

FAQ ON NORTEL REQUEST FOR PENSION ADJUSTMENT REVERSAL (PAR)

Note: This FAQ is a simplified explanation of a complex topic. The law, regulations, and policies of the regulators and the actual plan documents are controlling, and supersede any explanations below.

Q1 What is the issue?

A1 Pension Adjustments (PAs) were reported by Nortel to the Canada Revenue Agency (CRA) each year based on each person's pension accrual in that year. An individual's total PA for a year was subtracted from the maximum permitted PA (with certain adjustments) to get the allowable Registered Retirement Savings Plan (RRSP) contribution in the following year. To the extent that the individual didn't use his or her full RRSP contribution room in any year, the balance was carried forward as an addition to the allowable contribution room for the following year.

If an individual ultimately receives a total distribution (for example, as a transfer to a locked-in RRSP) that is less than the prior PAs from that plan, a Pension Adjustment Reversal (PAR) may be provided by the plan. Receipt of a PAR adds to the allowable RRSP contribution room. The Nortel PAs assumed that the pensions would be paid in full. As there will in fact be benefit reductions, with hindsight we know that the PAs were too high, so PARs may be permissible under certain limited conditions.

Under the Income Tax Act (ITA), a PAR is only reported once a participant has received his or her final settlement distribution from the plan, which is currently unknown pending the resolution of the allocation litigation over the lockbox funds.

Certain participants have asked for PARs to be issued at the time they decide to take a transfer value, however, this is not possible because this will be their first settlement distribution, not their final settlement distribution.

Q2 If there is going to be a distribution now, why can't there be a PAR issued now?

A2 The simple answer is because the ITA does not permit it. The ITA only permits a PAR to be issued to a participant who has no remaining entitlements to anything from a pension plan.

There is actually some logic to that requirement. Suppose you had \$10,000 in PAs from a plan. The first distribution was, say, \$8,000. You'd like to get a PAR for \$2,000, so you could put an additional \$2,000 into your RRSP. But if you later got a second distribution of \$500, you would now have over-contributed to your RRSP. So the ITA makes you wait until there will be no more distributions, so as to prevent you from over-contributing to your RRSP.

Despite the restriction under the ITA, the NRPC was successful in persuading the CRA to permit a provisional PAR for terminated members in 2011 on an exceptional basis with the understanding that a final PAR would be issued only on final distribution from the plans in accordance with the ITA. The provisional PAR was determined on the assumption that 100% of a member's commuted value was paid out. This was the only basis that the CRA would permit a provisional PAR. If it was determined in 2011 that you were not entitled to a provisional PAR based on the CRA's methodology, a further request for a provisional PAR from the CRA will not result in an earlier final PAR for any terminated members.

Q3 How does that affect me?

A3 Your current distribution, assuming you haven't retired and you have elected to take a transfer value instead of a pension, is coming from plan assets and, if you earned credits in Ontario, from the payments received from the Ontario Pension Benefits Guarantee Fund (PBGF). However, there are likely to be additional distributions that come from proceeds from the sale of Nortel's businesses and patents (i.e. the "lockbox"). Since the current distribution is not likely to be the final distribution, MS is not permitted under the ITA to issue a PAR. They will only be able to do that some time in the future, at the time of the final distribution.

Please also take into consideration that the PAR calculation only takes into account the post-1990 portion of the total pension commuted value because they were not calculated prior to 1990.

Q4 Pensioners and those who haven't retired but who didn't choose the transfer value option are also losing part of the benefit that was used to compute their PAs. Will they get a PAR eventually?

A4 No. Again, the simple answer is that the ITA does not permit it. The likely reason is that someone who received or will receive a pension might live to a very old age, and collect more than his or her total PAs. Whether or not that actually happens does not matter.

The PAR is also not available for retirees who elect a lump sum transfer.

Q5 Where can I read more about PARs?

A5 CRA's short description is on their web site at <http://www.cra-arc.gc.ca/tx/rgstrd/papspapar-fefespf/par-fer/menu-eng.html>. There is also PAR Guide RC 4137 at <http://www.cra-arc.gc.ca/E/pub/tg/rc4137/rc4137-09e.pdf>.

If you have further questions please contact the CRA directly.