Office of the Superintendent of Financial Institutions Canada
Bureau du surintendant des institutions financières Canada

Instruction Guide

Subject: **Authorization of Amendments Reducing Benefits in Defined Benefit Pension Plans**

Date: **April 2006**

Introduction

This Instruction Guide is intended for plan administrators[1] of defined benefit pension plans registered under the *Pension Benefits Standards Act, 1985* (PBSA). The guide sets out the general principles and requirements the Office of the Superintendent of Financial Institutions (OSFI) will generally expect to be satisfied with respect to an application for authorization, under paragraph 10.1(2)(a) of the PBSA, of an amendment that reduces 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 or other person was entitled before the date of the amendment. Such an amendment will be referred to as a "Reducing Amendment" in this Instruction Guide.

Pension plan sponsors are expected to maintain accrued benefits promised by the plan text. A plan administrator usually makes a Reducing Amendment in a defined benefit pension plan when the pension plan is unable, or will be unable, to meet the minimum funding requirements of the PBSA. An amendment reducing benefits accrued after the effective date of the amendment does not require the authorization of the Superintendent.

The principles and requirements set out in this guide are intended to ensure the protection of members', former members', retirees', spouses' and other beneficiaries' rights and interests under the PBSA and to ensure the minimum funding requirements for the ongoing pension plan will be met.

[1] For purposes of this Instruction Guide, plan administrator includes any party purporting to have the authority to make an amendment to the pension plan.

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I. Legislative Authority

Pension plan administrators must file, with OSFI, amendments to any pension plan document in accordance with subsection 10.1(1) of the PBSA. Paragraph 10.1(2)(a) provides that certain amendments are void unless authorized by the Superintendent. This paragraph applies to all pension plans subject to the PBSA, including negotiated contribution defined benefit plans (NCDB) plans.

> *10.1 (1) The administrator of a pension plan shall file with the Superintendent, within sixty days after making an amendment to any document referred to in subsection 10(1), a copy of the amendment and a declaration (in the form, if any, specified by the Superintendent) signed by the administrator that the plan as amended complies with this Act and the regulations.*
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> *(2) Unless the Superintendent authorizes the amendment, an amendment is void 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.*

II. General Principles

When reviewing requests from pension plan administrators for authorization of a Reducing Amendment, OSFI will consider the particular circumstances of each case. OSFI expects amendments and their implementation process to be consistent with the following general principles:

1. Pension plan sponsors are expected to maintain accrued benefits promised by the plan text; however, OSFI will consider the purpose of the Reducing Amendment.

2. Plan administrators or sponsors are expected to consider other options prior to adopting the Reducing Amendment, for instance, increasing contribution levels or reducing future benefit accruals. Any claim of an organization’s inability to meet increased contributions levels should be supported.

3. Plan administrators must determine whether or not an amendment requires authorization under paragraph 10.1(2)(a) and indicate this in its answer to question 5 of the *Pension Plan Amendment Information Form* that accompanies the *Declaration of Compliance* submitted to OSFI with any pension plan amendment.

4. The amendment power in the pension plan text and any supporting documents must allow for a Reducing Amendment[2] and the amendment must have been instituted in accordance with those documents. This can be determined in different ways, including a review of the wording of the plan documents or agreement to the Reducing Amendment by all relevant parties.

5. A Reducing Amendment cannot remove a benefit that is required by the PBSA to be provided to a member, former member or beneficiary.

6. The interests of the various affected groups often differ in a benefit reduction situation, for example, retiree or deferred vested interests versus active member interests. Therefore, the pension plan administrator must ensure that an appropriate process is in place for ensuring representation of all the affected groups.

III. What is an Accrued Pension Benefit (Includes Basic and Ancillary Benefits)

A basic pension benefit accruing to a member is a benefit established in the plan text to which a member or other beneficiary is entitled or will become entitled upon cessation of membership from the plan. The process of accruing the basic pension benefit is gradual and a member can begin to accrue a basic benefit when they join the plan.

The basic pension benefit accruing to a member can be based on, for example:

- the benefit formula
- credited service
- salary
- pensionable age
- indexation or
- a bridge benefit that is unconditionally provided.

An ancillary benefit is any benefit over and above the basic pension benefit that requires certain conditions be fulfilled such as years of service, employer consent or age before it can begin to accrue[3].

Examples of ancillary benefits include:

- bridge benefits subject to certain conditions
- disability benefits
- death benefits in excess of those required by legislation
- supplementary benefits payable for a temporary period of time
- enriched early retirement options over the minimum required by legislation.

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[2] The administrator cannot reduce a benefit already received by the retiree or beneficiary or due to be paid before the effective date of the amendment.

[3] The plan may not require retirement from the plan or attainment of pensionable age as defined in the PBSA as an eligibility condition.

The following questions may help the plan administrator determine whether an amendment requires authorization under subsection 10.1(2) of the PBSA:

- Does the amendment reduce any member's or former member's accrued pension or pension in pay or
- Does the amendment reduce the commuted value of a member's pension or
- Does the amendment remove an ancillary benefit to which the member is eligible as of the date of the amendment and based on the service already credited for eligible plan members?

If so, it is likely that the amendment is a Reducing Amendment.

IV. Notice to Members and Beneficiaries

A plan administrator must individually inform affected members and their spouses (whether or not there is a bargaining agent), former members, retirees or other beneficiaries of the impact of a Reducing Amendment and of their right to make representations to the Superintendent regarding the amendment.

Plan administrators are encouraged to submit a draft notice to OSFI for review to ensure that the notice meets OSFI's requirements before it is provided to those affected by the amendment. The final version of the notice must be submitted with the application for authorization of the Reducing Amendment.

Prior to issuing a decision, OSFI will require written confirmation that the notice has been sent to everyone affected by the Reducing Amendment. Any objections received by the plan 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 pension plan administrator hold an information session in conjunction with the notice. A summary of the results of the meeting (including attendance) should be sent to OSFI along with a copy of any presentation material.

The notice to members and beneficiaries must include as a minimum:

- A description of the Reducing Amendment and justification of the action being taken by the plan administrator, including how the reduction will be implemented, the use of future surplus and the other options that were considered prior to the adoption of the Reducing Amendment.
- A clear presentation of the pre- and post-amendment financial position of the pension plan.
- Information on any priority provisions in the pension plan text, including how these provisions affect the different affected groups in the event of a plan termination.

- If the pension plan is an NCDB plan, a statement indicating the possibility of additional Reducing Amendments should the financial position of the pension plan deteriorate further in the future.
- A statement that the plan administrator will make available all documents filed with OSFI in accordance with Section V of this Instruction Guide.
- Information on how to contact OSFI in order that members, former members, retirees, spouses and other beneficiaries may make written representations to the Superintendent within 30 days of the date of the notice.

V. Information Requirements for Amendment Authorization Submissions

OSFI requires the following information be prepared and filed when a request for authorization of an amendment is made under paragraph 10.1 (2)(a) of the PBSA.

1. A written request to the Superintendent for authorization of the Reducing Amendment. This request must include:
    - A copy of the Reducing Amendment, the *Declaration of Compliance (OSFI 522),* the *Addendum to Declaration of Compliance - Pension Plan Amendment Information Form (OSFI 521)* and any Board Resolution authorizing the amendment.
    - Evidence that the terms of the pension plan, trust agreement, or other documentation supporting the plan, permit the plan administrator to make the Reducing Amendment. Please specify whether the plan provides priority benefits on plan termination.
    - Details of all of the other options considered by the plan administrator to address the plan's financial situation, including the likely impact of each option on the plan's funding requirements and solvency position.
2. An action plan from the pension plan administrator. The action plan should include:
    - The plan administrator's expectations of the long term viability of the plan following the benefit reduction.
    - The proposed use of future surplus in the pension plan with respect to restoring benefits that have been reduced.
    - Projections for a minimum of three years of funding requirements and negotiated contributions, if applicable, under reasonable scenarios, considering the plan actuary's advice.

If the Superintendent authorizes a Reducing Amendment, OSFI may require that annual valuation reports be filed for a period of at least two years, regardless of the pension plan's solvency ratio. The pension plan administrator is responsible for closely monitoring the plan's solvency to anticipate and prepare for future adverse experience.

3. An actuarial valuation report that:

    - Clearly states the reduction is subject to the authorization of the Superintendent.
    - Provides the position and funding requirements of the pension plan before and after the reduction.
    - Demonstrates the ongoing ability of the plan to meet the minimum funding requirements of the PBSA.[4]
    - Indicates if any affected members or former members are subject to provincial jurisdiction.

    Regardless of the effective date of the Reducing Amendment, unless notified by OSFI, the pension plan administrator must continue to administer the plan and contributions must continue to be remitted based on the plan provisions before the Reducing Amendment until such time as the Superintendent's authorization is given.

4. A description of the process followed to provide information to affected members, former members, retirees, spouses and other beneficiaries, including a copy of the notice informing them of the Reducing Amendment and of their right to make representations to the Superintendent. See Section IV – Notice to Members.

VI. Authorization

After reviewing all relevant information, OSFI will notify the pension plan administrator whether authorization is given for the Reducing Amendment under paragraph 10.1(2)(a) of the PBSA. The plan administrator must then notify affected members and beneficiaries of the decision.

[4] All portability transfers from the fund must be in accordance with Section 9 of the *Directives of the Superintendent Pursuant to the Pension Benefits Standards Act, 1985*. OSFI may require that the portability provisions of Section 26 of the PBSA be suspended for the pension plan while the Reducing Amendment is being reviewed by OSFI or impose other transfer conditions.