

# **Proposed Guidance on Pension Plan Amendments (Identifier No. PE0301INT)**

**Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West, Suite 100  
Toronto, ON M2N 6S6**



**Ontario Federation of Labour Submission  
April 2024**

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April 26, 2024

Andrew Fung  
A/Executive Vice President, Pensions  
Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West, Suite 100  
Toronto, ON M2N 6S6

**Re: Proposed Guidance on Pension Plan Amendments (Identifier No. PE0301INT)**

Dear Andrew Fung:

This is the submission of the Ontario Federation of Labour (“OFL”) regarding FSRA’s Proposed Guidance on Pension Plan Amendments (Identifier No. PE0301INT) (the “Guidance”). The Ontario Federation of Labour (“OFL”) is Canada’s largest labour federation, representing more than 1500 locals, 54 affiliated unions and more than one million union members.

The OFL broadly supports the Guidance. It provides much-needed clarification on the interplay between retroactive plan amendments and the prohibition on the reduction of accrued benefits. The OFL and its affiliates have seen situations where a plan administrator has sought to cure non-compliance with the Pension Benefits Act (“PBA”) or its plan documents through a retroactive amendment. We therefore fully endorse FSRA’s attempts to mitigate this issue through the Guidance. The PBA is minimum standards legislation designed to protect vulnerable plan members, and it is clearly within FSRA’s mandate to prevent the registration of retroactive amendments that bypass the administrative requirements and member protections contained in the PBA.

While the OFL recognizes that different considerations may apply to MEPPs, it regards the Guidance as necessary for the good administration of single employer pension plans (“SEPPs”), and in most instances, JSPPs as well, and we support the interpretation of the relevant provisions of the PBA contained in Appendix A. However, we encourage FSRA to clarify the Guidance in several respects:

**1. Clearly state the general purpose of the Guidance**

We note that an earlier version of the Guidance had a much clearer statement of purpose than the current iteration. Both versions of the Guidance begin with sections headed “Purpose”, but the previous version made clear that the Guidance was intended to advance FSRA’s statutory objects to “promote good administration of pension plans” and “protect and safeguard the pension benefits and rights of pension plan beneficiaries”. Similar language now appears in a section headed “Background”. This should be moved into the “Purpose” section.

We also encourage FSRA to include a clear, succinct statement of the aims of the Guidance and how those aims fit within FSRA’s statutory mandate. In particular, the Guidance should make clear that amendments should be filed promptly, that

amendments are not effective until they are filed, and that plans must be administered in accordance with the documents filed with FSRA. All of this is a matter of good pension plan administration and helps to protect and safeguard pension benefits and the rights of plan members. This should be made clear at the outset of the Guidance.

## **2. Clarify the limited scope of permissible retroactivity**

The Guidance should be clearer that although section 13(2) of the PBA allows amendments to be registered with retroactive effect, this does not permit unlimited retroactivity to a date prior to filing. Similarly, while we strongly support the statement that, “retroactive amendments cannot absolve employers and administrators from previous non-compliance with the PBA”, we encourage FSRA to remove the qualifier “as general proposition”, as it is difficult to see how a retroactive amendment could ever “absolve” an employer or a pension plan administrator of their obligation to comply with the minimum standards contained in the PBA. Section 19(3) of the PBA requires administration and funding of pension plans in accordance with the documents filed with FSRA, this minimum standard is directly relevant to the question of whether an amendment may have retroactive effect to a date before filing and whether its retroactivity would have an adverse effect. References to section 19(3) should be included in the Guidance itself, not just in Appendix A.

To summarize, the Guidance should include a clear statement at the outset that section 13(2) of the PBA does not permit unlimited retroactive amendment and cannot be used to cure noncompliant administration of a pension.

## **3. Clarify that “adverse effect” includes interference with transparency rights**

We strongly support the general content of the section of the Guidance headed “Approach”. This section usefully outlines the principles that administrators should consider when registering an amendment with retroactive effect to a date prior to filing and that FSRA will consider when deciding whether to register the proposed amendment.

However, the OFL and its affiliates strongly emphasize that there is an important interplay between retroactivity and the rights of members, their union representatives, and other pension stakeholders when it comes to transparency in the administration of SEPPs. We welcome the inclusion of transparency as a key principle in FSRA’s approach to retroactive amendments. But, in that regard, we wish to stress that transparency is a crucial consideration in assessing the impact of an amendment. Importantly, the Guidance says that FSRA will ask “Does [the proposed retroactive amendment] negatively impact the rights and benefits of members and plan beneficiaries?” The answer to that question must consider whether an amendment has the effect, through retroactivity, of permitting past administration that was not in accordance with the filed plan documents. Such an amendment may have an adverse effect on the rights of members.

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To state the obvious, pension benefits are an extremely valuable component of compensation for employment. It is essential that members and their bargaining agents have a clear understanding of the rules by which pension benefits are administered. Members, unions, and other stakeholders rely on the filed plan documents to exercise their rights to transparency with respect to plan administration; they must be able to do so with confidence that the filed documents accurately reflect how the plan is being administered.

To state an equally obvious point: If it was permissible, without restriction, to retroactively amend the documents by which pension plans are administered, this would broadly undermine the very regime of filing and registering amendments with FSRA under the PBA. Unfettered retroactive amendment would mean administrators could ignore the documents filed and registered with FSRA and cure non-compliant administration after the fact; in effect, the only rules governing pension plan funding and administration would be the minimum standards in the PBA and there would be no need for documents to be registered with FSRA at all.

In asking whether a proposed amendment “negatively impacts” the rights of members, the right to transparency must be considered. This right is protected by the obligation to file and register plan documents and to administer pension plans in accordance with the documents filed. The right to transparency may be seriously impaired by amendments that are effective on a date long before they are filed with FSRA. This is the case even for amendments that do not increase member contributions, reduce accrued benefits, or have another measurable effect on by members’ financial obligations and entitlements.

We are therefore concerned by the statement in the Guidance that FSRA may register a retroactive amendment when the administrator is able to demonstrate that “[t]he negative retroactive impacts on the rights and benefits of plan members and benefits are non-material”. We appreciate that the Guidance goes on to suggest that such “non-material” negative impacts must be “offset by considerations of transparency, reasonable and equity”, as detailed in the “Approach” section, but we strongly encourage FSRA to clarify throughout the Guidance that retroactive amendments are “adverse” and impermissible if they negatively impact members’ rights to transparency by impairing their ability, and that of their bargaining agents, to a clear and accurate understanding of the administration of pension plan by examining the plan documents filed with FSRA and by receiving notice of plan changes, pursuant to the rights and obligations established by the PBA.

In short, we do not think the Guidance will sufficiently advance FSRA’s mandate to protect the rights of plan members and beneficiaries and to promote good administration of pension plans unless it makes clear that retroactive amendments will only be permissible if they do not impair members’ right to transparency.

**4. Clarify the applicability of the Guidance to different types of pension plans**

The OFL notes that the Guidance applies to both, defined benefit and defined contribution pension plans. Many OFL affiliates are sponsors of multi-employer pension plans (“MEPPs”) that must, by their very nature, be able to adjust all benefits – past, future, basic and ancillary – to ensure the sustainability of the Plan. Such adjustments are, of course, permissible for MEPPs under the PBA. The Guidance should make clear that retroactivity is less likely to be a concern for amendments to MEPPs because, in this regulatory context, there are less likely to be concerns about transparency, equity, predictability, effective plan administration and consistent treatment of similar amendments.

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We trust that the foregoing will be given due consideration in finalizing the Guidance. As we stated above, we are strongly supportive of the Guidance in general terms, and we see it as necessary for advancing FSRA’s statutory mandate. Our suggestions for clarification highlight some of the specific reasons why we support the Guidance overall and we hope that FSRA incorporates those suggestions in the final version.

Sincerely,



Laura Walton  
President  
Ontario Federation of Labour

CC: OFL Pension Committee

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