

Interpretive Guideline #11 Cessation of Benefit Accrual

Issued: November 2015

This guideline is designed to outline the process and requirements for the cessation of benefit accrual as required by the provisions of the [Employment Pension Plans Act](#) (the Act) and the [Employment Pension Plans Regulation](#) (the Regulation). This guideline summarizes the legislative requirements that apply to the subject matter, and includes (as applicable) additional details to outline the Superintendent of Pensions (Superintendent) expectations and requirements where such authority has been provided by the Act and Regulation. Finally, the guideline outlines best practices and policies that the Superintendent expects from provincially regulated pension plans.

The Act and Regulation should be used to determine specific legislative requirements. Any legal authority of this Guideline rests in the areas in which the legislation delegates authority to the Superintendent to accept a proposal or action.

Overview	<p>Under the Act, cessation of benefit accrual by all active members can result in two possibilities:</p> <ul style="list-style-type: none">• suspension of the pension plan, subject to compliance with the requirements of section 115 of the Act, or• termination of the pension plan, in accordance with Part 10 of the Act. <p>Three terms of note are:</p> <ul style="list-style-type: none">• Plan termination, which refers to the cessation of accrual of benefits and the decision to wind-up the plan.• Plan wind-up, which refers to the disbursement of plan assets to pay all liabilities under the plan. Except in the case of defined contribution provisions, plan wind-up is not permitted to commence until the consent of the Superintendent is given.• Termination of plan registration which refers to the cancellation of the plan's registration under the Act. This cannot happen until all assets have been paid out of the plan.
Continuation of a Pension Plan Despite Cessation of Benefit Accrual (Suspension of the Plan)	<p>The cessation of benefit accrual by all active members normally results in the termination of the plan. There are, however, circumstances under which the Superintendent may permit a plan to continue in a suspended status when no further benefits are being accrued.</p> <p>If there are no longer any active plan members, but the plan sponsor wishes to continue to operate the pension plan, the Superintendent may consent to the plan continuing in a suspended status if he is convinced that the participating employer will continue, or intends to continue in operation and the reason that the employer has for continuing the plan is reasonable.</p>

Consent to the continuation of the plan requires that the administrator of the plan make application to the Superintendent for the continuation of the plan, and that the following documents and information are provided to the Superintendent:

- written confirmation that the participating employer intends to continue in operation,
- an amendment to the plan text document which states the effective date of the suspension,
- the reason for the suspension,
- if the plan has a benefit formula provision, an actuarial valuation as of the date of the suspension (note that if the plan has a final or average best earnings formula, salary projections in respect of service up to the date of suspension may continue to be required),
- confirmation that the participating employer and administrator understand that Annual Information Returns and triennial valuations will continue to be required, and
- confirmation that the participating employer understands that if an actuarial valuation shows a solvency deficiency, the employer must amortize the deficiency over the required period (five years).

Where the Superintendent agrees to the continuation of the plan, the administrator must continue to administer the plan in accordance with the Act and Regulation. Of particular note:

- any individual who remains in employment with the employer and was previously an active member of the plan immediately prior to the cessation of benefit accrual, except in situations of retirement of that individual, continues to be defined as an active plan member for the purposes of section 1(1)(a)(ii)(B) of the Act,
- Annual Information Returns and filing fees must continue to be filed with the Superintendent's office,
- triennial actuarial valuation reports and cost certificates must continue to be filed with the Superintendent's office: in the case of a plan with a defined benefit provision, the requirements of section 49(5)(a), (b)(i), (c), (j), and (l) of the Regulation do not apply, in other words, the plan is only obligated to comply with the solvency funding requirements contained in that section.

An employer may decide to lift suspension and "reactivate the plan" at any time. Where this happens, the administrator of the plan must, within 60 days of making the decision, provide notice to the Superintendent of the date on which reactivation will occur and must file with that notice:

- an amendment which lifts the suspension of the pension plan as of the date specified in the notice, and
- if the plan has a benefit formula provision, an actuarial valuation as at the reactivation date.

Plan Termination

Who may terminate a Pension Plan

If the benefits cease to accrue and the administrator does not apply for plan suspension or if the employer later decides to cease the suspension of the plan without reactivating the accrual of benefits, then the plan is terminated.

The Superintendent may terminate a pension plan:

- if the plan is not in compliance with the legislation and all efforts to resolve the issue have been exhausted, or
- in the case of a suspended plan, by providing notice to the administrator that consent to continued suspension of the pension plan is withdrawn, if in the Superintendent's opinion the suspension is no longer appropriate or in the best interests of plan members.

Where the Superintendent has withdrawn consent to the continued suspension of the plan or terminated the plan for non-compliance, the administrator may file an objection under section 146(1) of the Act. Such objection must be filed within 30 days after the notice of termination or withdrawal of consent has been served.

Appeal

If a notice of objection is served on the Superintendent, the Superintendent will review the decision and may either revoke the decision or uphold it.

If the Superintendent maintains his position, the administrator may make further appeal to the Alberta Employment Pensions Tribunal. Based upon the Tribunal's decision the plan will either continue (as an active plan or in suspension) or be terminated.

Effective Date of Plan Termination

Generally, the termination of a pension plan will be made voluntarily by the person who, under the plan documents, is authorized to terminate the plan (usually the plan sponsor or the board of trustees who administer the plan), and that person shall determine the effective date of termination.

Where the Superintendent terminates a pension plan, the effective date of termination is:

- the date specified in the notice of the withdrawal of consent, in accordance with section 145(2)(d) of the Act,
- the date specified in the notice of termination for non-compliance in accordance with section 118(2), or
- if the notice does not specify a date, then the effective date of termination of the plan is the date of the notice.

Disclosure

Written notice of termination must be provided to plan members and any other person with a benefit entitlement under the plan, and must also be provided to the Superintendent. The notice of termination must specify the intended effective date of the termination.

If, at the time the decision is made, the chosen termination date is at least 60 days after the date the decision is made, then the notice must be provided 60 days in advance of the specified termination date. If, at the time the decision is made, the chosen termination date is less than 60 days after the date the decision is made, then the notice must be provided immediately. The termination date cannot be backdated to a date before the decision is made.

On and after the effective date of plan termination, no further benefits accrue to members under the plan.

Remittance

Within 30 days after the effective date of termination, the participating employer must remit to the fund-holder all outstanding employee and employer contributions required by the terms of the plan and in accordance with the funding requirements of the Act.

Part 10 of the Act and Part 10 of the Regulation provide the legislative authority and requirements for the termination of a pension plan. It should be noted that while this part of the guideline and the legislation talk about the termination of the plan, these rules also apply to that portion of a non-collectively bargained multi-employer plan related to an individual employer who is withdrawing from the plan.

A termination report must be filed with the Superintendent within the following timelines:

- in the case of a plan that has only a defined contribution provision, within 60 days after the effective date of plan termination, or
- in the case of a plan with a benefit formula provision, within 120 days after the effective date of plan termination.

In addition to the termination report, an annual information return to the date of plan termination and the filing fee must be provided.

The content of the termination report must include the following:

- the nature of the benefits to be provided,
- the assets and liabilities of the plan,
- the intended allocation and distribution of plan assets, and
- the treatment of surplus or deficits.

Termination Report

The Superintendent requires that the termination report contain additional information, to ensure that the termination and winding-up of the plan complies with the Act and the Regulation.

Defined Contribution Provision

Termination of Plans with a Defined Contribution Provision

The plan administrator must file with the Superintendent a report providing:

1. confirmation that there is no continuing pension plan, or if there is a continuing plan, confirmation that the successor employer will not accept the assets and liabilities related to the affected members,
2. the total number of affected members, and a breakdown of the number of members by jurisdiction,
3. if the plan provides LITB (life income type benefits), the number of members in the LITB portion of the plan and confirmation that those benefits will only be transferred to a LIF or a life annuity, and
4. the aggregate value of termination assets.

Wind-up may commence before the termination report is accepted by the Superintendent if the Superintendent gives written consent to do so.

When all assets in the plan have been disbursed, the administrator must file with the Superintendent written confirmation that the assets have been disbursed. Once this confirmation is received the Superintendent will cancel registration of the pension plan.

Defined Benefit Provision

Termination of Plans with a Defined Benefit Provision

The administrator must file with the Superintendent:

1. written confirmation that there is no continuing pension plan, or if there is a continuing plan, confirmation that the successor employer will not accept assets and liabilities related to the affected members,
2. a termination valuation report showing:
 - the total number of affected members with a breakdown of the number of members by jurisdiction,
 - a breakdown of the number of active members, deferred members, pensioners, and other persons entitled to benefits from the plan,
 - the aggregate value of plan assets and liabilities,
 - the basis used to determine the liabilities,
 - if the solvency ratio at termination is less than one, an explanation of how the deficiency will be funded, and
 - if the plan has surplus assets, the value of the surplus assets and the intended use of those amounts.

Treatment of a Solvency Deficiency

Except in the case of a jointly sponsored plan, or a negotiated cost plan, if the plan has a solvency deficiency at the effective date of termination and has remaining previously established deficiencies that have not been amortized, the participating employer may make a lump sum special payment to bring the plan to fully funded status or may make special payments with respect to the solvency deficiencies. Previously established solvency deficiencies must continue to be amortized in accordance with the established amortization schedules;

the solvency deficiency established as at the effective date of termination must be amortized over a period not exceeding five years.

Where solvency deficiencies will continue to be amortized, the plan becomes a suspended plan and section 47(8) of the Regulation requires that annual information returns and filing fees continue to be filed within 60 days after the anniversary of the effective date of termination of the plan (this becoming the new plan fiscal year end for purposes of the Act).

Other than the actuarial information contained in the termination report, section 48(3)(c) of the Regulation provides that no additional actuarial valuations are required after plan termination until the earlier of all of the solvency deficiencies being paid or five years after the effective date of plan termination. At that point a final actuarial valuation report showing that the deficiencies have been fully amortized and confirming allocation of the assets must be filed. The final actuarial valuation report must be filed within 60 days of the deficiencies being paid.

The Superintendent must provide notice that the content of the termination report is acceptable before assets may be disbursed. This restriction on disbursement of assets does not prevent the payment of pensions, or any other benefit, if the entitlement to the payment of that benefit arose before the effective date of termination.

The winding-up of a pension plan must begin immediately after the Superintendent has provided notice that the termination report filed in relation to the termination of the plan is acceptable.

Annuities must be purchased for pensioners and those who elect to commence pension or receive a deferred pension under the termination options available. All other members must transfer their benefits to one of the portability vehicles permitted on termination of plan membership or receive lump sum payments of small amounts. Annuities for pensions already in pay must be in the same form and amount as was being paid from the plan. See below for rules on annuity purchase.

If there is a solvency deficiency and it is to be amortized,

- Members who are receiving a lump sum small amount or who are transferring their benefit to their chosen portability option are eligible to initially receive the funded portion of their benefit. The balance (with interest) will be paid when the solvency deficiency has been paid.
- Annuities cannot be purchased for retired members and those who elect to commence pension as a result of the plan termination until the benefits are fully funded. As a result, those receiving pensions continue to receive their monthly pensions from the plan fund. However, in addition to the usual solvency deficiency payments, the participating employer must remit an additional contribution equal to the unfunded monthly pension amounts paid out of the fund to ensure that the solvency funded status of the plan is not further eroded by the payment of the monthly pension.
- Alternately, the employer may choose to fully fund the pension

portion of the plan at plan termination in order to immediately purchase the annuities and amortize the balance of the solvency deficiency related to non-pensioners.

Subsections (9) – (13) of section 146 the Regulation apply to a jointly sponsored plan or a negotiated cost plan that has a defined benefit provision. If the plan has a solvency deficiency at the effective date of termination no further contributions are required. Instead, benefits for all members, including pensioners, are reduced to the level that makes the plan fully funded.

Treatment of Surplus Assets

These same subsections apply in the case of employer bankruptcy either at the time of the plan termination or at a later date while special payments are still being made.

See below for an explanation of those rules.

If the plan has surplus assets at the date of plan termination, the surplus must be distributed as provided for in the plan text document. Surplus is not permitted to be paid out of the plan fund until all other benefit entitlements have been paid.

Unless the plan provides otherwise, if the plan is a jointly sponsored plan then the participating employer and the members jointly share in the distribution of surplus based on their proportionate share of the funding responsibilities (e.g. a 60 per cent / 40 per cent employer / member funding arrangement would mean that the employer is entitled to 60 per cent of the surplus and the members 40 per cent).

In all other cases if some or a portion of the surplus is to be allocated to the participating employer, the procedures outlined under section 64 of the Act and section 74 of the Regulation must be followed.

Of particular importance, if the plan text document does not provide for the distribution of surplus or to whom it may be distributed, the administrator must present to the members a proposal to distribute the surplus unless all surplus is being distributed to members. This proposal is accomplished through the provision of a notice to plan members, and other individuals entitled to benefits under the plan.

If some or the entire surplus is to be allocated to plan members, then the termination report must outline the method to be used for the allocation.

When all assets in the plan other than surplus have been disbursed, the administrator must file with the Superintendent written confirmation that the assets have been disbursed. Once this confirmation is received the Superintendent will consent to the disbursement of surplus assets, if applicable.

When all assets in the plan including surplus have been disbursed, the administrator must file with the Superintendent written confirmation that the assets have been disbursed. Once this confirmation is received the Superintendent will cancel registration of the pension plan.

Target Benefit Provision

Termination of Plans with a Target Benefit Provision

The administrator must provide the Superintendent with:

1. written confirmation that there is no continuing pension plan, or if there is a continuing plan, confirmation that the successor employer will not accept assets and liabilities related to the affected members.
2. a termination valuation showing:
 - the total number of affected members, with a breakdown of number of members by jurisdiction,
 - a breakdown of the number of active members, deferred members, pensioners and other persons entitled to benefits entitled to benefits from the plan,
 - the aggregate value of plan assets and liabilities,
 - the basis used to determine the liabilities,
 - if the plan has surplus assets, the value of the surplus assets and how they will be allocated to plan members, and
 - if the plan is not fully funded, how the benefits will be reduced (see below for rules on benefit reduction).

Once the Superintendent has reviewed and accepted the documents submitted, the administrator will receive consent to commence winding-up of the plan. The winding-up must begin immediately after the Superintendent's consent has been received.

Annuities must be purchased for pensioners and those who elect to commence pension or receive a deferred pension under the termination options available. All other members must transfer their benefits to one of the portability vehicles permitted on termination of plan membership or receive lump sum payments of small amounts. Subject to a benefit reduction being required because the plan is not fully funded, annuities for pensions already in pay must be in the same form and amount as was being paid from the plan. See below for rules on annuity purchase.

When all assets in the plan have been disbursed, the administrator must file with the Superintendent written confirmation that the assets have been disbursed. Once this confirmation is received the Superintendent will cancel registration of the pension plan.

Reduction of Benefits

If plan assets are insufficient to pay for all benefits on plan termination then accrued benefits may be reduced if:

- the plan is a negotiated cost plan,
- the plan is a jointly sponsored plan,
- the provision affected is a target benefit provision; or
- the employer is bankrupt.

Sections 146(10) through (13) of the Regulation set the rules for the benefit reduction. The principles reflected in these rules are that:

1. members should, to the extent possible, receive the value of their own contributions with interest, including any transferred contribution account,
2. benefits should only be reduced to the extent they are unfunded (thus if an unfunded liability had not been fully paid up to the time the plan is terminated and that unfunded liability related to a specific group of members in the plan, then that group's benefits should be reduced to the amount which has been funded before determining the solvency ratio to be applied to all benefits), and
3. the final solvency ratio should be applied equally to all members' benefits.

Sections 146(14) and (15) of the Regulation apply to the reduction of benefits under a target benefit plan. Again, the guiding principle is that the reductions be applicable to the benefits to which the deficits relate and be equitable among all members.

Annuity purchase exemption

Under section 145 of the Regulation, the Superintendent may consent, in writing, to allow portability options for retired members in any of the following circumstances:

- there is a significant solvency deficiency in the plan and the participating employer responsible for funding that deficiency is insolvent,
- the administrator is not reasonably able to purchase an annuity that provides the same type of benefit and the same income that the retired member is receiving from the plan,
- the plan is a jointly sponsored plan or a negotiated cost plan and at the effective date of the termination the assets of the plan are not sufficient to pay all benefits, and
- the plan text document contains a target benefit provision and at the effective date of the termination the assets of the plan are not sufficient to pay all benefits.

Interest on Commuted Value of Benefits

In accordance with section 73(5) of the Regulation, the interest which is payable on a commuted value of a benefit, between the effective date of termination of the plan and the date of payment of the termination benefit is the fund rate of return.

This provision eliminates the continual creation of experience gains / losses that can occur where a plan terminates but the payment of benefits does not occur in the month in which the commuted value of the benefit was determined.

Disclosure

There are two types of disclosure to members required when a plan terminates. The first disclosure item, as indicated above, is notification of the date of plan termination once the decision to terminate the plan has been made.

The second applies prior to benefit payment. A statement that meets the requirements of section 42 of the Regulation must be provided to

members receiving benefits under a benefit formula provision, within 30 days after the Superintendent has consented, in writing, to the winding up of the pension plan. In the case of a defined contribution provision, the statement may be provided prior to receiving the Superintendent's consent, but must be provided within 30 days after consent is received. The notice must include the following information, as applicable:

- With respect to each person entitled to benefits who is not receiving a pension from the plan:
 - for active and deferred members, the information provided for under section 34 of the Regulation (termination of membership),
 - for any deceased members whose benefit has not yet been settled, the information provided for under section 40 of the Regulation (pre-retirement death benefits), and
 - for any members who are entitled to and elect to commence a pension, the information provided for under section 37 of the Regulation (retirement).
- With respect to each person who is receiving a pension from the plan:
 - a statement that an annuity will be purchased on their behalf from an insurance company, and
 - once the annuity is purchased, the name of the insurance company and the annuity contract number.
- Despite the requirement to purchase annuities, if the administrator has applied to the Superintendent to permit portability for pensioners and the Superintendent has consented to such, a statement to those receiving pensions that the individual will be given portability options in accordance with section 145 of the Regulation*.

*If, at the time the Superintendent provides notice of acceptance of the termination report, but it is not clear if annuities are available for purchase, this statement may be delayed by requesting an extension.

- If benefits must be reduced in accordance with section 146 of the Regulation, the reasons for reduction and a description of the method of reduction.
- If there is surplus in the plan, how the surplus will be utilized.

Missing Members

Where members or other persons entitled to benefits cannot be located following the termination of the pension plan, and where the administrator has provided the Superintendent with evidence that these individuals cannot be located, assets related to those individuals may be transferred to the Unclaimed Property Fund under Division 9 of Part 8 of the Act.

Considerations for Collectively Bargained Multi-Employer Plans

Section 113 of the Act requires that the plan text document of a collectively bargained multi-employer plan specify what must happen to the funding of benefits if a participating employer withdraws from the plan. Where the plan text specifies that members affiliated with the withdrawing participating employer are terminated as a result of that withdrawal, benefit reductions in accordance with section 146 of the Regulation may apply.

**Considerations for
Non-Collectively
Bargained Multi-
Employer Plans**

Section 114 of the Act provides that where a participating employer of a non- collectively bargained multi-employer plan withdraws (and does not join or establish a successor pension plan), then Part 10 of the Act and Regulation (termination of a plan) apply as though that employer was the only participating employer in the plan.

**Cancellation of
Registration**

Upon receipt of confirmation of full disbursement, the Superintendent will issue a notice of cancellation of registration of the pension plan.

Until this notice is issued, the plan remains registered and the plan administrator continues to stand in a fiduciary role to members whose benefits have not yet been paid out.

For further information please contact:	
Superintendent of Pensions Alberta Treasury Board and Finance Room 402, 9515 - 107 Street Edmonton, AB T5K 2C3 For toll-free dialling within Alberta, call 310-0000 and then dial 780-427-8322.	Telephone: 780-427-8322 Fax: 780-422-4283 Email: Employment.Pensions@gov.ab.ca Internet: http://finance.alberta.ca/business/pensions Sign up for electronic notifications: http://www.finance.alberta.ca/subscribe/epen