Advisory Committee Report

on

Comprehensive Review of Regulations

2023

पेंशन निधि विनियामक और विकास प्राधिकरण

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY

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LETTER OF TRANSMITTAL

January 02, 2024

The Chairperson,
Pension Fund Regulatory and Development Authority,
B-14/A, Chatrapati Shivaji Bhawan,
Katwaria Sarai, New Delhi – 110070.

Dear Sir,

It is our great pleasure in submitting the Report of the Advisory Committee for Comprehensive Review of PFRDA Regulations, in terms of its mandate.

The Committee compliments the Authority for initiating the review exercise well in time and carrying it out in a very systematic manner.

Thank you for entrusting this responsibility to us.

Yours Sincerely,

Sd/-
M. S. Sahoo
Chairperson
(Distinguished Professor, NLU Delhi)

Sd/-
Pramod Kumar Singh
Member
(Former Whole-Time Member Law, PFRDA)

Sd/-
Abhiman Das
Member
(Professor of Economics IIM Ahmedabad)

Sd/-
Manoj Anand
Member
(Whole-Time Member Finance, PFRDA)

Sd/-
Rahul Ravindran
Member Secretary
(Executive Director, PFRDA)

Sd/-
Arumugarangarajan P.
Secretary to the RRC
(Chief General Manager, PFRDA)

ACKNOWLEDGMENTS

The Advisory Committee for Comprehensive Review of Regulations (RAC) expresses its deep gratitude to Dr. Deepak Mohanty, Chairperson, PFRDA for entrusting it with the responsibility of advising the Authority on the review of regulations. It immensely benefited from engagement with Dr. Mohanty and his guidance on complex regulatory issues.

The painstaking efforts taken by Prof. Manoj Anand, Whole-Time Member (Finance), PFRDA for driving this initiative both at the Regulations Review Committee (RRC) and the RAC, and drafting this report deserve a special mention. His thoughtful insights from his academic journey as well as first-hand experience of dealing with the regulations made the deliberations of the Committee much richer.

The RAC appreciates the very helpful input from Ms. Mamta Shankar, Whole-Time Member (Economics), PFRDA on different aspects of the regulations, and her participation in its meetings as a special invitee.

The RAC commends the able professional assistance it received from WGs, the RRC and their members, and the RAC research and secretariat. It gratefully acknowledges the contribution of the officers of the Authority throughout the regulation review exercise and their invaluable practical insights. It appreciates the sincere care extended in organizing the meetings of the Committee and supporting the Committee in all possible manners.

The Chairperson of the RAC thanks the Members of the Committee for strenuously sitting for about 10 hours at a stretch for days and deliberating each provision in the regulations from different perspectives to arrive at the most practical formulation for the objective in hand.

ABBREVIATIONS

AA: Appellate Authority
AML: Anti-Money Laundering
AO: Adjudicating Officer
APY: Atal Pension Yojana
ASP: Annuity Service Provider
CCIL: Clearing Corporation of India
CEO: Chief Executive Officer
CFT: Combating the Financing of Terrorism
CGM: Chief General Manager
CMMI: Capability Maturity Model Integration
CoR: Certificate of Registration
CoS: Custodian of Securities
CRA: Central Record-Keeping Agency
GB: Governing Board of a regulator
GM: General Manager
IBBI: Insolvency and Bankruptcy Board of India
IC: Internal Committees (Working Group and Regulations Review Committee)
IRDAI: Insurance Regulatory and Development Authority of India
ED: Executive Director
KYC: Know Your Customer
KMP: Key Managerial Person
NPS: National Pension System
NPST: National Pension System Trust
PAC: Pension Advisory Committee
PF: Pension Fund
PFRDA/ Authority: Pension Fund Regulatory and Development Authority
PRDF: Pension Regulatory and Development Fund
PoP: Point of Presence
PoP SE: Point of Presence - Sub-Entity
PRAN: Permanent Retirement Account Number
RA: Retirement Advisor
RAC: Advisory Committee for Comprehensive Review of Regulations
RRC: Regulations Review Committee
SEBI: Securities and Exchange Board of India
SEPF: Subscriber Education Protection Fund
SAT: Securities Appellate Tribunal
TB: Trustee Bank
WG: Working Group
WTM: Whole-Time Member

EXECUTIVE SUMMARY

To deal with the challenges of a market economy, business reforms mandated regulators to govern markets through regulations. It is, however, not an easy task to craft regulations that address the concerns and do not have any unintended consequences. Various tools and procedures have emerged to ensure the right quality and quantity of regulations at the right time. However, regulations, once made, remain in the statute book even if they have lost relevance over time, or the costs of such regulations outweigh the benefits. It is necessary to weed out regulations that have run out of time, context, and relevance and make them contemporary and in tune with the requirements of business in a dynamic setting. This probably prompted the proposal in Para 100 of the Union Budget for 2023-24: *"To simplify, ease, and reduce the cost of compliance, financial sector regulators will be requested to carry out a comprehensive review of existing regulations. For this, they will consider suggestions from public and regulated entities*."

In a related development, the Competition (Amendment) Act, 2023, enacted in April, mandated the competition regulator to consult the public in making regulations and prescribed the manner of such consultation. Even without any statutory mandate, several regulators have adopted a review of regulations as a best practice. They use various methods - online, offline, and face-to-face- to reach out to stakeholders. They engage with them in different formats- advisory committees, working groups, roundtables, seminars, workshops, discussion papers, etc. They often use technology to capture the provision-wise views of stakeholders. Some of them have made Regulations that mandate a review of regulations. For example, the Insolvency and Bankruptcy Board of India (IBBI) has made Regulations that mandate a review of each of its Regulations every three years unless a review is warranted earlier.

The Pension Fund Regulatory and Development Authority (PFRDA/ Authority) has a track record of reviewing its regulations regularly. However, in pursuance of the budget proposal, it initiated a comprehensive review of all its market-facing regulations. It conducted the review in a very systematic manner. Four working groups (WGs) reviewed 11 Regulations in detail and depth under the guidance of the Regulation Review Committee (RRC). The Advisory Committee for Comprehensive Review of Regulations (RAC) considered the recommendations of RRC and rendered advice from a broader perspective of business and markets. The output that emerged through the WGs, the RRC, and the RAC were put out on the website for seeking input from the stakeholders. The Authority undertook an in-person intensive consultation with target stakeholders to have a better appreciation of their perspectives. After considering the input of the stakeholders, the WGs, the RRC, and the RAC set together to finalise the changes required in the regulations for consideration by the Pension Advisory Committee (PAC) and finally the Authority.

Overarching Approach

The RAC reviewed all the extant 11 market-facing regulations to simplify, ease, and reduce the cost of compliance. While it has provided its specific advice on the proposals brought before it, it advised the WGs and the RRC to review every provision of the extant regulations comprehensively keeping in view the following:

A. Weed out regulations and sub-regulations that have outlived their utility or do not serve any purpose.

B. Recast the remaining regulations and sub-regulations, wherever required, to make them simpler to understand and easier to comply with. This requires:

i. Convert the paragraphs (like regulations 9 and 10 of the NPS Trust Regulations which run into paragraphs, making it difficult to comprehend them) into several short sentences and each such sentence should form a regulation or sub-regulation, as the case may be. In this context, attention was drawn to the Ministry of Corporate Affairs' recent prescription of drafting norms for Guidelines to be issued by the competition regulator. It prescribed: "*One paragraph shall contain only one sentence and one aspect of guidelines and should not have multiple sentences and aspects;*

ii. Write regulations, to the extent possible, in an active voice. It may write 'xx shall do this' instead of writing 'this shall be done';

iii. Reduce superfluous words by substituting words like:
(a) 'provision to the effect that the duty of the Board of Trustee shall be to act' by 'The Board of Trustees shall act',
(b) 'the provision to the effect that amendment to the Trust Deed shall be carried' by 'The Trust Deed shall be amended',
(c) 'it shall be its duty to take into its custody' by 'it shall take into custody',
(d) 'it shall be its responsibility to carry out its duties and responsibilities' by 'it shall carry out duties and responsibilities',
(e) 'shall be required to do' by 'shall do',
(f) 'shall be responsible for monitoring and approving' by 'shall monitor and approve',
(g) 'explicitly forbidding of assumption of any unlimited liability' by 'forbidding any unlimited liability', etc.;

iv. Avoid adjectives like sufficient, adequate, suitable, appropriate, mandatorily, minimum, relevant, related, requisite, etc., as explained in the meetings, to the extent possible;

v. Avoid double/triple negatives in sentences like 'no person shall be eligible … unless … he has not been convicted';

vi. Avoid unfettered discretion like 'if it considers necessary at any time … for any purpose';

vii. Replace a cluster of words by a term or word like 'national payment system and pension schemes under sub-clause (b) of subsection (2) of Section 12 of the Act' with 'schemes';

viii. Replace the word 'intending to be a subscriber' with 'prospective subscriber' in all Regulations, and

ix. Provide illustrations or hypothetical examples liberally to explain a regulation and sub-regulation, wherever required, as in the Indian Contract Act or the Indian Penal Code.

C. It is advisable to lay down timelines for the disposal of various applications (for registration, the commencement of business, permission to do something, etc.) under the Regulations. The RAC suggested the WGs and RRCs identify such approvals across Regulations and specify timelines for their disposal either in the relevant regulation and sub-regulation or as an annexure

table. This is important considering the shift to deemed approvals under several legislations including recent amendment Acts like the Competition (Amendment) Act, 2022, and the Electricity (Amendment) Act, 2022.

D. The governance through the regulator aims to make market corrections on the go. The statutes enable regulators to respond without much time lag. Therefore, regulations may avoid provisions like 'as may be specified by the authority', 'as may be decided by the authority', 'as may be notified by the authority', 'except to the extent specifically permitted under any circular or direction or guideline issued by the authority' or words to that effect. It can instantaneously specify all that it wishes to specify through regulations.

E. The objectives of each set of regulations need to be sharper. Further, each regulation and sub-regulation should have a clear rationale, which could be stated in the 'notes to the clause' for a complete understanding and compliance by the regulated and to facilitate ex-post regulatory impact assessment.

F. The NPS Trust Regulations may broadly envisage a relationship between the Authority and the Trust, like that between the Government and the Authority under the statute.

G. The monitoring of intermediaries needs to be demarcated between the NPS Trust and the authority to avoid the possibility of any overlaps and gaps.

H. The layers of redressal of grievances may be reduced to the extent possible. If possible, the treatment of grievances and complaints may be provided separately.

I. Terms need to be defined and used uniformly and consistently throughout and across the regulations. The terms defined in the Act may not be defined in regulations. A term may be defined if it is used multiple times. Otherwise, an explanation may be provided for the specific regulation and sub-regulation which uses the term.

J. The regulations may specify the governance and management aspects of the intermediaries separately.

K. Regulatory requirements in terms of eligibility, capital adequacy, accountability, compliances, penalty in case of misdemeanor, etc. need to be proportionate and should have nexus to the purpose to be achieved.

L. The fit and proper criteria requirement may be made more specific. The provisions in the Regulations of SEBI and IBBI may be studied for this purpose.

M. The core activities of intermediaries may be identified and specified in the Regulations as their duties.

N. Regulations should be ownership-neutral.

O. The Regulations need to provide for consequences of surrender, transfer, suspension, or cancellation of registrations granted by PFRDA. It also needs to provide for mergers, amalgamation, and restructuring of registered entities.

P. Regulations may enable the PFRDA to call for such data and report from the regulated, as are necessary for the performance of its duties and such data and reports may be specified in regulations.

Q. Provisions relating to audit and inspection of intermediaries need to be streamlined as discussed in the meeting.

R. The follow-up enforcement actions should emanate with a show cause notice and end with a reasoned order, adhering to the principles of natural justice throughout the process. The RAC attempted a draft template for enforcement actions for the benefit of the Authority.

S. Regulations should anticipate a shift from rule-based regulation to risk-based regulation and principle-based regulations.

T. Thrust of regulations should facilitate compliance rather than penalizing non-compliance. Regulations may envisage a mechanism to provide clarifications and guidance on regulatory provisions.

U. A Handbook and FAQs may be developed in consultation with the market and made available for the guidance of intermediaries.

V. Intermediaries may be guided on how to prevent fraud, detect fraud, and deal with fraud.

W. As part of the review, the PFRDA needs to consider suggestions from public and regulated entities. The consultation with stakeholders yields meaningful suggestions if they are presented with the purpose of each regulation and sub-regulation. For consultation, the RAC advised the WGs and RRC, to (a) present the need or purpose of each regulation and sub-regulation, to the extent possible, to stakeholders; and (b) use an IT platform that enables the stakeholders to submit their suggestions clause, sub regulation or regulation wise.

X. Regulation is a sacrosanct instrument to prescribe regulatory norms. If the PFRDA believes that the norms prescribed through circulars and other instruments are required in the long run, these norms should move to regulations. Para 99 of the Budget referred to above requires the same sacrosanct process for subsidiary directions.

Y. The PFRDA may consider codifying the process of making or amending regulations and institutionalising the process of reviewing regulations at regular intervals. A template is available in the IBBI (Mechanism for Making Regulations) Regulations, 2018.

Z. Matters of policy, which are specified in regulations, may be left to the PFRDA and Government, as discussed in the meetings, and need not be covered in the review exercise.

Chapterisation

Chapter 1 of the report provides the background to the regulation review exercise along with the constitution, the process, and the methodology adopted by various WGs, the RRC, and the RAC.

Chapters 2 to 7 briefly capture the discussions and recommendations with respect to six intermediary-related regulations. The recommendations are based on a comprehensive review of

existing regulations, in sync with the objectives of the budget announcement and the terms of reference of the RAC, as specified by the PFRDA.

Chapter 8 highlights the international flavour of regulation review exercises in the pension sector.

Chapter 9 recommends the best practices relating to regulations to prevent the accretion of unnecessary regulations and repeal of regulations as soon as they lose relevance.

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Chapter 1. Introduction

An Interim Pension Fund Regulatory and Development Authority was established on 10th October 2003, to effectively regulate, promote, develop and ensure orderly growth of the pension market in India. It was subsumed in the Pension Fund Regulatory and Development Authority which was established under the Pension Fund Regulatory and Development Authority Act, 2013 to promote old age income security by establishing, developing, and regulating pension funds (PFs), and to protect the interests of subscribers to schemes of PFs and for matters connected therewith or incidental thereto. The Authority issued the first set of fourteen Regulations (including the intermediaries regulations) in 2015 and one intermediary Regulation in 2016. The Authority has amended these Regulations from time to time, post analysis of emerging developments in the market. In 2018, the PFRDA (Aggregator) Regulations, 2015, and the PFRDA (Point of Presence) Regulations, 2015 were repealed and the PFRDA (Point of Presence) Regulations, 2018 were notified. In 2021, the PFRDA (NPS Trust) Regulations, 2015 were amended to redefine the role of NPST to monitor and oversee PFs, Custodians, TBs, and CRAs (in respect of exit and withdrawals).

In pursuance of the Budget Speech 2023-24, the Authority felt a need to comprehensively review all the 11 market-facing regulations considering passage of time, changes in the economic and technological landscape, and the exponential growth of the NPS ecosystem, subscriber base, and assets under management of PFs. Paragraphs 99 - 100 of the Budget Speech read as under:

"**Financial Sector Regulations**
Para 99: To meet the needs of Amrit Kaal and to facilitate the optimum regulation in the financial sector, public consultations, as necessary and feasible, will be brought to the process of regulation-making and issuing subsidiary directions.
Para 100: To simplify, ease, and reduce the cost of compliance, financial sector regulators will be requested to carry out a comprehensive review of existing regulations. For this, they will consider suggestions from public and regulated entities. Time limit to decide the applications under various regulations will also be laid down."

To simplify, ease, and reduce the cost of compliance, whilst maintaining the focus on the objects enshrined in the PFRDA Act, 2013, the Authority undertook a comprehensive review of all its regulations. Considering the significance and magnitude of the exercise, it constituted four internal Working Groups (WGs) consisting of Heads of Departments, and an internal Regulation Review Committee (RRC) consisting of Executive Directors as Members and Chaired by Whole-Time Member (WTM), Finance, PFRDA. The WGs and the RRC commenced the work in March 2023.

Subsequently, in April 2023, the Authority constituted the Advisory Committee for a comprehensive review of regulations (RAC), consisting of external experts to advise on the changes recommended by the ICs and the RRC. The RAC comprised the following members:

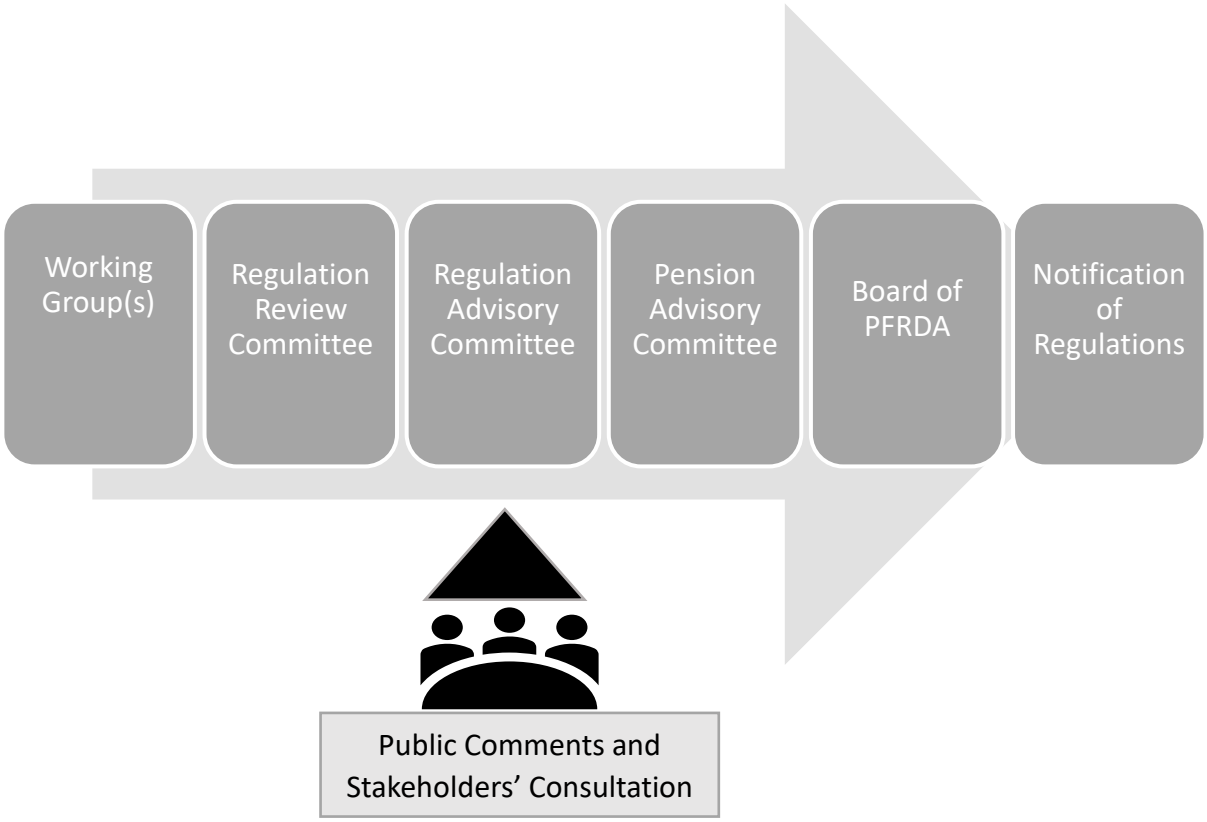
- Dr. M. S. Sahoo, Chairperson, Centre for Regulatory Studies, National Law University, Delhi & Former Chairperson, Insolvency and Bankruptcy Board of India as the Chairperson of RAC,
- Mr. Pramod Kumar Singh, Former Whole-Time Member (Law), PFRDA as a Member,
- Dr. Abhiman Das, Professor of Economics, IIM Ahmedabad as a Member,
- Dr. Manoj Anand, Whole-Time Member (Finance), PFRDA as a Member, and
- Mr. Rahul Ravindran, Executive Director, Member Secretary.

The terms of reference of the RAC are as under:

i. To review the recommendations of the RRC on the criteria of adequacy, relevance, timeliness, efficiency, effectiveness, reduction of overlap, full and fair disclosure, and financial stability;
ii. To examine the recommendations of RRC on suggested modifications in the Regulations on the criterion of simplicity, digitization, reduction of cost of compliance of intermediaries, subscribers' interest, reduction in subscribers' grievances, and ease of doing operations;
iii. To examine the recommendations of RRC and suggest changes based on the above evaluation and to ensure optimum regulation; and
iv. Any other issue germane to the subject matter.

The regulatory proposals that may emanate from the review carried out by WGs and the RRC under the guidance of the RAC will be considered by the PAC, a statutory Committee comprising industry experts, before being placed before the Governing Board (GB) of the Authority for consideration and approval. A schematic view of the mandate and scope of WGs, the RRC, and RAC are presented in Diagram 1.

Diagram 1: A schematic view of the review of regulations



<table>
<tr><th colspan="4">Composition</th></tr>
<tr><th colspan="2">Working Groups and assigned Regulations</th><th>RRC</th><th>RAC</th></tr>
<tr><td>WG 1:
▪ Mr. Akhilesh Kumar, CGM
▪ Mr. Sumit Kumar, CGM
▪ Ms. Manju Bhalla, GM
▪ Dr. Alpana Vats, GM</td><td>▪ PFRDA (Pension Fund) Regulations, 2015
▪ PFRDA (Custodian of Securities) Regulations, 2015
▪ PFRDA (National Pension System Trust) Regulations, 2015</td><td rowspan="4">▪ Dr. Manoj Anand, Chairperson
▪ Mr. Ananta Gopal Das, Member
▪ Ms. Mamta Rohit, Member
▪ Mr. Ashok Kumar Soni, Member
▪ Mr. Venkateswarlu Peri, Member
▪ Ms. Sumeet Kaur Kapoor, Member
▪ Mr. Rahul Ravindran, Member
▪ Mr. P. Arumugarangarajan, Member Secretary</td><td rowspan="4">▪ Dr. M. S. Sahoo, Chairperson
▪ Mr. Pramod Kumar Singh, Member
▪ Dr. Abhiman Das, Member
▪ Dr. Manoj Anand, Member
▪ Mr. Rahul Ravindran, Member Secretary</td></tr>
<tr><td>WG 2:
▪ Mr. K. Mohan Gandhi, CGM
▪ Mr. Pravesh Kumar, CGM
▪ Mr. Vikas Kumar Singh, CGM
▪ Mr. K. R. Daulath Ali Khan, GM</td><td>▪ PFRDA (Central Recordkeeping Agency) Regulations, 2015
▪ PFRDA (Trustee Bank) Regulations, 2015
▪ PFRDA (Exit and Withdrawals under the NPS) Regulations, 2015</td></tr>
<tr><td>WG 3:
▪ Mr. Ashish Kumar, CGM
▪ Mr. Mono Mohon Gogoi Phukon, CGM
▪ Mr. Ashish Kumar Bharati, GM
▪ Ms. Gurminder Kaur, GM</td><td>▪ PFRDA (Retirement Adviser) Regulations, 2016
▪ PFRDA (Point of Presence) Regulations, 2018
▪ PFRDA (Redressal of Subscriber Grievance) Regulations, 2015</td></tr>
<tr><td>WG 4:
▪ Mr. P. Arumugarangarajan, CGM
▪ Mr. Sachin Joneja, GM
▪ Dr. Purnima Sharma, GM</td><td>▪ PFRDA (Subscriber Education and Protection Fund) Regulations, 2015
▪ PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015</td></tr>
</table>

The RAC met five times during the period June – November 2023. The first meeting of two days was held on 06.06.2023 and 07.06.2023, followed by the second meeting on 01.08.2023, the third meeting for two days on 20.08.2023 and 21.08.2023, the fourth meeting on 18.09.2023 and the final meeting on 17.11.2023. In all its meetings, the RRC and the concerned WG members participated in the discussions and deliberations.

The Chairperson, PFRDA while addressing the first meeting of RAC, emphasized the need to align regulations with the governing statute to ensure consistency. He underscored the importance of finding a balance between effective oversight, creating a favorable business environment, and reducing the compliance burden on intermediaries. He suggested that there could be compliances that may not hold much relevance and, therefore, those need to be identified to repeal them to reduce the compliance burden on intermediaries.

The Secretariat presented an overview of the PFRDA Act, 2013, the regulations thereunder, and their evolution over time. It took the RAC through the key provisions of the Act, the role of intermediaries in the NPS architecture, and the regulatory framework. It shared an approach note on rationalizing the compliance certificates, reports, and disclosures submitted by intermediaries to the Authority and NPST.

The Secretariat briefed the RAC about the work undertaken by the respective WGs in reviewing the Regulations, as well as the process followed by the RRC while considering the suggestions received from the WGs. It presented recommendations of the RRC in three categories, namely, 'Accepted', 'Not accepted', and 'Requires further deliberations'. The RAC considered the agenda notes carrying the recommendations of the WGs and the RRC on 11 market-facing Regulations (PF, NPST, CRA, CoS, TB, PoP, RA, Exit and Withdrawals, SEPF, Redressal of Subscriber Grievance and Procedure of Inquiry by AO) and shared its views on each of them. It advised that the overarching approach, as elaborated in the Executive Summary should be applied to all the Regulations.

The RAC tried to identify the objective a regulation/ sub-regulation aims to achieve or the concern it seeks to address and then proposes modifications in the regulations to achieve the objective/ address the concern, with the least burden and higher efficacy. It attempted rationalization, simplification, and digitization of regulatory processes and compliances to remove unnecessary burdensome compliances and make it easier to do business.

The drafts of proposed changes in the regulations were uploaded on the PFRDA website for public comments. Concurrently, an active stakeholder consultation process involving the concerned intermediaries was undertaken by the Authority, wherein intermediaries were specifically requested to share their comments on proposed changes as well as to suggest changes on other provisions of the regulations. The consultation with stakeholders proved effective as they were presented with the rationale of the proposed change to each regulation and sub-regulation.

After going through the detailed deliberations and suggestions from the intermediaries, industry representative bodies, public, and other stakeholders, this report of the Committee presents recommendations in the regulations to promote ease of compliance, reducing regulatory burden, rationalizing reporting mechanism and streamlining of regulatory instructions and communications.

The Secretariat presented an approach note regarding the review of circulars issued by the Authority, over a period of time. The RAC suggested incorporating circulars, which have an enduring relevance, into the regulations.
The RAC observed that some of the issues presented before it were policy-related. Though it deliberated the same, it suggested that the PAC and the Authority may take a view on the same.

The RAC observed that some Regulations are long-winded, having some regulations running into paragraphs or even pages. It suggested having a schedule to rewrite these Regulations over a period of time using simple short sentences. This will bring clarity to regulatory purposes and make compliance and monitoring easier for the regulator and the regulated.

Broad-based stakeholder engagement, regular and proactive review, and leveraging technology for transparency and accessibility have been the underlying themes across the globe, while

reviewing Regulations in the pension sector. This approach has been considered while reviewing the Regulations.

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Chapter 2. PFRDA (Pension Fund) Regulations, 2015

These Regulations govern PFs as defined under 2(1)(l) of the Act with main functions envisaged as:

(i) receiving contributions
(ii) accumulating them and
(iii) making payments to the subscriber in the manner as may be specified by regulations

The PFRDA (Pension Fund) Regulations, 2015 was notified on 14.05.2015 to standardize the framework for monitoring, supervision, and internal control for PFs to enable them to establish high standards for internal control and operational conduct, to protect the subscribers and ensure proper management of risk.

Since notification, the regulation has undergone six amendments as follows:

First Amendment	17.08.2016
Second Amendment	04.02.2020
Third Amendment	14.05.2020
Fourth Amendment	31.03.2021
Fifth Amendment	25.05.2021
Sixth Amendment	15.07.2021

The RRC reviewed the proposals of Working Group-1 and bifurcated its recommendations as Accepted / Not Accepted / To be Deliberated before this Committee. The snapshot of the total number of interventions presently proposed under the review process conducted internally are summarized below:

Regulations	**Accepted**	**Not Accepted**	**To be Deliberated**
PFRDA (Pension Funds) Regulations, 2015	25	7	7

The exposure draft seeking public comments was issued on 30.06.2023 and the last date to receive comments was 21.07.2023. Further, active stakeholder consultation was undertaken by the Authority with all the PFs on 26.07.2023.

The proposed changes were suggested in the following key areas with an object to reduce the compliance cost leading to increased returns to the subscribers and optimum regulations:

I. Simplification of Governance norms of PFs in line with Companies Act, 2013 based on enhanced disclosures for PFs: Directors' Responsibility Statement, CEO and CFO Certification to be part of scheme financial statements which inter-alia includes declarations in respect of following key responsibilities:

(i) Preparation and presentation of scheme financial statements to provide a true and correct view of scheme state of affairs and scheme NAV,
(ii) Adequacy and effectiveness of internal financial processes and digital architecture controls,
(iii) Compliance with the PFRDA Act, PFRDA (Pension Fund) Regulations, Investment Guidelines, Valuation Guidelines, Stewardship code, voting policy, and other applicable laws,
(iv) Adherence to Code of Conduct and Ethics.

II. Thrust on risk-based supervision.

III. Segregation of roles of sponsor & PF and simplification of compliance requirements including approval of a change in management or shareholding pattern of sponsor of PF only in specific scenarios and only intimation in remaining scenarios.
IV. Simplification of definitions and terms used in the Regulations such as Business Day, Compliance Officer, Key Managerial Personnel, and Sponsor.
V. PFs to have additional committees of the Board such as the Audit Committee and Nomination & Remuneration Committee.
VI. The words "as may be specified by the Authority" used in the regulations have been proposed to be replaced with specific conditions wherever required.

The Committee deliberated on the proposals and the stakeholders' comments on appropriateness, effectiveness, efficiency, and disclosure, as guiding principles. These principles ensure that regulatory changes are appropriate for their intended purpose, produce desired outcomes, allocate resources efficiently, and are communicated in simple language. Based on the extensive deliberations held to review these regulations, primarily from the point of easing compliance burden whilst strengthening governance norms, the following is recommended:

Regulation 1: **Title**: The objective of regulations be aligned with the preamble of the Act which provides for the establishment, development, and regulation of PFs. Hence, the Committee recommends to re-word the short title as "The objective of the Regulations is to provide a framework to establish, develop and regulate Pension Funds, to protect the interest of subscribers and to ensure proper management of risk" to make it clear and more relevant.

Regulation 2. Definitions: Business day: The definition of business day by having regard to the provisions of the Negotiable Instruments Act, 1881, its sub-clause (i) designated branch of trustee bank and (iii) G-Securities market needs to be combined.

Regulation 2: Definition: **Key Personnel**: The Internal Committees (IC) proposed to define key managerial personnel in addition to positions specified under the Companies Act, 2013. The Committee suggests that the definition of KMP may be suitably modified in the intermediary regulations, by having an inclusive definition i.e., firstly having the positions defined under the Companies Act, 2013 and then including other personnel based on their roles and responsibilities in the intermediary's function.

Regulation 3: Certificate of Registration (CoR): The IC proposed that repetition of provisions of the Act be avoided in the regulations. Given the above, it is recommended that Regulations 3(2), 3(3), and 3(4) be considered for deletion as already provided under the Act. Further, Regulation 3(1) be repositioned after regulation 5, as the provision for CoR shall come after the regulation dealing with application and eligibility.

Regulation 4: Application: On review of regulation 4, it is observed that eligibility criteria can be provided in the selection process in addition to the provision laid down in the regulation. It shall be the emphasis to make explicit provisions in the regulations. Given the above, the eligibility criteria be laid down in the regulation itself and the additional criteria, if any in the selection process, and such criteria be made part of the regulations in the subsequent reviews**.**

Regulation 5: Application to conform to requirements: The IC proposed that a period of thirty days to remove deficiencies in the application be specified in the regulation to make it more explicit. The Committee suggests that the provision regarding the time limit to cure deficiencies

in the application may be reconsidered as it is in the applicant's interest to provide documents. However, the Committee deems it to be a policy decision to be taken by the Authority.

Regulation 5: The IC proposed that the period of embargo for making fresh applications in case of rejection on certain grounds be increased from one year to three years. The Committee deliberated that a mechanism has to be evolved for due process and hearing the party before passing an order of rejection in such cases. Hence, the Committee recommends continuing with the existing provision about the period unless any major concerns have been observed.

Regulation 6: Furnishing of information or clarification and disclosure of information: To expedite the process of registration, the IC proposed that the time limit to intimate material changes in the information contained in the application be reduced to seven days. Further, it was informed that material information shall mean information that shall have a bearing on the consideration of the application. Given the above, the Committee recommends that the material change be reported immediately.

Regulation 8: Name clause: The Committee concurs with the proposal of the IC that:

a. A PF shall contain the words 'Pension Fund' in its name and the existing PFs be given 12 months to fulfil the above requirement.
b. A PF may avail the infrastructural facilities from the sponsor for a period of 'X' months post its commencement of business rather than one year from the grant of COR. This period is a policy decision.
c. Sponsor and PF respectively to ensure they are fit and proper persons.

The Committee suggests that the Authority may co-ordinate with the Ministry of Corporate Affairs to ensure that the word 'Pension Fund' is not available in the name clause of the company to applicants who want to incorporate a company, without proper authorization from the Authority as 'Pension Fund' has been coined specifically having regard to PFRDA Act and only companies performing the functions of a PF under the Act, be allowed to use that name.

Regulation 10: **Documentation with intermediaries**: One of the PFs suggested that the Custodian be made responsible for reimbursing TDS on dividends and interest received on investments made by the PF. The IC briefed that at present it is the responsibility of the PF to obtain a refund of the TDS deducted on dividend and interest since NPS Trust is exempt from Income Tax. After detailed deliberation, the Committee felt that if the tax has been deducted which should not have been deducted, then it's the responsibility of the PF to obtain a refund.

Regulation 12: Terms and conditions of registration:

a. The IC proposed that changes in the shareholding pattern of the PF that affect the status of the PF as a government company or which results in a change of sponsor(s) be added to the category of changes requiring prior approval of the Authority. Further, it was proposed to maintain the *status quo* about the changes in shareholding pattern up to five percent and period within which change is to be intimated to the Authority. The Committee recommends the proposal for further consideration. However, the period for intimation is a policy call to be reviewed internally.
b. The Committee further suggests that the provisions dealing with mergers and amalgamation of Sponsor and PF, as the case may be, built in harmony with the above proposal.

Regulation 16: Nonperforming assets, recognition, classification, and provisioning: The IC proposed that the reference to "below investment grade" be added in the regulation in addition to "non-performing assets". It was informed that the above terms have been defined in the Valuation guidelines. To further simplify, the Committee suggests rewording the regulation as "All the investments shall be as per valuation and income recognition guidelines issued by the Authority."

Regulation 18: Net asset value for schemes: The IC proposed the addition of an explanation of the Net asset value (NAV) and allowable charges. The PF requested to allow brokerage charges on debt securities in NAV calculation. The Committee recommends the proposal of the IC for consideration along with an additional suggestion to illustrate further simplification. Allowing charges relating to "brokerage on debt" in NAV computation, is a policy decision.

Regulation 19: (Scheme Annual Report): The IC proposed a specification of the timeline of 15 days for addressing the observations of the NPS Trust before submission of scheme financial statements to the Authority. The Committee recommends the proposal for consideration with an additional suggestion that the provision in respect of the duty of NPS Trust to approve and countersign them be incorporated in the NPS Trust Regulation to maintain harmonization.

Regulation 21: Code of Conduct: The IC proposed the primary obligation to adhere to the code of conduct should be of the PFs and not that of sponsor as the sponsor is regulated by other FSR and it is required to abide by the code of conduct laid by them. The Committee however is of the view that it as a policy decision.

Regulation 22: Maintenance of books: One of the PFs requested that records and books of account be allowed to be maintained in physical or digital mode or both. Further, a few PFs also requested the formulation of a record retention policy. The Committee finds the request reasonable and suggests the Authority to formulate guidelines on record management and retention.

Regulation 22: Disclosure requirements: The IC proposed that the PF be required to comply with the disclosure requirements as applicable to a public company under the Companies Act, 2013. The Committee accepts the proposal and recommends the insertion for consideration in the interest of the subscribers.

Regulation 33: Cancellation or suspension of CoR: The adjudication mechanism available under the Act and the regulations was informed. Upon detailed deliberation, the Committee suggests the following :

a. Separate provisions relating to surrender, suspension, and cancellation of CoR be made wherein suspension and cancellation be kept separate and grounds should be bifurcated.
b. The order passed by the Authority should be placed in the public domain.
c. The word "blacklist" is to be replaced with "prohibited to do business in the financial markets".
d. A draft template for enforcement actions has been proposed.

Schedule V – Reports and Disclosure: The IC proposed that the reference to the content, frequency, and format of various MIS reports be moved from regulation to guidelines. The Committee suggests seeking disclosure of information from the PF to the extent required to be published in the annual report and as required by NPS Trust, or the Authority, and content, frequency and the disclosure format may be notified separately.

Schedule X- Investment and Risk Management Committee: The IC sought our advice on allowing an individual to handle multiple roles (fund management and risk management) in the PF. The Committee suggests that objective criteria based on Asset under management (AUM) may be laid down for this purpose and it's a policy decision.

Conclusion: It is contemplated that the proposed revisions shall result in achieving the intended objective of simplification, and reduction in the compliance burden for the PFs and would also enable ease of doing business. Also, for better clarity and ease of understanding many existing regulations are proposed to be rephrased without any change of intent of the provisions.

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Chapter 3. PFRDA (Central Recordkeeping Agency) Regulations, 2015

This chapter deals with the regulations governing the Central Recordkeeping Agency (CRA) defined under Section 2(1)(b) of the PFRDA Act 2013. Four basic functions of this intermediary have been envisaged under Section 21 of the Act, i.e.,

(i) receiving instructions from subscribers through the points of presence,
(ii) transmitting such instructions to PFs,
(iii) effecting switching instructions received from subscribers and
(iv) discharging such other duties and functions.

CRA shall perform the above functions in accordance with the terms of its CoR and the regulations made under the Act.

The PFRDA (Central Recordkeeping Agency) Regulations, 2015, were notified on 27.04.2015 to set standards for the eligibility, governance, organization, and operational conduct of the Central Recordkeeping Agency (CRA) and for providing centralized recordkeeping, administration, and customer service functions to all subscribers.

Since notification, these regulations have undergone three amendments as follows:

First Amendment	25.06.2015
Second Amendment	29.07.2020
Third Amendment	14.06.2021

The RRC reviewed the proposals of WG 2 and bifurcated its recommendations as Accepted/ Not Accepted/ To be Deliberated before this Committee. The snapshot of the total number of interventions presently proposed under the review process conducted internally is summarized below:

Regulations	Accepted	Not Accepted	To be Deliberated
PFRDA (Central Recordkeeping Agency) Regulations, 2015	5	-	1

The exposure draft seeking public comments was issued on 13.09.2023 and the last date to receive comments was 04.10.2023. Further, stakeholder consultation was undertaken by the Authority with all the CRAs on 15.09.2023.

Based on the extensive deliberations, the following is recommended:

Regulation 1: The Committee recommends that the objective of the regulations be harmonized with that of other regulations to align with the objectives of the Act.

New insertion - Regulation 2: The IC proposed that the terms “Authority” which shall mean PFRDA and the term “Applicant” may be defined. During the review, it is observed that the term “Authority” has already been defined under the Act and the applicant has certain eligibility criteria to fulfill, the Committee recommends not to define the above terms. Further, it is suggested to delete the terms “certificate” and “company” from the definition clause.

Regulation 2: The IC proposed that the definition of the auditor be referenced to the Companies Act, 2013 with the inclusion of system auditor as well. The Committee recommends the proposal

for consideration with an additional suggestion that an explanation of system auditor is made part of the definition of the auditor.

Regulation 2: One of the CRAs sought clarification on whether KMP is in addition to the principal officer or a replacement of the principal officer. The IC informed us that they propose to replace the term "principal officer" with "key managerial personnel". The Committee recommends that the term KMP be defined taking guidance from SEBI (Depositaries and Participants) Regulations, 2018.

Regulation 2: Upon queried on the requirement to define stakeholders, the IC briefed that the CRA is required to provide information and reports to various entities. After detailed deliberation, it is recommended to re-define stakeholders as under
"Stakeholders include (i) Subscribers, (ii) Government Nodal Offices, Departments of Central and State Governments, and (iii) Intermediaries in respect of pension schemes regulated by the Authority".

Regulation 3: The IC proposed deletion of regulation 3(3) dealing with the consideration of application in order to avoid duplicity and para in regulation 3(4) dealing with the allocation of subscribers between the existing CRA at the time of appointment of new CRA as the option to make a choice either one CRA, two CRA or all the three CRAs is with the PoPs and who in turn provide choice of selecting a particular CRA to the subscribers, whereas at the time of notification of regulations there was only one CRA. The Committee recommends rephrasing of heading of Regulation 3 as "Existing CRA" and regulations 3(1), (3), and para in (4) may be deleted and Regulation 3(5) to be repositioned in Regulation 4.

Regulation 3 (2): Though it was proposed by the IC that Proviso to Regulation 3 (2) about the *"application to be made by existing CRA"* may be deleted. However, pursuant to deliberation it is recommended not to delete the proviso.

Regulation 4 (a) (ii): During the review, it is observed that emphasis is provided on experience in central recordkeeping rather than defining the information in respect of which the service is provided. The Committee recommends that in regulation 4(a)(ii), the words "central recordkeeping and administration functions" may be replaced with "recordkeeping of ownership of financial assets and related services".

Regulation 4(a): The IC proposed that the eligibility criteria specified under regulation 4(e) (networth, number of accounts and experience) may be merged with regulation 4(a). For better clarity and to avoid prolixity, the Committee recommends the above proposal along with an additional suggestion that the eligibility criteria specified under regulations 4(b) (profit criteria) and 4(d) (IT capability and experienced manpower criteria) be subsumed as sub-clauses under regulation 4(a) dealing with eligibility criteria.

Regulation 4(c): The Committee recommends laying down comprehensive fit and proper criteria drawing guidance from SEBI (Intermediaries) Regulations, 2008 uniformly across the intermediary regulations. Hence, regulation 4(c) may be deleted.

Regulation 4(e)(vi): The IC briefed that CRA holds critical infrastructure, to respect the principle of unbundled architecture, it will be appropriate to examine the cross-holding in CRA and other intermediaries. For better clarity, it is recommended that regulation 4(e)(vi) be

reworded as "Applicant shall not have control or hold 20% or more equity share capital, directly or indirectly, in any intermediary and vice-versa" and this may be moved to regulation 4(a).

Regulation 5(3): To expedite the process of registration, the IC proposed that the time limit to intimate material changes in the information contained in the application be reduced to seven days. After a detailed discussion, the Committee suggests rewording it as "immediately but not later than 'x' days", where the number of days to be provided shall be a policy decision to be taken.

Regulation 6(1): For better clarity, rewording regulation 6(1) as "The Authority may require the applicant to furnish further information or clarification for consideration of the application" is suggested.

Regulation 8(3): The IC proposed that the period of embargo to apply afresh in cases where the application was previously rejected on certain grounds be increased to three years from one year. It is recommended that the status quo be maintained with respect to the time limit and the disability to make fresh applications need not be increased, unless any major concerns have been observed.
Further, the Committee suggests that regulation 8(3) be reworded, drawing guidance from Section 7 of the IBC, 2016, and IBBI (Insolvency Professional) Regulations, 2016, dealing with the rejection of applications.

Regulation 10 (1) (a): The IC proposed that prior approval of the Authority be sought in case of a change in shareholding pattern over five percent. CRAs requested that the above proposal be reconsidered in the light of listed entities whose shares are freely traded. It was informed that two out of the three CRAs are listed. Post review of comments of CRA, maintaining the status quo is suggested. However, the Committee recommends the insertion of an explanation of what constitutes a 'change in status or constitution', by drawing reference from the SEBI (Intermediaries) Regulations, 2008. Further, the circumstances where intimation to be made to the Authority may be added.

Regulation 13: The IC briefed that the annual fee is payable every quarter. Hence, the Committee recommends that the clarity may be given by adding the words *"On quarterly basis"* after *"… an annual fee"*. Further, since the fee is computed as a percentage of charges collected by CRA and there is no ceiling, regulation 13(2) is recommended to be deleted as regulation 13(1) encompasses it.

Regulation 14: New insertion: The IC proposed that the CMMI certification requirement be moved from eligibility criteria to requirement at the stage of commencement of business. It is suggested that the timeline to obtain the same be made before the commencement of business. Any further extension to be granted will be a policy decision to be taken.

Regulation 18(2)(f): Regulation 18(2)(f) may be reworded as "provide data, information and reports to (i) the Authority, the National Pension System Trust and the Central Government as may be required by them, (ii) State Governments as per the agreement, (iii) any other entity authorized by the Authority, as may be required by them" merging the provisions under regulation 18(2)(h).

Regulation 18(2)(i): The IC rephrased regulation 18(2)(i) to incorporate system requirements to cater to the growing needs of the pension sector. To further simplify**,** the Committee recommends

that it may be reworded as "Improve the systems and process as per the evolving needs and requirements".

Regulation 18 [Moved from regulation 3(4)]: It is recommended that proposed insertion on the compliance be categorized into three parts and reworded as *"(i) ensure at all times compliance with the provisions of the Act, the rules, the regulations, guidelines, circulars and directions issued by the Authority thereunder; (ii) render quality service to stakeholder at all times, and; (iii) ensure that intermediation and other operational costs under the schemes regulated by the Authority are economical and reasonable."*

Regulation 18: New insertion (Risk Management policy): The IC proposed responsibility on CRA to implement a risk management policy and indemnify subscribers for loss on account of any failure on its part. The CRA has sought clarification on the aspect of indemnification of subscribers. Hence, developing a handbook on risk management framework in consultation with the industry is suggested.

Regulation 18: New insertion (Director Responsibility Statement): The IC proposed the introduction of a certificate from the CEO and operations head on CRA activities to strengthen the governance norms. The proposal may be considered in the subscribers' interest.

Regulation 22(1): The IC proposed rephrasing the regulation 22(1) dealing with service fees or charges. Upon deliberation, it is recommended that the status quo may be maintained save for the usage of the words *'fee'* and *'charge'* required to be distinguished in the Regulations by using *'fee'* where it is payable to the Authority and *'charge'* where it is payable to the intermediary. Further, its usage may be made consistent across regulations for better clarity.

Regulation 23: The IC proposed specifying the timeline for submission of the exit management plan i.e., within six months from the date of Commencement of Business. The Committee accepts and recommends the proposal for consideration as it will provide clarity to the CRA.

Regulation 25A: New insertion: Audit report: The IC proposed the introduction of a provision in respect of the audit of processes, operations, and accounts of CRA activities and the submission of annual reports to the Authority. Since this proposal is in uniformity with an audit in the case of PFs, the same is being recommended for consideration.

Regulation 26(1): Bifurcation of the periodic inspection undertaken by the supervision wing of PFRDA with inspection or audit of the CRA in exceptional circumstances is suggested, on the ground that nature of inspection would differ.

Regulation 32(4): To avoid repetition, the provision regarding fulfillment of eligibility criteria at all times may be deleted in Regulation 32(4), since the same is already covered under regulation 10(1)(a).

Regulation 47: The IC proposed the insertion of a provision for the submission of an annual compliance certificate within thirty days from the end of the financial year. The heading of regulation 47 may be renamed as "Compliance" and recommend the above proposal for consideration since the same is in uniformity with the compliance requirements of other intermediaries.

Proposed New insertion: A recently notified provision on "Power to relax the strict enforcement of the regulations" has been suggested as an insertion in line with such powers available under

a. Regulation number 96A of the SEBI (Depositories and Participants) Regulations, 2018
b. Regulation number 50A of the SEBI (Stock Exchanges and Clearing Corporations) Regulations, 2018

This Regulation provides for two situations (i.e., non-compliance due to factors beyond the control of the entity or where the requirement is procedural or technical) where the intermediary can seek relaxation from strict compliance with any of the provisions under the respective regulations. On account of factors beyond its control, such an enabling provision will allow the Regulation to ensure continuity in genuine and deserving cases to avoid disruptions. Thus, similar provisions in the intermediary regulations may be incorporated. However, this shall be a policy decision.

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Chapter 4. PFRDA (National Pension System Trust) Regulations, 2015

This chapter deals with the Regulations governing the NPS Trust (NPST), as defined under Section 2(1)(j) of the Act as
"National Pension System Trust means the Board of Trustees who hold the assets of subscribers for their benefit".

NPST was created on 27.02.2008 under the Indian Trusts Act, 1882 with PFRDA as the settlor. It is the registered owner of the assets within the NPS architecture with the subscribers as the beneficial owners.

The PFRDA (NPST) Regulations were notified on 20.03.2015. The Regulations aim to lay down the appointment of the Board of Trustees of the NPST and for pension schemes under sub-clause (b) of sub-section (1) of Section 12 of the Act and to define their roles and responsibilities, powers and functions to be exercised in relation to the affairs of such Trust vis-à-vis other intermediaries, for protection of interest of the subscribers.

At present, NPST has been assigned inter alia, the duty to monitor activities of the PF, trustee bank, custodian, and Exits and Withdrawal function of the CRA.
Since notification, these regulations have undergone four amendments as follows:

First Amendment	29.07.2019
Second Amendment	29.07.2020
Third Amendment	14.06.2021
Fourth Amendment	17.04.2023

The RRC presented the proposals of Working Group 1 and bifurcated its recommendations as Accepted / Not Accepted/ To be deliberated in RAC. The snapshot of the total number of interventions presently proposed under the review process conducted internally are summarized below:

Regulations	**Accepted**	**Not Accepted**	**To be Deliberated**
PFRDA (National Pension System Trust) Regulations, 2015	13	7	4

The RAC is of the view that NPS Trust Regulations may broadly envisage a relationship between the Authority and the Trust. The Trust may have autonomy with corresponding accountability. Further, the monitoring of intermediaries needs to be demarcated between the NPS Trust and the Authority to avoid the possibility of any overlaps and gaps.

The exposure draft seeking public comments was issued on 13.09.2023 and the last date to receive comments was 04.10.2023.

Based on the extensive deliberations, the following is recommended:

Regulation 2(1)(b): During review, it is observed that reference to the Companies Act, 1956 has been made in various regulations. The reference to the Companies Act, 1956 in the regulations be replaced with the Companies Act, 2013, wherever applicable. Further, reference to the system auditor may be added uniformly across the regulations.
Regulation 2(1)(i): The Committee has reviewed the proposal of the IC on the definition of assets. For ease of understanding, it is suggested that it may be bifurcated into two categories (i) scheme assets and (ii) other assets. It is observed that the term asset is not used substantially in

the regulation. Hence, the requirement to define assets may be reconsidered. The Committee deems it as a policy decision to be taken.

Regulation 4(1): It is suggested that the words "indicative" and "namely" may not be used together in a single regulation to avoid any possible inconsistency in interpretation.

Regulation 4(2)(g) and 9(3): The IC proposed that the term "assets" be replaced with "scheme assets" in the contents of the trust deed and objectives of the trust to ascertain the share of beneficial interest. The scheme assets may be defined to make it clear as to how shall the beneficial interest of the subscriber be computed.

Regulation 4(2)(m): The IC proposed to add the following phrase in the assumption of liability clause in the trust deed "except to the extent specifically permitted under any circulars or directions or guidelines issued, by the Authority, in that behalf". Rewriting of it as "prohibiting absolute liability or that which would result in encumbrance of the property vested in the Board of Trustees in any way" is suggested and a proviso on pledging of securities as margin money with CCIL may be added.

Regulation 4(2)(n): A clause in the trust deed states that the power for removal of trustee shall lie with the Authority. The grounds for the removal of trustees be detailed in the regulations for enhanced transparency.

Regulation 4(2)(r): With regard to the clause on amendments to the trust deed, rewriting of the existing provision as "the Trust Deed shall be amended as and when so directed by Authority" is suggested.

Regulation 4(2) (New insertion): The IC proposed to incorporate the following clause "provision for maintaining books of accounts for scheme assets and general administration of National Pension System Trust". The Committee accepts and recommends the provision as it provides clarity.

Regulation 4(2) (New insertion): The IC proposed to incorporate the following clause "Fees and allowances payable to the trustees shall be as determined by the Authority". Post deliberation, it is concluded that reference to remuneration may not be required in the trust deed and may be incorporated in the governance section of regulations.

Regulation 5(4): To avoid any conflict of interest, the IC proposed to add the following to the eligibility criteria "If selected, before his joining as a trustee, he shall vacate any office that he holds with any of the intermediaries registered with the Authority or a sponsor of the PF or in a promoter entity of CRA, before joining as Trustee of NPS Trust". The Committee deems it as a policy decision to be taken considering the availability of requisite talent as the universe of intermediaries (specifically PoP) is wider.

Regulation 8 (New insertion): The IC proposed to add the following embargo on future employment "A trustee who has ceased to hold the office of the trustee, shall not be eligible for appointment as a director (including independent director on the Board of a PF or its sponsor or in CRA, or its promoter, for two (02) years from the date he or she ceases to hold the office of the trustee.". The Committee accepts and recommends the proposal as a measure of enhanced governance and similar to the practice of public administration.

Regulation 10 (New insertion): The IC proposed to introduce a provision on the frequency of meetings of the Board of NPS Trust as follows "The Board shall meet at least once every three calendar months". The Committee accepts and recommends the proposal as a measure in the subscriber's interest.

Regulation 10 (New insertion): The IC proposed to introduce a proviso on quorum for meeting as follows "Provided further that at least one of the Trustees present in the meeting shall be a Government nominee to constitute the quorum". The Committee is of the view that there shall not be a requirement on the attendance of government nominees to transact business. Hence, it is suggested not to insert the proviso, considering the stakeholder's feedback.

Regulation 10A (New Insertion): The IC proposed that detailed terms and conditions of service i.e., appointment, eligibility, age limit, disqualification, remuneration, and removal provisions of CEO – NPST may be incorporated in the Regulations. The Committee concurs with the proposal and is of the view that this addition will provide a comprehensive framework for the governance of NPST.

Regulation 11 & 12: The term "board of trustees" may be replaced with "NPS Trust" in the heading as well as regulations, if feasible, since NPS Trust is defined in the Act to mean the Board of Trustees.

Regulation 12(a): The IC proposed to reword regulation 12(a) as "The NPST (hereafter to be referred to as it) shall open an individual pension account in accordance with Section 2(1)(e) of the Act". To improve the clarity, the roles and responsibilities may be defined as the definition of NPST means the Board of Trustees. The obligation of the NPST to authorize the exit of subscribers from the scheme is a policy decision to be taken.

Regulation 12(f) (New insertion): The IC proposed to add the following proviso "Provided that the trustee having any conflict of interest shall declare so and recuse from the proceedings in such matter". The proviso may be reworded similarly to Section 9(4) of the PFRDA Act (as applicable to the members of the Authority).

Regulation 12 (New insertion): The IC proposed to add a provision on adherence to the Common Stewardship Code and voting policy on the assets, and the cybersecurity guidelines. The Committee is of the view that this addition will result in better clarity on the obligations, duties, and responsibilities of the Trust and the PFs.

Regulation 13(2)(a): The Committee was briefed that the internal audit of the intermediaries monitored by NPST is conducted quarterly. The IC proposed that the timeline may be specified in the Regulation to make it definite vis-à-vis regular intervals. The stakeholder requested that the scope of the internal audit of the intermediaries to be decided by the NPST. The Committee accepts and recommends the proposal along with suggestions to allow NPST to decide on the scope. However, it shall be a policy decision.

Regulation 13(2)(a) (New insertion): The IC proposed to introduce the provision of an internal audit of NPST annually. The periodicity of the internal audit of NPST may be kept quarterly so that timely information on the material deviations is received to take necessary action and a time of 45 days may be provided for submission of the internal auditor's report.

Schedule II Clause 4 (Regulation 12(n)): Based on stakeholder feedback, the phrase "and refraining from self-dealing" may be omitted from the Code of Conduct since the Trustee is not involved in the investment decisions of PFs. However, it shall be a policy decision.

Conclusion: In line with the intended objective, the PFRDA (NPST) Regulations were reviewed. The feedback received from active stakeholder consultation undertaken by PFRDA with the NPST have been considered while deliberating on the proposed amendments.

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Chapter 5. PFRDA (Point of Presence) Regulations, 2018

This chapter deals with the Regulations governing the Point of Presence (PoP) as defined under Section 2(1)(n) of the Act. Three basic functions of this intermediary have been envisaged under Section 22 of the Act, i.e.,

- receiving contributions and instructions,
- electronically transmitting them to the Trustee Bank or the CRA, as the case may be, and
- paying out benefits to subscribers.

PoPs are required to perform the above functions in accordance with the terms of their CoR and the regulations made under the Act.

The PFRDA (Point of Presence) Regulations, 2018 were notified on 25.06.2018, repealing the erstwhile PFRDA (Aggregator) Regulations, 2015, and PFRDA (Point of Presence) Regulations, 2015. The Regulations aim to encourage an independent, strong, and effective distribution channel for the National Pension System and other schemes regulated and administered under the provisions of the Act. It ensures that market practices of the PoPs towards the provision of old age income security are fair, efficient and transparent for the promotion and protection of interest of the subscribers. Since notification, the regulation was amended once i.e., Amendment on 14.06.2021.

The RRC reviewed the proposals of Working Group 3 and bifurcated its recommendations as Accepted / Not Accepted/ To be deliberated in RAC. The snapshot of the total number of interventions presently proposed under the review process conducted internally is summarized below:

Regulations	Accepted	Not Accepted	To be Deliberated
PFRDA (Point of Presence) Regulations, 2018	14	2	2

The exposure draft seeking public comments was issued on 14.07.2023 and the last date to receive comments was 04.08.2023. Further, stakeholder consultation was undertaken by the Authority with the PoPs on 27.07.2023.

Based on the extensive deliberations, the following is recommended:

Regulation 1: The Committee is of the view that the objective of the Regulation requires simplification to reduce redundancy and verbosity. Hence, it may be rewritten as “These regulations aim at promoting and regulating point of presence to protect the interests of the subscribers.”

New insertion - Regulation 2: The IC briefed us that as part of the consideration of the application, adverse actions on the principal officers of the applicant are evaluated under Regulation 5(1)(e). However, the term “principal officer” was not defined. To make it more definite and align it with the Companies Act, 2013, the term “key managerial personnel” [as defined under section 2(51) of the Companies Act, 2013] has been proposed to replace the term “principal officer”. The Committee accepts and recommends the proposal.

Regulation 3(1): The IC proposed specifying the functions of the PoP in detail (onboarding, subsequent servicing, grievance redressal and exit) under regulation 3(1). It is suggested that the

status quo may be maintained to maintain simplicity as these details are provided in Regulation 15.

Proviso to Regulation 3(1)(iii): The IC briefed us that only the entity which is registered either under Provident Fund or Employee State Insurance (ESIC) or Goods and Service Tax (GST) is eligible to seek registration under regulation 3(1)(iii). They proposed that the entity which is registered under GST along with Provident Fund or ESIC be eligible, thereby requiring registration under the GST mandatory. To expand the coverage, the registration under the Provident Fund or ESIC may be replaced with registration under any social security enactment.

Regulation 5(1)(a): During review, it is observed that one of the eligibility criteria is registration with any regulator in India. The Committee is of the view that the criteria of registration may be restricted to the regulators in the financial services sector only as entities in other sectors will not possess the requisite expertise. Further, an inclusive definition of financial sector regulators may be inserted in the Regulation.

Regulation 5(1)(c): One of the eligibility criteria is to possess 15 branches. The IC proposed reducing the required number of branches to 10 considering the technological advancements and widening the number of eligible entities. The phrase "Each of these branches of the point of presence should have demonstrated capability to electronically transmit the subscriber's contribution and information as per the service standards or relevant guidelines issued by the Authority" may be deleted. The Committee deems it as a policy decision to be taken.

Regulation 5(1)(d): The IC proposed that the net worth criteria be evaluated on the date of application vis-à-vis the last day of the immediately preceding financial year and computed as per Section 2(57) of the Companies Act, 2013 vis-à-vis the tangible net worth. The proposal on the computation of net worth in accordance with the Companies Act, 2013 leads to simplification. The date of evaluation of the net-worth criterion may be taken "as on the last date of the preceding quarter" thereby reducing the waiting time to three months vis-à-vis 12 months.

Regulation 5(1)(e): One of the stakeholders suggested that in the case of other regulators, the laws are listed whose violation will lead to disqualification i.e., they are definite and imposition of penalty is not a criterion. It is suggested to categorize (i) the convictions on account of pension business and other business, and (ii) the debarment or restraint orders by regulators. Further, it is advised to take reference from Section 164 of the Companies Act, 2013, IBBI (Insolvency Professional) Regulations, 2016, and SEBI (Intermediaries) Regulations, 2008. Fit and proper criteria may be laid down in detail considering the above aspects. This criterion may be made uniform across the regulations. The Committee felt that disabilities on account of conviction etc., should not be open-ended and should cease to act as a disqualification where the period of conviction is less than seven years.

Regulation 6(1): During the review, it is observed that there is a provision for the disclosure of information of the applicant in the public domain. The applicant has a right to protect its business information and model from disclosure. Further, the report sought from other regulators provides adequate assurance of the information disclosed by the applicant. The disclosure of information of the applicant on the website may not be required because there may be frivolous objections from competitors and further to speed up the process of grant of registration. However, it shall be a policy decision.

Regulation 6(2): The time provided for furnishing change in material information may be reduced to "immediately but not later than three business days" vis-a-vis fifteen days at present, during the pendency of application in the light of the reduction of time limit for disposal of the application. This is to facilitate earlier processing of registration applications and ensure that serious players apply for registration.

Regulation 8(1): It was informed by the IC that the Authority seeks a report on the applicant from other regulatory bodies. An explicit provisions on seeking a report from any agency or authority as a background check to process the application may be incorporated.

Regulation 9(1)(a): Based on feedback from the stakeholder, the information on the refusal of the application by other regulators of the entity that controls the applicant may not be required and the provision be made applicable only on the applicant. Further, the information in respect of the applicant may be sought for a definite period i.e., 'x' preceding years. The time limit is a policy decision. This criterion may be made uniform across the regulations.

Regulation 9(3)(c): The IC proposed that the omission of material facts be also one of the grounds for refusal of an application under regulation 9(3)(c). The Committee accepts and recommends the proposal as the applicant is bound to disclose all the relevant information for evaluation of the application.

Regulation 9(4): The IC proposed that the period of embargo to apply afresh in cases where the application was previously rejected on certain specified grounds be increased to three years from one year. Status quo may be maintained in respect of the time limit and the disability to make new applications need not be increased, unless any major concerns have been observed.

Regulation 9(5): The IC proposed that the time limit for disposal of applications by the Authority be reduced to thirty days vis-à-vis the sixty days at present. The Committee accepts and recommends the proposed change in the Regulation. This shall ensure that the Authority disposes of the application in a speedier manner considering that concomitant obligations have been made on applicants too, to submit information quickly as sought by the Authority.

Regulation 11(d): The IC proposed that the requirement of submission of an annual compliance certificate may be moved from Chapter V to Conditions of CoR. The submission of same may be made part of the duties and responsibilities.

Regulation 13(1): The CoR may contain a clause that registration will be valid subject to receipt of renewal fee i.e., to say that the registration will be liable for cancellation on non-payment of renewal fee. This is to ensure that PoPs that have registration seek revival in time by depositing the requisite fee.

Regulation 13(3): The IC proposed that the frequency of renewal fee payment be made annually for five years at present. Status quo may be maintained to reduce the compliance burden on the applicant and the Authority in processing it on an annual basis.

Proviso to Regulation 13(3): The IC proposed that the additional fee on delayed payment of renewal fee may be linked to interest @ 1.5 % per month from the existing Rs 1,000 per month. However, this scenario may be avoided by following up with the PoP and ensuring that the cost of compliance is not more than the cost of non-compliance. However, it shall be a policy decision.

Regulation 13(4): The IC proposed that the minimum renewal fee be reduced proportionately as per the proposal in Regulation 13(3) above and upper cap (maximum) be removed. The data on previous renewals were sought to decide the matter further. The data on renewal fees showed that the majority of the PoPs pay renewal fees based on the lower band (minimum). Hence, status quo may be maintained. Further, a review may be undertaken in the future.

Regulation 15: The duties and responsibilities of the PoP were proposed to be specified in detail. It is suggested that broad duties may be specified in the regulation and a handbook may be developed in consultation with the industry on detailed operational aspects. The decision to allow the opening of more than one collection account needs further examination on account of the misuse it can entail.

Regulation 17: The IC informed that recently the audit framework has been issued and requirement of audit of PoPs in relation to NPS and APY operations has been reduced from two separate audits (i.e., internal audit and annual audit) to only a single annual audit. They proposed to incorporate a provision for audit of activities of PoP pertaining to NPS and APY. The proposed insertion is recommended in the Regulation along with the scope and periodicity of audit and eligibility for appointment of auditor.

Regulation 23: It was informed by the IC that the supervision wing currently undertakes periodic inspections under this Regulation. It is suggested to adopt the provisions from CRA Regulations on periodic inspection. The frequency of inspection however is a policy decision to be taken.

Regulation 44 (Schedule IV): The IC proposed the Concept of a Pension Agent comprising banking correspondents, insurance agents, and mutual fund distributors replacing the PoP Sub-entity which are entities associated with PoP, but enjoy a separate registration from the Authority. They were allowed as extended distribution channels who act on behalf of the PoP, and facilitate onboarding of subscribers in the NPS architecture through the PoPs.
The proposal of replacing PoP-SE is on similar lines to the discontinuance of the sub-broker as an intermediary of the Securities and Exchange Board of India (SEBI) vide SEBI (Stock brokers and Sub-brokers) (Second Amendment) Regulations, 2018 notified on 30.07.2023.
There is no change in the roles and responsibilities of pension agents vis-a-vis the point of presence sub-entity. However, ensuring compliance with KYC, AML, and CFT norms continues to be the responsibility of PoP. The requirement of registration of PoP-SE has been proposed to be done away with and the PoPs can now engage the services of pension agents without prior approval from the Authority.
The proposal on the one end eases the operations and on the other end ensures the agents are experienced in dealing with financial products.
The Committee recommends the proposal of the agency model as it allows greater flexibility for PoPs to make a choice of their distribution channels subject to PoPs being responsible for overall compliance with the Regulations.

Proposed New insertion: SEBI has recently inserted a provision on "Power to relax the strict enforcement of the regulations" in the following regulations.

a. SEBI (Depositaries and Participants) Regulation, 2018 – Reg no. 96A
b. SEBI (Stock Exchanges and Clearing Corporations) Regulations, 2018 – Reg no. 50A

This Regulation provides for two situations (i.e., non-compliance due to factors beyond the control of the entity or where the requirement is procedural or technical) where the intermediary

can seek relaxation from strict compliance with any of the provisions under the respective regulations.

On account of factors beyond its control, such an enabling provision will allow the Regulator to ensure continuity in genuine and deserving cases to avoid disruptions.

Thus, the introduction of similar provisions in the Regulations is recommended. However, it shall be a policy decision.

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Chapter 6. PFRDA (Retirement Adviser) Regulations, 2016

This chapter deals with the Regulations governing the Retirement Adviser defined as an "intermediary" under section 2(g) of the Act.

Pension Fund Regulatory and Development Authority (Retirement Adviser) Regulations, 2016 was notified on 13.06.2016 to provide a framework for eligibility, registration process, fees, etc. of Retirement Adviser and to define the scope of work, responsibility, and providing advice by the Retirement Adviser to prospective subscribers, ensuring orderly growth of pension sector.

Since notification, the regulation has undergone five amendments as follows:

First Amendment	28.04.2017
Second Amendment	26.05.2017
Third Amendment	11.09.2017
Fourth Amendment	28.12.2017
Fifth Amendment	02.12.2019

However, it is informed that contribution of the intermediary towards the enrolment of NPS subscribers has not been significant. The role of retirement advisers as envisaged in the NPS ecosystem, their existing business model, and the operational challenges faced by them require a review before initiating the review of regulations. Accordingly, the department may initiate active stakeholder consultation on the above aspects. Thereafter, the Authority may place a note before the Pension Advisory Committee and Board of the Authority to seek guidance on the subject matter.

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Chapter 7. PFRDA (Redressal of Subscriber Grievance) Regulations, 2015

This chapter deals with the Regulations governing the grievance redressal of "subscriber", defined under section 2(1)(t) of the Act as follows:
"subscriber" includes a person who subscribes to a scheme of a PF.

The PFRDA (Redressal of Subscriber Grievance) Regulations, 2015 were notified on 29.01.2015 to provide a timely and seamless framework for handling grievances in the interests of the subscribers, by the intermediaries under the National Pension System and other pension schemes and for effective resolution of such grievances.

Since notification, these regulations have undergone two amendments as follows:

First Amendment	24.05.2022
Second Amendment	27.03.2023

The RRC reviewed the proposals of Working Group 3 and bifurcated its recommendations as Accepted / Not Accepted / To be Deliberated before this Committee. The snapshot of the total number of interventions presently proposed under the review process conducted internally are summarized below:

Regulations	**Accepted**	**Not Accepted**	**To be Deliberated**
PFRDA (Redressal of Subscriber Grievance) Regulations, 2015	1	-	1

The exposure draft seeking public comments was issued on 20.10.2023 and the last date to receive comments was 15.11.2023.

Based on the extensive deliberations held to review these regulations, primarily from the point of easing compliance burden and strengthening governance norms the following is recommended:
Initially, the IC proposed the merger of the Subscriber Education and Protection Fund Regulations, 2015 with Redressal of Subscriber Grievance Regulations, 2015. However, after due deliberations and bearing in mind the object of both these regulations, it was thought prudent to keep them separate.

Regulation 1: The objective of the regulation may be reworded as "These regulations aim to protect the interest of the subscriber and provide a framework for handling their grievance".

Regulation 2. Definitions: The Committee reviewed the definitions clause and recommends that (a) The definition of "Act" may not be required, (b) an Introduction of the definition of "Appellate Authority" may be reconsidered, (c) In the definition of the "intermediary" the words "in relation to NPS" may be deleted since the intermediaries are in respect of all the schemes regulated by the Authority and the word "Explanation" may be replaced with "Clarification", (d) Definition of Ombudsman may cover all ombudsmen envisaged in the regulation, (e) The term "Government nodal office" may be defined, (f) The definition of "complainant" may be replaced with "aggrieved" and it can be explained to include all possible individuals including deceased subscribers' family members (g) The word "complaint" may be omitted i.e., only "grievance" may be used to harmonize with the title of this regulation.

Regulation 3: Grievance Redressal Policy: It is observed that the present grievance redressal mechanism involves two levels before reaching the Ombudsman. Initially, grievances are dealt with at the intermediary level and then at the NPS Trust level. The layers of redressal of grievance may be reduced to the extent possible.

Regulation 4: Filing of grievance redressal policy: The contents of the Grievance Redressal policy may be enumerated within these regulations.

Regulation 5: Turnaround times: For clarity it is recommended that regulation 5 be reworded as "Subscriber grievance redressal policy which shall provide for turnaround times for (i) provision of services (ii) redressal of subscriber grievance".

Regulation 6: Turnaround times for grievance redressal: The IC has proposed a reduction in timelines for disposal of the grievance from thirty days to fifteen days. The timeline for reduction is a policy decision. To lay down the process flow and mechanism of redressal, it is recommended that references may be taken from SEBI's Online Dispute Resolution mechanism. Further, in Regulation 6(1) & (2), reference to the Centralized Grievance Management System and the unique grievance number allotted may be mentioned while Regulation 6(10) may be deleted. The regulation for consequences of non-compliance may be inserted at the end of the regulations.

Regulation 7: Closure of grievances: The IC proposed a reduction in the time limit for preferring an appeal against the intermediary's communication of resolution or rejection to thirty days vis-à-vis forty-five days. The above time limit is a policy decision to be taken. It is recommended that, instead of specifying the time limits at each stage, this regulation may be reworded as "A grievance shall be deemed as closed where the aggrieved has conveyed his acceptance of redressal or no appeal has been filed within the time limit".

Regulation 10(2): Escalation of grievance to National Pension System Trust (NPST): The provisions of regulation 10(2) were reviewed in conjunction with the provisions of regulation 22 and the Committee is of the view that regulation 10(2) and regulation 22 may be merged. Further, instances of preferring a claim with the Ombudsman may be categorized into grievances against
a. Intermediaries other than NPS Trust, and
b. NPS Trust.

Regulation 11: Appointment of Ombudsman; and **Regulation 12**: Establishment and Appointment:
The Committee is of the view that Regulations 11 and 12 dealing with the provisions of appointment of Ombudsman and establishment of office of Ombudsman may be merged. Further, the composition of the selection committee may be reworded as follows –
"a. WTM of the Authority as chairperson;
b. Two individuals having special knowledge and experience of law, finance or economics, pension;
c. A representative of the Central Government;
d. An Executive Director of the Authority as Secretary of the Selection Committee;
to be nominated by the Chairperson."

Regulations 13 & 14: The Committee recommends that Regulations 13 and 14 dealing with the provisions of qualification and disqualification of Ombudsman may be merged.

Regulation 14: Disqualifications: The IC proposed to reduce the period of disqualification for a whole-time director of the intermediary to be eligible for Ombudsman from three years to one year. The Committee is agreeable to such a reduction and recommends the proposal. However, the embargo period would be a policy decision.

Regulation 15: Tenure: The Committee recommends that the tenure of reappointment of the Ombudsman may be increased from two years to another term i.e., three years. However, this shall be a policy decision. Further, the Committee is of the view that the power to decide on the appointment and removal of the Ombudsman may vest with the same person. Also, the grounds for removal of the ombudsman may be categorized into the following two heads -

a. Involving reputational damage - immediately dispensed
b. Any other reason- discharge by paying remuneration.

Deletion of the following provisions is recommended:

(i) Regulation 10(3) due to proposal for simultaneous follow-up by NPST for resolution of grievance.
(ii) Regulation 17 dealing with stipendary ombudsman by merging the provisions with regulation 11.
(iii) Regulation 21(1)(a) dealing with separate annual budget for office of ombudsman.
(iv) Regulation 22(3) subsuming under regulation 22(1) dealing with instances of appeal with ombudsman.

Conclusion: In line with the intended objective, the PFRDA (Redressal of Subscriber Grievances) Regulations were reviewed. The same has been published on PFRDA's website www.pfrda.org.in for feedback and comments from all stakeholders to consider their inputs while further deliberating on the proposed amendments.

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Chapter 8. Regulatory Best Practices

A regulator carries out several tasks before the introduction of regulation, during the currency of the regulation, and even after the repeal of the regulation to ensure that regulations, when in force, serve the purpose efficiently and effectively. Review of regulations is a critical task that a regulator carries out to weed out regulations that have lost relevance and to modify regulations to serve the purpose better, in the changed circumstances. Review and other tasks associated with regulations have an organic relationship. For example, a regulation is made to serve a purpose. A review of this regulation requires examining if the said regulation effectively serves the intended purpose, if it needs to be modified to serve the said purpose, or if a new regulation is necessary in place of the existing regulation. Therefore, the effectiveness of a review of a regulation depends on how other tasks relating to the regulation are performed. **It serves the cause better if the regulator puts in place institutional machinery to perform the tasks relating to regulations holistically to serve the market well**.

Economists believe there is only one reason for having regulations, which is to address market failure; and without regulations, the market is most likely to fail (to yield optimum allocation of resources). The market fails only when it has any one or more of the three sets of infirmities, namely, information asymmetry, externalities, and market power. Literature provides several other motives for regulation such as safety, security, health, and ecological concerns, consumer protection, prevention of market manipulation and anti-competitive conduct, and protection of freedom in the marketplace. These are, however, subsets of the three sets of infirmities. It is important to have regulations that address the market failure only and do no more. This has made making regulations a skill which is an art and science of an elite few. **A regulator should master and upgrade this skill to ensure regulations of the right quantity and quality at the right time.**

While it is not possible to have standard regulations to address a market failure, **it is essential to have a standard process for making regulations (including reviewing, amending, and repealing them) to ensure that the regulations are effective as well as responsive, yet not excessive.** An example is the regulations made by the Insolvency and Bankruptcy Board of India, that govern the process of making regulations. These regulations mandate the regulator to involve the public in regulation-making through a consultation process; to present an economic analysis to indicate that the benefits from the proposed regulation exceed costs; to demonstrate that of the available regulatory options, the proposed one is the most cost-effective; to give comfort that the proposed regulation is not ultra vires the law and can be implemented; etc. This process brings in objectivity and minimizes the possibility of misuse of regulation-making power.

Regulations have the force of law, even though they are subordinate legislation. They have the potential to coerce and modify the behaviour of market participants. The law, therefore, prescribes a sacrosanct process for making regulations. Section 49 of the PFRDA Act mandates that the power to make regulations must be exercised only by the Governing Board (GB) of the Authority and this cannot be delegated. However, it is observed that other instruments like circulars, guidelines, or directions are at times used by some regulators for the sake of convenience or to meet an exigency. These instruments, though used to prescribe regulatory norms, may not go through the sacrosanct process of checks and balances that regulations are required to go through. **It is, therefore, necessary that a regulator uses only one type of subordinate legal instrument, that is, regulations to prescribe regulatory norms.** It may, however, issue guidance notes and FAQs to facilitate clarity and compliance.

Participative democracy envisages the participation of citizens in policymaking. The Law Ministry in 2014 advised consultation before any legislative proposal is submitted to the Cabinet for consideration and similar consultation for subordinate legislation. In 2016, the apex court (Cellular Operators Association of India Vs. Telecom Regulatory Authority of India) exhorted Parliament to make legislation requiring regulations to be made in consultation with stakeholders. The Budget for 2023-24 proposed that *public consultations, as necessary and feasible, will be brought to the process of regulation-making and issuing subsidiary directions to facilitate the optimum regulation in the financial sector*. A few legislations like the Competition (Amendment) Act, 2022 mandate the regulator to consult the public in making regulations. A few regulations like the IBBI (Mechanism for Making Regulations), 2018 mandate such a consultation for making regulations and prescribe the manner of consultation. **A regulator must conduct a consultation with the public and stakeholders for making, reviewing, amending, or repealing the regulation.**

Though the practice of public consultation is not new and is a necessity, its sufficiency depends on the manner and intensity of consultation, which varies from regulator to regulator. Modern regulators use various methods - online, offline, and face-to-face- to reach out to stakeholders. They engage with them in different formats- advisory committees, working groups, roundtables, seminars, workshops, discussion papers, etc. They often use technology to capture the provision-wise views of stakeholders. **A regulator must use all methods and formats to intensively engage with the stakeholders, with mutual trust and respect, to extract the best input from them in the interest of effective and efficient regulations.** This will refine regulations and bring in ownership, making implementation easier.

Public consultation typically is passive participation, as stakeholders limit their comments to the proposals on the table, and have a short window to formulate their views. It will be much more rewarding if they can have active participation in making/ reviewing regulations. A regulator, though closer to the market as compared to its principal, is still one step removed from the market compared to the regulated entity. It substantially depends on the regulated for understanding the market developments and designing solutions to emerging concerns. The regulated have first-hand experience of the market and its concerns and, given their numbers, the universe of practical solutions they have is much larger. **They should have an opportunity to seek/ suggest new regulations and/ or changes in existing regulations, at their convenience, to address market concerns and promote ease of doing business.**

Since regulations can be made only with the approval of the GB of the regulator, the language of the proposed regulation or amendment thereof must be approved by the GB. **The consultation is effective where the regulator presents drafts of proposed regulations, not just the regulatory proposal**. **The draft carries the purpose of each clause and sub-clause to enable the regulated to appreciate the rationale and implications.** This is because there can be a huge difference in intent between the regulatory proposal and draft regulations. Further, after considering the input of stakeholders, the GB should finalise the language of the regulations.

Consultation is effective when stakeholders are presented with an assessment of the likely impact of the proposed regulation, the associated costs of compliance and enforcement, and whether it would achieve the desired objectives. The most typical methodology for such an assessment is regulatory impact assessment (RIA). Many matured market economies have institutionalised it. In India, over time, a few expert bodies have recommended RIA. These include the Working Group on Business Regulatory Framework (Erstwhile Planning Commission, 2011), the Financial Sector Legislative Reforms Commission (Department of Economic Affairs, 2013), the

Committee for Reforming the Regulatory Environment for Doing Business in India (Ministry of Corporate Affairs, 2013), Tax Administration and Reforms Commission (Department of Revenue, 2015), and the Expert Committee on Prior Permissions and Regulatory Mechanism (Department of Industrial Policy and Promotion, 2016). An RIA typically carries the rationale for regulation, options - regulatory and others- considered to meet the regulatory objective, justification for the preferred choice, full range of costs, benefits, and impacts- economic, social, and environmental- tangible and intangible- associated with the choice in pecuniary terms to the extent possible, availability and effectiveness of mechanism for monitoring compliance and enforcement of the choice and associated costs. **A regulator should build capacity, including a database, to carry out RIA, and should carry out and present the RIA for any proposed regulation.**

The RAC observed that some regulations are long-winded, with some regulations running into paragraphs or even pages, making it difficult to comprehend them. Ministry of Corporate Affairs has recently prescribed drafting norms for Guidelines to be issued by the competition regulator: "*One paragraph shall contain only one sentence and one aspect of guidelines and should not have multiple sentences and aspects".* **A regulator may have a schedule to rewrite these Regulations over time using simple and short sentences.**

Regulations, once made, remain in the statute book even if they have lost relevance over time, or the costs of such regulations outweigh the benefits. It is necessary to weed out regulations that have run out of time, context, and relevance and make them contemporary and in tune with the requirements of business in a dynamic setting. Ease of doing business is a declared policy intent and regulations and regulatory changes must address that as well, without compromising on minimising the risk of market failure arising from unbridled market forces. An example of this initiative is the Reserve Bank of India's (RBI's) establishment of the Regulations Review Authority 1.0 in 1999, followed by Authority 2.0 in 2021, which aimed to reduce the compliance burden on regulated entities. On the recommendations of Authority 2.0, RBI withdrew 714 circulars, in addition to other actions. **A regulator should review every regulation once in three years unless a review is warranted earlier.**

Ideally, regulations should specify the purpose of each regulation/ sub-regulation. This will make reviewing regulations meaningful when the regulator presents how each regulation, sub-regulation, and clause of regulation aligns with its intended objective and supplements with a regulatory impact assessment. It is comprehensive if it covers both regulations and subsidiary directions. It is efficient if it uses technology.

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RAC Research Secretariat

The RAC Research and Secretariat comprised the following members:

S No	Name and Designation
1	Mr. Mohit Yadav, AGM (Team Lead)
2	Mr. Chetan Singhal, Manager
3	Mr. Naveen Balu K S, Manager
4	Ms. Priyanka Pradeep Pai, AM
5	Mr. Sidhant Mohapatra, AM
6	Mr. V Srinivasan, AM
7	Ms. Nikita Singh, AM
8	Mr. Indrajeet Shivprasad Bhosale, AM
9	Mr. Shubham Khandelwal, AM

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