



Instruction Guide

Subject: Authorization of Amendments Reducing Benefits in
Defined Benefit Pension Plans

Date: July 2012

Introduction

This Instruction Guide is intended for plan administrators¹ of defined benefit pension plans registered under the *Pension Benefits Standards Act, 1985* (PBSA). This 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 under paragraph 10.1(2)(a) of the PBSA. This paragraph 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 or former member was entitled before the date of the amendment². 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 beneficiaries under the PBSA, and to ensure the minimum funding requirements for the ongoing pension plan will be met.

Plan 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.

In addition, if a Reducing Amendment is part of a workout agreement negotiated with members under the Distressed Pension Plan Workout Scheme³, the plan administrator may wish to contact OSFI to discuss the implications of the timing of the application for the Superintendent's authorization under paragraph 10.1(2)(a) of the PBSA.

¹ For purposes of this Instruction Guide, plan administrator includes any party purporting to have the authority to make an amendment to the pension plan.

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

³ Sections 29.01 to 29.3 of the PBSA outline the provisions with respect to the Distressed Pension Plan Workout Scheme.



Table of Contents

1.	Legislative Provisions	3
2.	What Constitutes a Reducing Amendment?	3
3.	Request for Authorization of a Reducing Amendment: General Principles and Considerations.....	4
3.1	Amendment Powers	5
3.2	Notice to Members, Former Members and Other Beneficiaries	5
3.3	Information Requirements.....	6
4.	Authorization.....	8

1. Legislative Provisions

In accordance with subsection 10.1(1) of the PBSA, plan administrators must file with OSFI amendments to any pension plan document within 60 days after an amendment is made. 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.

- 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;*

2. What Constitutes a Reducing Amendment?

The following questions may help the plan administrator determine whether an amendment requires authorization under paragraph 10.1(2)(a) of the PBSA:

- Does the amendment reduce the commuted value of a member's or former member's accrued pension benefit (i.e., the pension benefit credit)?
- Does the amendment reduce any pensions in pay?
- Does the amendment increase the pensionable age for past service?
- Does the amendment remove or reduce a benefit for which the member has met the eligibility conditions?
- Does the amendment introduce 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](#).

If the answer is yes to any of the above, it is likely that the amendment is a Reducing Amendment.

An accrued pension benefit includes:

- The pension benefit to which a member, former member or other beneficiary is entitled or will become entitled to at pensionable age (based on the member's period of employment and salary at the date of the amendment); and
- Any additional benefit, payable prior to pensionable age, to which a member, former member or other beneficiary is entitled if any eligibility conditions have been met as at the date of the amendment.

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

3. Request for Authorization of a Reducing Amendment: General Principles and Considerations

When reviewing requests from pension plan 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. Plan 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 beneficiary. Additionally, a reducing amendment cannot reduce a payment already received by the retiree or beneficiary or due to be paid before the date of the amendment.
3. Subject to the terms of the plan, the plan administrator should consider the interests of all affected groups (actives, deferred vested, retirees) 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 authority in the pension plan text and any supporting documents allow for a Reducing Amendment and the amendment has been instituted in accordance with those documents. Alternatively, the extent to which the Reducing Amendment was collectively bargained or supported by the affected groups. Refer to section 3.1 of this Instruction Guide.
- 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;
- Appropriate notice was provided to members, former members and other beneficiaries. Refer to section 3.2 of this Instruction Guide;
- Any written representations received by OSFI from members, former members and other beneficiaries.

3.1 Amendment Powers

For all pension plans other than negotiated contribution plans, the amendment power in the plan text and any supporting documents, including historical plan documents, must allow for a Reducing Amendment and the amendment must be instituted in accordance with those documents⁴. This can be determined in different ways, including a review of the wording of the plan documents or agreement to the Reducing Amendment by all affected groups. Where the plan's amendment power does not permit a unilateral amendment, OSFI expects unanimous agreement to the Reducing Amendment by all affected groups.

A negotiated contribution plan is defined in section 2 of the PBSA. The key attributes of such a plan are:

- a multi-employer pension plan that includes at least one defined benefit provision;
- 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; and
- the amount of the contributions does not vary as a function of the prescribed tests and standards for solvency in the PBSA and PBSR.

In accordance with section 10.11 of the PBSA⁵, an administrator of a negotiated contribution plan may make a Reducing Amendment, despite the terms of the plan and subject to the Superintendent's authorization.

3.2 Notice to Members, Former Members and Other Beneficiaries

Regardless of whether there is a bargaining agent, a plan administrator must individually inform affected members and their spouses or common-law partners, former members, retirees or other beneficiaries of the impact of a Reducing Amendment and of their right to make representations to the Superintendent regarding the Reducing Amendment.

The notice to members and beneficiaries must include:

- A statement that the Reducing Amendment is subject to the authorization of the Superintendent.
- Justification of the action being taken by the plan administrator, including how the reduction will be implemented and the other options that were considered prior to the adoption of the Reducing Amendment.

⁴ Supporting documents may include documents or agreements outside the terms of the plan, such as collective bargaining agreements.

⁵ Section 10.11 of the PBSA came into force on December 15, 2010.

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- An explanation of the authority to make the amendment (see section 3.1 of this Guide).
 - 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 priority provisions in the pension plan text, including how these provisions affect the different groups in the event of an underfunded plan termination.
 - A statement that the plan administrator will make available to members and beneficiaries all documents filed with OSFI, as well as information on how this information may be obtained.
 - Information on how to contact OSFI in order that members, former members and other beneficiaries may make written representations to the Superintendent within 30 days of the date of the notice. Written representations may be directed to information@osfi-bsif.gc.ca and should include the plan's name and OSFI registration number.

Plan 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. The final version of the notice, along with written confirmation that it has been sent to affected groups, must be submitted to OSFI before the Reducing Amendment will be considered for authorization. In addition, any objections received by the plan 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 plan administrator hold an information session in conjunction with the notice. A summary of the results of the session (including attendance) should be sent to OSFI along with a copy of any presentation material.

3.3 Information Requirements

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

1. A written request to the Superintendent for authorization of the Reducing Amendment that includes:
 - A description of the purpose and rationale of the Reducing Amendment.

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- A copy of the Reducing Amendment, the *Defined Benefit/ Combination Pension Plan Amendment Information Form (OSFI 594)* and any Board Resolution authorizing the amendment.
 - A completed [Authorization Request Form for Benefit Reducing Amendments](#).
 - Documentation supporting the basis for the authority to make the amendment (see section 3.1 of this Guide).
 - Confirmation of whether or not the plan provides priority benefits on plan termination. The sections of any plan documents that address priority provision should be identified.
 - Details of other options considered by the plan administrator to address the plan's financial situation, including the likely impact of each option on the plan's funding requirements and solvency position.
2. An action plan from the plan administrator that includes:
- The plan administrator's assessment of the long term viability of the plan following the benefit reduction.
 - Projections for a minimum of three years of minimum funding requirements, and negotiated contributions if applicable, under reasonable scenarios, considering the plan actuary's advice. The action plan should include worst-case and expected-case scenarios, as well as the assumptions underlying the projections.
3. An actuarial report that:
- Clearly states that the reduction is subject to the authorization of the Superintendent.
 - Provides the position and funding requirements of the pension plan with and without the reduction⁶.
 - Demonstrates the ongoing ability of the plan to meet the minimum funding requirements of the PBSA.
 - Indicates if any affected members or former members are subject to provincial jurisdiction, as well as the relevant jurisdiction(s).
4. A description of the process followed to provide information to affected members, former members, retirees, spouses or common-law partners and other beneficiaries, including a

⁶ This information should continue to be provided in every actuarial report filed until OSFI has notified the plan administrator whether the Superintendent's authorization is given for the Reducing Amendment.

copy of the notice informing them of the Reducing Amendment and of their right to make representations to the Superintendent. See section 3.3 – Notice to Members.

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 plan administrator whether authorization is given for the Reducing Amendment under paragraph 10.1(2)(a) of the PBSA. The plan administrator should forthwith notify affected members and beneficiaries of the decision.

Until such time as the Superintendent authorizes a Reducing Amendment, the plan 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 prior to 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 funding requirements for the duration of their agreement and recognize that a Reducing Amendment cannot be implemented without the Superintendent's authorization. All plan administrators are responsible for closely monitoring the plan's solvency to anticipate and prepare for future adverse experience.