



May 23, 2019

Lynn Hemmings  
Acting Director General of Financial Services Division  
Senior Director, Pensions Policy  
Department of Finance  
90 Elgin Street  
Ottawa, ON K1A 0G5

Dear Ms. Hemmings,

We are writing to you further to our May 17, 2019, meeting and your request for additional information regarding the potential unintended implications of proposed s. 17.1 of the Pension Benefits Standards Act, 1985 (PBSA) contained in Bill C-97.

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

As discussed in our meeting, we understand that the intention of s. 17.1 is to prohibit a plan from explicitly providing one type or level of benefit while the plan is ongoing, and something other than that benefit on plan termination. The example given in our meeting was of a plan text that provided for CPI-linked indexation while ongoing, and flat-rate indexation on plan termination.

We further understand from our meeting that it is not your intention to preclude benefits from being provided in an ongoing plan that are conditional on factors that may change on plan termination, and are thus implicitly affected by plan termination. We discussed two examples of conditional benefits that should not be affected by proposed s. 17.1:

- conditional indexation benefits payable only from surplus or some other plan performance measure such as gains or rates of return on plan assets; and
- “consent benefits” where the employer has the discretion to grant or deny consent to certain benefits (often unreduced early retirement benefits) and where the employer may have a policy external to the plan text that contemplates consent to such benefits being granted while the plan is ongoing and denied on plan termination.

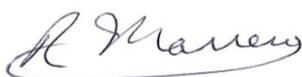
As discussed, our concern regarding proposed s. 17.1 is that it could be interpreted to preclude the conditional benefits described above. Specifically, it is our concern that conditional benefits could be considered a “pension benefit” as such term is defined in the PBSA, and that a member’s entitlement, conditional as it may be, could be “affected” by plan termination. Indeed, any chance of receiving indexation based on, for example, fund rate of return would cease on plan termination as the plan fund would be liquidated to buy annuities and would thereafter cease to exist. Similarly, the very nature of discretionary consent benefits as a workforce management tool would be undermined if the employer were unable to differentiate between ongoing and plan termination scenarios.

In our May 17th meeting, you asked that we provide further information regarding the prevalence of benefit designs that could be negatively impacted if proposed s. 17.1 is given the interpretation we are concerned it could be given. We polled the [ACPM Federal Council](#) and have determined that there are 8 plan sponsors, and 15 pension plans that provide either conditional indexation, conditional consent benefits, or both. Among these plans are some of the largest DB plans in Canada.

Given the sensitive nature of this issue, and in particular the delicate collective bargaining backdrop and significant potential financial implications associated with providing conditional benefits, we are providing aggregate data rather than actual plan provisions. However, we understand that OSFI has reviewed its files and is aware of many, if not all, of the plans with such benefits and could provide specific wording if needed.

We trust the foregoing is of assistance. We would be pleased to discuss this further and to work with you to make any changes to proposed s. 17.1. Should you require any further information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ric Marrero", enclosed within a thin, hand-drawn oval border.

Ric Marrero  
Chief Executive Officer  
ACPM

cc: Kim Page, Director, Private Pension Plans Division, Policy/Approvals, OSFI