OECD GUIDELINES FOR THE PROTECTION OF RIGHTS OF MEMBERS AND BENEFICIARIES IN OCCUPATIONAL PENSION PLANS

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Introduction

A central element of the programme of work of the OECD's Working Party on Private Pensions has been the development of principles of regulation and supervision and guidelines related to the maintenance and oversight of private pension plans and funds. This work has been done in conjunction with the International Network of Pension Regulators and Supervisors (INPRS). The guidelines set forth below specifically address the rights of pension plan members and beneficiaries, an especially vital aspect of any pension programme. The Working Party previously developed and issued in 2000 broad principles applicable to private occupational pensions, titled "Fifteen Principles for the Regulation of Private Occupational Pensions Schemes"[1], which were also approved by the INPRS. In 2002 the Working Party issued "Guidelines for Pension Fund Governance."[2] The document titled "Fifteen Principles for the Regulation of Private Occupational Pensions Schemes" includes as its third and fourth principles, "Rights of the beneficiaries" and "Adequacy of the private schemes." These "Guidelines for the Protection of Rights of Members and Beneficiaries in Occupational Pension Plans" contain six guidelines that are based on, expand and complement these principles.

The guidelines are intended to guide regulators, supervisors and other entities involved in pension plan design, administration and management, rather than to bind member countries. They aim to present good practices as agreed upon by the 30 OECD member countries participating in the Working Party and the members of the INPRS that participated in the document's development. As noted in various annotations to the guidelines, their precise manner of implementation may vary from country to country, the aim being that the underlying objectives of each guideline are met.

Like the previously developed principles and guidelines, these guidelines are intended to apply to occupational, private pension plans, that is those for which individual access is based on an employment relationship – regardless of whether the plans are voluntary or mandatory (on the part of employers or employees) and regardless of whether the plans serve as the primary or supplementary means of providing retirement income[3]. In most countries, occupational pension plans are voluntarily established by employers; in some of these cases employees may be compelled to participate. There are fewer countries in which employers are mandated to establish pension plans for their employees. Occupational pension plans may be opened or closed, meaning that they are either available to both the employer's own workforce and non-employees who choose to join ("open") or available to only the employer's own workforce ("closed"). These guidelines are drafted with closed pension plans in mind, but many of them will be equally applicable to open pension plans. Similarly, although these guidelines focus on occupational, rather than personal, pension plans, many of them will be equally applicable in the personal pension plan context.[4]

The guidelines set forth core rights and protections for plan members and beneficiaries that are generally intended to be implemented and monitored by pension regulators and supervisors. It is recognized, however, that depending on the nature of a particular pension system, it may be more appropriate for rights and protections to be established via other mechanisms. For instance, in some

[*] These guidelines were endorsed by the OECD Working Party on Private Pensions and approved by the International Network of Pension Regulators and Supervisors in 2003.

jurisdictions regulatory and supervisory authorities other than those specifically responsible for pensions may be the appropriate entity to implement or supervise some of the rights and protections set forth in these guidelines. This may be the case where a particular investment product used to fund pension plans (e.g., an insurance contract or a pooled investment vehicle) is regulated by a different regulator. It similarly may be the case that employment laws are sufficiently broad in scope to address certain matters; in such cases, there would be no need for the pension authorities to set forth redundant rules. Moreover, many occupational pension programmes rely on the collective bargaining process and the resulting contract to institute rights and protections for plan members and beneficiaries.

It should also be noted that there are many entities in addition to regulators, supervisors, employers and trade unions that may be involved in pension plan management and administration. Entities, such as trustees, custodians, plan administrators, and financial institutions may also interact on a regular basis with plan members and beneficiaries, and these guidelines are therefore also relevant for these parties. In short, these guidelines are not intended to identify the specific mechanism or entity to enforce the rights and protections they describe, as the modalities will vary from country to country. Put in this context, while the guidelines refer to "the regulator" in various places, the term is, in part, used for ease of drafting, and it is understood that different entities other than the pension authority may be more appropriate to set out or monitor various member rights. Nonetheless, it must also be remembered that governmental authorities should be ready to step into the breach and set forth basic standards that assure that plan members and beneficiaries are provided suitable rights and protections if other mechanisms and entities fail to do so.

The guidelines distinguish between "members" and "beneficiaries." The term "members" includes both active members, that is employees actively accruing benefits in the plan, and deferred members, that is former employees with vested, accrued benefits. The term "beneficiaries" refers to members that are receiving or presently entitled to receive a benefit and third parties, such as spouses, or former spouses that may acquire certain rights under the pension plan, usually upon the death of the plan member.

Because these guidelines are intended to be free standing, they include and adapt criteria from other principles already approved by the OECD Working Party on Private Pensions.[5] Notwithstanding the effort to be inclusive in this exercise, because these guidelines focus on the personal or individual rights of individuals in pension plans, there are, however, many items that are not addressed and nonetheless substantially affect members and beneficiaries. For example, one such item is governance. The OECD's Working Party on Private Pensions has already developed Guidelines for Pension Fund Governance, which identify the key elements of effective pension fund management. It is stating the obvious, perhaps, to note that members and beneficiaries of occupational pensions have a justifiable expectation that their pension fund will be managed in accordance with such guidelines and under a regulatory and supervisory regime that ensures that funds will be managed in their interest. Similarly, it is clear that members and beneficiaries of pension plans have a reasonable expectation that their pension plans will be adequately funded to deliver promised benefits, but such expectations are not in the nature of "rights" addressed in these guidelines.

Notwithstanding the differing circumstances under which employers offer a pension plan to their employees, the intent below is to establish guidelines applicable to all occupational pension plans. Nonetheless, the extent of certain rights will vary with the context in which a particular pension plan is established. The key distinctions among pension programmes that may affect the precise nature and scope of rights and protections are first, whether the pension programme is mandatory or voluntary; second, whether the pension programme is intended to be the primary or only a supplementary source of retirement income; third, whether and to what extent the programme is subsidised by the state; and fourth, whether the plan design is defined benefit or defined contribution, and if defined contribution,

whether plan members themselves direct their own investments. In the case of pension plans voluntarily established by employers for their employees, countervailing labour market constraints, including the role of collective bargaining and the extent to which certain rights may impose additional costs or unwarranted burden on employers, must also be taken into account. Put more directly, there is a risk that overly proscriptive member rights and protections may lead to a decrease in pension plan formation or upset the balance of collective bargaining over such issues. These concerns must be taken into account and be balanced against the need for such rights and protections. The guidelines are sensitive to these issues and raise them in annotations to the guidelines when appropriate.

In addition to these distinctions, one may distinguish between substantive rights and procedural rights, although the line between the two may not always be clearly drawn. Substantive rights would include, among other things, certain fundamental rights of non-discriminatory access, participation and coverage in an employer's pension plan, as well as benefit accrual and vesting rules. To the extent that a right is characterised as substantive, the nature of the pension plan (voluntary/mandatory; primary/supplementary, defined benefit/defined contribution, etc.) will be reflected in the expansive or limited nature of the right granted. By contrast, procedural rights are more universal in character, less dependent on the nature of the pension plan, and therefore, less likely to vary substantially in degree or quality. These procedural rights would include, for example, certain juridical rights, such as the right to a transparent and fair process whereby claims and grievances may be timely heard and appealed and adequate redress obtained.

As noted above, the starting point for our development of guidelines in this area are the "Fifteen Principles for the Regulation of Private Occupational Pensions Schemes" that have been approved by both the OECD Working Party on Private Pensions and the International Network of Pension Regulators and Supervisors. Specifically, the third principle, "The rights of beneficiaries" states:

> Non-discriminatory access should be granted to private pensions schemes. Regulation should aim at avoiding exclusions based on age, salary, gender, period of service, terms of employment, part-time employment, and civil status. It should also promote the protection of vested rights and proper entitlement process, as regard to contributions from both employees and employers. Policies for indexation should be encouraged. Portability of pensions rights is essential when professional mobility is promoted. Mechanisms for the protection of beneficiaries in case of early departure, especially when membership is not voluntary, should be encouraged.

Moreover, we have considered the fourth principle, "Adequacy of the private schemes." This principle states:

> Proper assessment of adequacy of private schemes (risks, benefits, coverage) should be promoted, especially when these schemes play a public role, through substitution or substantial complementary function to public schemes and when they are mandatory. Adequacy should be evaluated taking into account the various sources of retirement income (tax-and-transfer systems, advance-funded systems, private savings and earnings).

Based largely on these principles, member and beneficiary rights arise in the six following areas:

- Access to plan participation, equal treatment and entitlements under the pension plan;
- Benefit accrual and vesting rights;

- Pension portability and rights of early leavers;
- Disclosure and availability of information;
- Additional rights in the case of member-directed, occupational plans and
- Entitlement process and rights of redress.

I. Access to plan participation, equal treatment and entitlements under the pension plan

1.1 Employees should have non-discriminatory access to the private pension plan established by their employer. Specifically, regulation should aim at avoiding exclusions from plan participation that are based on non-economic criteria, such as age, gender, marital status or nationality. In the case of mandatory pension plans, those plans that serve as the primary means of providing retirement income, and those that are significantly subsidised by the state, regulation should also aim at avoiding other unreasonable exclusions from plan participation, including exclusions based on salary, periods of service and terms of employment, (e.g., by distinguishing between part-time and full-time employees or those employed on an at-will and fixed-term basis). Regulation of voluntary and supplementary pension plans also should aim towards similarly broad access, although the extent of such access may take into account factors including the voluntary nature of the arrangement, the unique needs of the employer establishing the pension plan, and the adequacy of other pension benefits.

1.2 Employees should be equally treated under the plan rules with respect to portability rights, disclosure requirements, governance and redress mechanisms, and other rights associated with the plan.

1.3 If establishing rules for benefit levels and accrual or contribution rates, regulators may take into account the extent of integration of occupational plans with other public or mandated sources of retirement income and the adequacy of the totality of the benefits provided.

1.4 Employees should be protected from retaliatory actions and threats of retaliation by their employer or pension plan representatives with respect to pension benefits and the exercising of rights under a pension plan. For example, they should be protected from terminations of employment carried out with the intent to prevent the vesting of an accrued benefit under the pension plan. Similarly, individuals exercising their rights under a pension plan, including but not limited to their filing of a claim or appeal or their initiation of administrative or judicial action, should be protected from retaliatory action, such as termination of employment, suspension, discipline, fine or any other type of discrimination.

Discussion. The extent of an employee's right of access to an occupational pension plan will depend on the nature of the pension programme and the particulars of the pension system of each country (or other relevant jurisdiction). Nonetheless, at a minimum, it is recognised that regulation should aim at assuring that employees are not unreasonably barred from participation in a pension plan. In the case where employee participation in a pension plan is voluntary on the part of the employee, this right of access should apply to the provision by the employer of the opportunity to elect to participate in the plan.

As a matter of public policy, it is clearly desirable that certain types of restrictions on plan access, such as those based upon age, gender, marital status and nationality, be avoided.[6] Countervailing policy considerations, for example, in the cases of age[7] and marital status[8], might be appropriately considered in some circumstances. Other restrictions that are based on more rational, economic criteria may be permitted, but should be carefully reviewed by regulators. For instance, salary restrictions that limit pension plan participation to only employees earning above a certain amount, in many cases, should be strongly discouraged. Similarly, rules limiting plan access based on whether an employee is a part-time rather than a full-time employee, or on the basis that the employee has been hired on a fixed-term rather than open-ended contract, should be discouraged. On the other hand, other categories of exclusion may be less problematic if moderate in application and appropriate in light of the nature of the pension programme and the balance policy makers have struck between the need for access to occupational pensions and labour market considerations. Where the provision of pensions is voluntary for employers, they should be permitted to retain some degree of control about which categories of employees have access to their pension plan. For example, period-of-service rules – such as those which require an employee to complete a specified period or number of hours of service prior to entering the pension plan or to work a certain number of hours annually to continue to participate – may be permitted to be imposed by the employer (or as a result of collective bargaining) in certain appropriate circumstances if not unreasonably exclusionary.[9] Similarly, in some circumstances, employers may be permitted to differentiate between various groups of employees, particularly on the basis of an intervening labour agreement. It is for the policy makers and regulator to decide whether such restrictions or exclusions strike the correct balance between pension plan access and other policy matters and to set outer limits on the flexibility permitted employers to set limitations to plan access. All restrictions or exclusions to plan access should be clearly defined in writing in plan documents.

In making such decisions, the issue of retirement income adequacy must also be considered: the extent of any right of access provided by regulation must take into account existing governmental retirement programmes and the expected role of the private occupational plans in providing an adequate level of retirement income. Thus, for example, in countries in which occupational plans are intended to only supplement state-provided pensions (or other sources of retirement income), there may be a lesser case for universal access among all employees, because the pension plan is intended to provide only a small portion of individuals' retirement incomes. Even in these cases, however, regulators should take into account the (frequently substantial) public subsidy (tax incentives, etc.) of occupational pension programmes and, in light of such subsidisation, seek to ensure the broadest possible access to plan membership and participation.

Once participating in a pension plan, individuals in that plan should be equally treated under the pension plan, although, again, as noted above, this rule must be applied with consideration to the context in which the plan is provided. Many regulators choose to establish rules for benefit levels and accrual or contribution rates for occupational plans aimed at developing a fair (if not equal) distribution of benefits among pension plan members. Guideline 1.3 recognises that regulators that establish such rules may take into account other sources of retirement income available to pension plan members and "integrate" across public and private pension systems – even if this results in plan members receiving different levels or rates of benefit under the pension plan alone.

Finally, having acquired rights to plan participation and plan benefits, individuals must be protected from retaliatory activity that would undermine their exercise of those rights. This protection may take the form of regulations or contractual provisions that specifically prohibit retaliatory activity with respect to pensions, or may be part of a broader legal framework in which employees are protected more generally from unfair dismissal or a variety of retaliatory acts by their employers.

II. Benefit Accrual and Vesting Rights

2.1 Regulations should promote the protection of benefits that an employee accrues by participating in an occupational pension plan, prevent the retroactive reduction of the value of benefits previously accrued in the plan and provide that plan members obtain timely notice regarding any reduction in the rate of future benefit accruals in the pension plan.

2.2 Accrued benefits should vest immediately or after a period of employment with the employer sponsoring the plan that is reasonable in light of average employee tenure. Benefits derived from member contributions to the pension plan should be immediately vested.

2.3 Practices that substantially undermine or eviscerate benefit accrual and vesting rights should not be permitted.

2.4 Vested benefits of those individuals who have severed employment with an employer should be protected and not subject to forfeiture, regardless of reasons for severance, except in the limited case of dismissals resulting from acts of gross malfeasance that are clearly defined.

2.5 Vested benefits should be protected from the creditors of the plan sponsor and plan service providers (including any financial institutions or other entities managing the pension plan or plan assets or acting as a custodian of pension fund assets associated with the plan) – at a minimum by the legal separation of plan assets. Vested benefits also should be protected when the plan sponsor or a plan service provider changes ownership due to merger, acquisition, sale, or other corporate transaction, or files for bankruptcy. Similarly, the extent to which vested benefits are protected from the creditors of individual plan members and beneficiaries should be addressed.

Discussion. A member's benefits begin to accrue upon his entry into a pension plan. In some pension plans and under the regulations of some countries, accrued benefits are immediately vested. In others, however, they may vest only after a defined period of time, typically linked to years of service with the employer sponsoring the plan. Regardless of whether accrued benefits are vested or not, employees participating in occupational pension plans should be protected from the retroactive reduction of the value of benefits that they have already accrued.[10] Thus, amendments to a pension plan's benefit or contribution formula generally should affect only the rate of future benefit accrual. Pension plan members should be appropriately notified if the rate of future benefit accrual will be reduced as a result of changes in the pension plan's benefit or contribution formulas. (See also Guideline 4.8.) Countries, however, will vary with respect to the precise manner in which these protections are extended. Protections should apply in both defined benefit and defined contribution environments, although certain practices that regulators should review (e.g., excessive back-loading as discussed below) may more typically occur in a defined benefit plan environment.

An accrued benefit is considered to be "vested" if the member has acquired an immediate, fixed right to the present or future receipt of his accrued benefit. The scope and nature of vesting rights should be clearly defined. In defined contribution plans, for example, the account value of the vested benefit may fluctuate with market performance; in defined benefit plans, the value of a vested benefit may depend on interest rate assumptions. In most countries, employees covered by a company retirement plan have vesting rights that reflect an irrevocable commitment from the employer and

ensure that plan members will receive benefits related to their past years of service (assuming adequate funding of the plan).

Vesting rules should be designed to provide for the vesting of accrued benefits after a reasonable period of employment. The reasonableness of a vesting period should be judged relative to average employee tenure, so that vesting is typically attainable by plan members. In appropriate circumstances, especially where there is collective bargaining, there may be different vesting schedules for different categories of employees. In practice, the scope of vesting rights, like rules pertaining to the protection of accrued benefits, varies significantly from one country to another. Generally, vesting periods range from immediate vesting to five years, although in some cases they may be longer. The length (number of years) and design of vesting periods (cliff – i.e. an "all or nothing" rule – versus graduated vesting scales) may vary with the particular labour market conditions of a country and the need to balance the cost to employers of shorter vesting periods against the desire to reduce "job lock" associated with longer vesting periods.[11] Where the employer funds or contributes to the pension plan, shorter vesting periods are costly to them because they increase funding demands (unless the employer reduces benefit levels). Shorter vesting periods also reduce a pension plan's utility as an employee retention tool. Longer vesting periods may reflect the legitimate desire of employers to retain workers for a certain period of time in light of their investment in employee training. From the standpoint of retirement income adequacy alone, it is desirable to encourage the immediate vesting of accrued benefits, but in practice, this is a difficult goal, because of the costs imposed, especially in cases where pension plans are voluntarily established by employers.

Generally, individual member contributions to pension programmes should be immediately vested, as reflected in Guideline 2.2. There will be exceptional instances, however, where the rate at which member contributions (and benefits derived from them) are vested may be appropriately subject to collective bargaining.

While in many jurisdictions, the precise design of benefit or contribution formulas in occupational pension plans – especially plans that are voluntarily established – is left to the employer and/or the collective bargaining process, certain practices should be avoided, because, as noted at Guideline 2.3, they may substantially undermine or eviscerate benefit accrual and vesting rights. Such practices may include, for example, the excessive back-loading of benefit accruals[12] or the use of an extremely long vesting period (especially when used in combination with a cliff, rather than graduated vesting schedule). The back-loading of benefit accruals, like vesting, however, may reflect legitimate employer desire to retain workers and to reward older, longer serving employees. It is the responsibility of policy makers and regulators to strike the appropriate balance between benefit protection and employer flexibility on such matters and to assure, in accordance with Guideline 2.3, that plan design features and other practices that are permitted to be adopted do not in their judgment substantially undermine benefit accrual and vesting rights.

Severed employees, whether separated from service voluntarily, through mutual agreement or at the will of the employer, should be assured that at least the nominal value of their vested benefit in a pension plan is protected.[13] In defined contribution plans the nominal value of an individual's account with the plan may be subject to the investment performance of the assets in the account, even after the employee has left the service of the employer. The ability of a severed employee to "port" the assets in the account or the present value of the accrued benefit (in the case of a defined benefit plan) may be an important adjunct to the protection of the vested benefit required by this guideline. (See Guideline III below addressing pension portability and rights of early leavers.)

Certain limited exceptions to vesting protections may be appropriate: for instance, in the case of individuals dismissed by the employer for gross malfeasance, especially if related to the pension plan

or fund, the loss of vested benefits may be warranted. Such exceptions, however, should be drawn narrowly and should generally exclude any amounts associated with an individual's own contributions to the pension plan. (Assets associated with the lost benefits generally should be retained by the plan and not appropriated by the employer.)

Regulators should seek to assure that vested benefits are protected from the creditors of plan sponsors and plan service providers. Vested benefits also should be protected in cases where the ownership of the employer sponsoring a pension plan (or that of a plan service provider) changes as the result of a merger, acquisition or sale. There should be a clear delineation of who is responsible for the pension plan, its assets and its administration under these circumstances. Similarly, if the employer or other entities managing or safekeeping plan assets become bankrupt, vested benefits should be protected by regulation. In many cases, these matters also may be addressed under corporate, bankruptcy and other bodies of law; in these cases, regulators should assure consistency of law and regulation with respect to the pension plan and with respect to the extent of a plan sponsor's obligations to it. Requiring pension assets to be legally segregated will substantially assist in protecting pension plan assets in bankruptcy and change-of-ownership situations, but will not fully address them.[14] Regulations should also assure that in the event of changing corporate circumstances it is clear who remains responsible for the maintenance of records related to the pension plan, including work, compensation and contribution histories that determine the value of benefit accrual and extent to which plan members are vested under the pension plan. Additionally, in the case of defined benefit plans there may be funding deficiencies resulting from the nature of funding rules that make it impossible for the plan to pay all vested benefit amounts. Some countries have resorted to additional insurance programs to address this issue.[15]

III. Pension portability and rights of early leavers

3.1 Individuals who are changing jobs should be able, upon request, to move the value of their vested account balance in a defined contribution plan from their former employer's pension plan either to the plan of their current employer (where permitted) or to a similar, tax-protected environment provided by an alternative financial instrument or institution. Where feasible, a similar portability right also should be available to individuals in defined benefit plans. There may be diminished need for individual portability rights where there are industry-wide and other types of multiple-employer pension plans.

3.2 Individuals should have the right to timely execution of the request to transfer the value of their vested benefit accruals.

3.3 With respect to defined benefit pension plan benefits, the actuarial and interest rate assumptions used in valuing an individual's vested benefit accrual that is to be transferred should be fair and reasonable. These assumptions should be made readily available to the individual transferring the value of his accrued benefit.

3.4 Portability rights should be available to members of a pension plan when they separate from service with an employer, regardless of whether the separation is voluntarily, involuntary or by mutual agreement.

3.5 Portability rights should not be inhibited by the assessment of unreasonable charges or fees, such as excessive transaction charges or excessive back-end fees. At a minimum, members and beneficiaries should be informed of the presence of any such charges or fees.

3.6 Individuals should not be required to exercise their portability rights and, generally, should be permitted to leave their vested benefits in the pension plan of their former employer.

Discussion. Like vesting rights, portability rights are often associated, as a matter of policy, with labour mobility. The inability to move one's vested benefit from one employer to another may constrain individuals who are considering a job change. It is frequently a desirable goal of policy makers to avoid such constraints, without imposing unnecessary costs on employers.

Portability rights may also assist individuals in managing their retirement assets as they change employers throughout their working lives by enabling their consolidation. The consolidation of retirement assets makes retirement accumulations (and the extent of their adequacy) significantly more transparent. This may be particularly true for defined benefit plan accumulations that are converted into a lump sum equivalent for purposes of transfer.[16] Additionally, many defined benefit plans do not index the vested benefit amounts of early leavers for inflation. In such circumstances, it may be beneficial to permit former plan members to transfer their benefit accumulations elsewhere.

The guidelines do not address portability rights, except in the context of changes in employment.[17] It may also be desirable, however, to provide portability rights to employees participating in member-directed pension plans so that they may choose to participate in a personal pension plan, rather than participate in the pension plan sponsored by their employer. This may be desirable, for instance, if plan members are provided only a limited choice of investment options under their employer's pension plan. The desirability of extending portability rights in these circumstances will depend on many factors. These factors include the extent that competition among financial providers would be enhanced, the financial sophistication of the working population, the costs of investments on an individual basis versus those achieved in pension plan environments that experience certain economies of scale, and the transaction costs associated with transferring accounts. Extending portability rights to current employees also may impose an unacceptable administrative burden on employers or undermine the economies of scale advantages employers may have in managing their pension plans. These factors must be considered before extending portability rights to current employees.

It is important that individuals have an adequate understanding of their portability rights and their potential impact on their pension benefits. Specifically, individuals should be provided sufficient information to enable them (and their financial advisors) to understand the nature of their pension benefits and the costs and benefits of "porting" their vested benefit amounts. (See also Guideline 4.5.) When deciding to move pension benefit accruals, individuals should have the right to the transfer of an appropriately valued benefit, ready access to the economic assumptions underlying the valuation (in the case of a defined benefit plan), and timely execution of their portability request.

The extension of portability rights, in addition to taking into account the needs of pension members, must also take into account the potential administrative burdens that portability obligations may impose on employers. In certain situations, the costs of certain portability mechanisms may be determined to be unacceptably high. For example, the administrative burdens and costs of providing portability to and from defined benefit plans are often perceived to be high. Moreover, substantial portability-related distributions could, in the extreme, have an impact on a plan's funding status. For these reasons, Guideline 3.1 recognizes that portability rights may be more easily established in the defined contribution context. Concerns also are frequently expressed that undue costs are imposed on employers who are asked to accept pension assets from other pension plans. In such cases, it is not unusual to permit, but not require, an individual's new employer to accept a transfer of pension assets from the individual's previous employer. Similarly, an individual's portability rights may be limited to

a right to transfer the value of vested benefit to a personal pension plan or individual account at a financial institution. Moreover, as stated in Guideline 3.1, it may be less necessary to institute extensive portability mechanisms in pension systems that are organized on an industry-wide or multiple-employer basis, because individuals are more likely to remain within the same pension plan when they change jobs. Finally, there may be costs associated with the retention of vested benefits in cases where former employees elect not to exercise their portability rights (Guideline 3.6). This is especially true of short-term employees with small vested benefit values or accounts. Regulators should consider whether, in light of the costs associated with retaining records for *de minimus* vested benefit amounts, a narrow exception to the general rule set forth in Guideline 3.6 is warranted.

Regulators should be encouraged to address other portability issues not specifically identified in the guidelines themselves, including those that arise when employees change jobs with the same employer. Such job transfers may result in the employee leaving one pension plan and entering another offered by the employer. Policy makers and regulators should be sensitive to the administrative difficulties for employers and the unnecessary confusion for employees in such circumstances and should seek to assure that rules and regulations reduce the difficulties of benefit portability on these occasions. Similarly, this Guideline III only contemplates portability in a domestic context. Regulators should also consider portability issues that arise in an international context, because individuals are increasingly moving from employer to employer or within a single firm across borders. It is recognised, however, that issues arising in this context are numerous and complex.

IV. Disclosure and availability of information

4.1 Members and beneficiaries in pension plans, as well as potential plan members, should have a legal right to ready access or disclosure to basic information about the pension plan, including adequate information regarding their rights of access, anticipated contribution and/or benefit accrual rates, vesting schedules, other rights and obligations, investment policy, the names and manner of contacting responsible parties for plan administration and governance, and claims processes or procedures.

4.2 Plan documents, annual accounts, and annual financial and actuarial reports, if not automatically disclosed, should be made readily available to plan members (and to beneficiaries where relevant) for copying for no more than reasonable charge or fee.

4.3 Members and beneficiaries should be notified in timely fashion if required employer and member contributions have not been made to the pension plan.

4.4 Timely, individualised benefit statement should be provided to each plan member (and to beneficiaries where relevant). The information included on the benefit statement and the frequency of its delivery will depend on the type of pension plan. The information included should enable the plan member to identify current benefit accruals or account balances and the extent to which the accruals or account balances are vested. For pension plans with individual accounts, the information should include the date and value of contributions made to the account, investment performance and earnings and/or losses. For member-directed accounts, a record of all transactions (purchases and sales) occurring in the member's account during the relevant reporting period should be provided. This information and other similarly personal data should be maintained and delivered in a manner that takes full account of its confidential nature.

4.5 Individuals should be provided adequate information about the rules associated with the portability of their vested benefit accruals, especially where the transfer of these assets may entail a loss of certain benefits or rights that were associated with the pension plan in which the benefit originated.

4.6 Disclosure materials should be written in a manner expected to be readily understood by the members and beneficiaries to whom they are directed.

4.7 Consideration should be given to adequate forms of delivery of disclosure materials, including, mail, delivery at the workplace and via email or websites, where feasible.

4.8 Amendments or changes to the pension plan that will significantly impact members and beneficiaries, their rights and their benefits must be disclosed to them in timely fashion and in a manner expected to be readily understood by them.

Discussion. Rights may be meaningless, unless they are adequately disclosed and understood. Therefore, it is important that sufficient, readily understood information about the pension plan is provided to plan members and beneficiaries in a timely manner. Moreover, any significant changes in rights, rules and obligations should similarly be disclosed.

Certain disclosure should be required to be provided to each individual prior to initiation of participation in the pension plan and upon request thereafter. These required disclosures would include the following: (1) information regarding the governing body of the plan, (2) explanation of the nature of the benefit promised (including identification of the risks and whether or not benefits are inflation-indexed), (3) information about the consequences of leaving the plan early, and (4) information about the investment policy pursued by the plan. In addition, certain information should be disclosed regularly, such as: (1) information on the performance of investments and (2) the value of the individual's accrued benefit or account balance. When establishing disclosure rules, regulators should take into account the need of plan members to have certain information on the one hand, and on the other hand, whether or not the information might be too voluminous or sophisticated for the average plan member. Consideration should also be given to the cost of providing certain information. Similarly, regulators should consider whether, given the nature of the specific pension programme, different rules should apply to former employees that are no longer actively accruing benefits in a plan and to beneficiaries; in many cases however there will be little justifiable distinction.

Adequate disclosure, in addition to helping to effectuate the substantive and procedural rights of members and beneficiaries, may also lead to more effective pension plan governance by enabling members to monitor certain aspects of plan administration.

There may be the need for additional types and frequency of disclosure in the case of member-directed defined contribution plans, which require members to select and monitor their own investments, thus imposing additional responsibilities and risks on them. Where members have the right to direct the investment of their individual accounts, the disclosure should provide adequate information upon which each plan member can base educated investment decisions. In particular plan members need to be informed about the precise nature of the financial instruments available, including data on investment performance and risk.

In this connection it also may be important that members obtain an adequate understanding of these types of pension plans, the investment risks they bear, and the extent of their responsibilities for managing investments or selecting an asset manager under the plan. Regulators and employers are encouraged to consider ways of improving members' understanding and knowledge of these matters

and ways to provide them with adequate assistance in making investment-related decisions. The entities responsible for the provision of disclosure materials, education and member assistance should be clearly identified. Entities that might play a role in educating plan members as to their rights and responsibilities, especially in member-directed plans, could include governmental agencies, schools, and trade unions, as well as employers and other plan sponsors, plan trustees, financial institutions and other plan service providers. The particulars will very much depend on the nature of the pension programme (See also Guideline V below.).

V. Additional rights in the case of member-directed, occupational plans

5.1 Where members direct their own investments in an occupational pension plan, they have the right to a number and diversity of investment choices sufficient to permit them to construct an appropriate investment portfolio in light of their own individual circumstances and in the context of the particular pension programme.

5.2 Members should be provided with complete information regarding investment choices that is standardised and readily comparable. At a minimum this information should include disclosure of all charges, fees and expenses associated with each investment choice, as well as portfolio composition and historical investment performance data.

5.3 Members managing their own individual accounts have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions. The right (or responsibility) to make and execute investment decisions should not be inhibited by the assessment of any unreasonable charges or fees.

5.4 Members and beneficiaries who are required to manage their own individual accounts should be provided sufficient opportunity to acquire the financial skills or education and other assistance that they need in order to make appropriate investment decisions in their pension plans.

Discussion. Individuals participating in member-directed pension plans, that is pension plans in which members direct their own investments or select an investment manager, should be provided adequate rights and protections that take into consideration the responsibilities delegated to them. As an initial matter, individuals participating in member-directed plans must have an appropriate array of investment options from which to choose. This array of investment options will likely include both higher-risk and lower-risk options (which may include an option guaranteeing the amounts of the employee's own contributions paid in), and an option suitable for the typical plan member. The extent of investment choice, however, will vary depending on the nature of the pension plan, the conditions in the relevant securities markets, the role of the pension plan in the broader retirement income security scheme of the particular country, and other similar factors. In assuring that members have a sufficient number and diversity of investment choices, it may also be appropriate to consider whether to limit the number of investment choices in cases where members may be overwhelmed by an excess of investment options. There may be a variety of methods to limit choice, such as by imposing a specific limit on the number and/or type of available investments or by imposing a legal obligation on plan sponsors or fiduciaries to consider this concern in light of the particularities of their pension plan and member population. The decision to limit choice should be weighed against the need to provide sufficient diversity of choice and assure a competitive market.

Individuals in member-directed pension plans may be responsible for assessing and selecting an asset allocation strategy, making specific investment decisions, monitoring investment performance, and buying and selling securities (or switching from one investment vehicle or management company

to another). They therefore have a need for adequate information, including comprehensive and comparable information regarding portfolio composition, risks, fees and investment performance to effectively carry out these tasks. In this regard, the disclosure rights set forth and discussed in Guideline 5.2 (and Guideline IV) are particularly important in the context of member-directed plans.

Just as importantly, as stated in Guideline 5.4, members and beneficiaries in member-directed pension plans should be provided sufficient opportunity to acquire the financial skills and other assistance they may need to make the investment decisions expected of them. Regulators and policy makers should therefore assess the needs in their particular pension systems and consider the best manner in which these needs can be met. Action in this area may take a variety of forms, including consideration of the role of public programmes to increase financial literacy, employers and other plan sponsors, trade unions and other social partners, as well as financial service providers and other entities involved in pension plan administration, management and investment.

Individuals in member-directed plans also must be able to execute their decisions in a timely fashion, as dictated by their own individual retirement planning needs, risk preferences and time horizons, market volatility, and their individual assessments of the performance of specific investments and trends in the economy and securities markets. Regulators must take steps to assure that pension plan administration is suitably robust to enable timely and accurate execution of these transactions.

Finally, regulators should take care that the fees associated with member-directed programmes do not significantly undermine their effectiveness, either by making investments themselves unreasonably expensive (for instance, as compared to fees and expenses associated with similar retail investment products in the relevant markets), or by imposing transaction costs that significantly inhibit plan members from effectuating appropriate investment strategies. Transaction costs that regulators might review include, for example, one-time administrative or service fees and front-end or back-loaded fees charged upon the purchase or sale of a particular investment.

VI. Entitlement process and rights of redress

6.1 Members and beneficiaries (and individuals claiming the right to be deemed a member or beneficiary under a pension plan) shall be entitled to a fair process or procedure in which their entitlements, rights and benefits under the pension plan may be claimed or asserted.

6.2 The claim process or procedure should be expeditious and transparent. It should be easy to understand and have only reasonable or no cost to the individual claimant.

6.3. The process should include independent administrative or judicial recourse if initial claims of rights or benefits are denied by the pension plan administrator, fiduciary, or employer. This process should provide for adequate remedial measures to redress the loss of rights or benefits suffered by the member or beneficiary whose claim has been found to be valid.

Discussion. A fundamental right of members and beneficiaries is the right to a fair, transparent process by which to assert claims against the pension plan. Individuals should be able to initiate and pursue at reasonable cost claims to the right to participate in a plan, to accrue benefits and vest in them at specified rates, and to take benefit distributions in the manner set forth in regulations or in the pension plan documents or contract. This right should be disclosed in accordance with Guideline 4.1. There are numerous ways to establish a claims process, including by the establishment of an internal

dispute resolution procedure. Good practice would also ensure that the procedure made use of an independent arbitrator or a board or tribunal, which may include member representatives. Individuals also should have access to an independent appeal mechanism, which may be especially warranted if claims are first considered by individuals or bodies internal to the pension plan or sponsoring employer. Consideration should be given to conciliatory approaches to dispute resolution and informal procedures that are easier for members and beneficiaries to use and are less costly to maintain. The use of a pension ombudsman should also be considered.

Furthermore, the claims process would be meaningless if it could not result in meaningful redress and, therefore, the process should include an effective way to assess and enforce adequate remedial measures.[18] Finally, in accordance with Guideline 1.4, employers and pension plan representatives should not be able to inhibit or undermine an individual's exercise of these rights by retaliatory action (or threats of retaliatory action).

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1 These principles were endorsed by the OECD Working Party on Private Pensions in 2000 and were approved by the International Network of Pension Regulators and Supervisors in 2001.

2 . The Working Party is also presently developing a "Methodology for the Assessment of the Observance of the Basic Principles", which provides criteria for the assessment of the Fifteen Principles. This document also incorporates the Guidelines for Pension Fund Governance. Similarly, once approved, these guidelines, like the work on governance, will be incorporated into the Methodology document. This document is also designed to be used as a free-standing document.

3 These guidelines may not apply to those occupational, private pension plans which fall outside the scope of the European Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

4 These guidelines apply primarily to the regulation of pension plans set up within a single country or jurisdiction for the benefit of employees resident in that same country or jurisdiction. Although much guidance may also be applicable to pension plans set up for the benefit of employees where they are in a different country or jurisdiction than that in which the pension plan is based, it is recognised that special considerations may arise in this context and strict application of the guidelines may not be appropriate.

5 Most notably, these include the disclosure-related guidelines (Guideline IV) in the draft Methodology. (See footnote 2.) It was felt that the matters addressed in these guidelines were so central to various aspects of member rights that to leave them out of the document or to refer to them only by reference would be wholly inadequate. In these cases, however, we have assured consistency with the previously approved principles and criteria, re-orienting them to sharply focus each on the protection of member rights.

6 In some cases, employer-sponsored pension plans are "open" rather than "closed", i.e., they must permit non-employees to participate in the plan. In such cases, at a minimum, regulators should impose similar prohibitions on access restrictions based on age, gender, marital status and nationality. Employment-related restrictions and guidelines pertaining to them may be less relevant.

7 As noted below, age might be a relevant consideration when it serves as an accurate proxy for legitimate period-of-service rules. Age also may be relevant – in light of the substantial tax subsidies sometimes involved – when regulators and policy makers determine whether individuals above a certain age should be permitted to continue to accumulate pension benefits or defer pension plan distributions. However, given the strong desire to avoid age discrimination in plan access, which is

expressed in Guideline 1.1, age-based rules should be implemented only with great care and the heightened scrutiny of regulators and policy makers.

8 Employee access to an occupational pension should not be contingent on whether or not the employee is married. It is recognized, however, that marital status may have a legitimate place in determining certain benefits or benefit rights. For example, some jurisdictions have enacted additional, special protections and rights for the widows and widowers of plan members. Similarly, some jurisdictions specifically address the rights of former spouses in cases of divorce. Additionally, other jurisdictions have moved recently – either by regulation or by the voluntarily action of employers – to establish or protect the rights of non-married partners.

9 Some pension plans include age-based rules that limit plan access and are intended to serve the same function as period-of-service requirements. For example, an employer might require that its employees attain the age of 21 prior to joining the pension plan. Period-of-service rules – and age-based proxies for these rules – may play an important role for employers that establish pension plans on a voluntary basis, because they address the problem of high turnover rates, which are typical among younger worker populations. High turnover rates can increase the administrative costs of a pension plan and yet deliver very low, if any, vested benefits to this portion of the workforce. It is up to the regulators to determine when age-based rules that limit pension plan access are appropriate proxies for legitimate period-of-service rules or merely a form of unnecessary age discrimination.

10 Limited exceptions to this prohibition may be appropriate, but only where there is clear, un-coerced member consent to a retroactive reduction in accrued benefits, such as in the context of a collective bargaining process.

11 It should be noted that "cliff"-style vesting can lead to results that may be perceived as unfair by employees and induce unwarranted "job lock." Take for example the employee in a pension plan with 5-year cliff vesting, who may forego a different employment opportunity after working for 4 years with an employer in order to vest in the pension plan. A graduated schedule, under which that employee would have been at least partially vested, would have been less drastic in application and would have substantially altered the nature of the individual's decision to forego a better employment opportunity in order to preserve the pension accrual.

12 "Back-loading" is the practice of deferring benefit accruals through the design of a benefit formula, typically in a defined benefit plan.

13 In the case of defined benefit plans some countries may require that pension plans provide additional protection of vested benefits by requiring the indexation of those amounts to wage or inflation related benchmarks. Full indexation, however, can impose extra costs on employers and prove counter-productive if employers are thereby deterred from offering pension plans on a voluntary basis. It is a decision for the policy makers and regulators whether the benefits of such indexation outweigh its costs.

14 See the fifth of the Fifteen Principles, "Regulatory system and separation," which states, in relevant part, "The pension fund must be legally separated from the sponsor (or such separation must be irrevocably guaranteed through appropriate mechanisms)."

15 See the sixth of the Fifteen Principles, "Funding.". See also Directive 80/987/EEC, relating to the protection of employees in the event of the insolvency of their employer and obliging European Union member states to ensure that occupational pension rights are safe when an employer becomes insolvent.

16 Converting a defined benefit into a lump sum equivalent for purposes of transferring the value of the benefit should be distinguished from enabling plan members and beneficiaries to obtain a lump sum

payment (or distribution) of the benefit. The issue of whether or not individuals should be able to receive a benefit payment in the form of a lump sum is not addressed in these guidelines.

[17] The guidelines take no position on whether or not portability rights should remain available once an individual begins to receive benefit payments under a pension plan.

[18] See also the OECD Guidelines For Pension Fund Governance, especially Guideline 12, “Redress”.