

Feds unveil new locked-in account options

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Clients with locked-in holdings have new spending options at their disposal after the federal government released amendments to the *Pension Benefits Standards Regulations*, which make good on commitments outlined in this year's federal budget.

According to federal documents, the changes are intended to improve the quality of life for individuals holding federally-regulated locked-in Registered Retirement Savings Plans (RRSPs) and Life Income Funds (LIFs), by increasing the flexibility individuals have to manage their own assets.

Note: According to the Office of the Superintendent of Financial Institutions Canada, federally-regulated plans include pension plans for some federal Crown corporations, banks, companies involved in interprovincial and/or international transportation and communications companies, among others. For others plans, provincial pension legislation and unlocking rules will likely apply.

Specifically, the amendments give clients three new options:

- A one-time provision that allows individuals aged 55 and over to unlock up to 50% of their locked-in assets.
- Small balance unlocking that allows individuals who are 55 or older, with locked-in holdings worth less than 50% of yearly maximum pensionable earnings (YMPE), to wind up their LIFs or convert them to an unlocked tax-deferred savings vehicle.
- Financial hardship unlocking, which allows individuals, regardless of age, to unlock assets up to 50% of YMPE, in each calendar year.

The changes do not affect existing locked-in accounts — clients holding locked-in assets will likely need to purchase a new contract to take advantage.

"The new rules require that all new contracts contain new flexibility options to unlock the funds under certain conditions," say the authors of finance department documents released last night. "However, the federal government will not intervene to change existing contracts signed before the new rules took effect. Therefore, people with LIFs or locked-in RRSP contracts who wish to unlock them should contact their financial intermediary to purchase a new, more flexible contract."

Dealers and fund companies willing to incur the additional cost of notifying plan holders could also opt to apply the amendments to all existing plans for ease of administration.

Transitional provisions outlined in the amendment documents give companies a six-month adjustment period during which LIF and locked-in RRSP contracts can be drafted under the old rules. After the six-month period, financial intermediaries will be required to include the provisions in all new locked-in contracts.

The amendments include terms and conditions for two new types of contracts — Restricted Life Income Funds (RLIFs) and Restricted Locked-in Savings Plans (RLSPs), designed to accommodate the new provisions.

Existing rules that allow withdrawals in extraordinary circumstances of reduced life expectancy or permanent departure from Canada are not affected by the changes.

One-time 50% unlocking

Subject to transitional provisions, contracts established after May 8, 2008, must give clients or individuals the option to transfer their assets to a RLIF after they turn 55. Upon the creation of an RLIF, clients may transfer up to 50% of their locked-in assets to tax-deferred plans with no maximum annual withdrawal limits, provided the transfer happens within 60 days of the RLIF creation. After 60 days, the account is subject to the same annual and extraordinary withdrawal limits. The unlocking provision can only be applied once by any individual on any one locked-in fund.

At death, funds from an RLIF can be paid to a survivor's locked-in RRSP, RLSP, LIF, RLIF, to an immediate or deferred life annuity, or into the federally-regulated pension plan of the survivor, under certain circumstances.

Small balance unlocking

Again subject to transitional provisions, clients over 55 with total holdings in federally-regulated locked-in plans that are less than 50% of yearly maximum pensionable earnings — \$22,450 in 2008 — may withdraw the funds as cash or transfer all funds into a tax-deferred plan without withdrawal limits. The measure only allows transfers and withdrawals from LIFs, RLIFs and RLSPs. It does not apply to locked-in RRSPs.

Financial hardship unlocking

Finally, under the new rules, contracts must also permit individuals who meet specific conditions for financial hardship to withdraw, as cash, up to 50% of YMPE from any combination of federally-regulated LIFs, locked-in RRSPs, RLIFs or RLSPs, within a calendar year, provided all withdrawals are made within 30 days. The hardship provision is available to anyone, regardless of age, if the individual holds a locked-in account created after implementation of the new regulations.

"Rather than creating a complicated process to assess financial hardship or to demonstrate that total holdings are small, the new regulatory environment will rely upon the best efforts of ordinary individuals to make an assessment of their own financial condition that is honest and as accurate as possible," say finance department authors. "It is anticipated that financial services providers will retain copies of these self-assessment forms as a precaution, should difficulties arise in the future."

Conditions

Under the new rules, financial hardship options are available to individuals for medical- or disability-related expenditures — those who expect to spend more than 20% of their income in any given calendar year for medical treatment, assistive technology or other expenses related to disability that has been attested to by a licensed Canadian physician. For those with low income, anyone who expects to earn less than 75% of YMPE — \$33,675 in 2008 — will be allowed to withdraw an annual amount based upon expected income in any given year to a maximum of 50% YMPE. Total permitted withdrawals, regardless of reason, may not exceed the 50% limit.

For disability-related needs, a licensed Canadian physician must certify that the treatment or technology is required. Clients must also attest that they expect to spend more than 20% of their income on the medical expenses. Low-income earners need to attest that they expect their income to be less than 75% of YMPE, not including the hardship withdrawals, and disclose their expected earnings.

In all cases, a client's spouse or common-law partner must also sign an attestation that indicates they know about, and agree to the transfer. If clients do not have a spouse or common-law partner, they will be required to provide an attestation to that effect as well.

Finally, clients withdrawing locked-in assets using these new provisions must also attest that they are aware that funds unlocked in this manner lose their creditor-protected status, that assets withdrawn may be taxable, and that they should seek professional advice about the financial and legal implications. All attestations must be made before a notary public, commissioner, or other person authorized to take affidavits.

The required format for all of these attestations will be included in a new annex to the *Pension Benefits Standards Regulations, 1985*, Schedule V.

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