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|  | Letterhead_committees logo**PENSION FUNDS AMENDMENT BILL, 2020****COMMENTS MATRIX****RESPONSES TO COMMENTS ON THE PENSION FUNDS AMENDMENT BILL PUBLISHED BY PARLIAMENT ON 02 NOVEMBER 2020****DRAFT FOR DISCUSSION PURPOSES ONLY**This document sets out the Dr. Dion George’s response in respect of comments submitted by stakeholders on the version of the Pension Funds (Private Members’) Bill that was published by Parliament on 2 November 2020. |  |
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# LIST OF COMMENTATORS

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|  | **Agency/ Organisation**  | **Contact Person** |
| 1. | Association for Savings and Investment South Africa (ASISA) | Ms. Rose Lightbody |
| 2. | Banking Association of South Africa (BASA) | Ms. Jacqueline Biddlecombe |
| 3. | Batsetsa Council of Retirement Funds for South Africa (BATSETSA) | Ms. Anne-Marie D’Alton |
| 4. | Congress of South African Trade Unions (COSATU) | Mr. Matthew Parks |
| 5 | Dear South Africa | Mr. Rob Hutchinson |
| 6. | Federation of Unions of South Africa (FEDUSA) |  |
| 7. | Institute of Retirement Funds Africa (IRFA) | Mr. Enos Ngutshane |
| 8. | National Treasury | Mr. Ismail Momoniat |
| 9. | South African Institute of Chartered Accountants (SAICA) | Dr Sharon Smulders |

| RESPONSES TO COMMENTS ON THE PENSION FUNDS AMENDMENT BILL, 2020 (B30: 2020) |
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| **Reviewer** | **Clause/Topic** | **Issue** | **Response** |
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|  | CLAUSE 1 | * The proposed amendment to sec 19 as contained in the Bill does not contemplate corresponding amendments to section 37A of the PFA (which protects a member’s benefit from being reduced, ceded, transferred or attached by creditors as security for general debts) and section 37D (which allows for certain deductions to be made from pension benefits, as permitted in terms of the Act)
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| NTASISABASAIRFA/ BATSETA | OBJECTS OF THE BILL. **(SYMPATHY FOR THE BILL BUT REJECT IT)** | * General sympathy towards the objectives of the Bill of providing relief to those members of pension funds who are temporarily without income or are in serious financial difficulties as a result of the current COVID-19 emergency.
* Many of the statements made in the Memorandum on the Objects of the Bill are also not valid need to be supported by hard evidence.
* Bill will lead to unintended consequences
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| COSATUFEDUSA | CONDITIONAL SUPPORT FOR THE BILL | * COSATU supports the provision for pension funds to be utilised as surety for workers in applying for loans. This builds upon the existing home loan provisions in the Pension Funds Act. COSATU believes that whilst allowing workers access to their funds, limits are needed to avoid their complete depletion.
* A reduced limit is needed to avoid a complete depletion of workers’ pension funds. COSATU believes that the 75% limit provided for in the Bill is too high.
* Reduce the 75% limit on withdrawals to 30% or up to R30 000.
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| NT ASISABASAIRFA/ BATSETA | IMPACT OF BILL ON SAVINGS | * If a member ends up defaulting on the loan, it would substantially erode their retirement savings.
* Incurring substantial indebtedness could certainly have a significant impact upon the pension fund member’s financial security over the long-term, including potentially into their retirement years.
* Retirement savings by South Africans have been extremely low for a lengthy period, and have not shown any signs of improvement. The recent 10X 2020 South African Retirement Realities Survey, for example, found that 49% of people surveyed say they don’t have a retirement plan.
* Additional costs will be incurred which will result in additional charges to funds that will ultimately impact on members’ savings.
* The Bill could potentially further erode policy interventions that have been developed to discourage leakage from retirement savings.
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| NT ASISABASAIRFA/ BATSETSA | INCREASED INDEBTEDNESS | * Retirement savings being used as security for loans will result in further or new indebtedness of members.
* It will be difficult to supervise or monitor what the money is used for.
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| NTIRFA | LOAN PROVISION | * No clear mechanisms for the operation of the loan scheme
* No evidence that competitive interest rate would be granted by lenders
* Loan might be unaffordable for the pension fund members.
* The scope for abuse of such loans has also not been considered.
* The current restriction in section 19 of the Act on granting loans in relation to pension fund interests is based on the policy position that retirement benefits should be preserved for the member’s retirement. The exception of allowing a loan in relation to immovable property is viewed as being consistent with ensuring the long-term security of the member, as the ownership of immovable property also promotes financial security during retirement. Granting loans for other purposes may be inconsistent with that objective. If a guarantee may be granted to obtain a loan which could potentially be used for any purpose, it will not adequately ensure the long-term security of the pension fund member.
* Loan defaults will result in the guarantees being called up, which will effectively give fund embers premature access to retirement savings. There is great risk that the longer-term financial consequences of the proposed loan guarantees (negative impact on retirement outcomes) will far outweigh any short-term benefits.
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| NTASISABASA | NATIONAL CREDIT ACT (2005) | * The proposed Bill would only benefit a small minority of pension fund members. The granting of loans proposed in the Bill in relation to pension fund interests would be subject to the affordability requirements of the National Credit Act, 2005 (Act No. 34 of 2005), as the legislation does not explicitly provide otherwise. This would preclude relief being accessed by those pension fund members who do not have sufficient income to meet affordability requirements, or might be blacklisted, which would be inequitable. Significant numbers of pension fund members who are in the greatest financial distress might potentially not be able to access the envisaged relief.
* It is not expressly clear from the Bill whether the loan will fall under the ambit of an “emergency loan” as defined in the NCA. (The loan must be strictly limited to some sort of Covid-19 relief with time limitations.)
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| BASAIRFA | BILL IMPLICATIONS FOR THE STATE | * Bill could result in an older population, marred by deficits and insufficient pensions.
* Likely increase in a number of persons who will rely on the State for old-age pension.
* Early access to retirement assets will risk placing significant pressure on retirement fund assets and forced selling could possibly add systemic risk to the economy.
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| NT | NO SOCIO-ECONOMIC IMPACT ASSESSMENT STUDY | * No economic or financial impact study has been submitted on the draft Bill to support its motivation
* The Bill has not taken into consideration the implications on the liquidity of pension funds, given that member contributions are invested in terms of a long-term investment plan, and that any change in the current investment profile of any retirement fund will have a direct bearing on the growth and sustainability of such fund.
* There is also no impact study on more macro-objectives like the impact on household savings.
* There is no indication on the impact on current tax incentives and preservation objectives of the broader retirement fund reform programme.
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| ASISASAICAIRFA/ BATSETSA | AMENDMENTS TO THE BILL NOT COMPREHENSIVE | * No indication in the draft Bill as to what the criteria should or may be applied in implementing the loan scheme. For instance, would lending institutions be expected to assess that the loans are for financial distress brought about, not by poor financial management, by COVID-19 or an emergency similar to COVID-19? Or is the expectation that fund trustees would have this responsibility before agreeing to the loan guarantee?
* The Bill does not cover retirement annuity and/or preservation funds specifically.
* The Bill is unclear as to what the procedure is should the taxpayer default on the loan where the loan has been secured by either the debt security cession of the pension rights or loan guarantee. (The Bill should provide clarity on how the lender will exercise the repayment of the loan and whether there will be compelled order of realisation i.e. first executing against other assets before executing against the fund benefit.)
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| NTIRFA/ BATSETSA | AMENDMENTS -ADMINISTRATIVELY ONEROUS ON THE FUNDS | * The Bill would create significant burdens for pension funds, and hence on members of such funds. It would be necessary for the Boards of pension funds to make a determination on a case by case basis, which would be very onerous for the Boards.
* Amendments to fund rules would be required, as well as systems and other administrative changes. Noting loans on the system, payment of creditors on loan defaults after verifying the correctness of the amounts claimed, applying for tax directives and calculating what balance remains, staff training and applications for tax directives will be required.
* Additional pressure on SARS and the FSCA.
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|  | IMPACT OF LOAN GUARANTEES | * The granting of guarantees by pension funds would result in potentially substantial contingent liabilities for the pension funds.
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| NTASISACOSATUSAICAIRFA/ BATSETSA | TAX IMPLICATIONS OF WITHDRAWAL | * The Bill is silent on the tax implications of using a guarantee for up to 75 per cent of the members’ fund assets. Any adjustment to the tax regime would require a separate money bill. The current tax regime would require that any payouts from the fund that are made before retirement are taxed according to the withdrawal tax table. Payouts from retirement funds are taxable since the contributions are made before tax is paid, otherwise the income could be received completely tax free. The tax on withdrawals before retirement ranges from 18 per cent on amounts above R25,000 up to 36 per cent on withdrawn amounts above R 990,000.
* If a guarantee is called because the member can no longer service a loan, the retirement fund assets that are withdrawn to honor the guarantee would be subject to this tax. If the guarantee ensures that the post-tax amount of the loan is paid to the loan provider, there may be cases where more than the full amount of the available retirement fund assets is used to service the debt. There would therefore be nothing left in the fund for the member in such a case, and may also create an additional liability that cannot be serviced by the individual’s assets.
* Under the provisions of the Income Tax Act, retirement annuity funds may not provide for access to cash prior to retirement (and then only to one-third of the proceeds at retirement). These funds would not be suitable as guarantors of the proposed loans because pre-retirement access to monies is not allowed.
* Insert a provision providing for such loans and withdrawals not to be subject to tax deductions.
* The Bill should provide clarity on how the tax payable on the occurrence of a withdrawal event when the creditor executes against the guarantee, will be treated.
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| NTCOSATU | ALTERNATIVE SUGGESTIONS/ WAY FOWARD | * National Treasury should introduce appropriate amendments in Parliament through a Financial Sector Laws General Amendment Bill during the next 12 months.
* COSATU welcomes and supports this Bill. COSATU does believe that the Bill requires amendments to address certain weaknesses and to further enhance it. The Federation believes that it is a necessary and progressive Bill. If passed, it will assist workers and their families facing the worst economic crisis in 100 years.
* Insert provisions for members to withdraw funds from their pension funds without being required to repay them.
* Insert a provision providing for such loans and withdrawals not to be subject to tax deductions.
* Treasury must table its own amendment bill in Parliament by no later than 1 November 2021 so that Parliament would be able to pass it by June 2022 and it could then come into effect by 1 October 2022. (Parliament should not reject the Private Member’s Bill. It should allow for further engagements on it and between government, industry and labour. If Treasury is not able to table its own bill in Parliament by 1 November 2021, then Parliament should proceed with the Private Member’s Bill with the necessary above mentioned amendments} (COSATU).
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|  | DEAR SOUTH AFRICA SURVEY | * Dear South African conducted a survey where it asked the following two questions:

1. **Do you support proposed PFA Bill**? * On the first question, 77.18% (115) of the participants said thay they did not support the Bill, while 19.46% (29) said they did. 3.36% (5) of participants said they do not support the Bill fully.

2. **What is your top concern**? * On this question, the participants responded as follows
	+ Devaluation of retirement = 46%
	+ Early Access to pension funds = 24%
	+ Other = 20%
	+ 75% limit of guarantees = 8%
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END