

Approach



Effective Date: March 16, 2020

Identifier: No. PE0199APP*

Supervisory Approach for Single Employer Defined Benefit Pension Plans that are Actively Monitored

1. Purpose and Scope

- 1.1 This Guidance outlines the predictive and preventative tools and supervisory methods used by FSRA to improve outcomes for pension plan beneficiaries¹ of Ontario-registered single employer defined benefit (DB) pension plans where there may be a concern with respect to the security of the pension benefits promised (actively monitored plans).
- 1.2 Such actively monitored pension plans are subject to an enhanced level of supervision and engagement by FSRA's Relationship Management and Prudential Supervision team.

¹ As used herein, "beneficiaries" refers to any individual with an entitlement under a registered pension plan, including members, former member and retired members as defined in the *Pension Benefits Act* and any other individual who may be entitled to payment from the plan.

2. Rationale and Context

- 2.1 FSRA's statutory objects, as outlined under the *Financial Services Regulatory Authority of Ontario Act, 2016* (FSRA Act), include²:
- (a) to promote good administration of pension plans; and
 - (b) to protect and safeguard the pension benefits and rights of pension plan beneficiaries.
- 2.2 In the development of this Guidance, FSRA considered the supervisory practices of both Canadian and international regulators with similar regulatory oversight for pension plans. This was done in an effort to incorporate leading regulatory practices that fit within the current regulatory and legislative framework in Ontario.
- 2.3 It is FSRA's view that voluntary employer sponsored pension plans are an important component of retirement income security for employees and their families in communities across Ontario. As such, FSRA recognizes that considering the interests of plan sponsors will be an important consideration in the application of this Approach.
- 2.4 FSRA recognizes that managing a DB pension plan in today's ever-changing world means facing a variety of economic, demographic, longevity and other challenges.
- 2.5 The *Pension Benefits Act* (PBA) requires a pension plan to be sufficiently funded to provide the promised benefits.³ In order for pension promises to be honoured over the long term, the plan sponsor must be financially able to continue to support the pension plan. As a prudential regulator, FSRA will assess pension plan risks and the sustainability of a pension plan in relation to the financial stability of the plan sponsor.

² FSRA Act, sections 3(1) and 3(3).

³ PBA, section 55. Regulation 909 sets out minimum contributions.

- 2.6 Also underlying this Approach to actively monitored plans is FSRA's responsibility for administering the Pension Benefits Guarantee Fund (PBGF).⁴ The PBGF is funded by PBGF eligible pension plans and provides protection, subject to certain maximums and exclusions, primarily to Ontario beneficiaries of single employer DB pension plans in the event of plan sponsor insolvency where a plan is underfunded. However, even with PBGF protection, pension promises may not be fully honoured where a sponsor becomes insolvent. Moreover, once drawn down, the PBGF will need to be replenished if it is to provide future protection to other plans. As such, FSRA views this Approach as a prudent and necessary step towards ensuring the long-term viability and sustainability of the PBGF without imposing an undue burden on other continuing PBGF eligible plans.
- 2.7 Through this Approach to prudential supervision, FSRA will discharge its regulatory responsibility to safeguard the rights and benefits of pension plan beneficiaries and will, as it determines is appropriate in the circumstances, use its statutory powers to execute on this supervisory Approach.

3. Principles

- 3.1 FSRA is a principles-based regulator, focused on outcomes consistent with its statutory objects. FSRA's guiding principles for the supervision of the pension sector are set out in an Approach guidance, the [Pension Sector Guiding Principles](#).
- 3.2 To guide FSRA in the implementation of this Approach, it will be risk-based. This means that FSRA will assess risks by their nature, size, complexity and potential impact on all pension plan stakeholders. Once risks are identified, they will be addressed by FSRA focusing its regulatory resources on those pension plans it determines to have the greatest risk to benefit security or which may pose a threat to the long-term sustainability of the PBGF.

⁴ PBA, section 82.

- 3.3 FSRA recognizes that no single approach or engagement strategy will work in all situations. FSRA will assess each situation based on its particular facts and circumstances. FSRA will make reasonable, fact-based decisions that take into consideration the impact of inherently uncertain outcomes on all stakeholders.

4. Focus

- 4.1 FSRA's prudential supervision of actively monitored plans is premised on the view that once an employer elects to establish a pension plan, the plan must be administered and its assets invested, with the care, diligence and skill required of a fiduciary in accordance with the standard of care prescribed by the PBA,⁵ the common law and equity. It is well established in case law that a fiduciary is required to act with the utmost good faith and in the best interest of beneficiaries. For example, officers and directors of a plan sponsor acting as the plan administrator (i.e., when acting as a member of a committee overseeing the pension plan) must act in the best interest of beneficiaries.
- 4.2 Under this Approach, as part of the engagement described in section 5.3 below, FSRA will be pleased to meet with fiduciaries of actively monitored plans to discuss their obligations under the PBA and as fiduciaries.
- 4.3 FSRA will review the governance framework of actively monitored plans as an essential component of good plan administration. This requires governance practices that ensure that the administrator's fiduciary duties are being appropriately satisfied.
- 4.4 FSRA will be transparent in its interactions with plan sponsors and administrators and expects collaboration and cooperation to facilitate better outcomes for plan beneficiaries.
- 4.5 If concerns with respect to the security of pension benefits are identified, FSRA will consider whether plan sponsors and administrators have taken appropriate measures to address these risks. FSRA will deploy regulatory tools and powers in a reasonable and proportionate way. FSRA will also encourage implementation of appropriate risk management measures to mitigate those risks.

⁵ PBA, section 22.

- 4.6 FSRA encourages pension plan beneficiaries and their representatives to contact FSRA at any point if they believe the plan sponsor is facing material business or financial challenges, the administrator is not acting in the best interest of pension plan beneficiaries in administering the pension plan, or if any other concerns exist about their rights and entitlements, or the plan sponsor's or administrator's obligations. FSRA will work to address any confidentiality concerns.

5. Processes and Practices

- 5.1 This section details how FSRA intends to identify and supervise actively monitored plans. It includes the following topics:
- Predictive and Preventative Tools; and
 - Engagement Strategy and Potential Outcomes.

5.2 Predictive and Preventative Tools

- 5.2.1 FSRA will undertake a risk assessment of all single employer DB pension plans each quarter. This risk assessment may include:
- Consideration of pension fund risks – this includes investment risk and funding risk;
 - Plan governance and evidence of the satisfaction of fiduciary duties; and
 - Sponsor / industry risks including challenges facing the plan sponsor that, if realized, may hinder its ability to honour the plan's pension promise. To this end, FSRA will monitor publicly available information and media feeds of corporate transactions, dividend payments, special events, significant financial losses, corporate earnings, and other relevant information. FSRA will use its judgment to determine the types of events and transactions it considers material. Underlying this analysis is the recognition that the health of the plan sponsor has a direct impact on the sustainability of the pension plan.

- 5.2.2 FSRA will use its judgment in its assessment of risk. For example, FSRA may choose to focus on plans with a large solvency deficiency (e.g. in excess of \$20 million), or where the severity of the funded ratio on a solvency basis is material, or when the solvency deficiency impacts a large number of plan beneficiaries (e.g. more than 1,000).
- 5.2.3 In deciding where to focus its regulatory resources, FSRA will consider not only the impact of the risk of insolvency of the sponsor on beneficiaries but also on the larger community, and whether an insolvency would have an impact on the sustainability of the PBGF.
- 5.2.4 FSRA expects that there will be a small number of actively monitored plans identified through the application of this Approach at any given time. The status of being identified by FSRA as an actively monitored plan will be maintained as confidential but will be disclosed to the plan administrator. The status of being an actively monitored plan will be dynamic, as FSRA's risk assessment may change (for example, due to additional information made available through FSRA's engagement or remedial actions taken), changes to the funded status of the plan, or due to an adjustment in FSRA's assessment criteria.

5.3 Engagement Strategy and Potential Outcomes

- 5.3.1 A proactive and collaborative approach to engage with the administrators of actively monitored plans will be key to FSRA's supervisory approach.
- 5.3.2 FSRA will focus on engagement with the plan administrator to better understand the particular risks to the pension plan and the plan sponsor. To minimize any potential burden, FSRA inquiries will not include publicly available information and information which has already been provided to FSRA in routine filings or by plan fiduciaries or their representatives. FSRA will work to address any confidentiality concerns with respect to non-public, sensitive information provided to it in the course of its regulatory oversight.

5.3.3 FSRA's engagement strategy will:

- Focus on matters that are most relevant to the benefit security of plan beneficiaries;
- Be built on an open, ongoing and collaborative dialogue with plan sponsors and administrators through a dedicated relationship manager from the Relationship Management and Prudential Supervision Team;
- Involve communication with other pension plan stakeholders (e.g., board members, unions, plan members, and plan beneficiaries) where and when deemed appropriate, while taking into account confidentiality concerns;
- Involve FSRA working with plan administrators and their professional advisors (e.g. actuaries, accountants, lawyers, and investment consultants) to understand the strategies, methods, legal and financial approaches and assumptions for the plan and how they fall within acceptable professional standards;
- Involve FSRA exercising both formal (e.g. statutory⁶) and informal tools (e.g., through dialogue with the plan sponsor as discussed above); and
- Be agile and dynamic in that FSRA will continually evaluate the most appropriate tool(s) at its disposal to achieve the desired outcome of enhanced benefit security for plan beneficiaries.

⁶ FSRA may use the powers described in Appendix 1 where appropriate in the circumstances as part of its engagement strategy

5.3.4 Potential outcomes of the engagement may include, but are not limited to:

- The pension plan no longer being actively monitored by FSRA for reasons that include: FSRA being satisfied that there is no material concern regarding benefit security; that good risk management practices are in place to mitigate pension risks; or the identified concern with respect to benefit security has been addressed through a better understanding of the plan's or plan sponsor's situation and / or remediation activities undertaken;
- Additional reporting or continued monitoring;
- Development of a risk management plan that remediates or mitigates the potential impact of identified risks on benefit security (see section 5.3.5); and / or
- Development of strategic solutions to improve expected outcomes for pension plan beneficiaries.

5.3.5 As part of its engagement, FSRA will consider the extent to which the plan administrator's decisions with respect to its pension plan reflect appropriate consideration of the applicable standard of care. This includes, but is not limited to, the extent to which the plan administrator has considered:

- The plan's ability to absorb future fluctuations in funding costs;
- The probability of delivering the promised benefits with the current funding and investment strategy, including consideration of the range of possible outcomes that may result from the current funding and investment strategy;
- The impact of the financial health of the plan sponsor on the health of the pension plan and the security of the plan benefits; and
- The prospect of the plan sponsor, given its financial strength and business plans, continuing to support the pension plan.

- 5.3.6 FSRA will require the plan administrator to demonstrate that it understands the scope of its fiduciary duty (e.g., demonstrating that it has had fiduciary training and engaged appropriate advisors), and that it has considered industry best practices relevant to the funding and governance of the plan (e.g., CAPSA Guidelines with respect to governance and funding⁷). Also, FSRA will expect that the plan administrator has considered how it will resolve any conflicts that arise by virtue of its role as also being plan sponsor (where the plan administrator and the plan sponsor are the same entity).

6. Effective Date and Future Review

This Approach is effective March 13, 2020. FSRA will review this guidance by March 2025.

7. About this Guidance

This Guidance is an Approach. Approach Guidance describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion. Approach Guidance may refer to compliance obligations but does not in and of itself create a compliance obligation. Visit [FSRA's Guidance Framework](#) to learn more.

⁷ At <https://www.capsa-acor.org/CAPSAGuidelines>, see, for example, CAPSA Guideline No. 7: Pension Plan Funding Policy Guideline and Guideline No. 4: Pension Plan Governance Guideline.

8. Appendices and References

- *Appendix 1: Statutory Powers*

References

- *Pension Benefits Act* sections 22, 23.1, 25.1, 55, 57, 69, 82-85, 87, 98, 106 and Regulation 909 under the PBA.
- *Financial Services Regulatory Authority of Ontario Act, 2016* section 3
- Canadian Association of Pension Supervisory Authorities Guidelines 4 and 7 at <https://www.capsa-acor.org/CAPSAGuidelines>

9. Appendix 1. Statutory Powers

As a risk-based regulator that is also responsible for the Pension Benefits Guarantee Fund, FSRA will act in a graduated and proportionate manner. FSRA will consider each case on its circumstances and will act appropriately and consistently with its objects. Some examples of relevant statutory and regulatory powers for FSRA's engagement strategy can be found in the following sections of the PBA:

- Administrator's standard of care described in section 22 of the PBA
- Meeting and communication powers under section 23.1 and section 25.1 of the PBA
- Windup order powers in section 69 of the PBA
- The CEO's power to order that a plan administrator take action where the plan and/or fund are not administered in accordance with the PBA and the Regulation can be found in section 87(1)
- The CEO's power to order reports can be found in section 87(4), section 87(6) of the PBA and section 16.3 of Regulation 909 under the PBA
- Information gathering and examination powers can be found in section 98 and section 106 of the PBA
- Other powers may exist from time to time, regardless of their presence on this list.