

# Audit of refusals of unjustified claims from insolvent pension schemes

## OPA Guarantee Fund Foundation

### Key facts

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The OPA Guarantee Fund Foundation (hereafter the OPA Guarantee Fund) is a national occupational pension scheme. It is a public foundation with its own legal personality, and an authority with sovereign competencies.

The OPA Guarantee Fund acts as a "reinsurer" for the 2nd pillar if an employer is no longer able to pay the employer savings contributions into the occupational pension scheme, or if entire pension schemes become insolvent. All pension schemes that are subject to the Vested Benefits Act must sign up to the Fund and contribute towards its financing. In 2021, around 2,800 cases were processed. The guaranteed benefits amounted to some CHF 36 million.

If Fund reserves are insufficient, the Confederation can grant the OPA Guarantee Fund a loan at market rates to bridge the liquidity shortfall.

The aim of the audit was to assess whether the OPA Guarantee Fund's processes for refusing unjustified claims from insolvent pension schemes are effective. The findings of the audit by the Swiss Federal Audit Office (SFAO) were positive.

#### **The Guarantee Fund's processes for dealing with cases of insolvency are effective**

The OPA Guarantee Fund executive office's standard procedure for checking insolvency dossiers is fit for purpose and checks are carried out carefully and effectively. Tasks are set out in the regulations on the powers of the foundation board, the executive committee and the executive office.

The foundation board has established benchmark ranges that are used to measure and manage the OPA Guarantee Fund's finances and keep them on an even keel. At end-2021, the Fund reserves amounted to around CHF 836 million.

#### **Simple and effective practices for combating cases of abuse**

In accordance with the legal requirements, the OPA Guarantee Fund does not guarantee benefits that are fraudulently claimed. In addition, it can participate in the claims of the pension fund against persons who are responsible for the pension scheme's insolvency in the amount of the secured benefits.

In recent years, the executive office has developed an effective, easy-to-use procedure to combat cases of abuse. It applies this procedure consistently and in a way that is predictable for the players in the pension fund landscape. In 2021, unjustified claims amounting to around CHF 2 million were refused. The financial burden from the fight against abuse is not very high relative to the secured benefits. However, it is a task in the system which fosters acceptance of solidarity among contributors.

In 2019, a collective foundation lodged an appeal with the Federal Administrative Court against the OPA Guarantee Fund's decision to refuse benefits. Irrespective of the pending court ruling, the SFAO is of the view that meaningful and practicable measures should also be taken in the future to combat abuse.

### **Legal frameworks impose some limitations on freedom to act**

In a case of impending insolvency, it is important to intervene quickly in order to reduce insolvency losses as much as possible. However, the OPA Guarantee Fund has no legal basis for an early intervention. In 2017, the Federal Supreme Court concluded that a pensioner portfolio to be taken on by the OPA Guarantee Fund. This is in spite of the fact that, de facto, the restructuring of pension funds is possible only for active insured persons, and not for pension funds without a solvent employer.

This issue was also discussed in the dispatch (19.080) on amending the Federal Act on Old-Age and Survivors Insurance (modernisation of supervision in the 1st pillar and optimisation in the 2nd pillar of the old-age, survivors and disability insurance). It should no longer be possible to "buy" pensioner portfolios, to charge excessive administration or portfolio management fees, and thereby further reduce the already insufficient base for covering pension liabilities. This would not address the risk to existing pensioner portfolios.

**Original text in German**