

Guidance

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Proposed Guidance: Pension Plan Administrator Roles and Responsibilities

1. Purpose and scope

- 1.1. This Guidance provides FSRA's interpretation of the role and responsibilities of pension plan administrators (administrators).^[1]
- 1.2. As fiduciaries in an ever-changing world, administrators are responsible for prudently managing risks in their pension plans, making decisions in the best interest of pension plan beneficiaries,^[2] and administering the plan in accordance with the filed plan documents and all applicable laws.
- 1.3. Voluntary employment-based pension plans are an important component of retirement income security for employees and their families in Ontario. Good pension plan administration helps all stakeholders and enhances confidence in the ability of these plans to deliver their intended outcomes.



1.4. FSRA’s guiding principles for the supervision of the pension sector are set out in its [Pension Sector Guiding Principles](#). [This Guidance supports FSRA’s statutory objects to promote good administration of pension plans and to protect and safeguard the pension benefits and rights of pension plan beneficiaries.](#)^[3]

2. Role of administrator

2.1. An administrator is responsible for all aspects of the administration of the pension plan and the related pension fund, including:

- providing information to plan beneficiaries
- complying with plan documents and applicable [laws legal requirements](#).
- establishing, maintaining, and investing the pension fund in accordance with the plan terms
- maintaining complete and accurate plan records
- ensuring that appropriate contributions are made to the pension plan
- making benefit payments to plan beneficiaries

2.2. As a part of the administrator’s governance activities (see below regarding governance policy), the administrator’s role also includes responsibility for implementing processes to ensure plan risks (investment, funding, operational, legal, etc.) are understood and addressed. Especially important in the context of defined benefit pension plans are those risks that might impact the security of the promised pension benefits, such as the financial risks to the plan’s investments and the employer’s ability to withstand variations in its funding commitments.

2.3. The administrator’s role differs from the roles of the plan sponsor and employer.^[4] The plan sponsor’s responsibilities include designing, establishing, amending and terminating the pension plan.^[5] The responsibilities of the employer include making contributions and providing sufficient funding to provide the promised pension benefits.^[6] For many defined



benefit pension plans, the employer's responsibilities also include understanding the risks that might impact the security of the promised pension benefits and its ability to withstand variations in its funding commitments based on the plan's funding and investment strategies.

3. Who can be an administrator?

- 3.1. An administrator must be a person, body or entity specified by the *Pension Benefits Act* (PBA).^[7] For most plans, the administrator is also the same entity as the employer of plan members and the plan sponsor. Another common form of administrator is a board of trustees.
- 3.2. The individuals who make decisions for the administrator may delegate decision-making authority to other individuals within or outside of the organization. Notably, section 22(7) of the PBA provides that an administrator must carry out such supervision of the agent as is prudent and reasonable. When delegating decision-making authority to an agent, an administrator retains their fiduciary duties under section 22, and must ensure that the agent fulfills their delegated responsibilities. ~~Where decision-making authority is delegated, the directors, pension committee or trustees~~ Administrators should have in place controls and reporting requirements to ensure ~~the administrator's~~their responsibilities are fulfilled and pension benefits are protected.
- 3.3. For some pension plans, the same individuals will have decision-making responsibilities for the administrator, the employer and/or the plan sponsor. In these situations, those individuals need to clearly understand and document when their decisions are taken as an administrator, an employer or a plan sponsor and be mindful of the potential for conflicts of interest among their roles (see below regarding fiduciary duties).^[8]

4. Responsibilities

- 4.1. Administrator responsibilities are set out in the pension plan documents, the PBA and other applicable law/legislation. Administrators also have responsibilities as fiduciaries under common law (see below regarding fiduciary duties).
- 4.2. To assist administrators in carrying out their responsibilities, FSRA has published



regulatory guidance.^[9] The Canadian Association of Pension Supervisory Authorities (CAPSA) has also published documents describing leading practices.^[10] Administrators should be able to demonstrate that they have considered these practices in their administration and investment activities.

5. Fiduciary duties

5.1. Administrators are subject to fiduciary duties under common law and minimum standards prescribed by the PBA.

5.2. It is well established in law that a fiduciary is required to act with the utmost good faith and in the best interests of beneficiaries. This means that administrators must be honest, act in good faith and treat plan beneficiaries impartially. They must also avoid or manage conflicts of interest – i.e., the individuals and legal entities acting as administrators must not permit their interests to conflict with the interests of plan beneficiaries.^[11] In addition, if an administrator owes a duty to another person outside of their role as plan administrator, they must not permit that duty to conflict with the interests of plan beneficiaries.

5.3. At a minimum, section 22(1) of the PBA provides that the “[a]dministrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.” Section 22(2) of the PBA provides that the, “[a]dministrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator’s profession, business or calling, ought to possess” (collectively referred to as the “standard of care”).^[12] This increases the minimum standard of ordinary prudence to one in keeping with the administrators’ abilities, experience, and profession. ~~The PBA also requires administrators to act with the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person. They must also use all relevant knowledge and skill that they possess or, by reason of their profession, business or calling, ought to possess.¹³ This is referred to as the administrator’s standard of care.~~

5.4. Individuals carrying out administrator functions must be knowledgeable about their responsibilities and the standard of care they must meet. Depending on the



circumstances, the standard of care may require the administrator to obtain the appropriate level of knowledge from third-party advisors.

- 5.5. In determining whether the administrator’s standard of care has been met, attention is paid to the policies and procedures put in place by the administrator and how they were followed in the course of administering the plan. Appropriate policies and procedures, including written records of administrator decisions and activities, can help ensure and demonstrate that in respect of decision-making, only proper factors are considered (e.g., interests of plan beneficiaries, compliance with plan documentation and applicable law, etc.) and that the standard of care~~appropriate degree of care, diligence and skill~~ is complied with~~adhered to~~.

- 5.6. For pension plans where the administrator is also the plan sponsor and/or employer, there is a greater risk of potential conflicts of interest. For example, the directors and officers of a corporate employer must act in the best interests of the corporation. But, in carrying out administrator duties, those same individuals must act in the best interests of plan beneficiaries. In the context of multi-employer pension plans, individual trustees need to be mindful of potential conflicts of interest that may arise if they also occupy senior roles within the sponsoring union or a participating~~the~~ employer. Service provider engagements can also be a source of conflict of interest if the service provider, particularly those providing professional advice, provides services to the administrator and the plan sponsor or the employer (see below regarding service providers).

- 5.7. A helpful perspective for dealing with conflicts of interest is to consider how an independent administrator would act in the specific circumstances. This might require obtaining independent, expert advice. Also, a written policy on conflicts of interest, included as part of the administrator’s governance documents (see below regarding governance policy), is an effective way to identify potential conflicts of interest that may arise and the measures through which they can be effectively managed.

- 5.8. An administrator’s fiduciary duties apply in the context of ensuring that contributions to the plan are paid when due and the plan is sufficiently funded to pay the promised benefits.^[13] For defined benefit pension plans, an administrator’s fiduciary duties may require it to consider the plan’s probability of delivering its promised benefits in situations of increased funding risk, such as an employer’s financial distress, and what actions are



appropriate in light of its standard of care.^[14] Depending on the circumstances, an administrator's fiduciary duties may require it to consider formal legal action to enforce the payment of contributions and/or ensure that sufficient assets are retained within the employer to fund the plan.^[15]

6. Service providers

- 6.1. Administrators often engage third-party service providers.^[16] Service providers may provide advice as consultants or perform administration and investment activities for the pension plan. Such activities include, for instance, the preparation of a valuation report and investment decisions for the plan fund or for members' investment options, as applicable.
- 6.2. Consistent with their fiduciary duties and applicable law~~statutory obligations~~, administrators need to understand how third-party advice informs their decision-making, and also prudently document and supervise the activities performed by those service providers.^[17] Service providers should be subject to clear reporting obligations and have established policies and procedures that can be reviewed and monitored.
- 6.3. Service providers that are employed by administrators to carry out any act required for the administration and/or investment of the plan, are subject under the PBA to the same standard of care as administrators.^[18] Such service providers cannot contract out of the legislated standard of care.^[19]
- 6.4. While the use of service providers does not relieve administrators of liability, their use can be an effective means for administrators to meet their standard of care and manage their exposure to liability. Administrators should ensure their reliance on service providers is reasonable in accordance with their standard of care, e.g., through their supervision activities and by asking questions to understand and verify the reasonableness of relying on any advice received. An effective process for selecting service providers is important in determining whether it is reasonable to rely on a service provider with respect to a particular activity.^[20]



7. Administration expenses

7.1. It is generally permissible, subject to the plan documents and the PBA, to pay reasonable expenses for the administration and investment of the pension plan out of the pension fund.^[21] Permitted expenses are determined on a case-by-case basis. Such expenses should be appropriate for the circumstances of the pension plan and in the interests of plan beneficiaries.^[22] Expenses paid out of the pension fund~~incurred~~ in connection with the role of the plan sponsor or employer are impermissible.^[23] An administrator should consider having a written~~an~~ expense policy and/or obtain expert advice regarding the ability to pay expenses out of the plan where appropriate. An expense policy forms part of an administrator's governance policy (see below regarding governance policy).

8. Records retention

8.1. Pension plans have long term time horizons. Administrators must manage and retain records relating to the pension plan and pension fund in a manner that complies with their fiduciary duty, the PBA, and applicable law.

8.2. In order to demonstrate adherence to the standard of care, FSRA's interpretation of section 22 of the PBA, including applicable law, is that administrators must retain relevant records and ensure such records are available so long as they are needed:

- For good plan administration; or
- To demonstrate the plan has fulfilled its obligations to plan beneficiaries and others, including by complying with the PBA.

Where the administrator does not maintain relevant records, this could adversely affect the administrator's position should a dispute arise.^[24] It is also possible the administrator may be in breach of its obligations under section 22 of the PBA.

8.3. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to be able to demonstrate adherence to the standard of care, administrators should consider:



- Putting in place records management and retention policies. These may vary based on the size and complexity of the plan as well as the Administrator’s relationship with third party service providers
- Integrating such policies with the plan’s risk management practices relating to data (e.g., data integrity, cybersecurity, and disaster recovery)
- Ensuring that any record keeping arrangement with a third party service provider allows the administrator to demonstrate compliance with its own policies and obligations with respect to maintaining plan records.^[25]

8.4. The PBA does not prescribe timelines for retention of different types of records.^[26] In order for administrators to meet the standard of care, FSRA’s interpretation of the PBA and applicable law, is that administrators must determine appropriate retention timelines for different types of plan records. In doing so, administrators should consider:

- Putting in place a schedule of reasonable retention periods that balances different factors such as the cost and challenges associated with retaining the records relative to the nature of the records, and whether and to what extent they may be, helpful to effective plan administration^[27]
- In certain instances, such as for terminated members whose benefits have been settled, retaining only summary information
- Whether there are any conditions that would justify electronic records not being retained given the relative ease and expense of electronic document retention.

Administrators must also ensure that their record retention practices comply with all applicable laws with respect to document protection and retention.^[28]

7-2-8.5. Administrators are required to make available for inspection the specific types of records set out in section 29 of PBA. The administrator must keep these records indefinitely to meet the requirements of section 29.



9. Complaints and inquiries

9.1. In order for administrators to meet the standard of care, FSRA's interpretation of the PBA and applicable law is that administrators must observe high standards of integrity and honesty, and act in good faith and in the best interests of beneficiaries when responding to complaints and inquiries.

9.2. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to be able to do so, administrators should put in place written complaint and inquiry handling policies and procedures that align with the principles in FSRA's Complaints Resolution: Policy Framework and Best Practices Guidance such that they are:

- accessible
- fair
- timely
- transparent
- effective

Policies and procedures should also respect general principles of natural justice. For example, beneficiaries should be made aware of any issues relevant to their inquiry or complaint and should be given a reasonable opportunity to respond. Beneficiaries should feel respected and fairly treated even if they disagree with a decision.

9.3. The content of a complaint and inquiry handling policy may vary depending on the number, frequency, and complexity of complaints and inquiries handled by the plan, as well as whether any service providers are involved. That policy should:

- provide contact information to which beneficiaries may direct questions or concerns about their pension



- describe the various roles and responsibilities of those involved in the complaint or inquiry process
- describe the complaint or inquiry process and set out expected timelines for beneficiaries
- direct beneficiaries' complaint to FSRA to the extent the complaint is not satisfactorily resolved by the administrator

Administrators should be able to demonstrate proper adherence to any complaint and inquiry handling policies and procedures developed and that effective controls and processes are put in place for operationalization and oversight.

10. Providing information to beneficiaries

10.1. In order for administrators to be able to demonstrate adherence to the standard of care, FSRA's interpretation of the PBA and applicable law is that administrators must provide appropriate information to beneficiaries that:^[29]

- communicates plan terms and legislative requirements in a clear manner
- is accurate, up-to-date, and reflects the terms of the plan as applicable to the beneficiary
- reflects any changes made to the plan within a reasonable period of time

10.2. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to do so, and in recognition that even inadvertent errors in communications may impact the rights and entitlements of beneficiaries,^[30] administrators should:

- put in place written policies and procedures to ensure that information accessed by beneficiaries is always current and correct
- communicate any benefit changes made to the plan in plain language, in addition



to statutory notices required under the pba^[31]

- If providing communications electronically, put in place policies and practices for electronic communications to ensure compliance with the PBA, the *Electronic Commerce Act, 2000* (ECA), and CAPSA Guideline #2 Electronic Communication in the Pension Industry.

8.11. Governance policy

8.1.11.1. As outlined by CAPSA in its *Pension Plan Governance Guideline*,^[32] having a documented governance framework or policy is considered a key practice for pension governance. FSRA's supervisory activities frequently include a review of plans' governance frameworks. Failure to have and follow a governance framework exposes the administrator to potential sanction and liability for having breached its fiduciary duty and statutory standard of care.

8.2.11.2. Administrators, in developing their governance policies, should refer to CAPSA's *Pension Plan Governance Guideline*, including the *Self-Assessment Questionnaire* and *FAQs*, and consider other best practices as may be relevant. A key component of a governance policy is a prudential framework. This framework is intended to identify and assess the magnitude and probability of potential risks, including the ability to absorb future fluctuations in funding contributions, based on reasonable assumptions, and to put into effect appropriate risk management practices.^[33]

9.12. Effective date and future review

This Guidance is an update to the version previously released on July 28, 2021. This updated Guidance became effective on (insert date here), 2023 and will be reviewed no later than (insert future date here), 2026. This Guidance is effective July 28, 2021. The next review of this Guidance will be initiated no later than July 28, 2024.



10.13. About this Guidance

This document is consistent with [FSRA's Guidance Framework](#). As Interpretation Guidance, it describes FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations, and rules) so that non-compliance can lead to enforcement or supervisory action.

This Guidance replaces FSCO pension policies A300-101 (Administrator Role and Responsibilities), A200-101 (Administrative Fees and Expenses Payable from Pension Fund), A200-200 (Payable from Pension Fund), ~~and~~ A200-803 (Fees and Expenses for Wind Ups and Surplus Refund Applications), [A300-200 \(Management and Retention of Pension Plan Records by the Administrator\)](#), [A300-450 \(Administrators Management of Inquiries and Complaints from Plan Beneficiaries\)](#), and [A300-807 \(Electronic Communications Between Plan Administrators and Plan Beneficiaries\)](#).

Reference

- sections 8, 10, 22, 22.1, [24.1, 25, 26, 27](#), 55, 56 and 59 of the PBA.
- [section 3 of the FSRA Act](#).
- [FSRA Pension Sector Guidance](#)
- [CAPSA Guidelines](#)

^[1] This document is not intended to be a complete and comprehensive guide for administrators. Administrators have a duty to educate themselves with respect to their responsibilities. Specific aspects of the administrator's role and responsibilities can vary depending on the nature of the pension plan: defined benefit, defined contribution, multi-employer, jointly-sponsored, and if the administrator has been appointed by the Chief Executive Officer of FSRA. [Please note that as Interpretation Guidance, this Guidance sets out FSRA's view of requirements under the PBA so that non-compliance can lead to enforcement or supervisory action. However, this Guidance also contains paragraphs which express FSRA's views about good or best practices.](#)



^[2] As used in this Guidance, “beneficiaries” refer to any individual with an entitlement under a pension plan, including members, former members, and retired members as defined in the *Pension Benefits Act* (PBA) and any other individual who may be entitled to payment from the plan.

^[3] [See subsection 3\(3\)\(a\)-\(b\) of the *Financial Services Regulatory Authority of Ontario Act, 2016*.](#)

^[4] In many cases the employer is also the plan sponsor. While the PBA is silent on the role the plan sponsor, the Canadian Association of Pension Supervisory Authorities (CAPSA) guidelines differentiate the role of the plan sponsor from the role of the employer.

^[5] CAPSA Guideline No. 4 Pension Plan Governance Guideline at [Guidelines for Industry](#).

^[6] See subsection 55(1) of the PBA.

^[7] Subsection 8(1) of the PBA sets out who or what entity can be the administrator of a pension plan.

^[8] [For example see *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6.](#)

^[9] [Guidance - Pensions](#).

^[10] [Guidelines for Industry](#).

^[11] See, for instance, subsection 22(4) of the PBA.

^[12] [The standard of care articulated in the PBA with reference to the “property of another person” is considered higher than the fiduciary standard found in common law. The common law standard is considered to be determined with reference to the fiduciary’s own property.](#)

~~¹³ Subsections 22(1) and (2) of the PBA. The standard of care articulated in the PBA with reference to the “property of another person” is considered higher than the fiduciary standard found in common law. The common law standard is considered to be determined with reference to the fiduciary’s own property.~~

^[13] Section 56 of the PBA requires administrators to ensure contributions are paid when due. Section 59 of the PBA provides that administrators may commence proceedings in a court of competent jurisdiction to obtain payment of contributions.

^[14] FSRA has set forth its expectations of administrators in connection with the funding of single employer defined benefit pension plans in its [Supervisory Approach for Single Employer Defined Benefit Pension Plans that are Actively Monitored](#).

^[15] Legal actions might include actions based on breach of the administrator’s fiduciary duty, breach of contract, corporate statute (e.g., derivative or oppression claims) and the *Fraudulent Conveyances Act*.

^[16] Subsection 22(5) of the PBA requires the administrator to be satisfied that it is reasonable and prudent to do so in the circumstances.

^[17] Subsection 22(7) of the PBA, for instance, requires administrators to carry out such supervision “as is prudent and reasonable”.



[18] See subsections 22(5) and (8) of the PBA. FSRA interprets “agent” in a broad and purposive manner to include all service providers performing plan administration activities. FSRA recognizes, however, that a distinction can be made for service providers that only provide advice to an administrator and as such may not fall within the PBA’s statutory language regarding an agent.

[19] If a service provider seeks to negotiate a contractual provision to limit the amount of its potential liability for its services, the implications of the provision should be considered by the administrator in light of the administrator’s own standard of care.

[20] For example, such a process should ensure that service providers have the requisite skills and experience and should not simply defer to the lowest cost option.

[21] Administrators should be aware of any limitations in their plan documents or under the PBA. Section 22.1 of the PBA provides that expenses must not be paid from the pension fund if they are prohibited, or their payment is otherwise provided for, under the plan documents or the PBA or its regulations. Subsection 10(1) of the PBA requires that the mechanism for the payment of the cost of administration of the pension plan and the pension fund be set out in the plan documents. Where the sponsor or employer acts as the administrator, the sponsor or employer may pay expenses from its account and invoice the fund provided the plan documents permit this practice.

[22] Examples of permitted expenses include: actuarial fees to prepare and file required valuation reports and other reports as considered appropriate by the administrator; investment management fees; legal or consulting fees related to legislative compliance; continuing education costs for the administrator; records retention costs; and expenses related to the wind up of the pension plan.

[23] Examples of impermissible expenses include: professional fees to assist a plan sponsor or employer in designing or revising the plan benefit structure (although implementing those decisions can result in permissible administration fees and expenses). More broadly, fees and expenses whose primary purpose is to benefit the employer or plan sponsor are generally impermissible (e.g., the preparation of off-cycle valuation reports where the primary goal is to reduce employer contributions); professional fees incurred by the employer as part of collective agreement negotiations; expenses incurred in connection with an employer’s surplus withdrawal application. Despite the foregoing, expenses incurred in connection with an employer’s surplus withdrawal application can be permitted expenses if approved by FSRA or by written agreement of the affected plan beneficiaries. Different considerations may apply where supported by relevant legislation, judicial precedent, or plan documents. For example, see OMERS Sponsors Corporation v OMERS Administration Corporation, 2008 CanLII 3970 (ON SC).

[24] For example, if the administrator cannot produce a record to demonstrate they have already paid a benefit entitlement, they may be required to pay that amount where the beneficiary can show they would have been entitled under the plan.



[25] For example, contracts with a service provider should ensure either that records are retained for the appropriate amount of time by the service provider or that these records are transferred to the administrator where the service provider is no longer obligated to maintain them.

[26] Section 24.1 of the PBA, which provides for a Duty to Retain Records as prescribed, is not yet proclaimed into force. Note that retention of certain records may be prescribed under other statutes such as the *Income Tax Act (Canada)*, the *Employment Standards Act, 2000*, the *Workplace Safety and Insurance Act, 1997*, the *Personal Health Information Protection Act, 2004* and the *Freedom of Information and Protection of Privacy Act*.

[27] Note that appropriate record retention timeframes may differ for pension plan administration purposes and Human Resources records retention purposes.

[28] Applicable requirements relating to the retention of records may be contained in other statutes, including the *Income Tax Act (Canada)*, *Employment Standards Act, 2000*, *Workplace Safety and Insurance Act, 1997*, *Personal Health Information Protection Act, 2004* and *Freedom of Information and Protection of Privacy Act*.

[29] Certain statutory disclosures are required under the PBA. For example, under ss. 25 (Information from administrator) and 27 (Annual statement of pension benefits).

[30] There are a number of cases in which Administrators have been found liable for negligent misrepresentation with respect to the terms of the pension plan. See for example *Smith v Casco*, 2011 ONCA 306; *Deraps v. Labourers*, 1999 CanLII 3790 (ONCA).

[31] See for example section 26 (Notice of proposed amendment) of the PBA.

[32] CAPSA Guideline No. 4 at [Guidelines for Industry](#).

[33] As part of a defined benefit pension plan's overall governance framework, the investment and funding policies also serve to capture risks and put into place approach risk management practices. See CAPSA Guideline No. 6 Pension Plan Prudent Investment Practices Guideline at [Prudence Standard](#) and Guideline No. 7 Pension Plan Funding Policy Guideline at [Pension Plan Funding Policy](#).