Guidance Note

Subject: Administration of Negotiated Contribution Plans

Date: March 2016

Introduction

Negotiated Contribution Plans (NCPs) are multi-employer, defined benefit pension plans with funding contributions that are limited in accordance with an agreement, statute or regulation. Because the funding of NCPs is limited in this way, their administrators may, under certain circumstances, need to consider reducing accrued pension benefits if contributions are not sufficient for the plan to meet the minimum funding requirements of the *Pension Benefits Standards Act, 1985* (PBSA) and its Regulations. It is therefore important that administrators of NCPs understand their responsibilities under the plan and that members, former members and other beneficiaries be informed of the nature of the pension benefits provided to them by these plans.

To ensure that members are aware of the funding arrangements for NCPs and how they may lead to benefit reductions under some circumstances, these plans are subject to enhanced disclosure requirements compared to other defined benefit plans.

This Guidance Note sets out some of the Office of the Superintendent of Financial Institutions' (OSFI) expectations respecting managing the funding limitations of NCPs and describes the enhanced disclosure that administrators of this type of plan must, effective July 1, 2016, provide to members and former members and their spouses or common-law partners.

Plan Administrators

Paragraphs 7(1)(a) and (b) of the PBSA determine the types of bodies that can be the administrator of a multi-employer pension plan (MEPP) including an NCP.

- Paragraph 7(1)(a) of the PBSA states that if a MEPP is established under one or more collective agreements, the administrator must be a board of trustees or another similar body constituted in accordance with the terms of the plan, or collective agreement or agreements to manage the affairs of the plan.

- In the case of any other MEPP, paragraph 7(1)(b) of the PBSA provides that the administrator of that MEPP must be a pension committee constituted in accordance with the terms of the plan, subject to section 7.1 of the PBSA, to manage the affairs of the plan.

If the administrator is a pension committee, then section 7.1 of the PBSA provides that it must include a representative of the plan members if the majority of plan members request it. Similarly, if the plan has fifty or more retired members and a majority of the retirees request it, the pension committee must include a representative of the retired members.

Subsection 8(3) of the PBSA provides that the administrator must administer the pension plan and the pension fund as a trustee for the employer, the members of the pension plan, former members and any other person that is entitled to pension benefits under the plan.

Subsection 8(6) of the PBSA provides that a person is not permitted to accept an appointment to one of the governing bodies mentioned above if there would be a material conflict of interest between that person's role as a member of that body and their role in any other capacity.

Managing Risks in the Context of Funding Limitations

An administrator is required to administer its plan in accordance with the PBSA, the *Pension Benefits Standards Regulations, 1985* (PBSR) and the terms of the plan.

As specified in subsection 9(1.2) of the PBSA, each participating employer of a MEPP (including an NCP) must pay contributions that they are required to pay under an agreement between the participating employers, or a collective agreement, statute or regulation. Although these required contributions are limited to those set out in an agreement, statute or regulation, the pension plan is still required to meet the prescribed tests and standards for solvency as set out in section 9 of the PBSR.

An NCP may face challenges in responding to funding demands in circumstances where the contribution levels established for the plan are not sufficient to meet minimum funding requirements, and it is not feasible to increase contributions. In such situations, the administrator of an NCP may have to consider a reduction of accrued pension benefits.

In accordance with section 10.11 of the PBSA, an administrator of an NCP may, subject to the authorization of the Superintendent and despite the terms of the plan, reduce pension benefits or pension benefit credits. Therefore, even if the plan text does not provide for the authority, the plan administrator may still reduce accrued pension benefits (subject to the authorization of the Superintendent). OSFI's Instruction Guide on the Authorization of Amendments Reducing Benefits in Defined Benefit Plans sets out the factors and specific requirements that OSFI considers with respect to an application seeking the Superintendent's authorization.

In comparison to other defined benefit plans, the generally more limited ability of NCPs to increase funding levels in response to changing circumstances makes it especially important that administrators of NCPs closely monitor their plan's solvency. This will help the administrator of an NCP consider, on a timely basis, actions that may need to be taken in order for the plan to continue to meet funding requirements.

The administrators should also strive to have the information necessary to perform its duty to monitor the risks facing the plan, assess how these risks may affect the plan and implement strategies to manage these risks. One way for administrators to identify and manage the risks in their plans is to conduct stress testing. Stress testing may help administrators identify threats, and consider possible adverse impacts of events that could affect their plan. For more information on stress testing, please refer to OSFI's Stress Testing Guideline for Plans with Defined Benefit Provisions

Actuarial Reports

As required by subsection 11(4) of the PBSR, if the actuarial report that an NCP files with their application for registration indicates that the funding of the plan fails to meet the standards of solvency referred to in section 8 of the PBSR, the report must contain the options available to address the funding shortfall.

As noted in OSFI's Instruction Guide for the Preparation of Actuarial Reports for Defined Benefit Pension Plans, subsequent regularly filed actuarial reports should also address the adequacy of expected contributions for the plan. The reports should either state that the expected contributions are adequate to meet the minimum funding requirements or, if they are not, the reports should contain the options considered to address the funding shortfall. For more information on the preparation of actuarial reports, please refer to this instruction guide which contains reporting requirements specific to funding and NCPs.

Enhanced Member Disclosure Requirements for NCPs

OSFI expects that enhanced information related to the nature of the benefits provided by these plans should be disclosed to members, former members and other beneficiaries. Effective July 1, 2016, the PBSA and PBSR require administrators of NCPs to provide this enhanced information to members and former members and their spouses or common-law partners.

As such, certain documents must explain that the administrator may amend the plan to reduce, subject to the Superintendent's authorization, pension benefits or pension benefit credits if negotiated contributions are insufficient to meet the prescribed solvency standards.

The following documents must include the enhanced disclosure described in the paragraph above[1]:

- written explanations of the provisions of the plan (e.g. the plan booklet)[2]
- annual member statements[3]
- annual former member statements[4]

[1] Section 22.1 and paragraphs 23(1)(s) and 23(1.1)(h) of the PBSR, which are effective July1, 2016, outline the information that must be provided to members, former members and their spouses or common-law partners.
[2] Paragraph 28(1)(a) of the PBSA.
[3] Paragraph 28(1)(b) of the PBSA.

These documents must contain the enhanced disclosure if they are due to be issued on or after July 1, 2016. This means that plans with a plan year end of December 31, are not required to include the additional information in their annual member statements for the plan year ending December 31, 2015, since they are due on June 30, 2016 but are required to include the information in following years.

[4] Paragraph 28(1)(b.1) of the PBSA.