Instruction guide

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Introduction

The Office of the Superintendent of Financial Institutions (OSFI) has issued this Instruction Guide for Disclosure Requirements for Defined Benefit Pension Plans (Disclosure Guide) to inform the pension industry of the requirements under the *Pension Benefits Standards Act, 1985* (PBSA) and the Pension Benefits Standards Regulations, 1985 (PBSR) regarding the disclosure of information to a plan member, former member, an employee eligible to join the plan, and that person's spouse or common-law partner. This Disclosure Guide also provides guidance in addition to the legislative requirements to assist plan administrators in providing adequate and appropriate information.

This Disclosure Guide replaces the Guideline titled "Disclosure of Information to Pension Plan Members and Former Members" issued on March 6, 1998 which included guidance related to both defined benefit and defined contribution plans. This previous Guideline has been replaced with two separate instruction guides – one for

defined benefit plans and one for defined contribution plans. The two new Disclosure Guides include updates to reflect amendments to the PBSA and the PBSR to date.

If a defined benefit pension plan includes a defined contribution component (including additional voluntary contributions), plan administrators are to follow the requirements outlined in this Disclosure Guide as well as any additional applicable disclosure requirements as described in the Instruction Guide for Disclosure Requirements for Defined Contribution Pension Plans.

The disclosure requirements are generally found in section 28 of the PBSA and sections 22 and 23 of the PBSR. The plan text may also contain disclosure requirements in addition to the legislative requirements.

The PBSA and the PBSR are the authoritative source for requirements regarding disclosure of information. If there is a discrepancy between this Disclosure Guide and the legislation, the legislation prevails.

1. General Principles

Effective communication promotes transparency and enables a member or former member and that person's spouse or common-law partner to make informed financial planning decisions, better understand how a pension plan works, recognize the value of their pension and have confidence in the administration of the plan.

The disclosure of information should be carried out in a manner that is consistent with the disclosure requirements of the PBSA, the PBSR and with the administrator's fiduciary responsibilities and applicable standard of care[1].

In carrying out their duties with regard to the disclosure of information, plan administrators should aim to make the disclosure of information timely, easily understood and accurate. Any document provided should give the name, address and telephone number for a contact person who can answer any follow-up questions.

2. Electronic Communications

Section 31.1 of the PBSA and sections 25 to 25.3 of the PBSR set out details regarding requirements when providing information to members electronically. The main requirements are described below.

Any information that an administrator is required by the PBSA or PBSR to provide to a member of the plan, an employee eligible to join the plan, and that person's spouse or common-law partner can be provided by way of an electronic document if consent is provided. Consent can be given to the plan administrator in writing (paper or electronic form) or orally. Consent may be revoked at any time either in writing (paper or electronic form) or orally. The individual who is receiving information electronically (the addressee) must designate an information system (typically an email address or website) for the receipt of the electronic document and must inform the plan administrator of any changes to their electronic contact information.

The information in the electronic document must be accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference. If an electronic document is provided on a generally accessible information system, such as a website, the administrator must provide the addressee with written notice that the electronic document is available and of where it can be found.

An electronic document is considered to have been provided to an addressee when it is entered into or made available on the information system designated by the addressee. If the plan administrator has reason to believe that an addressee did not receive an electronic document, then the plan administrator must mail a paper copy of the document to the mailing address that they have on file.

3. Explanation of Plan Provisions and Plan Amendments

Paragraph 28(1)(a) of the PBSA requires that each plan member and each employee eligible to join the plan, and that person's spouse or common-law partner be given a written explanation of the provisions of the pension plan and any applicable amendments to the plan within sixty days after the establishment of the plan or the making of the amendment.

OSFI expects plan administrators to apply paragraph 28(1)(a) of the PBSA broadly and assume that most amendments to a plan could be considered applicable to a member of that plan. For example, while a particular amendment may not directly affect the benefit level of a particular class of members, it may have an impact on the funding of the plan.

OSFI considers an amendment to a plan to be made as of the date that the decision regarding the amendment is properly adopted in accordance with the governance procedures for that plan.

Section 22 of the PBSR requires that the written explanation of the provisions of the plan be addressed to the plan member or the employee and that person's spouse or common-law partner and is to be provided at the place of employment or mailed to the residence of the plan member or employee.

Plan administrators often prepare a standardized information booklet containing the information that is required by the PBSA and the PBSR. While the PBSA and the PBSR do not provide a detailed list of information that must be provided with respect to plan provisions, OSFI expects the following to be included:

3.1 Description of the plan

- Official name of the plan
- The plan is registered under federal pension legislation and whether any members are subject to provincial pension legislation
- The date the plan was established and whether the plan was the result of any predecessor plans
- A defined benefit plan is an arrangement where plan members accrue pension benefits by a formula
- For a negotiated contribution plan[2], an explanation 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
- If the plan is administered by a pension committee or if the plan has established a pension council, contact information for the committee /council
- Contact information for enquiries from members and former members

3.2 Eligibility to join the plan

- Whether membership in the plan is voluntary or mandatory
- Who is eligible to join the plan and when they are eligible to join the plan (i.e. the minimum period of employment required for membership for full-time employees and non-full-time employees)
- How to enrol in the plan

3.3 Contribution information

- Formula for any required member contributions
- When contributions are deducted and remitted to the plan
- Treatment of additional voluntary contributions (if permitted)
- How a transfer of benefits from another pension plan into this pension fund would be treated
- Amounts deducted by the employer from a member's remuneration and other amounts due to the pension fund by the employer are required to be kept separate and apart from the employer's own moneys

3.4 Investment of the pension fund

- The purpose of the pension plan's Statement of Investment Policies and Procedures
- How members are able to obtain a copy of the Statement of Investment Policies and Procedures which they have a right to review annually

3.5 Plan expenses

- What plan expenses may be charged to the pension plan
- How members may obtain more information regarding expenses charged to the plan

3.6 Benefits at retirement

- When the member is entitled to retire with an unreduced pension (this is "pensionable age" as defined in the PBSA)[3] and when the member is entitled to early retirement (10 years before pensionable age)
- Plan's benefit formula with examples
- Normal form of pension and any optional forms of pension available on retirement
- The requirements for any particular benefit (e.g. minimum service or age requirements or if any benefits are subject to consent)
- A retiring member's pension benefit will be increased if their required contributions plus interest exceed 50% of the value of their pension benefit credit

- The requirement for a joint and survivor pension if the retiring member has a spouse or common-law partner.
- The joint and survivor pension must not reduce on the death of the member or former member to less than 60% of the amount payable when both were alive unless the prescribed spousal waiver form has been completed (Schedule II Form 4 of the PBSR)
- Entitlement of a retiring member and their spouse or common-law partner to a prescribed benefit statement within 30 days after their date of retirement and thereafter an annual statement giving details of the financial status and investment of the pension fund (Form 1 of Schedule IV and subsection 23(1.1) of the PBSR respectively)

3.7 Benefits on cessation of membership before retirement

- Entitlement to a deferred pension from the plan if the terminating member does not opt to transfer their pension benefit credit
- A terminating member's pension benefit will be increased if their required contributions plus interest exceed 50% of the value of their pension benefit credit, determined at cessation of membership[4]
- For members who cease membership before eligibility for early retirement, their entitlement to
    - transfer their pension benefit credit to a locked-in registered retirement savings plan, life income fund, restricted life income fund or another pension plan (including a pooled registered pension plan) willing to accept the funds or
    - use the pension benefit credit to purchase an immediate or deferred annuity
- Whether terminating members are entitled to the transfer options described above once eligible for early retirement. If yes[5], a transfer to a locked-in registered retirement savings plan, a life income fund or a restricted life income fund may be made only if the member's spouse or common-law partner notifies the administrator, in the prescribed form, of their consent (Form 3.1 of Schedule II of the PBSR).
- When a terminating member's benefit is considered locked-in. A plan may provide for pension benefits to be locked-in prior to having completed two years of membership; upon two years of membership, pension benefits must be locked-in.

- Entitlement of a terminating member and their spouse or common-law partner to a benefit statement, in the prescribed form, within 30 days after cessation of membership. If the member does not opt to transfer their pension benefit credit, they are entitled to an annual statement giving details on the financial status and investments of the pension fund (Form 2 of Schedule IV and subsection 23(1.1) of the PBSR respectively).

3.8 Death benefits before retirement

- The death benefit payable to a survivor is the pension benefit credit to which the member or former member would have been entitled if they had terminated employment on the day of death. If there is no survivor, this benefit must be paid to the member's or former member's designated beneficiary or if there is none, to their estate or succession.
- Option for the survivor to surrender the death benefit and designate a beneficiary who is a dependant of the survivor, member or former member
- Entitlement of a survivor or a member's legal representative to a prescribed benefit statement within 30 days of the administrator being notified of the member's or former member's death

3.9 Non-assignment / commutation of pension benefits

- Benefits provided under the plan cannot be assigned, charged, anticipated or given as security with the exception that benefits may be assigned on marriage breakdown or the ending of a common-law relationship
- Pension benefits cannot be surrendered or commuted during the lifetime of the member or former member or the lifetime of the member's or former member's spouse or common-law partner

3.10 Marriage or common-law partnership breakdown

- Pension benefits of a member or former member are subject to applicable provincial property law in the event of their divorce, annulment, separation or breakdown of common-law partnership
- PBSA permits the division of pension benefits by a court order or an agreement between the parties
- In the event of an assignment of all or part of the pension benefit, the former spouse or common-law partner is deemed to have been a member of that pension plan and is deemed to have ceased to be a member of that plan as of the effective date of the assignment. Therefore, they would be entitled to a termination

statement within 30 days of the effective date of the assignment and would have the same transfer options available to them as any other former member who has ceased membership.

3.11 Termination of the plan

- Options (including any transfer options) that will be available to members, former members or survivors on termination of the plan
- Statements they can expect to receive (see Part 9 of this Disclosure Guide for more information on the statement requirements on plan termination)

3.12 Additional information available on request

- List of the documents that may be examined or copies of which can be ordered. In accordance with paragraph 28(1)(c) of the PBSA, each member and former member of the plan, every other person entitled to pension benefits under the plan and their spouses or common-law partners may, once in each year of operation of the plan, either personally or by an agent authorized in writing for that purpose, order photocopies or examine, at the administrator's office, certain documents held by the plan administrator
- The plan administrator may charge a reasonable fee for photocopies

4. Enhanced Disclosure Requirements for Negotiated Contribution Plans

Negotiated contribution plans (NCPs) as defined in the PBSA are subject to enhanced disclosure requirements compared to single employer defined benefit pension plans because contributions to negotiated contribution plans are fixed, which may lead to benefit reductions under some circumstances.

In accordance with section 22.1 and paragraphs 23(1)(s) and 23(1.1)(h)[6] of the PBSR, the member booklet and annual statements to members and former members of an NCP must include a description of the funding arrangement for the plan. This description must state that the administrator may amend the plan to reduce, subject to the Superintendent's authorization, pension benefits if negotiated contributions are insufficient to meet the prescribed solvency standards.

For further information on NCPs please see the Guidance Note on the Administration of Negotiated Contribution Plans.

5. Annual Statements to Members

It is important that members and beneficiaries receive timely and useful information regarding their plan and their pension benefits. In support of this, paragraph 28(1)(b) of the PBSA requires that each member of the plan and the member's spouse or common-law partner be given, within six months after the end of each plan year, a written statement that includes, among other things, the pension benefit which the member has accrued under the plan as of the end of that year, the member's accumulated required contributions, and the solvency ratio of the plan.

The specific information that must be provided is set out in subsection 23(1) of the PBSR, and Appendix A to this Disclosure Guide contains a checklist of this information as it relates to defined benefit plans. The additional items required to be included in the annual statements that are due to be issued after July 1, 2016 are noted on this checklist.

6. Annual Statement to Former Members

Paragraph 28(1)(b.1) of the PBSA provides that each former member of the plan and the former member's spouse or common-law partner will be given, within six months after the end of each plan year, a written statement showing the solvency ratio of the plan and other information as set out in subsection 23(1.1) of the PBSR. For the purposes of this requirement, former members are defined as retirees and persons who have ceased membership and have not exercised portability rights.

Appendix B to this Disclosure Guide contains a checklist of the requirements of subsection 23(1.1) as they relate to a defined benefit plan.

7. Termination / Retirement / Death Statements

Paragraph 28(1)(d) of the PBSA provides that where a member of the plan retires or ceases to be a member of the plan for any reason other than the termination of the plan, the administrator shall give to that member and to the member's spouse or common-law partner a written statement within thirty days after the date of retirement or cessation of membership.

Paragraph 28(1)(e) of the PBSA provides that if a member of the plan dies, the administrator shall give the written statement to the survivor[7] within 30 days after the date of the member's death. If there is no survivor, the statement is to be given to the member's designated beneficiary or, if there is no designated beneficiary, to the executor, administrator or liquidator of the member's estate or succession.

The information that must be provided in the statements is set out in the following Schedules of the PBSR:

- For retiring members - Form 1 of Schedule IV
- For retiring members whose spouse or common-law partner wishes to waive their entitlement to a joint and survivor pension – Form 4 of Schedule II
- For terminating members - Form 2 of Schedule IV
- For members or survivors choosing to transfer the value of their pension benefit -Form 3 of Schedule II
- For terminating members offered portability after eligibility for early retirement, a request to transfer to a locked-in registered retirement savings plan, a life income fund or a restricted life income fund must be accompanied by a spousal consent form (Form 3.1 of Schedule II)
- For deceased members – Form 3 of Schedule IV

7.1 Portability

Members or survivors entitled to portability must be given at least 60 days from the date they receive their statement to notify the administrator if they wish to transfer the value of their pension benefit out of the plan to one of the portability options. In addition to the required information set out in the above forms, statements provided to members or survivors who are offered portability should also include the following:

- That members or survivors should seek independent financial advice before deciding on the portability options that may be available
- Whether the administrator permits portability in the situations where notification is received after the expiration of the notification period given on the statement and if a re-calculation of the transfer amount (pension benefit credit) is a possibility in that circumstance
- That members or survivors who do not elect to take portability should file any future changes of address with the plan administrator

8. Phased Retirement Benefits

Section 16.1 of the PBSA sets out the requirements for a pension plan that provides for the payment of a phased retirement benefit. Should a pension plan offer this benefit, phased retirement allows an employee to receive a portion of their pension benefit from a defined benefit pension plan and simultaneously accrue further benefits, subject to certain requirements[8]. One of these requirements is to enter into a written agreement between the person and the employer. Phased retirement benefits may also be offered to current retirees and if that retiree was receiving a joint and survivor pension benefit prior to the phased retirement period, the consent of the spouse or common-law partner is also required. This consent form must follow Form 6 of Schedule IV of the PBSR.

Before a person enters into the agreement referred to above, the administrator must give, in written form, to the person to whom the benefit is to be paid, and to their spouse or common-law partner either

- if the person is a member (i.e. not yet retired) before the phased retirement period begins, the statements shown in Forms 1 and 5 of Schedule IV; or
- if the person was retired before the phased retirement period begins, the statement shown in Form 5.1 of Schedule IV. Schedules of the PBSR

9. Information on Plan Termination

Subsection 28(2.1) of the PBSA requires that on the termination of a pension plan[9], the plan administrator shall provide two written statements to each member and former member (includes retirees) and to that person's

spouse or common-law partner. The first statement must inform them of the termination of the plan and the second statement must set out the member's or former member's pension benefits and other benefits payable under the plan.

9.1 Initial notification

The initial notification informing the parties noted above of the plan termination must be provided within 30 days of the plan termination date or any longer period permitted by the Superintendent. The information that must be provided is set out in Form 2.1 of Schedule IV of the PBSR. This form includes basic member and beneficiary information and a statement that documents that have been filed with the Superintendent may be examined. The form also states that pension benefits will continue to be paid to retirees as they fall due, while other pension benefits cannot be distributed until the termination report is approved by the Superintendent.

9.2 Detailed termination statement

The second statement informs the parties noted above of the specific pension benefits and other benefits payable under the plan, and must be provided within 120 days after the termination of the plan or any longer period that the Superintendent may allow. The information to be provided in this statement is set out in Form 2.2 of Schedule IV of the PBSR.

This statement includes information similar to the information that must be provided to a member ceasing membership, including, if applicable, the portability options available to them under section 26 of the PBSA. Recipients must be given at least 60 days from the date they receive their statement to notify the administrator of their choice, and they should be advised to seek independent financial advice before making their decision. Form 3 of Schedule II must be completed and submitted to the plan administrator if a portability option is chosen.

This statement must also address if there is to be any adjustment to benefits and, if so, the reasons for these adjustments. If these statements are issued prior to the approval of the termination report and if, in the course of the termination report approval process, a change to a benefit is required, a revised termination statement must be sent.

Appendix A – Annual Member Statement Checklist

- The name of the plan member
- The period to which the statement applies
- The date of birth of the plan member
- The period that has been credited to the plan member for the purpose of calculating the pension benefit of the plan member
- The date on which the plan member attains pensionable age[10]
- The date on which the plan member is first entitled to an immediate pension benefit (early retirement)
- The name of the spouse or common-law partner of the plan member listed on the records of the administrator
- The name of any person on the records of the administrator designated as the beneficiary of the pension benefit of the member
- The additional voluntary contributions of the plan member made for the plan year and the accumulated additional voluntary contributions of the plan member as of the end of the plan year
- The required contributions of the plan member made for the plan year and the accumulated required contributions of the plan member as of the end of the plan year
- The amount of any funds transferred to the plan in respect of the plan member and the benefit under the plan attributable to that amount or the length of service credited to the plan member in respect of that amount
- The annual amount of the pension benefit accrued in respect of the plan member as of the end of the plan year and payable at pensionable age

- If applicable, the interest rates credited to the contributions of the plan member for the plan year
- The benefit payable on the death of the plan member and the extent to which that benefit would be reduced by a payment under a group life insurance plan
- A statement setting out the right to access the documents described in paragraph 28(1)(c) of the PBSA and whether a fee is charged for copying the information
- The value and description of the solvency ratio of the plan[11]

  If the solvency ratio of the plan is less than one

  - a description of the measures the administrator has implemented or will implement to bring that solvency ratio to one and
  - the extent to which the member's benefit would be reduced if the plan were terminated and wound up with that solvency ratio[12]

Additional information required to be provided in annual member statements due to be issued after July 1, 2016

- The valuation date and the date of the next valuation
- The total value of solvency assets and solvency liabilities of the plan on the valuation date
- The total employer payments made to the plan for the plan year
- A list of the pension fund's 10 largest asset holdings based on market value, each expressed as a percentage of the total assets
- The pension plan's target asset allocation expressed as a percentage of the total assets
- If the plan is a negotiated contribution plan, a description of the funding arrangement, including an indication 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

Appendix B – Annual Former Member Statement Checklist

- The name of the former member
- The period to which the statement applies
- The name of the spouse or common-law partner of the former member listed on the records of the administrator
- The name of any person on the records of the administrator designated as the beneficiary
- The total employer payments made to the plan for the plan year
- The total value of solvency assets and solvency liabilities of the plan on the valuation date
- The value and description of the solvency ratio of the plan, the valuation date and the date of the next valuation
- If the solvency ratio is less than one
    - a description of the measures the administrator has implemented or will implement to bring that solvency ratio to one and
    - the extent to which the former member's benefit would be reduced if the plan were terminated and wound up with that solvency ratio[13]
- A list of the pension fund's 10 largest asset holdings based on market value, each expressed as a percentage of the total assets
- The pension plan's target asset allocation expressed as a percentage of total assets

- A statement setting out the right to access the documents described in paragraph 28(1)(c) of the PBSA and whether a fee is charged for copying the information
- If the plan is a negotiated contribution plan, a description of the funding arrangement, including an indication 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

1 Subsections 8(3) and 8(4) of the PBSA

2 The PBSA defines a negotiated contribution plan as a multi-employer pension plan that includes at least one defined benefit provision and under which a participating employer's 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 which amount does not vary as a function of the prescribed tests and standards for solvency.

3 Pensionable age could be a specific age or number of years of service, or a combination of both.

4 If the plan provides for annual indexation of a deferred pension benefit, up to the day when payment of that deferred pension benefit commences, this increase to the terminating member's pension benefit is not required.

5 Members who ceased membership prior to July 1, 2016 were not required to obtain spousal consent for such a transfer.

6 These provisions came into effect July 1, 2016.

7 "Survivor", in relation to a member, means the person who was the common-law partner of the member at the time of the member's death or, if there is no such person, the spouse of the member at the time of the member's death.

8 In addition to the requirements set out in the PBSA, income tax rules also impose some restrictions.

9 The requirement for two written statements applies to plans that terminated on or after July 1, 2016.

10 Pensionable age means the earliest age 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 reason of early retirement. (Subsection 2(1) of the PBSA)

11 For statements due to be issued prior to July 1, 2016, if the plan's solvency ratio was 1 or greater, the minimum requirement was a statement that the plan is fully funded based on the most recent solvency ratio of the plan.

12 For plans other than negotiated contribution plans it should be explained that benefits at plan termination must be fully funded but could be reduced if the employer is bankrupt or liquidating and unable to pay the solvency deficit.

13 For plans other than negotiated contribution plans it should be explained that benefits at plan termination must be fully funded but could be reduced if the employer is bankrupt or liquidating and unable to pay the solvency deficit.