Guide

Title	Termination of a Defined Contribution Pension Plan
Publication type	Guide
Topics	Terminations
Plans	Defined contribution plans
Year	2021

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- Final Instruction Guide – Termination of a Defined Contribution Pension Plan (letter)
- Standardized Termination Report for Defined Contribution Pension Plans (PDF, 572 KB)

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 pension 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 March 2016, and includes updates to clarify OSFI's expectations and to reflect amendments made to the Assessment of Pension Plans Regulations that came into effect on April 1, 2019.

The PBSA and the Pension Benefits Standards Regulations, 1985 (PBSR) are the authoritative source for requirements applicable to plans that are terminating or that have terminated. If there is a discrepancy between this Instruction Guide and the legislation, the legislation prevails. OSFI may require documentation not mentioned in this Instruction Guide.

1. Reporting and Filing Requirements on Plan Termination

1.1 Notice to OSFI

An administrator or employer who intends to terminate a pension plan must notify the Superintendent in writing at least 60 days and not more than 180 days before the termination date (i.e. the effective date of the plan's termination)1. Not fulfiling this requirement may affect the proposed termination date and OSFI may require a delayed effective date where the requirement has not been met.

Only the Superintendent may declare part of a pension plan terminated[2]. However, where a pension plan registered with OSFI is multijurisdictional (i.e., includes pension benefits subject to provincial pension legislation), it may be possible for an administrator to partially terminate the plan for provincial members only. In such a case, the administrator may need to seek the Superintendent's approval of a partial termination report required under applicable provincial legislation. Where OSFI is supervising the plan on behalf of a province, the Superintendent could grant the approval of the partial termination report on behalf of that provincial regulator.

1.2 Termination Report

The administrator of a plan that has been terminated in whole or in part must file a termination report with the Superintendent[3]. The termination report in respect of a defined contribution plan may be prepared by an actuary, accountant or other similar type of professional advisor[4].

OSFI has developed a Standardized Termination Report for Defined Contribution Pension Plans (PDF) (Termination Report) that is expected to be used for defined contribution plan terminations[5].

The Termination Report should include the information listed below on individual members or former members (includes retirees receiving a variable benefit from the plan) so that OSFI can verify that the termination arrangements comply with the PBSA and PBSR. In order to limit the collection of unnecessary personal information, administrators must not include specific information that could identify a member or former member (e.g. their name, date of birth or social insurance number).

- Member or former member identification number
- Exact age in years and months, or year and month of birth
- Credited service under the plan
- Member account values (Showing separately employee contributions, any additional voluntary contributions, any amounts transferred in from another plan and employer contributions. All amounts should include investment income.)
- Whether the benefits are subject to provincial pension legislation[6]

OSFI may request additional information necessary to verify the benefits payable.

1.3 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:

- The Termination Report
- A plan amendment and/or a board resolution or, in the absence of these documents, a letter signed by the employer or administrator indicating that the plan is terminated
- Samples of the initial notification of plan termination and the detailed termination statement

2. Pension Benefits Payable Prior to the Approval of the Termination Report

The PBSA provides that assets of a pension plan may not be applied toward the provision of any benefits until the Superintendent has approved the termination report. However, the administrator of the plan may nevertheless pay pension benefits, as they fall due, to the person entitled[7].

In the context of a defined contribution plan, OSFI considers the following to be the equivalent of paying pension benefits as they fall due:

- Paying variable benefit payments from the plan
- Purchasing an immediate annuity for a retiring member or survivor
- Transferring a pension benefit credit to a life income fund or a restricted life income fund for a retiring member or survivor
- Paying a benefit by reason of disability[8] as provided for in paragraph 18(2)(b) of the PBSA

Otherwise, transferring a pension benefit credit – even one that may be payable to a member in a lump sum because the value is small[9], – is not considered paying a pension benefit as it falls due. Therefore, distributions of pension benefit credits, other than those listed above, cannot be made until the termination report has been approved by the Superintendent.

3. Required Payments on Plan Termination

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 members' wages but not yet remitted to the pension fund and all outstanding and accrued employer contributions[10].

4. Information to Members and Former Members

4.1 Initial Notification of Plan Termination

If the whole of a plan is terminated, the administrator must, within 30 days after the termination date, inform members, former members (including any retirees receiving a variable benefit from the fund) and their spouses or common-law partners in writing that the plan has terminated[11]. Any survivor receiving a variable benefit should also receive a notification statement.

This written statement must be given in Form 2.1 of Schedule IV of the PBSR[12]. 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.

4.2 Detailed Termination Statements

If the whole of a plan is terminated, the administrator must, within 120 days after the termination date, inform members, former members (includes retirees receiving a variable benefit from the fund) and their spouses or common-law partners in writing of their pension benefits and other benefits payable under the plan[13]. Any survivor receiving a variable benefit from the fund should also receive a detailed termination statement.

This written statement must be given in Form 2.2 of Schedule IV of the PBSR[14]. This form includes information similar to the information that must be provided to a member that has ceased membership in other circumstances, including information on the portability options available to them.

If, in the course of the termination report approval process, OSFI requires a change to a benefit entitlement or identifies missing information, OSFI will expect the administrator to send a revised detailed termination statement.

4.3 Member Portability Options

Members and former members with deferred benefits in the plan on the termination date are, as a default, entitled to receive their pension benefits by way of an annuity purchased by the administrator.

Members not yet eligible to retire at the termination date are also entitled to the portability options described in subsection 26(1) of the PBSA.

Members eligible to retire at the termination date may also be entitled to portability options, if provided for under the terms of the plan. The administrator could also choose to offer portability options on plan termination to members eligible to retire (even if not provided for by the terms of the plan) or to former members with deferred benefits in the plan. In such cases, the administrator should document this decision (e.g. in Board minutes).

The portability options described in section 26 of the PBSA are to

- transfer the pension benefit credit to another pension plan (including a pooled registered pension plan and a pension plan under provincial jurisdiction)15 if that other plan permits;
- transfer the pension benefit credit to a locked-in registered retirement savings plan (locked-in RRSP), a life income fund, or a restricted life income fund of the type prescribed in the PBSR16; or
- use the pension benefit credit to purchase an immediate or deferred life annuity.

Members must be given at least 60 days from the date they receive their detailed termination statement to notify the administrator of their choice of portability option. If a member does not respond and the benefit is locked-in17, the administrator is required to purchase a deferred or an immediate annuity for that member. The termination statement should clearly note this default annuity purchase where a member does not notify the administrator of their choice.

If the benefit is not locked-in18, the adminstrator may pay the benefit as a lump sum or may offer the member the option to transfer the pension benefit credit to a non-locked-in RRSP. If this option is offered, the termination

statement should clearly note how the benefit will be paid if the member does not respond.

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

If a member is eligible to retire from a pension plan and they wish to transfer their pension benefit credit to

- a locked-in RRSP;
- a life income fund; or
- a restricted life income fund,

The transfer may only be made if that member's spouse or common-law partner notifies the administrator of their consent to the transfer[19]. This notification must be provided to the administrator in Form 3.1 of Schedule II of the PBSR[20].

5. Locating Members, Former Members or Other Persons

When an administrator is unable to contact plan members, former members, and any other persons entitled to benefits under the plan through their last known addresss, they are expected to make appropriate efforts to locate them. Please refer to the Canadian Association of Pension Supervisory Authorities' Guideline No.9 – Searching for Un-locatable Members of a Pension Plan for best practices and options with respect to searching for un-locateable individuals.

If an administrator has made appropriate efforts, but is unable to locate a member, former member or other person entitled to locked-in benefits under the plan, the administrator may consider the following options[21]:

- Purchase a deferred annuity for the former member or beneficiary
- If the purchase of a deferred annuity is not an available option (e.g. if the amount is very small and the cost would be disproportionate compared to the benefit or it would be difficult to find an insurance company willing to provide the annuity), transfer the pension benefit credit to an individual locked-in RRSP, if such a transfer is acceptable to the financial institution and subject to any applicable *Income Tax Act* rules
- 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

If the benefit is not locked-in[22], the administrator may pay the benefit as a lump sum or transfer the benefit to a non-locked-in RRSP subject to any applicable *Income Tax Act* rules.

Additional options may be available for persons whose benefits are subject to provincial pension legislation.

6. Notification of Approval and Distribution of Benefits

After reviewing the termination report and all relevant information, OSFI will notify the administrator if the Superintendent has approved the termination report.

Upon receiving the Superintendent's approval, OSFI expects the administrator to distribute the benefits in accordance with the approved termination report without undue delay. If the administrator is unable to distribute the benefits within a reasonable period of time, the administrator is expected to inform OSFI of the reason for the delay and the anticipated distribution date. OSFI may require that members, former members and other persons entitled to benefits under the plan be notified of the delay and the reason for it.

7. Required Filings and Assessments Following Plan Termination

An administrator must continue to file Annual Information Returns (OSFI 49), Certified Financial Statements (OSFI 60) and Auditor's Reports (if required) as long as assets remain in the pension fund[23]. These documents are to be completed as at the plan year-end and submitted through RRS.

The administrator must continue to pay assessments for five plan years after the plan year in which the plan terminated or until all assets of the fund have been distributed, whichever is earlier[24]. OSFI will send an invoice to the administrator each year after determining the assessment due.

The administrator will also be expected to notify OSFI in writing when all assets have been distributed and file a year-to-date financial statement from the fund custodian.

1 Subsection 29(5) of the PBSA.

2 Subsection 29(4.1) of the PBSA.

3 Subsection 29(9) of the PBSA.

4 Section 24 of the PBSR.

5 Refer to section 5 of this Instruction Guide for OSFI's expectations for the content of the termination report.

6 If the benefits of any members, former members or any other persons entitled to benefits under the plan are subject to the pension legislation of Newfoundland and Labrador, a termination report covering these benefits would have to be filed with the provincial pension regulator. This is because there is no reciprocal agreement between the federal government and Newfoundland and Labrador.

7 Subsection 29(10) of the PBSA.

8 Disability is defined in paragraph 2(2)(a) of the PBSR as a mental or physical condition that a physician has certified as being likely to shorten considerably the life expectancy of the member.

9 As described in paragraph 18(2)(c) of the PBSA.

10 Subsection 29(6) of the PBSA.

11 Paragraph 28(2.1)(a) of the PBSA.

12 Subsection 23.4(1) of the PBSR.

13 Paragraph 28(2.1)(b) of the PBSA.

14 Subsection 23.4(2) of the PBSR.

15 Subsection 26(5) of the PBSA.

16 Consent from the spouse or common-law partner is required if the member is eligible to retire. Refer to section 4.4 of this Instruction Guide for further details.

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

18 Either prior to having completed two years of plan membership or because the pension benefit credit is less than 20% of the Year's Maximum Pensionable Earnings (YMPE) (paragraph 18(2)(c) of the PBSA).

19 Subsection 26(2.1) of the PBSA.

20 Subsection 18(3.1) of the PBSR.

21 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 yet been designated.

22 Either prior to having completed two years of plan membership or because the pension benefit credit is less than 20% of the YMPE (paragraph 18(2)(c) of the PBSA).

23 Section 12 of the PBSA.

24 Subsection 2(3) of the Assessment of Pension Plans Regulations.