

# Interpretation



**Effective Date:** [TBD]

**Identifier:** No. PE0301INT

## Proposed guidance on pension plan amendments

### 1. Purpose

**1.1** The purpose of this Guidance is to inform stakeholders of how FSRA interprets and administers certain *Pension Benefits Act* (PBA) provisions applicable to pension plan amendments.

**1.2** FSRA is a principles-based regulator, focused on outcomes consistent with its statutory objects. FSRA's objects under the *Financial Services Authority of Ontario Act, 2016*, are to:

- promote good administration of pension plans
- protect and safeguard the pension benefits and rights of pension plan beneficiaries

**1.3** This Guidance draws the following conclusions:

1. Although section 13(2) of the PBA allows an amendment to be effective as of a date before the amendment is registered, this does not grant an unlimited ability to “retroactively” amend a pension plan.

2. Amendments to indexation provisions that replace a variable indexation formula with a fixed rate of indexation with respect to benefits accrued prior to the effective date of the amendment will be considered void under section 14 of the PBA (unless an exception prescribed by section 14 applies<sup>1</sup>).
3. An “adverse” amendment notice must be issued by an administrator under section 26(1) of the PBA in circumstances where an amendment to the pension plan would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund. This notice requirement can be dispensed with only if written approval is obtained from FSRA.

## 2. Rationale and background

**2.1** When applying to register a plan amendment, plan administrators must certify that the amendment complies with the PBA and its regulations.<sup>2</sup> Although filed amendments are subject to review by FSRA, registration is not an approval and should not be taken as a confirmation by FSRA that the amendment is compliant or that any PBA requirements relating to the amendment (e.g., notice) have been met.

**2.2** Section 18 of the PBA provides that the registration of non-compliant amendments can be revoked. The onus is on employers and plan administrators to ensure compliance with the PBA. Registration does not relieve an administrator of the duty to comply with the requirements of the PBA. Plan administrators should therefore be familiar with relevant PBA requirements and seek appropriate advice, if necessary, before filing an amendment with FSRA.

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<sup>1</sup> Sections 14(2)-(7)

<sup>2</sup> See section 12(2) of the *Pension Benefits Act*.

## 3. Interpretation

### 3.1 Effective Date of Amendments

**3.1.1** These comments apply to both defined benefit and defined contribution pension plans.

**3.1.2** Section 13(2) of the PBA permits an amendment to be effective before the date on which the amendment is registered. Section 14 of the PBA sets out an express limit on such authority by prescribing that an amendment purporting to reduce the amount or commuted value of previously accrued pension benefits is void.

**3.1.3** In some cases, plan administrators may seek to register amendments which, if not void, would unfavourably impact members and beneficiaries as of a date prior to the date the amendment is filed. Such amendments may include increases in member contributions, decreases in employer contributions, and changes in contribution formulas. For example, amendments have been filed with FSRA that purport to:

- implement a change that had been announced (or agreed to by a collective bargaining agent) and implemented months or years earlier, even though the filed plan terms continued to reflect the more favourable provisions
- reduce employer (and, if applicable, employee) contributions in defined contribution plans months after the reductions were implemented by the employer and administrator
- reduce benefits or switch from defined benefit to defined contribution accruals in collectively bargained plans months or years after the changes were implemented

**3.1.4** In such cases, the pension plan was not being administered in accordance with the requirements of section 19(3) the PBA which requires administration to be in accordance with filed documents.

**3.1.5** Section 13(2) of the PBA does not permit an administrator to cure any prior non-compliance with the existing plan terms or the PBA by filing a “retroactive” amendment. Section 19 of the PBA requires an administrator to ensure that the pension plan and pension fund are administered in accordance with the PBA, regulations, FSRA rules and filed documents. An administrator cannot be absolved of that responsibility by a purported “retroactive” amendment. In addition, depending on the specific facts, FSRA may take issue with an amendment that purports to “retroactively” impose unfavourable consequences on plan members and beneficiaries.

### **3.2 Replacing a Variable Indexation Formula with a Fixed Indexation Rate (for Accrued Benefits)**

**3.2.1** Section 14 of the PBA provides that an amendment is void if it purports to reduce the amount or value of certain benefits already accrued under the pension plan.

**3.2.2** FSRA has received applications for registration of amendments that purport to replace a variable indexation formula with respect to benefits that have already been accrued under the plan (e.g., based on changes in the Consumer Price Index or fund rate of return, etc.) with a fixed indexation rate. These amendments are generally considered by FSRA to be void under section 14 of the PBA as they have the potential to reduce the amount or commuted value of accrued pension benefits. This is the case whether or not the fixed indexation rate currently exceeds, or is thought likely to exceed in the future, the rate determined by the variable formula.

**3.2.3** It may be possible for an indexation formula to be amended without violating section 14(1) of the PBA. For example, if the variable rate formula is maintained as a floor to a fixed rate (i.e., providing the greater of), FSRA would not interpret such an amendment to be void.

**3.2.4** This position is subject to the exceptions set out in section 14 of the PBA.

### **3.3 Notice Requirements for Adverse Amendments under Section 26(1)**

**3.3.1** Section 26 of the PBA establishes notice requirements for plan amendments that reduce subsequently accrued pension benefits or that “would otherwise adversely affect the rights or obligations of a member or former member or of any other

person entitled to payment from the pension fund”. Pursuant to section 26(1), FSRA requires administrators to transmit notice to each member, former member or other person entitled to payment from the pension fund who is affected by such amendments.

**3.3.2** Section 26(4) of the PBA gives FSRA discretion to dispense with this notice requirement in certain circumstances. If an administrator believes one or more of the prescribed circumstances applies, it can make a written request to FSRA that it exercise its discretion and not require the section 26(1) notice. Such a request should indicate which of the three circumstances set out in section 26(4) applies. Plan administrators should not assume FSRA has waived or will waive the section 26(1) notice requirement simply because the administrator believes the amendment falls into one of the prescribed circumstances.

**3.3.3** If an administrator files an “adverse” amendment but does not transmit a notice pursuant to section 26(1), or does not obtain a waiver pursuant to section 26(4), and FSRA later determines that the amendment is “adverse”, FSRA may require the administrator to transmit a notice at that time, regardless of whether a certificate of registration has already been issued for the amendment.

**3.3.4** A notice pursuant to section 26(1):

- does not need to contain the word “adverse” but must provide an appropriate description or explanation of the amendment
- must indicate that questions or comments about the amendment can be provided to the administrator or to FSRA
- does not affect the filing of the related amendment i.e., there is no need to hold off on filing the amendment until after the 45 day notice period has expired
- does not remedy an otherwise void or non-compliant amendment or cure past non-compliance with the plan terms as they existed before the amendment.

## 4. Effective date and future review

**4.1** This Guidance became effective on **[date following consultation]** and will be reviewed no later than **[date], 2027**.

## 5. About this guidance

**5.1** This document is consistent with [FSRA's Guidance Framework](#). As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.