Guidance

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The Office of the Superintendent of Financial Institutions (OSFI) has issued this policy advisory to provide further detail on OSFI's expectations with respect to consent benefits. This advisory updates past policies on this topic.

The Nature of Consent Benefits

Under the *Pension Benefits Standards Act, 1985* (PBSA), pensionable age is the earliest age at which an unreduced pension benefit is payable to a member under the terms of the pension plan without the consent of the administrator. Members and former members are eligible to receive an immediate pension benefit commencing ten years before pensionable age.

Some pension plans offer benefits that are subject to the administrator's consent, such as unreduced early retirement benefits. In certain cases, however, OSFI has found that, despite provisions in the plan text that state that a benefit is subject to consent, in practice these benefits may not be genuinely subject to consent. In order to be considered a consent benefit, an administrator, in its fiduciary role, must have the discretion to grant or deny the benefit. Where an administrator does not have such discretion, the benefit is not a consent benefit but rather a promised pension benefit that must be funded.

In determining whether an administrator truly has discretion to grant or deny a benefit, documents or agreements outside the terms of the plan may be relevant and must be considered along with the plan terms. In addition, where any such documents or agreements require that a pension benefit be granted, or otherwise promise a pension benefit payable from the pension fund, they should be appropriately reflected in the terms of the plan. Administrators have a responsibility to ensure all promised benefits that are to be paid from the pension fund are clearly identified and described in the plan text.

Where, in such circumstances, outside documents or agreements have not been reflected in the plan text, OSFI will consider further action. This may include directing that an administrator administer the terms of the plan without reference to those documents or agreements, or requiring that all promised benefits that are to be paid from the pension fund (even if not reflected in the plan text) be funded.

Another important consideration in determining whether a benefit is subject to consent is how eligibility to a benefit has been communicated to members as well as past practice in granting consent. OSFI expects member communication to clearly indicate that consent benefits are subject to the administrator's discretion and may be denied.

Exercise of the Administrator's Fiduciary Responsibility

An administrator has a fiduciary responsibility under the *Pension Benefits Standards Act, 1985* (PBSA) to act in the best interest of all plan beneficiaries and administer the pension plan in accordance with the plan text and other plan documents. In administering the plan and fund, the administrator has a high standard of care. Where an administrator has discretion to grant or deny a benefit, it is expected to exercise that discretion in a manner that is consistent with its statutory and fiduciary responsibilities.

OSFI expects pension plans to have documented procedures that are followed in administering consent benefits. These documented procedures should clearly:

- demonstrate that the administrator has discretion to grant or deny consent;
- describe the administrator's considerations when exercising its discretion; and
- demonstrate that the administrator's considerations are consistent with its fiduciary role.

Impact on the Actuarial Valuation of the Plan

The Instruction Guide for the Preparation of Actuarial Reports for Defined Benefit Pension Plans outlines OSFI's expectations with respect to actuarial assumptions used for consent benefits. In order to make reasonable assumptions, a plan's actuary should consider the administrator's policy and practice regarding consent benefits. To that effect, the actuary should obtain confirmation from the administrator of how consent benefits are handled on a day-to-day basis as well as how they have been communicated to members.

OSFI allows the exclusion from solvency liabilities of benefits genuinely subject to consent. Where a benefit is excluded from the solvency liabilities because it is subject to consent, the actuary should indicate this in the actuarial report.

If, after considering all the factors described in this Advisory, it is determined that the administrator does not have true discretion and these are promised benefits payable from the pension fund then these benefits should be included in the solvency liabilities. The administrator is responsible for ensuring that actuarial valuations reflect the true liabilities of the plan and that such liabilities are funded in accordance with the PBSA.