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| <b>BULLETIN NUMBER:</b> | <b>PEN-09-001</b>  |
| <b>TITLE:</b>           | <b>Guidelines for Requests for Solvency Extensions for Defined Benefit Pension Plans</b> |
| <b>LEGISLATION:</b>     | <b><i>Pension Benefits Standards Act</i></b>   |
| <b>DATE:</b>            | <b>JANUARY 2009</b>  |

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## Overview

The *Pension Benefits Standards Act* (the "Act") generally requires solvency deficiencies to be amortized over a maximum five-year period. Section 6 of the Act allows the Superintendent of Pensions (the "Superintendent"), on receipt of a written request from the plan administrator, to extend the time period required for solvency payments given "extenuating reasons". This note is intended to provide guidance to plan administrators who are considering making solvency extension requests.

The following are some of the specific factors the Superintendent will consider when making solvency extension determinations and which all applications for extensions should address:

**1. Is the request for a solvency deficiency payment extension demonstrably in the best interests of plan members?**

For example, the plan administrator must consider and be in a position to demonstrate whether the extension leads to the continuation of the plan, and improvements in its financial position. Other considerations, discussed in more detail below, should include whether the administrator has pursued all other options available under the Act, such as obtaining a letter of credit or applying for a solvency moratorium.

**2. Is the solvency deficiency the result of factors that were largely beyond the control of the plan administrator?**

The administrator should detail how the solvency deficiency arose, i.e., did it arise primarily as a result of extraordinary equities market volatility or low interest rates, or are there other factors, such as a history of benefit increases made when the plan was already in an underfunded position.

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- 3. Would the special payments normally required to eliminate the solvency deficiency result in severe financial hardship for the plan sponsor, which can only be resolved through the solvency extension?**

The administrator should explain what efforts have been made to finance the required solvency payments, and the results. For example, the administrator should disclose whether the employer is unable to secure other financing, and whether the amount and payment of dividends has been reviewed and reduced to a minimum level, given the sponsor's particular circumstances.

- 4. Has the plan sponsor provided strong assurance of its ongoing financial viability for the period of the solvency extension?**

The application should include an overview of the particular industry, and the business prospects of the applicant over a period that is at least as long as the period of the solvency extension requested.

- 5. Does the plan administrator have a good record with respect to plan administration and regulatory filings?**

- 6. Have all required contributions and special payments to the plan's fundholder been remitted within the regulatory deadlines?**

- 7. Has the plan administrator reviewed the form and design of its plan to ensure that the benefits are affordable?**

As described above, the administrator should describe how all past benefit increases were prudent. Other considerations might include the ancillary benefits offered or the structure of any enhancements to early retirement.

The Superintendent likely will not approve application for an extension which results in a solvency amortization period longer than 15 years.

## **Application Requirements**

The Superintendent requires the following as part of an application from a plan administrator for an extension to the amortization period for a solvency deficiency:

1. A current actuarial valuation report, prepared in accordance with accepted actuarial practice and acceptable to the Superintendent. In order to be acceptable to the Superintendent, the actuary must disclose the source of and amounts of margins of conservatism used in the preparation of the report.

The report must show the plan's going concern and solvency status and list the solvency payments required under the five-year amortization period. The report must also include a schedule of payments certified by the actuary as being sufficient to fully amortize the solvency deficiency over the extended period.

2. A letter from the plan administrator identifying the extenuating reasons that the plan can not make the required solvency deficiency payments, and the period of extension to the five year amortization period that the plan is requesting.
3. A commitment from the plan administrator not to increase plan benefits during the solvency deficiency period without the written approval of the Superintendent.
4. Copies of financial statements for the last three years of operations for the plan sponsor.
5. A letter from the plan sponsor providing information on the financial prospects for the plan sponsor over the period of the solvency amortization extension.
6. A full report from either the plan auditor or plan fundholder on the remittance of contributions, showing the timing and amount of each transaction for each of the past three years.

It is recommended that plan administrators discuss their application for an extension with the Superintendent's staff before submitting it.

If a plan is granted an extension, the administrator will be required to disclose details of the extension to all plan members.

## Contacts

For more information, please contact:

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