PENSION FUNDING FRAMEWORK REVIEW
AND OTHER ISSUES AFFECTING PENSION PLANS

Province of Nova Scotia

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Submissions of Canadian Union of Public Employees (Nova Scotia)

To:

Pension Funding Framework Review
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The Canadian Union of Public Employees Nova Scotia (CUPE NS) welcomes the opportunity to provide submissions to the Nova Scotia Department of Finance and Treasury Board, Pension Regulation Division, on the discussion paper Pension Funding Framework Review, September 2017 (the Framework Review) for Defined Benefit (DB) pension plans.

CUPE NS represents some 19,000 members in virtually every community in Nova Scotia. CUPE NS members provide services that help make Nova Scotia a great place to live. Most of our members are employed in five basic sectors of our economy, delivering public services in healthcare, school boards, municipalities, community services and universities.

CUPE NS members work under all forms of work arrangements -- part-time, casual, temporary and full-time -- and for all types of employers -- public, broader public, not-for-profit and private. They also work under all types of pension arrangements.

Many CUPE members have successfully negotiated workplace pensions and, understandably, our members take their pensions very seriously. CUPE NS represents members in large sectoral plans like the Nova Scotia Health Employees' Pension Plan (NSHEPP) and Nova Scotia Public Service Superannuation Plan (NSPSSP). We also represent workers in single-employer DB plans across the province, ranging from large plans like the Halifax Regional Municipal Pension Plan and various university plans to very small plans in the municipal sector.

Our National union, Canada's largest union with more than 650,000 members across the country, has a breadth of experience with a diverse array of pension issues. CUPE considers any potential changes to pension legislation and regulation through a wide and interconnected lens.

CUPE ENDORSES NOVA SCOTIA FEDERATION OF LABOUR SUBMISSION

CUPE Nova Scotia's position is consistent with that of the Nova Scotia Federation of Labour (NSFL) and CUPE NS endorses the NSFL's comments on the Framework Review. In the balance of this brief, CUPE NS offers additional commentary.

CUPE'S GENERAL COMMENTS ON SOLVENCY FUNDING

Any discussion of solvency funding rules must start from acknowledging the fact that solvency funding rules were originally instituted to protect plan members by better securing their benefits. Though the system is not perfect, solvency funding has better secured members' benefits, particularly for private sector employers facing a genuine risk of insolvency. Therefore, any measure that introduces any form of "relief" to an employer's solvency funding obligation necessarily reduces the security of members' pension benefits. The more relief that is provided to employers, the less secure plan members' benefits become.

CUPE NS is concerned the factors driving the Framework Review's options are the concerns of the employer sponsors of DB pension plans. Low interest rates and the ensuing solvency special payment obligations are not new concerns. But these are not the concerns (typically) raised by trade unions, members or retirees, where the first instinct is to prioritize better protection of promised DB pensions.

Missing from the Framework Review are the chief concerns of the members and beneficiaries of DB pension plans: protection of benefits and ensuring the pension promise is delivered. The balance of the Framework

Review paper makes clear these concerns are being compromised in favour of the cost and volatility concerns raised by employers.

We submit that it is inappropriate to solely prioritize the concerns of one stakeholder in the pension system in Nova Scotia, particularly when the proposed options effectively transfer risks to other stakeholders in the system. All of the options considered involve shifting risk to plan members. CUPE NS believes a more balanced approach would have been a better way to finding mutually-acceptable solutions.

This being said, CUPE NS does appreciate the ongoing challenges some employers face with funding for solvency in a low interest rate environment. From bargaining tables, we know these rules, which were crafted to better protect plan members, can have the unintended consequence of putting more pressure on pension plans, employers and, subsequently, plan members in many cases. We therefore believe a review of solvency funding rules is appropriate. But government must only institute changes cautiously and after full consideration and discussion with all impacted stakeholders. Importantly, employers should only be able to avail themselves of such changes with the consent of those who would be losing a measure of benefit security: the plan members and retirees.

CUPE NS also recognizes the pension landscape in Nova Scotia is incredibly complex (single/multi-employer, public/private sector, large/small scale, solely/jointly sponsored plans all exist). There will be no single approach to solvency funding that will appropriately or adequately cover all scenarios. In general, the nature of the employer must be considered when crafting solvency rules. Plan members must always consent to any lessening of an employer's solvency funding obligations.

In general, CUPE NS agrees with the NSFL that solvency funding relief should conform to the following principles:

- No "one size fits all" approach. Given the different realities discussed above, one solution should not be imposed on all DB plans.
- Outside of the broader public sector plans discussed below, any relief should generally be determined on a case-by-case basis.
- All new solvency relief or exemption measures should require the consent from plan members and retirees. Trade unions, where they exist, can speak for their members for the purposes of this consent. A consent process must be robust and based on positive consent of plan members.
- The provincial government should implement a province-wide pension insurance system as a way to provide additional pension security if solvency funding rules are relaxed. Ontario is currently the only province with such insurance, and has agreed to improve this insurance coverage as an offset for the loss of the security provided by pension solvency funding.

In our view, there is no need for a wholesale elimination of solvency funding across all sectors, when a case-by-case, consent-based approach provides the ability to provide relief based on the particular needs of a given plan.

CUPE'S COMMENTS ON PUBLIC SECTOR SOLVENCY FUNDING

The Framework Review notes that, "many pension plans in the broader public sector, including those of universities and municipalities were permanently exempt from solvency funding in 2012-2013." But the Review paper is not entirely clear if it is government's intention for these exemptions to continue.

CUPE's view has generally been that solvency funding obligations are not necessary for most public sector

employers. Solvency funding rules were instituted to protect against employer insolvency, and most public sector employers face very low – or negligible – risk of insolvency. In the event a public sector DB plan was wound up, it is highly unlikely the plan sponsor would not be able to meet its obligations to members. For many of these employers, solvency funding simply imposes funding rules and financial obligations ultimately do not add measurable security to these public sector workers' benefits. These employer obligations ultimately come to bargaining tables, either directly through pension bargaining or indirectly through wage or other benefit bargaining.

CUPE NS did not oppose government's 2012-2013 exemptions of many broader public sector plans from solvency.

RECOMMENDATIONS

Going forward, we would make the following recommendations with respect to public sector DB plans:

- The broader public sector plans currently permanently exempt should continue to be permanently exempt from the requirement to solvency fund. Though the Framework Review does not suggest a planned change for these plans, it is also not explicitly clear if this exemption will continue. This point should be clarified, and these plans should be permanently exempted.
- If there are other public sector plans where employers face a low or negligible risk of insolvency, these plans should be similarly permanently exempted from solvency funding with the consent of workers (speaking through trade unions) and retirees.
- In the Framework Review, the government is contemplating a "trade-off" that eliminates solvency funding, but enhances going concern funding rules. In CUPE's view, the fact that government has already permanently exempted the broader public sector from solvency funding demonstrates the government's belief that solvency funding does not provide much real security for employers with low or negligible risk of insolvency. Therefore, there should be no need for these plans to be involved in such a trade-off and saddled with new, more rigorous, going concern rules. To avoid the unintended consequence of putting more pressure on these employers, government should clearly exempt public sector plans from any new going concern funding requirements that arise from the general Review.
- Public sector employers should continue to be responsible for fully funding benefits on wind up.

SPECIFIC ANSWERS ON PENSION FUNDING FRAMEWORK REVIEW QUESTIONS

PART 1: Funding Framework for Defined Benefit Pension Plans

Option 1 – Maintain Full Solvency Funding

1. Do you believe that full (100%) solvency funding should be maintained?

This question is addressed above. CUPE believes that DB plans in the broader public sector should not generally be required to solvency fund. For other DB plans, an acceptable framework for solvency review is detailed above.

2. If full solvency funding were to be maintained, what adjustments, if any, to the specific solvency funding requirements discussed above should be implemented?

CUPE NS offers commentary on the proposed adjustments here. We note that all of these adjustments involve lower solvency obligations for an employer, and therefore shift risks from employers to plan members.

Longer Funding Period

Lengthening the maximum funding period has been used in Nova Scotia as a relief measure on a temporary basis. This can be a desirable form of flexibility if and when elected with meaningful member consent. It should be pointed out that a longer solvency funding period increases the risk to plan members that their plan may be wound up underfunded if the employer is insolvent. If made available on a permanent basis, we believe a more robust consent process is required; positive member consent as outlined above.

Consolidate Solvency Deficiencies

This has essentially the same effect as a Longer Funding Period (above). Lengthening the amortization period can be a desirable form of flexibility if and when elected with meaningful member consent.

Solvency Reserve Accounts (SRA)

CUPE NS does not support the creation of separate accounts within a pension plan fund to hold payments made in respect to a solvency deficiency. Permitting the withdrawal of surplus via SRAs effectively builds in the possibility of employers taking contribution holidays. The widespread use of contribution holidays, prior to the severe impact of the 2008 financial crisis on pension plan investment returns, is the direct cause of many DB plans' funding deficiencies.

The Framework paper's statement, "Greater certainty is provided to employers that money paid in respect of a solvency deficiency can be returned to the employer if the pension plan returns to a solvency excess funded position"[1] is contrary to the "pension deals" that have been bargained over time, good plan governance, and the fiduciary duty of plan administrators.

[1] Pension Funding Framework Review and other issues affecting pension plans. September 2017, p. 3

CUPE NS believes that SRAs would result in a permanent barrier to funding benefit improvements for members, when funding can be achieved through stable contributions and investment income derived in part through good stewardship of that DB plan.

Letters of Credit (LOC)

CUPE NS does not support the proposal for a higher limit on the use of Letters of Credit (LOCs). This proposal undermines one of the primary ways in which good stewardship of pension plans generates income for plan members' benefits.

LOCs are problematic because they are not "performing assets" in that they do not generate returns. If 15% of the liabilities are secured by an LOC, then 85% of the plan is funded and available to make investment income. Several studies have confirmed that perhaps 70-80% of funds used to pay for benefits derive from investment income. Reducing investment income reduces funds available to pay for benefits. The plan will then only be able to generate returns from the 85% of assets that are needed by 100% of the liabilities.

LOCs are also expensive to obtain. Increasing the limit will increase the cost to a plan that uses an LOC, without adding to the pool of money available to pay benefits.

3. Are there changes to solvency funding requirements not identified in this paper that should be considered?

As noted above, contribution holidays have played an important role in the current funding challenges faced by employers. If the province is considering employer-friendly changes to solvency funding rules during periods of underfunding, it must also make converse changes during periods of surplus. Employers should be prohibited from taking contribution holidays.

Employers should of course continue to be responsible for funding benefits on wind up. Government should clarify that the only changes it is considering pertain to solvency funding of an ongoing plan.

Option 2 - Eliminate Solvency Funding and Enhance Going Concern Funding

Option 2 is an approach that should be rejected, particularly for private sector plans. Unilaterally eliminating solvency funding rules for Single Employer Pension Plans (SEPPs) would increase risk to those plans, negate the benefits of the dual valuations and would be bad public policy.

Any new exemptions from solvency funding should be granted on a case-by-case basis, and be generally only where there is very low chance of insolvency (for example, in the broader public sector). Since these plans are already permanently exempted, they should not be subject to any new enhanced going concern funding rules, as discussed above.

If permitted at all, this option should only be allowed in a consent-based system with a robust form of positive consent required from active members and retirees, as are currently required for other permanent changes to plan types.

It is also clear that, absent an express agreement to do so, including shared governance, enhancing going concern funding rules would create an increase to contribution rates for members to fund margins for conservatism in order to provide a policy priority for employers, i.e., eliminating solvency funding. Such a dramatic change, effectively lowering workers' take-home pay in order to compensate for an employer solvency relief request, is unwarranted and unbalanced.

Comments on Proposed Options A-D

With respect to the individual recommendations under Option 2, as just discussed, Options 2A (Require a Funding Reserve) and 2C (Return on Investment Assumptions) are policies that prescriptively require certain measures of conservatism to be included in going concern valuations. In most DB plans CUPE NS participates in, combinations of these techniques are already employed, and are part of a good governance process in administering a DB plan. CUPE NS supports regulatory and policy support for such processes. However, we vigorously oppose the codification of a single set of factors or methods to achieve any desired level of conservatism in going concern funding rules.

Put simply, no one size fits all. The very role of plan administrators and trustee boards is to use the appropriate factors and methods available to them to discharge their duties, monitor the plan, permit it to evolve over time, and react to changing conditions. CUPE NS does not support any fixed or single set of factors being required in going concern valuations, and any policy goal of greater going concern valuation conservatism must be accompanied by the flexibility in the selection of methods and factor by plan sponsors and administrators within the overall scope of their rights and obligations.

Should the province proceed to legislate changes to going concern rules as a trade-off for reduced solvency funding obligations, CUPE NS again points out that plans currently exempt from solvency should not be affected by any new going concern rules.

The province should be mindful that in many cases, Option 2 Eliminate Solvency Funding and Enhance Going Concern Funding could increase existing funding obligations on employers. The Superintendent's 2016 Annual Report states 63% of DB plan members were in plans that were fully funded on a solvency basis.[2] Other plans are underfunded but are currently exempted from having to fund for solvency. Exempting these employers and imposing new going concern funding requirements would increase the employer funding obligations for most DB members in the province.

The proposal to enhance going concern funding by shortening the length of amortization of unfunded liabilities, Option 2B. Shortened Funding Period is a single-factor instrument that may be appropriate for some plans some of the time, but should not be centrally regulated and imposed on all plans. This raises annual plan costs without providing any significant gain, in our view.

Proposal Option 2D, Solvency 'Trigger' for Enhanced Funding would introduce a funded status "floor" below which would trigger some form of special payment schedule to bring it up to that floor. If the rationale for solvency funding is accepted, then it should be implemented and funded to 100%; any derogation from that is in effect a transfer of risks to members without any compelling benefit for the DB system as a whole. In an environment in which solvency funding has been eliminated, or in extraordinary circumstances, a "solvency floor" is better than no floor at all. However, as just stated, if the rationale for a solvency floor is accepted, then full solvency funding

[2] http://www.novascotia.ca/finance/pensions/docs/Annual-Report-March-31-2016.pdf

should follow. To do otherwise is to dictate that members and other stakeholders should simply accept greater risks in their pension promises, which should not be an objective of this review. CUPE NS notes that about four in five DB plan members are currently in plans funded above 80%, suggesting a funding floor could be an effective current exemption for most plan members in the province.[3]

Option 3 Reduce Solvency Funding

Questions 4-7 have been addressed above.

[3] http://www.novascotia.ca/finance/pensions/docs/Annual-Report-March-31-2016.pdf

PART 2: REGULATORY ISSUES

Target Benefit Plans

CUPE NS will focus on Question #10 of the consultation paper: "Should DB plans be permitted to convert to target benefit plans, including benefits earned in the past?"

CUPE NS is incredibly disappointed that the government is considering permitting the retroactive conversion of DB plans into target benefit (TB) plans. Should the government introduce legislative changes to permit such conversions, CUPE NS, along with other unions and retiree groups, would mount a significant campaign to fight such changes.

This is not a technical question. It is a profoundly political question and CUPE NS will respond to it accordingly.

CUPE NS notes the Liberal Party 2017 Election Platform did not make any reference to changes in provincial pension policy. The government simply does not have a public mandate to make such a sweeping change.

Currently, as is common with pension legislation across the country, Nova Scotia's *Pension Benefits Act* protects already-earned "accrued" benefits in a DB plan. Once promised by an employer, accrued benefits cannot be subsequently reduced. Defined benefit plans can be amended on a go-forward basis, subject to collective bargaining in many cases, but already promised benefits are considered, for good reason, to be non-amendable. This is not controversial and is completely in line with the public's expectations about how pensions should be regulated.

This basic protection of accrued benefits has existed in law since the *Pension Benefits Act* was legislated in 1975 by the Liberal government of Gerald Regan. Then Liberal MLA Peter Nicholson was the government's lead spokesperson on this new pension legislation. His description of the legislation's basic goal was simple: the law "sets out certain safeguards to protect the interest of the contributor to the plan."[4] Nicholson explained, in the absence of such legislation, workers too often failed to fully collect (or even to collect at all) on the DB pension benefits promised to them by their employers. The government clearly saw this as a moral problem and crafted the new *Act* to right these wrongs. Every pension plan in Nova Scotia subsequently had to comply with these new laws. "It's better for an employee to have no pension at all than one that jeopardizes his benefits," Nicholson said. The new *Act* was introduced to correct "major deficiencies" in existing laws that did not adequately enshrine DB promises as a clear **right** for workers. Under the new *Act*, pension promises were secured, "his rights in that plan are vested and they would become payable to him." The Liberal government's goal was simple: ensure a pension promise made to a worker by an employer, is fully secure, and backed up by the law.

This basic, noncontroversial principle has operated and protected the sanctity of the pension promise ever since, and access to accrued benefit protections has been expanded over the decades in Nova Scotia as pension vesting rules were improved.

The Nova Scotia government commissioned a special expert review panel on pensions in 2008 and gave this panel the mandate to review the province's pension laws in light of various challenges faced by DB plans.[5] While this panel did clearly express an interest in TB plans, there was no recommendation that government should permit the retroactive conversions of defined benefits workers have already earned. The possibility was not even

[4] Feb 19, 1975, http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/HansardDeposit/51-02/19750219.pdf

[5] http://www.novascotia.ca/lae/pensionreview/docs/PensionReviewPanelFinal.pdf

contemplated or discussed in the report. Conversely, the panel came down squarely on the side of the ongoing need to protect the sanctity of DB pension promises; the report itself is called "Promises to Keep". The panel's first recommendation stated: "Our focus is first and foremost to create an environment where pension promises will be fulfilled." Question #10 in the current Funding Review paper directly undermines this basic goal.

CUPE NS believes this longstanding provision of Nova Scotia pension law—that defined benefit promises cannot be subsequently reduced—must remain a central tenet of the law. Our union is strongly opposed to the retroactive conversion of DB pension plans into TB plans. Such conversions turn the purpose and history of basic pension rights and statutes on their heads by allowing employers to retroactively walk away from the pension promises they have already made to workers. The *Pension Benefits Act* has always existed to **strengthen** these protections, in fact, it was the basic purpose of the *Act*. Question #10 proposes to use the *Act* in an unprecedented way; to actively **undermine** the security of DB pension promises.

CUPE NS knows DB pensions are often won and improved by trade-offs at bargaining tables, often around wages. This is why our union sees DB pensions as "deferred wages." Pensions are not gifts given to workers. Pensions are one element of an agreed upon compensation "deal" with an employer. These deals say workers will give their labour and service in exchange for wages and a benefit package that includes a specific pension promise upon retirement – a pension promise backed up by legislation and is said to be "guaranteed." When workers labour and earn pensionable service under a DB plan, they are making good on their end of this deal with their employer. Under current Nova Scotia pension law, the employer is obligated to follow through on these pension promises. This guarantee, and the obligations that an employer is taking on, has significant value to workers, who benefit from the secure lifetime income it provides when they retire.

If this law is changed and a defined benefit is **retroactively** replaced with a target benefit that can legally be reduced, the value of the DB promise is effectively expropriated from workers and/or retirees. The original "deal" would be irrevocably broken. Employers could then shirk their past pension promises, **but workers and retirees cannot have their labour retroactively returned to them.** It has been given and fully collected on by the employer. This deal-breaking is why these retroactive conversions are so wrong in principle.

The public strongly rejects the idea that employers should be allowed to walk away from past pension promises. Ipsos Reid reports that 94% of Canadians believe "employers should live up to the commitments they have made to pensioners and employees."[6] A similar proportion believed that, in developing new pension frameworks, governments must "ensure that companies honour the commitments made to pensioners and employees." Even if governments can get away with legalizing such behaviour by amending a statute, this does not make it morally right or acceptable to the public.

Canadian workers, of course, are not being given new legal avenues to walk away consequence free from the credit card, mortgage, rent or car payments they have agreed to make. Despite being highly indebted and facing wage stagnation and precarious employment prospects, workers continue to scrape to hold up their end of the bargain.[7] Employers and governments also continue to fully meet their obligations to bondholders and other creditors. These creditors are not being asked to retroactively accept "flexible" payments in place of the original

[6] Ipsos Reid, "With Changes to Pension Landscape on the Horizon, Canadians of all Ages Want to See Pension Promises Kept, Look to Government to Ensure They Are," June 20, 2014.

[7] Canadians now owe $1.70 for every $1 of disposable income they have (Statistics Canada CANSIM Table #378-0123); less than 1% of Visa and Mastercard holders are delinquent over 90 days (Canadian Bankers Association, "Credit card delinquency and loss statistics," September 14, 2017); less than 0.5% of mortgage holders are delinquent over 90 days (Canadian Mortgage and Housing Corporation, "Homeowners' debt at a glance," June 13, 2017).

guaranteed promise. CUPE NS is incredibly disappointed this government is making the political choice to question if pension promises made to workers are not real promises. CUPE NS believes that Nova Scotians consider **"a deal is a deal."**

Since an employer currently cannot shirk its past DB promises, the most risk they can shift now to plan members in bargaining is through implementing a Defined Contribution (DC) plan on a go-forward basis. Past DB liabilities remain employer obligations and remain on their books. Going forward, those liabilities shrink over time as workers retire and pensioners pass on. But no new liabilities are incurred for future service. Essentially, the closed DB plan shrinks by attrition over time.

If past liabilities can be retroactively converted to TB aspirations, the DB plan and its liabilities die overnight. The risks associated with employer liabilities are immediately and totally shifted to plan members and retirees. In short, the employer accomplishes its goal of shifting pension risk to plan members **overnight**, instead of **over generations** with a DC conversion. Not surprisingly, employers strongly prefer accomplishing their goals quickly and will respond accordingly in bargaining if the government enables such conversions.

This is indeed the lived experience in the province of New Brunswick which is the only jurisdiction in Canada to enable DB to TB retroactive conversions.[8] In just five years since implementing this law, up to 15 large pension plans have been converted from DB to "Shared Risk" target plans. Around 50,000 active plan members are in these newly converted plans. Most telling, there are only about 15,000 active members remaining in DB plans in the province. CUPE NS knows the pressure continues to convert more plans. This is a massive sea change in just five years. After decades of relatively stable DB membership numbers in the province, the passage of "Shared Risk" legislation has clearly emboldened employers to attack DB plans in favour of TB plans. Passage of this legislation was the catalyst that began a new era of attacks on existing DB plans.

Knowing these dynamics and experience, if government proceeds to enable these retroactive conversions, the only conclusion to be drawn is that the Liberal government believes that all DB plans should be converted to TB plans. In effect, government would be politically sanctioning the view that DB plans should no longer exist. This would be an incredible incursion into the collective bargaining process. It would move the bargaining goalposts far in favour of employers and against workers and retirees.

Enabling these conversions would therefore implicate government in any labour disputes that would surely accompany the new pension possibilities in the province. Once bargaining goalposts are moved by government, employers can be expected to fight hard to make possible what was long impossible: shedding their DB promises (past and future) overnight. Workers will defend their pensions, as CUPE members have a strong track record of doing. The government should carefully consider whether it wants to make this pro-employer political decision. Government would also expose itself to legal challenges if it passes this legislation, like the multiple Charter challenges currently proceeding against the New Brunswick government.

We are aware the proponents of such legislative changes typically argue that employers need new pension "options." These proponents say their political goal is to increase pension coverage. CUPE NS is extremely critical of this opinion. In our view, if retroactive conversions are enabled, pension security for workers would be diminished without making any real increase in overall pension coverage. As already discussed, permitting retroactive conversions gives employers a massive incentive to attack **existing** DB plans. Given the cost and complexity of administering this new variant of TB plans (often with requirements to perform annual stochastic

[8] Statistics in this section from a fulfilled Right to Information Request to the New Brunswick Financial and Consumer Services Division, received September 8, 2017. Statistics Canada data shows similar trends.

testing), employers currently not providing a pension plan, or employers who only provide a basic DC or Registered Retirement Savings Plan (RRSP) style plan, are not likely to take the **step up** into a TB plan. This is the experience in New Brunswick. CUPE NS is not aware of any pension plan that has **stepped up** into a "Shared-risk" TB plan in that province. All of the conversions we are aware of have been **steps down** from DB plans already in operation. Therefore, we could expect no real impact on quantitative pension coverage and a substantial decline in qualitative pension security as DB plans are converted to TB plans.

We also strongly disagree with the characterization of New Brunswick style TB plans as "Shared Risk" plans (a term the NS government uses in the consultation paper).[9] This term has been used in an extremely misleading way and serve to minimize the magnitude of the risk shifting that takes place in these plan conversions. Originally, the term was devised to refer to the fact that risk in these plans is primarily borne (and shared) between **active** and **retired** plan members. However, it is repeatedly misreported that these plans share risk between **plan members** and **employers**. An examination of any "Shared Risk" funding policy makes it clear plan members bear virtually all plan risks and employers are effectively shielded from most risk. The only risk employers bear is the chance of a small and limited increase in contribution rates. Plan members face this same risk, but face the much more serious risk of suspension of indexation and possibly open-ended reductions in both future and past pension benefits. Employers, pension consultants and governments know full well which side of the table is really bearing risk in these plans.

The true structural "Shared Risk" plans are jointly sponsored pension plans (JSPP) that the *Nova Scotia Pension Benefits Act* (PBA) enables. In these plans, both sides of the table have a responsibility to address unfunded liabilities.

CUPE NS also disputes the notion that employers bear all risks in a DB plan and members bear no risks. Since the market crash nearly a decade ago, employers have brought pensions to bargaining tables in the hopes of offsetting their pension costs. In some cases, changes to plans were agreed on by CUPE NS and other unions. Increased employer contributions translated into downward pressure on wages at bargaining tables. What appears simple on paper (employer bears 100% of plan risks) is not so clear when wage and pension bargaining is taken into account. This recent history, coming on the heels of employer contribution holidays when many plans were in surplus, demonstrates that risks are already shared in complex ways in traditional DB plans, even if rewards too often fell to employers.

CUPE's View of Target Benefit Plans

CUPE is not opposed to all target benefit plans. In fact, our union has created and administered two very large, Ontario-regulated, multi-employer TB plans for decades. For workers who do not have a pension plan, or have a group RRSP or DC plan, the step up to a TB plan makes sense in many (but not all) cases. These traditional TB plans are multi-employer and are (appropriately) wholly or significantly governed by the side of the table that bears the plan risks: plan members speaking through their trade unions. Nova Scotia already regulates this type of target plan.

The new variant of target plans (as developed in New Brunswick) is materially different from these traditional TB plans. These new plans are single employer and are very tightly regulated by prescriptive regulations and funding policies. The latitude for the risk bearers (plan members) to make real decisions about benefit and contribution levels is severely limited by these policies. Instead, third-party technocrats design these plans within the narrow confines of the legislation and pre-program virtually all decisions about plan design. This effectively sidelines the

[9] For more on this see Canadian Union of Public Employees, "6 Myths About the Shared Risk Model," August 2014.

influence of workers and unions to make the decisions that TB plan trustees have traditionally made.

TB benefits are funded extremely conservatively to meet the stochastic testing required by law. Members pay a high contribution rate for a very low level of "base benefits" to meet these requirements and have no latitude to change this arrangement. CUPE has been critical of basing a regulatory system on complex stochastic modeling which independent research has proven to be highly dependent on input variables.[10] Different, but still acceptable, actuarial inputs can result in dramatically different results throwing into question the usefulness of these models at the centre of a regulatory system.

CUPE NS opposes the sidelining of trade unions from their traditional role as real decisionmakers in these plans. We believe any departure from the traditional multi-employer nature of TB should be undertaken with great care and consultation, if it is undertaken at all. We have concerns about efficiency and scale with single-employer plans. If these features are the supposed benefits of TB plans compared to the individualized DC approach, would they really bear fruit at a single-employer, particularly a small employer?

We note that the difference between the traditional multi-employer and the proposed single-employer target plans was not highlighted in your discussion paper. This should be highlighted and given further public discussion prior to any further government action.

In general, CUPE NS supports target benefit provisions **only** if they are used to upgrade members' pension security and to increase pension coverage overall. We know a New Brunswick-style approach, with retroactive conversions and highly-regulated stochastic testing requirements, will not accomplish these goals.

Any change to pension coverage in a workplace, including the implementation of a TB plan, must be fully negotiable by a trade union through the collective bargaining process. Target benefit plans should be restricted to unionized workplaces, as this is the only way plan members can participate in decisions about plan design in a democratic way. CUPE NS does not see a consent mechanism as an acceptable rationale for permitting retroactive DB to TB conversions. As our submission makes clear, we believe such conversions are wrong in principle at any time.

[10] PBI Actuarial Consultants, "Review and Analysis of the Risk Management Goals and Measures of Success, (pertaining to the Conversion of the Pension Plan under the New Brunswick Public Service Superannuation Act to the New Brunswick Public Service Shared Risk Plan)," June 10, 2015.

Annuity Discharge

11. Should a statutory discharge of liability for the pension plan be granted where annuity buy-outs occur, and if so what conditions should be met in order to qualify for the discharge?

The proposal to allow a statutory discharge of liability to an employer where annuity buy outs occur is contrary to the fundamental purpose of the *Pension Benefits Act.* It would discharge an administrator from any duty to the member without an annuity having been purchased for that specific member or the duties and obligations under the *PBA* being transferred to the party assuming the payment of the benefits, the insurer. It is not appropriate to discharge one pension plan administrator from the responsibility to administer the plan in accordance with the terms of that plan and *PBA* unless another administrator has taken on the same responsibility.

Permitted Investment Rules

12. Should Nova Scotia's permitted investment rules mirror those established federally? Are there situations where it would be important to have different rules for Nova Scotia pension plans?

13. Should the current Schedule 1: Permitted Investments of the Pension Benefits Regulations be replaced by incorporating by reference the federal investment regulations?

CUPE NS is particularly concerned about a current federal review of "The 30 Per Cent Rule." If the federal government does move ahead to eliminate this rule, we do not believe the Nova Scotia government should follow suit. While it indeed may be simpler to incorporate federal rules by reference, these rules can have serious impact for not only pensioners but residents of the province, as we will discuss below. CUPE believes that Nova Scotia should retain jurisdiction over its pension investment rules and that "The 30 Per Cent Rule", in particular, should remain in place. CUPE submitted a brief to the Finance Canada consultation on this issue, which we can provide on request.

While many pension funds remain underfunded, and pension costs have been under pressure, there is no evidence this rule is preventing regulated plans from generating sufficient returns in the financial markets. In our view, the pressures to eliminate this rule are emerging in particular from a very few large funds who have reconfigured their investment strategies around a relatively recent investment category: "private market" assets, composed of public infrastructure, private equity, and real estate. These funds are already in a process of pursuing these investments, and the largest among them are increasingly seeking large, controlling ownership stakes in the enterprises that operate the asset.

We are concerned about each of these three sub-categories, but we have particular concern about the public infrastructure component, which has become the latest hot trend among large financial investors. While the structures of pension fund investment in privately owned, operated, or financed infrastructure can vary, an increasingly popular approach involves the acquisition of controlling equity ownership of entities involved in the provision of public services or in the operation of public infrastructure assets. In some cases, this involves the outright privatization of already existing public assets (e.g. Ontario's ongoing sale of Hydro One). In others, it means so-called green field construction of new facilities to provide a service (e.g. the Caisse de Depot commuter rail project in Montreal). In another form, it requires the establishment of complex investment vehicles that are structured into public private partnerships or P3s. In each of these cases, they involve forms of privatization. CUPE has always resisted privatization as contrary to the public interest because of its negative consequences for workers, communities and users of public services and infrastructure.

Insofar as the contemplated elimination of "The 30 Per Cent Rule" would facilitate more of the same kind of privatization of public assets (by pension fund, or with their participation), CUPE is opposed to this proposal. While we are aware that some pension fund managers now view infrastructure as an emerging "asset class" with an attractive risk-return profile, our view is that the social costs of this asset class are unrecognized and unmeasured, particularly when it comes to earnings-focused investors who seek to hold and draw value from such assets for longer periods. Moreover, as with other recent examples of new asset classes promising high returns at minimal or managed risk (i.e. hedge funds), the new types of infrastructure investments have such limited track records their risk profiles are in many cases not understood.

Recent pressures to deregulate financial sector actors and markets have been followed by significant negative shocks, including most dramatically, the 2008 financial crisis. This experience offers strong evidence for a return to more cautious approaches to financial regulation, and much more skepticism about models resting on self-regulation. If anything, the experience of the past ten years may yet serve as a catalyst for a renewal and strengthening of prudential regulation of financial activity and actors, including in particular the established regulatory framework for tax assisted pension funds.

CONCLUSION

CUPE NS is disappointed that the Pension Funding Framework Review discussion paper fails to address the top concerns of the members and beneficiaries of DB pension plans; ensuring the pension promise is delivered and benefits are protected.

The discussion paper appears driven by employer concerns to reduce their pension commitments as all of the "options" proposed shift the pension plan risk away from employers and on to pension plan members and retirees. This is not a balanced or fair approach to crafting Nova Scotia's public policy for DB pension plans.

CUPE is strongly opposed to the proposal to allow the retroactive conversion of DB pension plans to TB pension plans. This would destroy the long-held rights and obligations under Nova Scotia's Pension Benefits Act, legislation designed to protect the pension promise made to workers and retirees.

CUPE supports the position of the NSFL that employers simply cannot be granted the ability to walk away from the pension promises they have already made to workers and retirees; a deal is a deal.