Guide

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Introduction

A negotiated contribution plan (NCP) is a multi-employer, defined benefit pension plan with employer contributions that are limited to amounts determined in accordance with an agreement, statute, or regulation and that do not vary as a function of the applicable minimum funding requirements.[1] Because the funding of NCPs is limited in this way, the administrator of an NCP may 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 the *Pension Benefits Standards Regulations, 1985* (PBSR). Further, pension benefits will be reduced on

termination of the pension plan if plan assets are insufficient to ensure that all obligations with respect to pension benefits are satisfied. It is important that administrators of NCPs understand their responsibilities under these plans and that members, former members, and other beneficiaries be informed of the nature of the pension benefits provided to them by these plans.

In addition to required employer contributions to an NCP being limited, NCPs are subject to different minimum funding requirements than other defined benefit pension 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 pension plans. The administrator of an NCP is also required to establish a funding policy and a governance policy before the plan is filed for registration. Further, because an NCP meets the Canadian Institute of Actuaries' (CIA) definition of a target pension arrangement,[2] requirements for the calculation of pension benefit credits (i.e., commuted values) also differ for these plans.

The purpose of this Guide is to:

- set out the Office of the Superintendent of Financial Institutions' (OSFI) expectations for managing the funding limitations of NCPs,
- highlight differences in requirements with respect to funding and determination of pension benefit credits for NCPs as compared to other defined benefit pension plans, and
- describe the enhanced disclosure that administrators of NCPs must provide to members and former members and their spouses or common-law partners and to survivors entitled to benefits under the plan.

If there is a discrepancy between this Guide and the PBSA or PBSR, the legislation prevails.

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 pension plan members if the majority of plan members request it. Similarly, if the pension 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 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

The administrator is required to administer the pension plan in accordance with the PBSA, the 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 for an NCP these required contributions are limited to those set out in an agreement, statute, or regulation, the plan is still required to meet the prescribed tests and standards for solvency as set out in section 9 of the PBSR, which differ for NCPs compared to other defined benefit pension plans (see Funding Requirements and Actuarial Reports below).

An NCP may face challenges 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, the 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 administrator of an NCP 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 Pension Plans sets out the factors and specific requirements that OSFI considers with respect to an application seeking the Superintendent's authorization to reduce accrued pension benefits.

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

The administrator should also strive to have the information necessary to perform their duty to monitor the risks facing the pension plan, assess how these risks may affect the plan, and implement strategies to manage these risks. OSFI expects administrators to follow the Canadian Association of Pension Supervisory Authorities (CAPSA) Guideline No. 10: Guideline for Risk Management for Plan Administrators as part of their efforts to meet their fiduciary duties in the administration of their pension plans and their pension funds. As described in that guideline, one way for administrators to identify and manage the risks in their pension 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.

Funding and Governance Policies

The PBSA requires the administrator of an NCP to establish a funding policy and a governance policy before the plan is filed for registration.[3][4]

The funding policy must set out the following:[5]

- the funding objectives for the pension plan as they relate to benefit security, benefit levels, and contribution levels;
- the material risks that affect the plan's funding requirements, the tolerance for those risks, and the internal controls to manage them;
- the objectives and expectations for reducing pension benefits in the event that a reduction is required; and
- the procedures for the use of surplus.

The governance policy must set out the following:[6]

- the governance structures and processes for overseeing, managing, and administering the pension plan;
- what those structures and processes are intended to achieve;
- the roles, responsibilities, and accountabilities of all governance participants who have authority to make decisions in respect of those structures and processes;
- the performance measures and the process established for evaluating, against those measures, the performance of each governance participant;
- the procedures established to ensure that the administrator and, as necessary, other governance participants have access to relevant, timely, and accurate information in order to meet their fiduciary and other responsibilities;
- the code of conduct and the procedure established to disclose and address conflicts of interest of the administrator;
- the ongoing process established to identify the educational requirements and skills necessary for the administrator to perform their duties in relation to the plan;
- the material risks that apply to the plan and the internal controls established to manage those risks; and

- the process established for the resolution of disputes involving members or other persons who are entitled to benefits under the plan.

In the process of establishing the policies described above, OSFI encourages administrators to consult CAPSA Guideline No. 4: Pension Plan Governance and CAPSA Guideline No. 7: Pension Plan Funding Policy.

Funding Requirements and Actuarial Reports

The minimum funding requirements differ for NCPs from those of other defined benefit pension plans.

NCPs are subject to enhanced going concern funding requirements, based on a normal cost and liabilities that include a margin for adverse deviations. The margin included in the normal cost is based on a minimum provision of 5%, while the margin included in the liabilities is determined by the administrator.[7]

Minimum funding requirements for NCPs do not include solvency special payments to fund a solvency deficiency. Although NCPs are exempt from solvency funding,[8] the solvency ratio for an NCP must be calculated for any actuarial report for the plan, as administrators of NCPs are required to disclose their solvency ratio and describe the implications to plan members, former members, and other beneficiaries. The solvency ratio is also necessary for determining the date of the next required actuarial report[9] and for calculations relating to eligibility of an NCP for a contribution holiday.[10]

As required by subsection 11(4) of the PBSR, if the actuarial report that the administrator of an NCP files with their application for registration indicates that the funding of the plan fails to meet the minimum funding standards 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 (Actuarial Guide), 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 the Actuarial Guide, which contains reporting requirements specific to NCPs.

Amendments Improving Benefits

NCPs are subject to a going concern funding threshold, which prohibits amendments improving benefits where the going concern ratio would be below 1.05 after the amendment.[11]

Calculation of Pension Benefit Credits

The PBSR requires that pension benefit credits be determined in accordance with the CIA Standards of Practice (CIA Standards).[12] An NCP meets the CIA definition of a target pension arrangement.[13] This is because the administrator of an NCP may, subject to the Superintendent's authorization and despite the terms of the plan, make an amendment that has the effect of reducing pension benefits or pension benefit credits. The CIA Standards include specific recommendations for target pension arrangements with respect to the calculation of commuted values,[14] including the use of a pension plan's going concern funding assumptions from the most recently filed actuarial report, with certain adjustments, as applicable. Among other details, the CIA Standards provide that, if required by the terms of the plan or by applicable legislation, the actuary may adjust the assumptions used to calculate the commuted value, or the actuarial value of the benefit entitlement:

- to include margins for adverse deviations;
- to include non-investment expenses; and
- to reflect the funded status of the plan or to reflect the member's share of the plan assets.

These adjustments are not required by the PBSA or the PBSR, but must be made if required by the terms of the plan.

For more information on the calculation of pension benefit credits, please refer to OSFI's Frequently Asked Questions on the Revised standards of practice for calculating commuted values.

Enhanced Disclosure Requirements

The PBSA and PBSR require the disclosure of enhanced information related to the nature of the benefits provided by NCPs to members, former members, and other beneficiaries. They require certain documents to include an

explanation that:

- pension benefits or pension benefit credits may need to be reduced if negotiated contributions are insufficient to meet the funding requirements under the PBSA, and
- the administrator may amend the pension plan to reduce, subject to the Superintendent's authorization, pension benefits or pension benefit credits.

The following documents must include the enhanced disclosure described above:

- written explanations of the provisions of the plan (e.g., the plan booklet) provided to each employee eligible to join the plan and their spouse or common-law partner[15]
- annual statements provided to each plan member and their spouse or common-law partner[16]
- annual statements provided to each former member and their spouse or common-law partner and to each survivor entitled to benefits under the plan[17]

In addition, although NCPs are exempt from solvency funding, administrators of NCPs are required to disclose the solvency ratio and, where the solvency ratio is less than one, the impact on pension benefits if the plan terminated with that solvency ratio, in the annual statements described above.[18]

Footnotes

1 Subsection 2(1) of the PBSA defines both negotiated contribution plan and multi-employer pension plan.

2 Paragraph 3570.01 of the CIA Standards of Practice.

3 Subsection 10(7) of the PBSA.

4 For a pension plan that was already registered, or had already filed for registration, on May 24, 2024, subsection 10(10) of the PBSA requires that the funding and governance policies be established within one year after this date.

5 Section 10.992 of the PBSR.

6 Section 10.993 of the PBSR.

7 Subsection 2(1) of the PBSR defines both going concern liabilities and normal cost for negotiated contribution plans.

8 Paragraphs 9(4)(c) and9(4)(d) of the PBSR.

9 Section 2 of the Directives of the Superintendent pursuant to the *Pension Benefits Standards Act, 1985*

10 Subsection 9(5) of the PBSR.

11 Subsection 9.3(4) of the PBSR.

12 Subsection 18(1) of the PBSR.

13 Paragraph 3570.01 of the CIA Standards defines a target pension arrangement as “a pension plan for which applicable legislation contemplates the reduction to the accrued pensions of plan members and beneficiaries while the pension plan is ongoing as one of the available options for maintaining the funded status of the pension plan, and where the reduction in accrued pensions is not necessarily caused by the financial distress of the plan sponsor or sponsors”.

14 Section 3570 of the CIA Standards.

15 Paragraph 28(1)(a) of the PBSA and section 22.1 of the PBSR.

16 Paragraph 28(1)(b) of the PBSA and paragraph 23(1)(s) of the PBSR.

17 Paragraph 28(1)(b.1) of the PBSA and paragraph 23(1.1)(h) of the PBSR.

18 Paragraphs 23(1)(q) and 23(1.1)(f) of the PBSR.