

Approach



Effective Date Posting: December 10, 2020

Identifier: No. PE0204APP

Waiver of Biennial Statements for Missing Former and Retired Members

1. Purpose and Scope

1.1. This Approach guidance describes FSRA's approach to a pension plan administrator's application for a waiver, pursuant to section 27(3) of the *Pension Benefits Act* ("PBA"), of the requirement to provide biennial statements to former and retired members who are "missing". It applies to all types of benefit entitlements that are subject to the PBA.

1.2. The PBA was amended in December 2019 to modify the waiver requirements.

1.3. A former or retired member is considered "missing" if the plan administrator is unable to locate or communicate with the Member and reasonably believes that the address it has on record for that person is no longer valid. Administrators should refer to FSRA's [Information Guidance Missing Members Principles and Practices](#).

1.4. The waiver discussed in this Guidance is available only if the administrator has taken sufficient and appropriate steps to locate a missing former or retired member (i.e., to obtain a current address) and such steps have been unsuccessful, considering the criteria set out section 27(4) of the PBA.

1.5. For clarity, there is no requirement for a plan administrator to apply for this waiver. Rather, what is required of the plan administrator is that it carry out appropriate search activities of a missing member in fulfillment of its fiduciary duty.

2. Rationale and Context

2.1. FSRA is a principles-based and outcomes-focused financial services regulator. FSRA's statutory objects with respect to the pension sector are to promote the good administration of pension plans and to protect and safeguard the pension benefits and rights of pension plan beneficiaries.¹

2.2. Drawing on its [Pension Sector Guiding Principles](#) FSRA will be risk-based, facilitative, effective and efficient in reviewing waiver applications.

2.3. The PBA requires pension plan administrators to provide biennial statements to former and retired members.² Deadlines for sending biennial statements, and a description of information to be included in those statements, are set out in Regulation 909 under the PBA (the "Regulation").³

2.4. FSRA may waive the requirement under the Regulation to provide biennial statements to former or retired members if it is satisfied that the administrator is unable to locate such former or retired members after making reasonable efforts to do so.

2.5. As a fiduciary and a custodian of personal information, an administrator should maintain privacy of member information and should not send a biennial statement or other documents containing personal information to an address of a former or retired member if it has good reason to believe that such address is not correct.

2.6. If an administrator already received a waiver under the PBA pursuant to the former FSCO policy in effect before December 10, 2019⁴ (FSCO Policy A300-901 *Waiver of Biennial Statements for Missing Former and Retired Members*), the administrator is not required to obtain another waiver in accordance with the PBA and this FSRA Approach Guidance, unless the administrator knows that circumstances with respect to a missing member have changed and it would be unreasonable to rely on an earlier waiver. If a waiver provided prior to December 10, 2019, related to a specific time period, administrators may consider those waivers to have lapsed if the period covered in the waiver has passed.

3. Background

3.1. This Approach Guidance replaces FSCO Policy A300-901 *Waiver of Biennial Statements for Missing Former and Retired Members* and associated FAQs.

3.2. A waiver granted under section 27(3) of the PBA only applies to biennial statements required to be issued to former and retired members; it does not apply to any other requirement to disseminate information to members.

3.3. Additional information for administrators of multijurisdictional plans, whether registered in Ontario or another Canadian jurisdiction, is included in Appendix 2.

4. Processes and Practices

4.1. The Waiver Application

4.1.1. A waiver application should be sent to pensioninquiries@fsrao.ca. It is recommended that the application be provided in electronic format. The application should include the following:

1. Basic Pension plan information:
 - name, or plan ID number of the member(s);
 - plan name and registration number;
 - name of the plan administrator.
2. A brief description of the waiver application, for example:

Description of Waiver Application

Application is made for a waiver under subsection 27(3) of the *Pension Benefits Act* of the requirement to send biennial statements under subsection 27(2) of the PBA in respect of [#] former members and [#] retired members.

3. The information described in section 27(4) of the PBA, taking into account the following considerations:
 - For defined benefits, please indicate both the pension amount and the commuted value. For defined contribution benefits or other lump sum entitlements, please indicate the account balance or lump sum that has been most recently reported to the administrator.
 - When describing the commuted value of a defined benefit entitlement of former or retired members, FSRA will accept the present value (i.e., individual actuarial liability) from the most recent actuarial valuation report. Other reasonable methods of estimation are also acceptable.
 - When describing searches undertaken, the approximate timeframe of such search(es) should be indicated.
 - When describing the cost of searches undertaken, the application can reference an approximate per-person cost incurred and the anticipated costs for additional future searches.
4. A Certification of Compliance

The waiver application must contain a Certification of Compliance as provided in

Appendix 1 of this guidance, signed by an authorized representative of the administrator.

4.1.2. The waiver application can be prepared, signed and sent to FSRA by a duly-authorized employee, agent, or service provider of the administrator. The administrator is ultimately responsible for statements made in the application.

4.1.3. An application may be submitted at any time; however, any waiver only has effect once granted.

4.1.4. An approved waiver applies until it is revoked. A waiver is deemed to be revoked immediately upon an administrator's receipt of what it believes to be current contact information for a former or retired member for which the waiver was granted; upon revocation of an approved waiver, communications to those located former or retired members should immediately recommence on a go-forward basis.

4.1.5. Administrators must notify FSRA promptly when current contact information is received for someone for whom a waiver had previously been obtained. Generally, FSRA will consider notification to have been given "promptly" in this context, if it is given to FSRA within the later of 12 months or before the next biennial statement is due.

4.2. FSRA's Review Process

4.2.1. In carrying out its review, FSRA may rely on the waiver application outlined in section 4.1 along with a signed certification containing the language in Appendix 1, in order to satisfy its "consideration" of the factors identified in section 27(4) of the PBA and to grant the requested waiver. FSRA may ask for additional information.

4.2.2. If the waiver application is acceptable, FSRA will send a letter to the applicant, granting the waiver. The applicant must keep a record of the application, and any supporting documents, in order to pay benefits should a member be located.

4.2.3. FSRA will advise applicants in writing if an application is incomplete and / or otherwise non-compliant with the PBA and this Approach guidance. FSRA will specify the

period within which the applicant must provide a response. The applicant will then have the opportunity to provide additional information and / or otherwise comply with the PBA and this Approach.

4.2.4.If the application is ultimately determined not to be acceptable, the applicant will be advised by letter of the decision to not grant the waiver and the reasons for this decision.

4.2.5.FSRA may publish information concerning each waiver granted to an administrator.

5. Effective Date and Future Review

This Approach Guidance is effective Dec 10, 2020and will be reviewed no later than December 2025. Upon the effective date, FSCO Policy A300-901 Waiver of Biennial Statements for Missing Former and Retired Members, and associated FAQs, are withdrawn and should no longer be considered in effect.

6. About this Guidance

Approach guidance describes FSRA’s internal principles, processes and practices for supervisory action and application of CEO discretion. It does not, of itself, create compliance obligations. Visit FSRA’s [Guidance Framework](#) to learn more.

7. Appendices and References

Appendices

Appendix 1. Certification of Compliance

Appendix 2. Further information for administrators of multijurisdictional plans.

References

Section 27, *Pension Benefits Act*.

Section 40.1 and 40.2 of Regulation 909 under the *Pension Benefits Act*.

Missing Members – Principles and Practices Guidance

Appendix 1 Certification of Compliance

Certification of Compliance for an Application to Obtain a Waiver of the Requirement to Issue Biennial Statements

Plan Administrator:

Provide the legal name of the plan administrator

Pension Plan:

Provide the full name of the pension plan and its registration number.

I Certify to the Financial Services Regulatory Authority of Ontario, that, to the best of my knowledge and belief:

- I, the individual making this certification, am authorized to do so by the administrator of the pension plan;
- If I am not an employee of the administrator, I have provided a copy of this certification and of the waiver application that it accompanies, to the administrator;
- a search directed at individual members was conducted for each former or retired member identified in the waiver application, that is reasonable taking into account the amount of the missing member's pension, or its commuted value, the search cost incurred to date and likely to be incurred in the future and other relevant considerations;
- the supporting information provided with this waiver application is, to the best of my knowledge and belief, true and correct;
- a representative of the plan administrator will advise FSRA if a former or retired member included on the list of missing members is no longer considered to be "missing"; and
- all records supporting this waiver application, including a list of the missing members, will be kept indefinitely, by or on behalf of the administrator of the plan.

DATED this _____ day of _____, _____.
(day) (month) (year)

Signature of Authorized Representative of the Administrator

Name and Title of person signing above

Capacity in which the person above is signing
(e.g., as employee of, or service provider for, the administrator of the pension plan)

Appendix 2 Additional Information for Administrators of Multi-jurisdictional Plans

Applicability of section 27(2) and (3) of the PBA to Multi-jurisdictional Plans

The applicability of section 27(2) of the PBA, the requirement to send statements to former and retired members, is determined by the jurisdiction of the pension plan's registration and whether or not that province is a signatory to the [2020 Agreement Respecting Multi-Jurisdictional Pension Plans](#) (MJPPA) or, to the extent that the same treatment is provided, any successor agreement.

For Non-Ontario Members of a Multi-jurisdictional plan registered in Ontario

If a former or retired member of an Ontario registered pension plan is subject to pension benefits legislation of a jurisdiction (other than Ontario) that has signed the MJPPA, then the Ontario requirement to send biennial statements applies to those former and retired members. In that case, the plan administrator can request a waiver for such MJPPA covered, non-Ontario, former or retired members (separately or together with its request for a waiver for former or retired Ontario members).

However, if a former or retired member of an Ontario registered pension plan is subject to pension benefits legislation of a jurisdiction (other than Ontario) that has not signed the MJPPA, then the Ontario requirement to send biennial statements does not apply and the waiver process is not applicable. Periodic statement requirements of that other jurisdiction will apply.

For Ontario Members of a Multi-jurisdictional plan not registered in Ontario

If the pension plan is not registered in Ontario but is registered in a jurisdiction of Canada that has not signed the MJPPA, then sections 27(2), 40.1(1) and 40.2(1) of the Ontario PBA apply to any Ontario former and retired members of that plan. Administrators of such plans can apply for a waiver under section 27(3) of the PBA with respect to those Ontario former and retired members. The application for the waiver should be sent to the regulator of the province of registration of the pension plan.

If the pension plan is not registered in Ontario but is registered in a province that has signed the MJPPA, then sections 27(2), 40.1(1) and 40.2(1) of the Ontario PBA do not apply to the Ontario former and retired members of that plan and the waiver process is not applicable. Instead, the relevant provisions of the jurisdiction of registration will apply.

¹ Section 3(3) *Financial Services Regulatory Authority Act*.

² Section 27(2) *Pension Benefits Act*.

³ Sections 40.1 and 40.2 of the PBA

⁴ Section 27 of the PBA was amended effective December 10, 2019.

⁵ Section 27(6) of the PBA.