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# Draft Instruction Guide

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**Subject:** Amendments Reducing Benefits in Defined Benefit Pension Plans

**Date:** May 2019

## Introduction

This Instruction Guide is intended for employers and administrators of defined benefit pension plans registered under the *Pension Benefits Standards Act, 1985* (PBSA). The Instruction Guide sets out the factors along with the specific requirements that the Office of the Superintendent of Financial Institutions (OSFI) generally considers with respect to an application seeking the Superintendent's authorization for an amendment with respect to paragraph 10.1(2)(a) of the PBSA<sup>1</sup>. This Instruction Guide therefore applies to an amendment that has the effect of reducing pension benefits or pension benefit credits accrued before the date of the amendment or an immediate or deferred pension benefit to which a member, former member<sup>2</sup>, or other person was entitled before the date of the amendment<sup>3</sup>. In this Instruction Guide, such an amendment is referred to as a "Reducing Amendment". An amendment that reduces future service accruals does not require the authorization of the Superintendent.

The factors and requirements set out in this Instruction Guide are intended to protect the rights and interests of members, former members and other persons entitled to pension benefits, and to ensure the minimum funding requirements for the ongoing pension plan will be met.

Administrators are expected to determine whether or not an amendment requires authorization under paragraph 10.1(2)(a) of the PBSA and are encouraged to contact OSFI to discuss any proposed amendments.

OSFI has developed a standardized [Authorization Request Form for Amendments Reducing Benefits](#). This form should be submitted when seeking authorization for a Reducing Amendment.

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<sup>1</sup> Authorizations for amendments otherwise considered void under paragraphs 10(2)(b) to (d), which relate to the solvency ratio of the plan, are dealt with on a case by case basis. Section 9.3 of the *Pension Benefits Standards Regulations, 1985* is also relevant to these paragraphs of the PBSA.

<sup>2</sup> Former members include retirees and individuals entitled to a deferred pension under the plan.

<sup>3</sup> This Instruction Guide does not apply to other required authorizations under paragraphs 10.1(2)(b) to (d) of the PBSA.



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## 1. Legislative Provisions

Administrators must file with OSFI amendments to any pension plan document within 60 days after an amendment is made<sup>4</sup>. Paragraph 10.1(2)(a) provides that certain amendments are void unless authorized by the Superintendent. This paragraph applies to all pension plans subject to the PBSA including negotiated contribution plans<sup>5</sup>.

*10.1 (2) Unless the Superintendent authorizes the amendment, an amendment is void or, in Quebec, null if*

*(a) it would have the effect of reducing*

*(i) pension benefits accrued before the date of the amendment or pension benefit credits relating to pension benefits accrued before the date of the amendment, or*

*(ii) an immediate or deferred pension benefit to which a member, former member or any other person was entitled before the date of the amendment;*

OSFI considers the date of the amendment referred to in section 10.1 to be the date that the amendment is made (i.e., the date it is adopted in accordance with the governance procedures set up for that plan, for example, by way of a board resolution).

## 2. What Constitutes a Reducing Amendment?

An amendment would likely require authorization under paragraph 10.1(2)(a) of the PBSA in the following scenarios:

- The amendment reduces the aggregate value of a member's, former member's or other person's pension benefit or other benefit provided under the plan (i.e. the pension benefit credit) accrued before the date of the amendment
- The amendment reduces or could reduce any accrued periodic amount (i.e. an accrued pension benefit)<sup>6</sup>
- The amendment reduces any pensions in pay (current or future periodic amount)

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<sup>4</sup> Subsection 10.1(1) of the PBSA

<sup>5</sup> See section 3.2 of this Instruction Guide

<sup>6</sup> If it is possible that an amendment could reduce an accrued periodic amount (an accrued pension benefit, it requires authorization under paragraph 10.1(2)(a) of the PBSA. For example, an amendment to replace full consumer price index (CPI) indexation of an accrued pension benefit with a fixed level of indexation would require authorization, regardless of the relative aggregate values of these two types of indexed pension benefit. This is because a future increase in CPI could potentially be higher than the fixed rate, such that the application of the fixed rate would result in a lower pension benefit payment.

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- The amendment increases the pensionable age<sup>7</sup> for past service
  - The amendment removes or reduces a benefit for which the member has met the eligibility conditions
  - The amendment introduces consent to an existing benefit, to which members were entitled without consent. For more information related to consent benefits, see the Policy Advisory on [Benefits Subject to Consent](#).

A pension benefit accrued before the date of the amendment includes

- the pension benefit to which a member, former member or other person is entitled or will become entitled **at pensionable age** (based on the member's period of employment and salary at the date of the amendment). For example, a plan provides an unreduced pension without the consent of the administrator at 65 years of age or at 58 years of age with 20 years of service (making this pensionable age for a member with 20 years of service). If a member or former member has 20 years of service at the time the amendment is made, regardless of their age, entitlement to an unreduced benefit at 58 for those 20 years of service is considered to be accrued before the date of the amendment so cannot be reduced without authorization. Under the PBSA, a member or former member is assumed to grow-in to any age eligibility requirement for a benefit payable at pensionable age.
- any portion of a pension benefit, payable **prior to pensionable age**, to which a member, former member or other person is entitled if all eligibility conditions have been met as at the date of the amendment. For example, a plan's pensionable age is 65 and an early retirement benefit that is more generous than an actuarial reduction is available at 60 years of age with 10 years of service<sup>8</sup>. If the member or former member is 60 **and** has 10 years of service at the time the amendment is made, entitlement to receive that subsidized early retirement benefit is considered to be part of the benefit accrued before the date of the amendment and cannot be reduced without authorization. A member or former member is not required by the PBSA to grow into any age eligibility requirement for a benefit payable prior to pensionable age.

For more information on pension benefits payable at pensionable age, see the policy advisory on [Vested Benefits Payable to Terminating Employees](#).

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<sup>7</sup> Pensionable age is defined in section 2 of the PBSA as the earliest age (taking into account the period of employment with the employer or the period of membership in the pension plan, if applicable) at which a pension benefit is payable to the member under the terms of the pension plan without the consent of the administrator and without reduction by means of early retirement.

<sup>8</sup> This subsidy is not considered part of a benefit payable at pensionable age and therefore not treated in the same way as the first bullet because the benefit is subject to reduction by means of early retirement.

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### 3. General Principles and Considerations

When reviewing requests from administrators for authorization of a Reducing Amendment, OSFI will consider the particular circumstances of each case. OSFI's review is guided by the following general principles:

1. Employers or administrators are expected to maintain accrued benefits promised by the plan text and to consider other options prior to adopting the Reducing Amendment, such as increasing contribution levels or reducing future benefit accruals.
2. The amendment must comply with the PBSA. For instance, a Reducing Amendment cannot remove a benefit that is required by the PBSA to be provided to a member, former member or other person. Additionally, a Reducing Amendment cannot reduce a payment already received by the retiree or other person or due to be paid before the date of the amendment.
3. Subject to the terms of the plan, the employer or administrator should consider the interests of all affected groups (e.g. actives, deferred vested, retirees or other relevant groupings of affected persons entitled to benefits) and apply its discretion in an even-handed manner in deciding on reductions that may apply to each of the affected groups.

OSFI also considers a number of factors relevant to the specific request, including the following:

- The authority in the pension plan text and any supporting documents for making the Reducing Amendment and whether the amendment has been instituted in accordance with those documents, or alternatively, the extent to which the Reducing Amendment was collectively bargained or supported by the affected groups<sup>9</sup>
- Whether the plan is a negotiated contribution plan<sup>10</sup>
- The purpose and rationale for the Reducing Amendment and other alternatives considered
- The long-term viability of the pension plan with and without the Reducing Amendment
- Any previously authorized Reducing Amendments and whether previously reduced benefits have been reinstated, as well as prior applications under consideration, denied, or withdrawn
- Appropriate notice provided to affected members and former members and their spouses or common-law partners and to other affected persons entitled to benefits under the plan (e.g., survivors)<sup>11</sup>

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<sup>9</sup> See section 3.1 of this Instruction Guide.

<sup>10</sup> See section 3.2 of this Instruction Guide

<sup>11</sup> See section 3.4 of this Instruction Guide

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- Any written representations received by OSFI from those parties noted in the bullet above

### 3.1 Amendment Powers

For all pension plans other than negotiated contribution plans<sup>12</sup>, if the amendment power in the plan text and any supporting documents, including historical plan documents, allows for a Reducing Amendment, the amendment must be instituted in accordance with those documents<sup>13</sup>. All plan text documents and supporting documents (including historical documents) that address the power to amend the plan must be filed with the application to OSFI for authorization.

Where the plan's amendment power does not allow for a Reducing Amendment, OSFI would expect written agreement to the Reducing Amendment by anyone (e.g., member, former member or survivor) whose pension benefit would be reduced by that amendment. A bargaining agent could agree on behalf of a unionized member if authorized to do so. This agreement would have to be obtained prior to OSFI considering the request for the authorization, and documentation supporting that the agreement has been obtained should be filed with the application to OSFI for authorization.

### 3.2 Negotiated Contribution Plans

Subject to the Superintendent's authorization, an administrator of a negotiated contribution plan may make a Reducing Amendment, regardless of whether or not the authority to do so is provided under the terms of the plan<sup>14</sup>.

A negotiated contribution plan<sup>15</sup> must have all of the following attributes:

- It is a multi-employer pension plan<sup>16</sup> that includes at least one defined benefit provision
- Under the pension plan, the participating employers' contributions are limited to an amount determined in accordance with an agreement entered into by the participating employers or a collective agreement, statute or regulation
- The amount of the employer contributions does not vary as a function of the prescribed tests and standards for solvency in the PBSA and PBSR

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<sup>12</sup> See section 3.2 of this Instruction Guide

<sup>13</sup> Supporting documents may include documents or agreements outside the terms of the plan, such as collective bargaining agreements.

<sup>14</sup> Section 10.11 of the PBSA

<sup>15</sup> Section 2 of the PBSA

<sup>16</sup> Section 2 of the PBSA's definition of a multi-employer pension plan (MEPP) excludes a pension plan where more than 95 per cent of the plan members are employed by participating employers who are incorporated and are affiliates within the meaning of the *Canada Business Corporations Act*. Since such a plan does not qualify as a MEPP under the PBSA, it cannot qualify as a negotiated contribution plan under the PBSA.

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In contrast to pension benefits offered under other defined benefit pension plans, on the termination of a negotiated contribution plan, participating employers are not required by the PBSA to fully fund pension benefits as they are determined on the date of termination.

OSFI expects the administrator of a negotiated contribution plan to demonstrate, in its application to OSFI for authorization of a Reducing Amendment, that the plan meets the definition of a negotiated contribution plan. The following documentation must be filed with the application:

- A list of participating employers
- Documents confirming that that plan meets the PBSA definition of multi-employer pension plan, including the requirement that more than 95% of the plan members cannot be employed by participating employers who are incorporated and are affiliates within the meaning of the *Canada Business Corporations Act*
- Copies of current agreements, collective agreements, statutes or regulations limiting the amount of contributions that participating employers make to the plan

OSFI expects these documents to be provided regardless of whether or not the administrator is relying on the plan's status as a negotiated contribution plan for its authority to make the amendment.

### **3.3 Provincial Legislation**

If any of the affected benefits are subject to provincial pension legislation, the requirements of the appropriate provincial pension legislation must be respected.

If the plan is also registered in Quebec or Newfoundland & Labrador<sup>17</sup>, the Reducing Amendment may also require the permission of the regulators from these provinces. OSFI expects the administrator to determine whether permission from either of these provincial regulators is required and to obtain any such required permission.

### **3.4 Notice to Affected Members, Former Members and Others**

Regardless of whether there is a bargaining agent, an administrator must individually inform affected members and former members and their spouses or common-law partners, as well as any other affected persons entitled to benefits under the plan of the impact of a Reducing Amendment and of their right to make representations to the Superintendent regarding the Reducing Amendment.

The notice must include the following:

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<sup>17</sup> Dual registration is required because the Government of Canada does not have a bi-lateral agreement with Newfoundland and Labrador and the agreement with Quebec covers only federal members who are employed in included employment in the Northwest Territories, Nunavut or Yukon.

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- A statement that the Reducing Amendment is subject to the authorization of the Superintendent
  - Justification for the Reducing Amendment, including how the reduction will be implemented and the other options that were considered prior to the adoption of the Reducing Amendment
  - An explanation of the authority to make the amendment<sup>18</sup>
  - A clear description of the pre- and post-amendment benefits provided by the plan, including a numerical example
  - A clear presentation of the pre- and post-amendment financial position of the pension plan
  - If the pension plan is a negotiated contribution plan, a statement indicating the possibility of additional Reducing Amendments should the financial position of the pension plan deteriorate further in the future
  - Information on any provisions in the pension plan text providing for priorities to certain groups on plan termination (i.e. priority provisions), including how these provisions affect the different groups in the event of an underfunded plan termination
  - A statement that the administrator will make available to recipients of the notice all documents filed with OSFI, as well as information on how this information may be obtained
  - Information on how to contact the administrator
  - Information on how to contact OSFI in order that recipients of the notice may make written representations to the Superintendent within 30 days of the date of receipt of the notice, including that written representations should include the plan's name and OSFI registration number and can be emailed to [information@osfi-bsif.gc.ca](mailto:information@osfi-bsif.gc.ca) or mailed to:

The Office of the Superintendent of Financial Institutions  
Private Pension Plans Division  
255 Albert Street  
Ottawa ON K1A 0H2

Administrators are encouraged to submit a draft notice to OSFI for review, to ensure that it meets OSFI's requirements, before it is provided to those affected by the Reducing Amendment.

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<sup>18</sup> See section 3.1 of this Instruction Guide

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The final version of the notice, along with written confirmation that it has been sent to affected members and former members and their spouses or common-law partners, as well as any other affected persons entitled to benefits under the plan, must be submitted to OSFI before the Reducing Amendment will be considered for authorization. In addition, any objections received by the administrator, employer or any employee or retiree representatives, along with any response, must be forwarded to OSFI for its consideration.

It is recommended that the administrator hold an information session in conjunction with the notice. A summary of the results of the session (including attendance) along with a copy of any presentation material should be included as part of the application to OSFI for authorization.

### **3.5 Actuarial Report**

An actuarial report that is based on OSFI's expectations as outlined in the *Instruction Guide for the Preparation of Actuarial Reports for Defined Benefit Pension Plans* must be prepared for the pension plan and filed with OSFI. In addition, the report must include the following:

- A statement that the reduction is subject to the authorization of the Superintendent
- Projections of funding requirements, and negotiated contributions, if applicable, for a period of three years using appropriate best estimate assumptions and factoring in anticipated changes to demographics
- The financial position and funding requirements of the pension plan with and without the reduction<sup>19</sup>
- A demonstration of the ongoing ability of the plan to meet the minimum funding requirements of the PBSA by stress testing key assumptions such as the discount rate and the expected return on assets
- A statement specifying whether any affected members, former members, or other persons entitled to benefits under the plan are subject to provincial jurisdiction, and if so, specify which provincial jurisdictions
- Where the amendment only affects certain groups within the pension plan, the membership status information relevant to each affected group such as active vs. non-active, broken down by jurisdiction, and any other relevant distinctions

### **3.6 Information Requirements**

OSFI requires that the following documentation be prepared and filed when a request for authorization of a Reducing Amendment is made under paragraph 10.1(2)(a) of the PBSA:

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<sup>19</sup> This information should continue to be provided in subsequent actuarial reports filed with OSFI until OSFI has notified the administrator whether the Superintendent's authorization is given for the Reducing Amendment.

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1. A completed Authorization Request Form for Amendments Reducing Benefits that provides the rationale for the Reducing Amendment, details of other options considered, an assessment of the plan's long term viability, and other requested information
  2. A copy of the Reducing Amendment, the Defined Benefit/Combination Pension Plan Amendment Information Form ([OSFI 594](#)) and any Board Resolution and/or other documents authorizing the amendment
  3. A copy of all documentation supporting the basis for the authority to make the amendment<sup>20</sup>
  4. For all negotiated contribution plans, documentation supporting that the plan meets the definition of a negotiated contribution plan<sup>21</sup>
  5. A copy of the notice informing affected members and former members and their spouses and common-law partners as well as any other affected persons entitled to benefits under the plan of the Reducing Amendment and of their right to make representations to the Superintendent<sup>22</sup>
  6. If an information session was held, a copy of any presentation material from the session<sup>23</sup>
  7. An actuarial report that includes all required elements<sup>24</sup>

Please ensure that copies of the plan text and every document that creates or supports the plan or the pension fund, as well as all amendments to these documents, have been filed with OSFI as required under the PBSA. OSFI may request an up-to-date consolidation of the plan text and any amendments.

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<sup>20</sup> See section 3.1 of this Instruction Guide

<sup>21</sup> See section 3.2 of this Instruction Guide

<sup>22</sup> See section 3.4 of this Instruction Guide

<sup>23</sup> See section 3.4. of this Instruction Guide

<sup>24</sup> See section 3.5 of this Instruction Guide

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#### 4. Authorization

The Superintendent's authorization is a discretionary decision and, pursuant to subsection 5(3) of the PBSA, may be subject to terms and conditions. After reviewing all relevant information, OSFI will notify the administrator whether authorization is given for the Reducing Amendment under paragraph 10.1(2)(a) of the PBSA. The administrator should forthwith notify affected members and former members and their spouses or common-law partners and other affected persons of the decision.

Until the Superintendent authorizes a Reducing Amendment, the administrator must administer the plan and remit contributions based on the plan provisions in effect before the Reducing Amendment was made. Any portability transfers from the fund must be in accordance with Section 8 of the [\*Directives of the Superintendent Pursuant to the Pension Benefits Standards Act, 1985\*](#) and based on the solvency ratio of the plan without taking into account the Reducing Amendment. The Superintendent may require that the portability provisions of section 26 of the PBSA be suspended for the pension plan while the Reducing Amendment is being reviewed by OSFI, or may impose other transfer conditions if the solvency ratio of the plan is below one.

Negotiated contribution plans should anticipate future funding requirements in comparison to their expected contributions to the plan for the duration of their agreement and recognize that a Reducing Amendment cannot be implemented without the Superintendent's authorization. All administrators are responsible for closely monitoring the plan's solvency to anticipate and prepare for future adverse experience.