## Authority for Pension Funding Framework Regulation

Issue:

Legislative Counsel Office (OLC) has taken the position that the regulation to implement the defined benefit (DB) pension funding framework is not properly authorized by the *Pension Benefits Act* (PBA) and will not seal the regulation.

Background:

Section 55 (1) of the PBA states: **"A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations."**

OLC argues that the funding of pension benefits must be sufficient, not that they must be sufficiently funded based on the rules set out in the Act or regulations. However, OLC's view has never been the case for DB pension funding rules under the PBA.

Ministry of Finance officials have put forward a number of explanations of how the rules should be considered sufficient, given the current and past funding rules. However, none of these have been accepted by OLC.

A Crown Law Office (CLOC) opinion is being sought with respect to the interpretation of the provision and risk analysis. However, timing for the CLOC opinion is unclear (therefore putting the timing for filing the regulation at risk). While a positive opinion would be persuasive, it is unknown whether OLC will consider it sufficient to seal the regulation.

Options:

Assuming a positive opinion from CLOC is not received, or if not received in time, options consist of:

1. Amend the PBA in the Spring Bill. **Instructions are required immediately if amendment to be made.** Final wording of the amendment to be determined – may be possible to clarify that 'sufficiency' is based on what is set out in the Act and regulations. However, LSB advises it is likely that the term "sufficient" may need to be removed.

   Regulation would proceed to LRC on April 16th with a memo indicating it is unsealed, pending passage of the spring bill amendment. Approval of regulation would be subsequent Royal Assent, potentially through a 'walk around'.

2. File an unsealed regulation. (Not recommended)

   - Minister would need to defend why MOF was proceeding to Cabinet with an unsealed regulation. OLC suggests that Cabinet members may be held personally liable in case of a court finding of insufficiency of a pension plan.