

## **COFECE issues opinion on proposal to regulate the commissions charged by retirement fund administrators (Afores)**

- *The Commission recommends not approving, in the proposed terms, the Initiative to reform the regulation of the Retirement Savings System, since the mechanism that proposes to regulate commissions results inflexible for the operation of the system.*
- *Furthermore, it proposes to adopt a regulatory system for commissions that promotes better returns and avoids establishing predefined maximum caps.*
- *As long as the current scheme for the negotiation and authorization of commissions is not modified, it is proposed that the secondary regulation clearly establishes a transparent procedure for its authorization by CONSAR, with objective and predictable criteria.*

**Mexico City, November 20, 2020.-** The Board of the Mexican Federal Economic Competition Commission (COFECE or Commission) issued an opinion in which it recommends not to approve on its terms the *Initiative with a Draft Decree to reform, add and repeal several provisions of the Social Security Law and the Retirement Savings System Law (Initiative)*, as it establishes a maximum cap concerning the collection of commissions which, if approved, would result inflexible for the operation of the Retirement Savings System market (SAR, per its acronym Spanish).

However, the Board of COFECE agrees that regulation of commissions in the market for retirement savings is justified due to:

- (1) Workers in general do not change between Retirement Fund Administrators (Afore, per its acronym in Spanish), even though the amount of commissions charged or the returns offered. Due to this, the *Afores* do not have incentives to compete by offering lower commissions and better returns. On the contrary, administrators attract transfers through commercial expenditure, which increases their operational costs and does not benefit workers.
- (2) The current mechanism to determine the commissions charged by the different administrators every year is not very transparent, in addition to the fact that the regulatory authority, the National Commission for the Retirement Savings System



(CONSAR, per its acronym in Spanish), does not have complete information about the costs presented by *Afores* to get commissions authorized.

- (3) With the reform, a gradual increase of the employer contribution in accordance with the worker's wage level would be expected, which should allow the leverage from greater economies of scale in the accounts' management, and would enable the possibility for the commissions to continue decreasing over time.

In this sense, while it is necessary to modify the current procedure for the authorization of commissions, the scheme proposed by the *Initiative* could result inflexible and lacks technical elements for their determination.

The *Initiative* that was presented before the Chamber of Deputies establishes, among other changes, a cap on the commissions charged by *Afores*, so these are not higher than the average of commissions charged in Chile, Colombia and the United States, through a formula to be defined by CONSAR's Governing Board.

To take as a reference other countries' indicators is a mechanism used in the design of regulation, but its use requires to demonstrate the comparability between savings systems in terms of variables, such as the number of accounts and balances managed in each system, and the type of commissions that are allowed to be charged in each country. In this case, the *Initiative* does not contain a justification for the selection criteria of the reference countries chosen for the calculation of the maximum cap of the commissions.

Likewise, this criterion generates inflexibility to adapt regulation in accordance to changes in the market. For example, in the case that a different cap is needed, a new reform to the law would be required. In this regard, the Supreme Court of Justice has established that, given the vocation of permanence of the Laws, these are an unsuitable instrument for the determination of commissions. Moreover, it considers that the determination of fees corresponds to the regulator, as it is the one who can choose the means and type of regulatory policy necessary to fulfill the objectives pursued. In this case, the commissions charged by *Afores* must be determined by CONSAR

Given the above, COFECE sent to Congress, the Ministry of Finance and Public Credit and to the CONSAR an opinion with the following recommendations:



1. Not approving the Initiative in its current terms, as the mechanism it proposes to regulate commissions is inflexible.
2. Where appropriate, adopt a system for regulating commissions based on a criterion and procedure that: i) avoids establishing predefined maximum caps, on the contrary, that allows the modification of commissions according to changes in the market; ii) promotes better returns for workers; iii) generates competition through cost reduction, and iv) is based on technical and transparent criteria.

COFECE's Board of Commissioners also recommends that, as long as the current scheme for negotiation and authorization of commissions is not modified, the Governing Board of CONSAR establishes in the secondary regulation a transparent procedure for the authorization of said commissions, from the moment *Afores* submit an application for the authorization of said commissions, until it is authorized or denied, based on objective, predictable and transparent criteria.

[Read the opinion \(in Spanish\)](#)

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*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's welfare and the efficient functioning of markets. With its work, COFECE seeks better conditions for consumers, more services of higher quality and a "level playing field" for companies.*

