



APRIL 2010

## **CHANGES TO FEDERAL PENSION LEGISLATION**

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The federal government has introduced legislation to implement some of the proposals contained in its pension reform package released in October 2009. To review the proposals, please see FMC's [Pensions | Benefits Newsletter - November 2009](#). The changes to the *Pension Benefits Standards Act* (the "Act") are part of Bill C-9, which received its First Reading in the House of Commons on March 29, 2010. (These changes do not apply to pension plans subject to the pension benefits legislation of any of the provinces).

Although some of the changes to the Act contained in Bill C-9 are relevant to all federal pension plan sponsors, the focus of the amendments in Bill C-9 clearly reflects an intention by the federal government to respond to the effects of the financial crisis on defined benefit pension plans.

**Relevant to all federally-regulated plan sponsors** is the requirement that members be immediately vested in their pension plan benefits.

**Relevant to federally-regulated sponsors of defined contribution pension plans** is the introduction of the option for plan sponsors to provide a variable benefit payment directly from a pension plan. This allows members to access their defined contribution account balances directly from the pension fund instead of requiring a transfer of account balances to a retirement vehicle outside of the pension plan before payments are made.

**Relevant to federally-regulated sponsors of defined benefit pension plans...**

### **"Workout Scheme" for plan sponsors in distress:**

Bill C-9 allows employers who cannot make the "regular" payments to a pension fund to enter a distressed pension plan workout scheme to negotiate a revised funding schedule with representatives of members and

beneficiaries of a pension fund. Once entering negotiations for a workout scheme, a plan sponsor is not required to make payments into the pension fund. A plan sponsor may enter into the workout scheme if already subject to proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*.

The process associated with the workout scheme starts with a declaration by an officer of the employer essentially stating that the employer cannot make required funding payments, and intends to negotiate a workout agreement (which is defined to be a Minister approved funding schedule). There is a description of the procedure for the appointment of representatives for beneficiaries and non-unionized members by the Federal Court (or other appropriate Court), including criteria for the selection of representatives to be prescribed by Regulation. The costs of these Court proceedings are to be paid by the employer rather than the pension fund.

The time period for negotiation of the workout scheme is to be specified in the Regulations, but the revised Act provides that the Minister may extend the period for negotiations up to three months. The negotiation period ends with the liquidation, assignment, or bankruptcy of the employer, at which point, deferred payments are due with interest. Deferred payments (with interest) also become due if negotiations fail, the pension plan is terminated during the negotiation period, the workout agreement does not provide for the payment of the deferred amounts, or if no agreement is reached.

### **Funding by Letter of Credit:**

As promised in the federal government's reform proposals, Bill C-9 introduces the option for employers to use letters of credit to fund solvency payments. Employers would not be able to use letters of credit to satisfy funding requirements where a pension plan has been fully wound up. Letters of credit would become due on the liquidation, assignment, or bankruptcy of an employer. The amendment to the Act specifies that all costs associated with letters of credit, specifically, obtaining, holding, amending or cancelling a letter of

credit, may not be paid from the pension fund. More information regarding the use of letters of credit is expected on the release of amended Regulations to the Act.

#### **On Termination, Funding “Without Delay”:**

Included in the package of amendments is the requirement that an employer fund on plan termination “without delay” the amounts required to meet solvency requirements. The amounts to be paid are specified to include the normal cost accrued to the date of termination, the amount of any special payments due on termination, or which would have come due to the end of the plan’s year, as well as amounts member required contribution and other member deductions. These amounts are required to be paid “immediately” on the liquidation, assignment, or bankruptcy of the employer. There are special provisions for multi-employer pension plans which require the payment amounts equal to a pension plan’s obligations for pension benefits determined on the date of termination. Further information on how these amounts are to be calculated will likely be contained in amendments to the Regulations to the Act. The Regulations will also likely describe the precise time frame contemplated for payment “without delay”.

#### **Other coming changes:**

In addition, Bill C-9:

- Eliminates sponsor declared partial terminations from the Act, only allowing the Superintendent to declare a partial wind up.
- Permits the Superintendent of Financial Institutions to designate an actuary to prepare an actuarial report or a termination report if in the best interests of members or retirees.
- Provides that amendments to a pension plan are void if they reduce the pension plan’s solvency ratio.
- Increase the pension surplus threshold for employer contributions to pension plans to 25%.

The full impact of federal reform will only become clear when the amendments to the Regulations to the Act are released and once the federal government tables further changes to the Act, which were described in the October 2009 announcement but were not included in Bill C-9.

#### **CONTACT US**

For further information on the federal government’s reform of pension benefits legislation applicable to federally-regulated employers, please contact a member of our [National Pension | Benefits Group](#).



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