



Canadian Union of Public Employees

Submission to the Office of the Superintendent of Financial Institutions

2019

CUPE

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This submission is made on behalf of the Canadian Union of Public Employees (CUPE). We are Canada's largest union, with over 680,000 members across the country. CUPE represents workers in health care, emergency services, education, early learning and child care, municipalities, social services, libraries, utilities, transportation, airlines and more. Our union represents thousands of pension plan members in federally regulated pension plans.

CUPE has very serious concerns with the "Proposed changes to Instruction Guide – Authorization of Amendments Reducing Benefits in Defined Benefit Pension Plans" recently issued by the Office of the Superintendent of Financial Institutions (OSFI).

OSFI says that "there are no significant policy changes" in the proposed Instruction Guide.

However, a close review of the proposed changes to the existing Instruction Guide suggest that there are significant policy changes in the proposed Guide. Given the seriousness of CUPE's concerns, **OSFI should either withdraw the proposed revisions, or amend them to address the concerns outlined below.**

In particular, CUPE is concerned that several provisions of the proposed Guide may effectively enable retroactive conversions of Defined Benefit pension plans into Target Benefit pension plans. We note that such changes were introduced and considered in Bill C-27, but not adopted by Canada's duly-elected Parliament.

Our concerns are specifically with the following points:

- The existing Instruction Guide pertains to amendments that **would immediately reduce** accrued pension benefits, while the proposed guide speaks to permitting a plan amendment that "reduces or **could** reduce" [our emphasis] an accrued pension benefit. We note that many retroactive Defined Benefit to Target Benefit conversions (in jurisdictions where they were permitted) were premised on this very idea: benefits under the new plan were not cut immediately, but were converted to benefits that **could** be cut in the future. The ability to potentially reduce accrued benefits is a defining feature of Target Benefit plans.
- The threshold for member consent has been significantly altered. The current Instruction Guide requires "unanimous agreement to the Reducing Amendment by all affected groups." The new threshold no longer requires such unanimous agreement. Instead, it proposes *individual* written consent, while allowing employers to pressure trade unions into reopening past pension promises. This will ultimately divide plan memberships into factions. This proposed consent mechanism mirrors the consent proposal in federal Bill C-27. As we repeatedly pointed out to the government during the debates around C-27, the proposed consent mechanism will lead to labour strife, as employers would be highly motivated to push to offload their pension risks by achieving "consent" through a labour disruption.
- The actuarial reporting requirements have been amended to require actuarial "stress testing." Such actuarial modeling has been a central rationale in legislative efforts to permit existing Defined Benefit promises to be retroactively converted to Target Benefits. Proponents of Target Benefit plans have frequently pointed to this modeling as a reason why plan members should not be concerned about potential benefit reductions under these plans. Plan members are told not to worry since the actuarial models show that there is a very small likelihood of benefit cuts.

- We are unclear how the proposed Instruction Guide would function alongside the current Distressed Plan Workout Scheme, and we note that a reference to the Scheme has been deleted. It is CUPE's understanding that that Scheme allows distressed employers to negotiate different funding arrangements to fund the pension promises they have made. A policy decision to expand employers' ability to reduce pension benefits through the Instruction Guide would seemingly contradict the spirit of the Workout Scheme, which (like the PBSA itself) strives to keep funding obligations (albeit over a potentially longer term) and benefit promises in place.

Any one of these changes should be considered a "significant policy change."

Looking at these changes together, we are extremely concerned that OSFI is attempting to enact a historic re-writing of federal pension law, not democratically through the legislative process, but quietly, through a technical regulatory Instruction Guide. We are deeply worried that an employer could attempt to retroactively convert a Defined Benefit plan to a Target Benefit plan under this new document, if it is adopted.

We have seen OSFI's response to the Canadian Labour Congress on this very point. In that response, OSFI argues that the proposed new language on potential benefit reductions pertained only to differences in indexation calculations. We note that the proposed language is not limited only to indexation provisions, nor have we seen any confirmation from OSFI that a Defined Benefit to Target Benefit conversion could not take place under the new language.

As we described in our letter to the Minister of Finance of May 15, 2017, the federal *Pension Benefits Standards Act (PBSA)* was created and has functioned to **protect the pension promises made to workers and retirees**. This is a non-controversial goal that is deeply supported by the public. When the government tabled Bill C-27, which would have given employers a legal avenue to break such promises, we reminded the government of the *PBSA's* original purpose and the Liberal Party's long history of supporting the basic goals of pension protections. We also reminded government of the explicit promises on this subject that Prime Minister Trudeau made in writing before the 2015 federal election. We argued that the government should only use pension legislation to **protect** the pensions promised to workers and retirees and that it should certainly not use this law to actively undermine these promises to the exclusive benefits of employers.

We are deeply concerned about this OSFI document for the reasons set out above. We are equally troubled about what appears to be an effort to quietly adopt policy changes through a regulatory guidance document – policy changes that were considered, but rejected by our democratically-elected Parliament.

Without a serious reset to this process and engagement with CUPE and the labour movement, we will be forced to defend our members' interests and to mount a campaign against the government for allowing this to take place.