



Instruction Guide

Subject: Filing and Reporting Requirements for Defined Contribution Pension Plan Terminations

Date: March 2016

Introduction

The Office of the Superintendent of Financial Institutions (OSFI) has issued this Instruction Guide to inform the pension industry of the filing and reporting requirements for a defined contribution plan that has terminated, in whole or in part, under the *Pension Benefits Standards Act, 1985* (PBSA). This Instruction Guide does not apply to a termination report for a pension plan with a defined benefit component. This Instruction Guide replaces the previous version, issued in August 2008, and includes updates to reflect amendments made to the PBSA and the *Pension Benefits Standards Regulations, 1985* (PBSR) since 2008. The last of these PBSR amendments have an effective date of July 1, 2016. Where the requirements in effect prior to and as of July 1, 2016 are different, this Instruction Guide provides an explanation of both.

The PBSA and the PBSR are the authoritative source for requirements applicable to plans that are terminating or that have terminated. If there is a discrepancy between the Instruction Guide and the legislation, the legislation prevails. OSFI may require documentation not mentioned in this Instruction Guide.

OSFI has developed a [Standardized Termination Report for Defined Contribution Pension Plans](#) that may be used for most defined contribution plan terminations. Please refer to this Instruction Guide while completing the form.



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1. Reporting Requirements

Section 29 of the PBSA concerns the termination and wind-up¹ of pension plans. Pursuant to subsection 29(5), a plan administrator or employer who intends to terminate or wind-up a pension plan must notify the Superintendent in writing at least 60 and not more than 180 days before the date of the termination or wind-up. This requirement may affect the proposed effective date of the termination or wind-up.

Subsection 29(4.1) of the PBSA specifies that only the Superintendent may declare part of a pension plan terminated.

Subsection 29(9) requires that the administrator of a plan that has been terminated in whole or in part file a termination report with the Superintendent. Pursuant to section 24 of the PBSR, the termination report in respect of a defined contribution plan may be prepared by an actuary, accountant or other professional advisor.

OSFI has developed a [Standardized Termination Report for Defined Contribution Pension Plans](#) that may be used for most defined contribution plan terminations.

Pension Benefits Payable Prior to the Approval of the Termination Report

Subsection 29(10) of the PBSA provides that assets of the plan cannot be applied towards the provision of any benefits until the termination report is approved by the Superintendent. The plan administrator of a defined contribution plan may, however, pay variable benefits from the plan, as they fall due, until plan termination. Additionally, for a plan member who chooses to retire or for a survivor entitled to a death benefit, the plan administrator may, in advance of obtaining the Superintendent's approval of the termination report

- purchase an immediate annuity; or
- transfer a pension benefit credit to a life income fund or a restricted life income fund as defined in the PBSR.

A payment or series of payments payable to a member or former member under the disability/shortened life provisions of paragraph 18(2)(b) of the PBSA may also be paid out prior to the approval of the termination report, as this benefit may be considered a pension benefit that has fallen due.

A pension benefit credit that may be payable to a member as a result of the application of paragraph 18(2)(c) of the PBSA (small benefit rule) cannot be provided to the member until the termination report has been approved by the Superintendent.

¹ Wind-up means the distribution of the assets of a pension plan that has been terminated.

Payments to be made by the Employer on Plan Termination

Subsection 29(6) of the PBSA provides that on the termination of the whole of a defined contribution pension plan, the employer must, without delay, pay into the pension fund all amounts deducted from employees' wages but not remitted to the fund and all outstanding and accrued employer contributions.

2. Information to Members and Former Members

Initial Notification of Plan Termination – Effective July 1, 2016

Paragraph 28(2.1)(a) of the PBSA provides that if the whole of a plan is terminated, the plan administrator must, within 30 days, notify members and former members (includes any retirees being paid a variable benefit from the fund) and their spouses or common-law partners in writing that the plan has terminated. In accordance with section 23.4 of the PBSR, this written statement must be given in Form 2.1 of Schedule IV of the PBSR. This form includes basic member and beneficiary information and a statement that they may examine documents that have been filed with the Superintendent, as well as what benefits may and may not be distributed prior to the Superintendent's approval of the termination report.

Detailed Termination Statements - Effective July 1, 2016

Paragraph 28(2.1)(b) of the PBSA requires that, within 120 days after the whole of a plan is terminated, the plan administrator provide a written statement to members, former members (includes retirees) and their spouses or common-law partners informing them of their pension benefits and other benefits payable under the plan. In accordance with section 23.4 of the PBSR, this written statement must be given in Form 2.2 of Schedule IV of the PBSR.

This form includes information similar to the information that must be provided to a member ceasing membership, including the portability options available to them.

If these statements are issued prior to the approval of the termination report and if, in the course of the termination report approval process, OSFI requires a change to a benefit entitlement, OSFI expects the plan administrator to send a revised termination statement.

Until July 1, 2016

As described above, Forms 2.1 and 2.2 of Schedule IV of the PBSR come into force on July 1, 2016. Until that time, plan administrators should use Form 2 of Schedule IV of the PBSR to meet the requirement to provide members and their spouses or common-law partners with a termination statement within 30 days of plan termination.

The termination statement should also explain that the termination report setting out members'



benefits is subject to the approval of the Superintendent and that benefits cannot be distributed until this termination report has been approved.

If the plan administrator is unable to provide these termination statements within 30 days after the plan termination date, the plan administrator must notify OSFI of the reason for the delay and the expected date that the member statements will be provided.

Plan administrators should also advise members and any others who have an entitlement under the plan (such as retirees receiving a variable benefit or deferred vested members) of the plan termination.

If, in the course of the termination report approval process, there are any changes to a benefit entitlement, OSFI expects the plan administrator to send a revised termination statement.

Member Portability Options

On plan termination, members not yet eligible to retire are entitled (after approval of the termination report) to the portability options described in section 26 of the PBSA.

Members eligible to retire may also be entitled to the portability options depending on the terms of the plan. Plan administrators may also choose to offer the portability options to former members with deferred benefits in the plan.

The portability options described in section 26 are to

- transfer the pension benefit credit to a non-locked-in retirement vehicle or provide a lump sum cash payment if the benefit is not locked-in²;
- transfer the pension benefit credit to another pension plan (including a pooled registered pension plan and a plan under provincial jurisdiction³);
- transfer the pension benefit credit to a locked-in registered retirement savings plan, a life income fund, or a restricted life income fund of the type prescribed in the PBSR⁴; and
- use the pension benefit credit to purchase an immediate or deferred life annuity.

After receiving their termination statement, members must be given at least 60 days from the date they receive their statement to notify the administrator of their choice.

Consent of Spouse or Common-law Partner for Certain Portability Options

Effective July 1, 2016

Subsection 26(2.1) of the PBSA requires that if

² A plan may provide for pension benefits to be locked-in prior to having completed two years of membership. After two years of membership, pension benefits must be locked-in.

³ Subsection 26(5) of the PBSA.

⁴ On or after July 1, 2016, consent from the spouse or common-law partner will be required if the member is eligible to retire.

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- the member is eligible to retire from a pension plan; and
 - they wish to transfer their pension benefit credit to a locked-in registered retirement savings plan, a life income fund, or a restricted life income fund of the type prescribed in the PBSR

then the transfer may only be made if the member's spouse or common-law partner notifies the administrator of their consent to the transfer.

In accordance with subsection 18(3.1) of the PBSR (in force from July 1, 2016) this notification must be provided to the plan administrator in Form 3.1 of Schedule II of the PBSR.

Until July 1, 2016

As described above, Form 3.1 of Schedule II of the PBSR comes into force on July 1, 2016. Until that time, if a pension plan permits the transfer, then a member who is eligible to retire may transfer their pension benefit credit out of the pension plan without the consent of their spouse or common-law partner.

3. The Termination Report

OSFI has developed a [Standardized Termination Report for Defined Contribution Plans](#) that may be used for most defined contribution plan terminations. If this Standardized Termination Report is not used, OSFI expects that the termination report submitted for approval will include the information contained in this Standardized Termination Report.

OSFI expects all termination reports to also include the following information on individual members or former members (includes retirees) so that OSFI can verify that the termination arrangements comply with the PBSA and PBSR:

- identification number of member
- age or date of birth
- credited service under the plan
- member account values (showing separately employee and employer required contributions, any contributions transferred in from another plan and any additional voluntary contributions)

OSFI may request additional information in order to verify the accuracy of the benefits payable to members.

4. Locating Former Members or Beneficiaries

When a plan is terminated, the plan administrator is expected to make best efforts to locate everyone who has benefits payable from the fund through, for instance,

- notices in local and national newspapers, union central publications, newsletters or postings in local union halls;



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- private search agencies and databanks; and
 - government department databases, such as provincial motor vehicle registries.

A plan's termination report should describe to OSFI the efforts that have been made to locate all beneficiaries of the plan and how the administrator intends to treat the plan's liabilities in respect of beneficiaries who have not been located. If a plan administrator has made best efforts but is unable to locate everyone who has benefits payable from the plan, the administrator may consider the following options:

- purchase deferred annuities for the former members or beneficiaries
- pay the funds into Court in accordance with, for example, provincial trust legislation, if applicable
- apply to the Court for its opinion, advice or direction

Additional options may be available for any former members or beneficiaries of the plan who fall under provincial jurisdiction.

Although section 10.3 of the PBSA allows the Minister of Finance to designate an entity for the purposes of receiving and holding a pension benefit credit of any person who cannot be located; such an entity has not been designated. Therefore, this option is not currently available.

5. Filing of Required Documents on Plan Termination

When a plan has terminated, the following documents are expected to be filed with OSFI within 90 days after the termination date:

- a termination report - either the Standardized Termination Report or a termination report that includes the information contained in the Standardized Termination Report
- an executed plan amendment, board resolution or letter signed by the employer or plan administrator indicating that the plan has terminated and whether there is any continuing pension plan for the plan members. If so, the registration number of the continuing plan and the jurisdiction under which the continuing plan is registered must be provided.
- sample termination statements (notice of plan termination⁵ and detailed termination statement)

All documents should be submitted directly to OSFI and not through the Regulatory Reporting System (RRS).

6. Notification of Approval and Distribution of Benefits

After reviewing the termination report and all relevant information, OSFI will notify the pension plan administrator of whether or not the Superintendent has approved the termination report. Upon receiving the Superintendent's approval, OSFI expects the administrator to distribute the

⁵ The PBSR requirement regarding the notification of plan termination comes into force on July 1, 2016. Please see section 2 of this Instruction Guide for more details.

benefits in accordance with the approved termination report without undue delay. If the plan administrator is unable to distribute the benefits within a reasonable period of time, the administrator is expected to advise OSFI of the reason for the delay and the expected distribution date. OSFI may require that members be notified of the delay and the reason(s) for it.

7. Required Annual Filings Following Plan Termination

In accordance with section 12 of the PBSA and section 2 of the *Assessment of Pension Plans Regulations*, a plan administrator must continue to file Annual Information Returns (OSFI 49), Certified Financial Statements (OSFI 60), auditor's reports (if required) and to pay plan assessments annually as long as assets remain in the pension fund. These documents are to be completed as at the plan year-end. The plan administrator will also be expected to notify OSFI in writing when all assets have been distributed and submit a year-to-date financial statement from the fund custodian.