

Interpretive Guideline #04 Unlocking of Pension Benefits

Issued: January 2015

This guideline outlines the conditions under which locked-in money may be unlocked under the [Employment Pension Plans Act](#) (the Act) and the [Employment Pension Plans Regulation](#) (the Regulation). This guideline summarizes the legislative requirements which apply to the subject matter, and includes (as applicable) additional details to outline the Superintendent's expectations and requirements where such authority has been provided by the Act and Regulation. Finally, the guideline outlines best practices and policies that the Superintendent expects from provincially regulated pension plans.

The Act and Regulation should be used to determine specific legislative requirements. Any legal authority of this Guideline rests in the areas in which the legislation delegates authority to the Superintendent to accept a proposal or action.

What is Locking in?

Locking in is a restriction, imposed by the Act, on the use of funds originally accumulated in a pension plan. The purpose of locking-in is to ensure that a member's pension benefit is used to secure a retirement income for that person and their pension partner (married or common-law) for both of their lives.

Locking in applies to funds held in a pension plan, and also to funds transferred from the plan to a Locked-in Retirement Account (LIRA) or Life Income Fund (LIF), held in the former plan member's or their pension partner's name. Nonetheless, there are several exceptions to this general rule, and they are summarized below.

Sections 71 of the Act and 76 of the Regulation set out the conditions under which the locking in restriction may be removed. A plan text document, a LIRA and LIF must all include these provisions.

Unlocking of Small Amounts

Small Amount Unlocking

Act 71(1) and (2) Regulation 76(1)

The plan text document of a pension plan must provide for the unlocking of a benefit when a member terminates membership, on termination of the plan, on the death of the member or at pension commencement, if the commuted value of the pension falls below the threshold amount. Small amount unlocking does not, however, apply if a member has suspended plan membership under section 31 of the Act.

In addition, if a member has elected a deferred pension and at some future date, the commuted value of that benefit falls below the threshold amount as calculated at that date, then the member, at their option, is permitted to unlock the benefit.

A pension plan text may provide that if the value of a benefit falls below the threshold amount the member must transfer the benefit out of the pension plan.

Finally, each LIRA and LIF contract must permit the unlocking of monies if the balance of the account drops below a threshold amount.

Threshold Amount

The threshold amount is 20 per cent of the Years Maximum Pension Earnings (YMPE) under the Canada Pension Plan. The member's commuted value must be compared against the threshold amount at the time of application. In this context, commuted value is defined as:

- In relation to a defined benefit, or target benefit, is the actuarial present value of those benefits.
- In relation to a defined contribution, is the total amount of the member account.

Unlocking of Small Amounts

If the commuted value of the benefit falls below the threshold amount when the member terminates membership, retires, or dies, the disclosure statement given to the member or surviving pension partner must include the option to elect that the benefit be unlocked.

If funds have been left in the pension plan for a deferred pension and the commuted value of the benefit falls below the threshold amount the plan may offer or the member may request that the benefit be unlocked.

It should be noted that when determining if a deferred benefit qualifies for unlocking, the commuted value must be recalculated, and that value must be compared to the current threshold amount.

For funds held in a LIRA or LIF, if the balance of the account falls below the threshold amount, the account owner may simply request from the LIRA or LIF issuer holding the account that it be unlocked.

Forms of Payment

On termination of membership, or at a later date when the value of a member's account has dropped below the threshold amount (if forced transfer requirements are being applied), a statement must be provided to the member stating the amount of the benefit and how funds may be paid. Unlocked funds may be taken as a cash lump sum payment, less withholding tax. Alternatively, the funds may be transferred to an RRSP or RRIF on a tax deferred basis, subject to any restrictions on transfers imposed under the [Income Tax Act](#), if any.

A pension plan text document may provide for a default payment option if the member does not elect how the benefit will be paid within 90 days of the statement being sent to that member. Normally this would be a

cash payment. If the payment is returned to the employer, the member may qualify as a missing member under Part 8, Division 9 of the Act and funds may be transferred to the government under *the Unclaimed Property and vested Property Act*.

Unlocking due to Shortened Life Expectancy

Act 71(3)(a), (4)(a) and (6)

Regulation 76(2) and (4)

Considerably Shortened Life Expectancy

The determination of a considerably shortened life expectancy is made by a medical practitioner, who must certify that in his or her opinion, the active or deferred plan member, or the locked-in account owner, has an illness or disability which is terminal or is likely to shorten that person's life considerably. This determination does not depend on the individual being expected to die within a certain period of time.

Shortened life expectancy unlocking does not apply to a retired member who is receiving a pension under the plan.

Unlocking Process

The plan text document of a pension plan must have a provision permitting the unlocking of benefits if the active or deferred member provides the administrator with written certification of a medical practitioner that the active or deferred member has a considerably shortened life expectancy.

Similarly, each LIRA and LIF contract must have a provision permitting the unlocking of monies if the locked-in account owner provides the LIRA or LIF issuer with written certification of a medical practitioner that the owner has a considerably shortened life expectancy.

A medical practitioner is defined as:

- A person who is a regulated member of the College of Physicians and Surgeons of Alberta and who holds a practice permit issued under the [Health Professions Act](#), and who is not under suspension, or
- A physician who is regulated, registered, or certified in that capacity in another jurisdiction in Canada and who is not under suspension.

In addition to the medical practitioner's certification, if the active or deferred member or locked-in account owner has a pension partner, a pension partner waiver is required. If funds are being unlocked from a pension plan, [Form 6](#) must be used. If funds are being unlocked from a LIRA or a LIF, [Form 13](#) must be used.

Note: the need to obtain a pension partner waiver does not apply if the locked-in account owner is a surviving pension partner or a former pension partner of the original plan member.

It should also be noted that the plan administrator or financial institution cannot require any other documentation or information about the cause of or reason for the shortened life expectancy.

Forms of Payment

Unlocked funds may be taken as a cash lump sum payment, less withholding tax. Alternatively, the funds may be transferred to an RRSP or RRIF on a tax deferred basis, subject to any restrictions on transfers imposed under the [Income Tax Act](#), if any. Alternatively the member may elect to receive the funds as a series of payments for a fixed term.

Unlocking due to Non-Residency of Canada for Income Tax Purposes

Act 71(3)(b), (4)(b) and (6) Regulation 76(3 and (4))

Non-Residency of Canada for Income Tax Purposes

A member who has ceased active membership in the plan and has not commenced to receive pension payments may apply for unlocking due to non-residency. The determination of non-residency status of an individual must be confirmed in writing by the Canada Revenue Agency (CRA). Application may be made to the CRA by completing Form NR73: [Determination of Residency Status \(Leaving Canada\)](#).

For purposes of the Act and Regulation, there is no requirement which obligates the plan administrator, or the financial institution, from ensuring that the person has been a non-resident for a specific period of time. (The length of non-residency may, however, be a consideration under the approval process under Form NR73).

Process for Unlocking

The plan text document of a pension plan must have a provision permitting the unlocking of benefits for a member who has terminated active membership, is entitled to a transfer of benefits from the plan and who provides the administrator with written confirmation of non-residency status.

Similarly, all LIRA and LIF contracts must have a provision permitting the unlocking of monies if the locked-in account owner provides the LIRA or LIF issuer with written confirmation of non-residency status.

In addition to the certification of non-residency, if the member or locked-in account owner has a pension partner, a pension partner waiver is required. If funds are being unlocked from a pension plan, [Form 6](#) must be used. If funds are being unlocked from a LIRA or a LIF, [Form 13](#) must be used.

Note: the need to obtain a pension partner waiver does not apply if the locked-in account owner is a surviving pension partner or a former pension partner of the original plan member.

Forms of Payment

Unlocked funds may be taken as a cash lump sum payment, less withholding tax. Alternatively, the funds may be transferred to an existing RRSP or RRIF on a tax deferred basis, subject to any restrictions on transfers imposed under the [Income Tax Act](#), if any.

50 Per Cent Unlocking

Act 71(5) and (6) Regulation 76(5) and (6) and Schedule 3

50 Per Cent Unlocking

Under the Act and Regulation, 50 per cent unlocking is a provision which permits a plan member who has terminated active membership, or the owner of a LIRA, to receive up to a maximum of 50 per cent of the value of their benefit prior to transferring the remainder of the benefit to a LIF. The unlocking can only occur on a one-time basis, and is subject to the plan member or LIRA owner meeting certain conditions.

Process for Unlocking

The member, or LIRA owner, may unlock once up to 50 per cent of the value of their benefits if:

- the member or LIRA owner is age 50 or older, and
- the member is transferring his or her benefit from the pension plan, or the LIRA owner is transferring his or her benefit from the LIRA, to a LIF or a Life Income Type Benefit (LITB) account.

The unlocking option can only be made once, and must occur prior to funds being deposited in the LIF or LITB account. Please note that 50 per cent is the maximum that may be unlocked and that an individual is permitted to unlock a lesser amount. Where an amount less than 50 per cent is unlocking, there is no option to unlock the remaining portion at a future date.

Once funds have been transferred to either a LIF or an LITB account, they may not be transferred to a LIRA.

The option to unlock funds must be offered by the plan administrator, or the LIRA issuer, on the establishment of the LITB account or LIF. Furthermore, if the member or LIRA owner has a pension partner, a pension partner waiver is required. If funds are being unlocked from a pension plan, [Form 7](#) must be used. If funds are being unlocked from a LIRA, [Form 14](#) must be used.

Note: the need to obtain a pension partner waiver does not apply if the LIRA owner is a surviving pension partner or a former pension partner of the original plan member.

Forms of Payment

Unlocked funds may be taken as a cash lump sum payment, less withholding tax. Alternatively, the funds may be transferred to an existing RRSP or RRIF on a tax deferred basis, subject to any restrictions on transfers imposed under the [Income Tax Act](#), if any.

Financial Hardship Unlocking

Financial Hardship Unlocking Program

**Act 71(4)(c)
Regulation 121 and
140**

A LIRA or LIF owner, subject to meeting specific criteria for financial hardship, may be able to unlock some or all of their LIRA or LIF account to meet financial needs.

Process for Unlocking

The LIRA or LIF owner must complete [Form 23 – Application for Financial Hardship Unlocking](#), and submit the application to the LIRA or LIF issuer. For more information on financial hardship unlocking, please refer to the [Summary of Financial Hardship Unlocking Program effective September 1, 2014](#).

How May Funds be Paid

Unlocked funds may be taken as a cash lump sum payment, less withholding tax. Alternatively, the funds may be transferred to an existing RRSP or RRIF on a tax deferred basis, subject to any restrictions on transfers imposed under the *Income Tax Act*, if any.

The Superintendent’s Office does not administer this program.

**Exemption from
Seizure, etc.**

If locked-in funds are unlocked, any amount which is paid as cash, less withholding tax, is no longer protected from execution, seizure or attachment under section 72 of the Act.

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