Instruction guide

Title	Authorization of Amendments Reducing Benefits in Defined Benefit Pension Plans
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Introduction

The *Pension Benefits Standards Act, 1985* (PBSA) provides that the Superintendent of Financial Institutions can authorize an amendment that reduces an accrued pension benefit.[1] Without this authorization from the Superintendent, the amendment would be void or null.[2] Such an amendment is usually proposed by a plan that, for various reasons, is not able to meet the minimum funding requirements set out for all plans in the Pension Benefits Standards Regulations, 1985 (PBSR). For these plans, the alternative is usually to terminate the plan.[3]

The Superintendent cannot authorize an amendment that changes an accrued benefit from a defined benefit to what is sometimes referred to as a "target benefit" because the PBSA does not permit target benefits.[4]

In this Instruction Guide, an amendment is referred to as a "Reducing Amendment" if it 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[5] or other person was entitled to before the date of the amendment.

This Instruction Guide sets out the applicable filing requirements, as well as the principles and considerations that the Office of the Superintendent of Financial Institutions (OSFI) takes into account with respect to an application seeking authorization for an amendment with respect to paragraph 10.1(2)(a) of the PBSA.[6] These principles and considerations are intended to protect the rights and interests of members, former members and other persons entitled to pension benefits, and to ensure that minimum funding requirements for the ongoing plan will be met.

1. Legislative Provisions

Administrators must file with OSFI amendments to any plan document within 60 days after an amendment is made.[7] Paragraph 10.1(2)(a) of the PBSA provides that certain amendments are void or null unless authorized by the Superintendent. The requirement for the Superintendent to authorize such amendments applies to all plans subject to the PBSA including negotiated contribution plans.[8]

- 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 of the PBSA 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?

Administrators are expected to determine if an amendment requires authorization under paragraph 10.1(2)(a) of the PBSA and are encouraged to contact OSFI for assistance in making this determination, and to discuss any proposed amendments.

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

- The amendment reduces a member's, former member's or other person's pension benefit credit[9] accrued before the date of the amendment on the assumption that the member ceased membership on the day

before the date of the amendment.

- The amendment reduces any accrued periodic amount (i.e., an accrued pension benefit)
- The amendment reduces any pensions in pay (current or future periodic amount)
- The amendment increases the pensionable age[10] 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

OSFI considers an amendment to replace a consumer price index (CPI) indexed accrued pension benefit with a fixed level indexed benefit (regardless of the relative aggregate values of these two types of indexed pension benefits) a Reducing Amendment. This is because a future increase in CPI that is higher than the fixed rate would result in a lower accrued pension benefit payment.

A pension benefit accrued before the date of the amendment includes the following:

- The pension benefit to which a member, former member or other person 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). 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 the 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 it cannot be reduced without authorization. Under the PBSA, a member or former member is assumed to grow into any age eligibility requirement for a benefit payable at pensionable age.
- Any portion of a pension benefit, payable **prior to pensionable age**, if the member, former member or other person has met all eligibility conditions 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.[11] 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. Under the PBSA, a member or former member is not assumed 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.

3. General Principles and Considerations

When reviewing applications from administrators for the 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. OSFI recognizes the contractual nature of pension plans and expects employers or administrators to maintain accrued benefits promised by the plan text. Prior to adopting a Reducing Amendment, other options such as increasing contribution levels or reducing future benefit accruals should be considered. Single employer plans should also consider entering the Distressed Pension Plan Workout Scheme[12] although reducing accrued benefits could be a result of this process.

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. The amendment cannot include the possibility of further reductions to accrued benefits beyond what is specifically set out in the Reducing Amendment.

4. 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) in deciding on any reductions.

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

- The authority in the 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 is supported by the affected parties[13]
- Whether the plan is a negotiated contribution plan[14]
- The purpose and rationale for the Reducing Amendment and other alternatives considered
- The long-term viability of the 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[15] 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)
- Any written representations received by OSFI from those parties noted in the bullet above

3.1 Amendment Powers for Negotiated Contribution Plans

The PBSA provides that, subject to the Superintendent's authorization, an administrator of a negotiated contribution plan may make a Reducing Amendment, regardless of whether or not the terms of the plan provide the authority to do so.[16]

A negotiated contribution plan[17] must have all of the following attributes:

- It is a multi-employer pension plan[18] that includes at least one defined benefit provision
- Under the 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

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

3.2 Amendment Powers for Plans Other than Negotiated Contribution Plans

For a plan other than a negotiated contribution plan,[8] the amendment powers 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 documents.[19] All plan documents (including copies of all current and historical plan texts and supporting documents) that address the power to amend the plan must be filed with the application to OSFI for authorization.

If the plan's amendment power does not allow for a Reducing Amendment, then such an amendment must be presented to the affected parties (i.e. members, former members or other individuals whose pension benefits would be reduced by that amendment) for their approval. The Superintendent will consider the level of agreement to the Reducing Amendment from the affected parties along with all other relevant factors when deciding whether to authorize that amendment.

Anyone from whom agreement is sought must have previously received notice[15] of the impact of the Reducing Amendment and of their right to make representations to the Superintendent regarding the amendment and how agreement to that amendment was sought.

Where unions collectively bargain with respect to pension plans, OSFI will consider agreement by a bargaining agent on behalf of their unionized plan members in reviewing the Reducing Amendment application. OSFI would not generally consider agreement to the amendment by a bargaining agent on behalf of any other group (such as former members of the plan with deferred benefits or retirees) even if such groups maintain membership in the union.

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 registered federally and in Newfoundland & Labrador,[20] the Reducing Amendment may also require the permission of the Newfoundland and Labrador regulator. OSFI expects the administrator to determine whether permission from the provincial regulator 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:

- A statement that the Reducing Amendment is subject to the authorization of the Superintendent
- A 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. The rationale for not implementing the other options (including not making the Reducing Amendment) should also be clearly set out.
- An explanation of the authority to make the amendment[13]
- 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 plan
- If the plan is a negotiated contribution plan, a statement indicating the possibility of additional Reducing Amendments should the financial position of the plan deteriorate further in the future
- Information on any provisions in the 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, and how these might be affected by the proposed amendment
- A statement that the administrator will make available, to the recipients of the notice, all documents filed with OSFI, as well as instructions on how this information may be obtained
- Instructions on how to contact the administrator to obtain additional information or have questions addressed
- A statement that recipients of the notice may make written representations to the Superintendent regarding the Reducing Amendment within 30 days of the date of receipt of the notice. If agreement to the amendment is being sought,[8] the notice must also contain a statement that written representations concerning how agreement was sought may also be made to the Superintendent.

- A statement that written representations should include the plan's name and OSFI registration number and that those representations can be emailed to information@osfi-bsif.gc.ca or mailed to:

  The Office of the Superintendent of Financial Institutions

  Attention: Private Pension Plans – Approvals' Division

  255 Albert Street

  Ottawa ON K1A 0H2

Administrators are encouraged to submit their 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 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 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 plan with and without the reduction[21]
- A demonstration of the ongoing ability of the plan to meet the minimum funding requirements of the PBSA. This should include 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 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

4. Filing Requirements

OSFI requires that the following documentation be prepared and filed as part of the administrator's application for the authorization of a Reducing Amendment under paragraph 10.1(2)(a) of the PBSA:

1. OSFI's standardized Authorization Request Form for Amendments Reducing Benefits (PDF) must be completed. It contains 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[13]
4. For negotiated contribution plans, documentation supporting that the plan meets the definition of a negotiated contribution plan[8]
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 Superintendent15

6. If an information session was held, a copy of any presentation material from the session15

7. An actuarial report that includes all required elements22

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.

Administrators must file their application seeking authorization of a Reducing Amendment using the Regulatory Reporting System (RRS). For instructions on how to file this application using RRS, please refer to OSFI's instruction guide for Filing an Application for Approval of Amendments Reducing Benefit using the RRS.

5. 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 without taking into account the Reducing Amendment. However, the Superintendent may prohibit portability transfers under section 26 of the PBSA while the Reducing Amendment is being reviewed by OSFI if the Superintendent is of the view that the transfer would impair the solvency of the pension fund, or may impose other transfer conditions if the solvency ratio of the plan is below one.

Administrators of negotiated contribution plans should anticipate future funding requirements in comparison to expected contributions to the plan for the duration of the applicable 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.

1 An amendment that reduces future service accruals only does not require the authorization of the Superintendent.

2 Subsection 10.1(2) of the PBSA.

3 The Superintendent can declare a plan terminated if the plan is considered unsustainable and unable to meet the minimum funding requirements set out in the PBSR (subsection 29(2) of the PBSA).

4 A benefit that, pursuant to the plan text, can be reduced at a later date without an amendment that is subject to authorization by the Superintendent.

5 In the PBSA, a former member includes a retiree and an individual entitled to a deferred pension under the plan.

6 Authorizations for amendments otherwise considered void under paragraphs 10.1(2)(b) to (d) of the PBSA and section 9.3 of the PBSR, which relate to the solvency ratio of the plan, are dealt with on a case-by-case basis.

7 Subsection 10.1(1) of the PBSA.

8 See section 3.1 of this Instruction Guide.

9 Section 2 of the PBSA defines a pension benefit credit as the aggregate value at a particular time of a person's pension benefit, and other benefits provided under a pension plan, calculated in a prescribed manner.

10 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 plan, if applicable) at which a pension benefit is payable to the member under the terms of the plan without the consent of the administrator and without reduction by means of early retirement.

11 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.

12 See sections 29.01 to 29.3 of the PBSA and 10.1 to 10.991 of the PBSR for the provisions related to the Distressed Pension Plan Workout Scheme.

13 See section 3.2 of this Instruction Guide.

14 As noted in section 3.1 of this Instruction Guide, section 10.11 of the PBSA provides that, subject to the Superintendent's authorization, an administrator of a negotiated contribution plan may make a Reducing Amendment, regardless of whether or not the terms of the plan provide the authority to do so.

15 See section 3.4 of this Instruction Guide.

16 Section 10.11 of the PBSA.

17 Section 2 of the PBSA.

18 Section 2 of the PBSA's definition of a multi-employer pension plan excludes a 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 multi-employer pension plan under the PBSA, it cannot qualify as a negotiated contribution plan under the PBSA.

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

20 Dual registration is required because Newfoundland and Labrador is not a signatory to the 2020 Agreement Respecting Multi-Jurisdictional Pension Plans and the Government of Canada does not have a bi-lateral agreement with Newfoundland and Labrador.

21 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.

22 See section 3.5 of this Instruction Guide.