the date of the report (as opposed to the traditional 15 years) or the remainder of the amortization period under which the unfunded liability was initially determined.

Note however, that with respect to a going concern unfunded liability, identified in a report filed under the PBA Regulations, the administrator of a SMEPP can elect to fund according to temporary special payment rules whereby amortization is over the lesser of 10 years from the valuation date and the remainder of the amortization period under which the liability was originally established.

If an amendment to a SMEPP increases pension or ancillary benefits, and that amendment reduces the plan's transfer ratio to below 0.8 or its going concern funded ratio to below 1.0, any increase to the going concern unfunded liability caused by the amendment must be liquidated in equal monthly installments over a period of eight years.

As a result, while the Draft Regulations exempt SMEPPs from the requirement to fund any solvency deficiency identified by a report, they impose constraints relative to traditional funding in terms of treatment of unfunded liabilities.

What is Missing?

Notably absent from the Draft Regulations are any provisions on TBPs. Pursuant to Bill 96, a DB plan will qualify as a TBP if the employer's contribution obligations are limited to a fixed amount set out in a collective agreement, if the plan documents allow the administrator to reduce benefits, deferred pensions or accrued pensions while the plan is ongoing or on wind-up, and if the plan satisfies the criteria set out in the regulations.

In a preliminary **consultation** on the Draft Regulations that took place in late 2011, the Department stated that TBP regulations were under development, and would be similar to the rules for such plans developed by Ontario. However, as Ontario has yet to release its own set of TBP regulations and principals, Nova Scotia's TBP provisions will be on hold until Ontario's are available.

Next Steps

The Draft Regulation is open for comment until January 31, 2012. The submissions will then be reviewed and any necessary changes will be recommended to the government. Further consultation on a revised draft is not expected unless significant revisions are made as a result of consultations.

For more information, please contact **[Karen DeBortoli](#), [Derek Gerard](#), [Peter Hayes](#), [Jeff Turnbull](#)** or your Eckler consultant.

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