

Pension Plan Administrator Roles and Responsibilities Guidance and Pension Plan Amendments Guidance

Information Webinar

The logo for the Financial Services Regulatory Authority of Ontario (FSRA) consists of the letters "FSRA" in a large, bold, blue, sans-serif font.

Financial Services Regulatory
Authority of Ontario

Date: Wednesday, July 17, 2024 @ 1:00 pm - 2:00 pm

Speakers:

David Bartucci, Head, Pension Plan Operations and Regulatory Effectiveness, FSRA
Victoria Lesau, Director, Credit Union, Insurance Prudential and Pensions Policy, FSRA
Fern Karsh, Senior Policy and Technical Lead, Pensions Policy, FSRA
Cindy Kwok, Senior Policy and Technical Lead, Pensions Policy, FSRA



Ontario

Agenda

- Introductions
- Land acknowledgement
- Background
- Overview of the Pension Plan Administrator Roles and Responsibilities Guidance
- Overview of the Pension Plan Amendments Guidance
- Summary
- Questions



SPEAKERS & MODERATOR

- **David Bartucci**, Head, Pension Plan Operations and Regulatory Effectiveness
- **Fern Karsh**, Senior Policy and Technical Lead, Pensions Policy
- **Cindy Kwok**, Senior Policy and Technical Lead, Pensions Policy
- **Victoria Lesau**, Director, Credit Union, Insurance Prudential and Pensions Policy

QUESTION PANELISTS

- **David Bartucci**, Head, Pension Plan Operations and Regulatory Effectiveness
- **Tim Thomson**, Director, Pension Plan Operations
- **Mathew Ou**, Legal Counsel


Land Acknowledgement

We acknowledge the land we are on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit and the Williams Treaties signed with multiple Mississaugas and Chippewa bands.


Background

Both pieces of Guidance support FSRA's statutory objects for the **pension sector**

- to promote good administration of pension plans; and
- to protect and safeguard the pension benefits and rights of pension plan beneficiaries.



Interpretation ◆◆◆◆

 **Effective date:** June 5, 2024
Identifier: No. PE0296INT ** (previously listed as PE0251ORG and PE0252ORG)


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 Administrators have a duty to inform 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.


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

¹ This document is not intended to be a complete and comprehensive guide for administrators. 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 FSRA's views about good or best practices which may not give rise to compliance obligations. For the purpose of this Guidance, the use of the word "must" supports a mandatory compliance requirement (e.g., an express legislative requirement under the PBA and/or FSRA's interpretation of a legislative requirement so that non-compliance may lead to enforcement or supervisory action) and the use of "should" indicates elements that FSRA views as prudent for a plan administrator to consider in order to demonstrate that it has satisfied the standard of care.

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- Sets out FSRA's interpretation of legislative requirements relating to the duties of a plan administrator
- Provides leading practices for a plan administrator to consider

- Protects plan beneficiaries from certain adverse amendments
- Encourages timely filing of plan amendments with FSRA



Guidance ◆◆◆◆

Interpretation Approach Information Decision

 **Effective date:** June 4, 2024
Identifier: No. PE0301INT


Pension Plan Amendments

Purpose

The purpose of this Guidance is:

1. To inform stakeholders of how FSRA interprets certain *Pension Benefits Act* (PBA) provisions relating to certain plan amendments which are determined to be Retroactive Adverse Amendments (as defined below).
2. To describe FSRA's approach to:
 - Retroactive Adverse Amendments¹, including those purporting to rectify drafting errors in plan terms

¹ "Retroactive Adverse Amendment" is not a defined term in the PBA. It is used in this Guidance as a description for the type of amendments described under the section "Amendments with Retroactive Adverse Effects".

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Principles Based Regulation (PBR) is a regulatory approach that relies on high level **broadly stated principles** as opposed to prescriptive requirements.

As a principles-based regulator, FSRA uses **guidance as a tool to communicate** its thinking to the sector.

Guidance is intended to: a) allow regulated entities to **understand how FSRA is supervising the sector** or otherwise exercising its discretion, and b) allow **regulated entities to determine applicable compliance obligations**.

BENEFITS

- **Inclusive approach that fosters collaboration** between FSRA and the pension sector to achieve desired outcomes.
- **Flexibility** to respond to market changes, innovation, and industry practices.
- Allows FSRA to apply legislative requirements and leading practices on a **proportional** basis.
- Uses **qualitative and evaluative terms** (e.g. “fair”, “reasonable”, “suitable”) to facilitate compliance in a manner best suited to the characteristics of the regulated entity.

*Both pieces of guidance are consistent with FSRA’s **principles-based and outcomes-focused regulatory approach**:*

Pension Plan Administrator Roles and Responsibilities Guidance

- Includes desired outcomes with practices to consider as opposed to a prescriptive checklist (e.g., to ensure complaints are handled fairly and in a timely manner, an administrator should consider implementing a complaints handling policy to demonstrate meeting the standard of care).

Pension Plan Amendment Guidance

- Sets out a framework for exercising FSRA’s discretion based on the impact of the amendment (e.g., whether FSRA believes it would cause material harm to beneficiaries).

FSRA will use **four distinct types of guidance** to support requirements set out in legislation, regulations, and rules:



Interpretation

Sets out FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations, and rules).



Decision

Sets out FSRA's determination and underlying reasons for regulatory decisions of precedential value for other parties not involved in the specific matter.



Information

Indicative of FSRA views on certain topics without creating new compliance obligations for regulated persons.



Approach

Describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion.

Overview of Pension Plan Administrator Roles and Responsibilities Guidance

RATIONALE

- Administrators are subject to a fiduciary duty under the PBA and common law – a fiduciary duty is the highest standard of care in law.
- Administrators are responsible for prudently managing their pension plans, making decisions in the best interest of pension plan beneficiaries, and administering the plan in accordance with the filed plan documents and all applicable laws.
- While FSRA issued guidance to highlight key roles and responsibilities, it is **not intended to be a complete and comprehensive guide** for administrators.

BACKGROUND

- Effective on June 5, 2024, FSRA replaced the previous version released in July 2021 adding three additional sections on records retention, complaints and inquiries, and communicating information to beneficiaries.
- Proposed guidance was released for public consultation from August to September 2023.

PURPOSE

- Sets out **FSRA’s interpretation of existing legislative requirements** under the *Pensions Benefits Act* (“PBA”) relating to a plan administrator’s roles and responsibilities.
- Expresses FSRA’s views about **elements that are prudent for plan administrators to consider** in order to demonstrate that they have satisfied the standard of care.
- For the Purpose of this Guidance:
 - The use of the word “**must**” indicate FSRA’s interpretation of a **mandatory compliance requirement**.
 - The use of “**should**” indicates **leading practices** for a plan administrator to consider and may not relate to compliance obligations.

INTERPRETATION GUIDANCE

Existing Sections

1. Purpose and scope
2. Role of administrator
3. Who can be an administrator?
4. Responsibilities
5. Fiduciary duties
6. Service providers
7. Administration expenses
11. Governance policy

Newly Added Sections

8. Records retention
9. Complaints and inquiries
10. Providing information to beneficiaries

*Administrators **must manage and maintain records** relating to the plan and fund in a manner that complies with their fiduciary duties, the PBA, and applicable laws.*

- 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, including by complying with the PBA.
 - Determine **appropriate retention timelines for different types of plan records**.
- Note: administrators must **keep specific types of records indefinitely** to satisfy **section 29 of the PBA**.

GOOD PRACTICES

- To demonstrate adherence to the standard of care, administrators should consider:
 - Implementing records management and retention **policies, which may vary based on certain factors, such as the size and complexity of the plan**
 - Integrating these policies with the plan's **data risk management** practices
 - **Ensuring that third party service record keep arrangements permit the administrator to demonstrate compliance with its plan record maintenance policies and obligations**

9. Complaints and inquiries

*Administrators should implement complaint and inquiry handling policies and procedures that are **accessible, fair, timely, transparent, and effective.***

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.

GOOD PRACTICES

To demonstrate adherence to the standard of care, administrators should implement complaint and inquiry handling policies and procedures that:

- Align with FSRA's Complaints Resolution [Policy Framework and Best Practices Guidance](#) principles
- Are consistent with the administrator's duty to act in good faith, communicate clearly and provide explanations for their conclusions with supporting information

The complaint and inquiry handling policy should:

- Provide **contact information** so beneficiaries can direct questions or concerns
- Describe the complaint or inquiry process, along with the **roles and responsibilities** of those involved
- Set out **expected timelines**
- Inform beneficiaries of **FSRA's complaints resolution process**

10. Providing information to plan beneficiaries

*Information provided to beneficiaries is **clear, accurate and up-to-date**.*

FSRA's interpretation of the PBA and applicable law is that administrators **must provide appropriate information to plan beneficiaries** that:

- **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**.

GOOD PRACTICES

In order to meet the standard of care, administrators should:

- Implement **written policies and procedures** to ensure that accessed information is current and correct
- Communicate benefit changes and statutory notices in **plain language**

Overview of Pension Plan Amendments Guidance

RATIONALE

- **FSRA issued guidance to clarify certain issues** relating to requirements for pension plan amendments. The guidance is **not intended to address all issues** related to plan amendments.
- **Provides transparency** on FSRA's approach to certain amendments which are determined to be retroactive adverse amendments.
- Intended to protect plan beneficiaries by **encouraging timely filing of amendments** and promoting good plan administration.

BACKGROUND

- Effective on June 4, 2024, after two consultation periods (August-September 2022 and November 2023-January 2024).

PURPOSE

- To inform stakeholders as to **how FSRA interprets** certain PBA provisions relating to certain **plan amendments** which are **determined to be Retroactive Adverse Amendments**; and
- To describe **FSRA's approach** to:
 - How FSRA will exercise its discretion in certain limited circumstances to register what appear to be **Retroactive Adverse Amendments**;
 - Amendments that purport to **replace a variable indexation formula** with a fixed indexation rate for benefits already accrued; and
 - **Notice requirement** for certain adverse amendments.

Interpretation

- **Sets out interpretation of Retroactive Adverse Amendments** and FSRA CEO's discretion to register or refuse to register an amendment.

Approach

- How FSRA will exercise its discretion in certain limited circumstances to register what appear to be **Retroactive Adverse Amendments**.
- **Replacing a Variable Indexation Formula with a Fixed Indexation Rate for Benefits Already Accrued.**
- **Notice Requirements for Certain Adverse Amendments.**

Pension plan amendments are required to be filed with FSRA for registration.

Relevant sections of the PBA include sections 12 to 14, 18, 19 and 26:



Establish **registration requirements** for pension **plan amendments**, including filing timelines.



Describe **amendments that are void** under the PBA.



Establish **when FSRA can refuse or revoke registration** of an amendment.



Describe **notice requirements** for “**adverse**” amendments.

- Plan administrators should be familiar with PBA requirements relating to plan amendments they wish to file and to ensure that plans, and amendments to a plan, are administered in accordance with all legislative requirements.
- Failing to do so, *FSRA may refuse to register such amendments and take additional regulatory action as required.*

Retroactive Adverse Amendments are generally not permissible.

DEFINITION

A Retroactive Adverse Amendment is one which:

- May **negatively impact** plan beneficiaries' **rights and/or benefits**; and
- Purports to be **effective on a date before the amendment is filed** with FSRA.

FSRA determines if amendment truly has an “adverse effect” by considering the totality of nature and effect of amendment on the rights and benefits of beneficiaries, as well as relevant PBA provisions.

FSRA can exercise discretion to register or refuse to register an amendment.

EXAMPLES

Some obvious cases of an Adverse Amendment that may not be permissible include an amendment that is retroactive prior to date of filing and:

- Increases defined benefit plan member contribution rates prior to the date of filing;
- Reduces benefits accrued prior to the date of filing; or
- Removes portability rights for plan members who have reached early retirement age under the plan terms.

Possible exceptions:

- A union negotiated change in contribution rate even if the effective date is prior to the date of filing.
- A change that supports a corporate reorganization that's been communicated to members.

Permissibility of Retroactive Adverse Amendments



Prior to Filing

No Retroactivity Possible for Adverse Amendments

No retroactivity before the date of filing is possible for amendments that FSRA considers to be **adverse**.

However, amendments that are retroactive but **not adverse** may be retroactive prior to the date of filing.

FSRA's Approach sets out how FSRA will determine whether an amendment with retroactive effect is adverse.



Date of Filing

Retroactivity Possible for All Amendments

An amendment (adverse or non-adverse) may have retroactive effect in relation to:

- the period of time *after* the date the amendment is filed with FSRA, and
- before the amendment is registered by FSRA.



Date of Registration

AMENDMENT APPLICATION

The current approach is intended to provide **greater transparency** on FSRA's/FSCO's **prior practice** where amendments were refused registration or complaints were made in respect of a plan amendment where the amendment was retroactive in application and determined to be adverse.

Application for registration of a retroactive amendment should:

- Identify that the amendment has retroactive adverse/negative impacts; and
- Explain the basis for the Administrator's view that the amendment does not constitute a Retroactive Adverse Amendment based on FSRA's interpretation

Note: A retroactive amendment must not be used as a cure to any prior non-compliance with the PBA.

Administrator is encouraged and should be prepared to:

- Discuss with FSRA before filing;
- Make submission supporting its registrability; and
- Address how it can attest that the amendment complies with the PBA

FSRA typically receives around 100 amendments per month of all types (prospective, retroactive, DB, DC, etc.)

A very small percentage (typically fewer than 20 per year) are Retroactive and Adverse.

Approach: Evaluating Amendment with Retroactive and Potentially Negative Impacts

FSRA's approach to evaluating and exercising discretion to register an amendment that appears to retroactively reduce pension benefits or otherwise adversely affect the rights or obligations owed to a plan member:



Transparency

Communication and issues management



Impact of the amendment

Scope and impact to rights and benefits



Reasons for the retroactive filing

Reasonable circumstances



Is the amendment equitable

Fairness

FSRA will publish anonymized fact patterns of Retroactive Adverse Amendments it has decided to register on its website.

FSRA will engage with a plan administrator on solutions where amendment is refused (e.g., withdrawing the amendment) and only issue a notice of the intended decision (“NOID”) when necessary.

Replacing a variable indexation formula with a fixed rate is generally not permissible.

The following amendments are generally considered to be **void** (PBA s.14) if they purport to do the following with respect to benefits already accrued:

- Remove a variable indexation formula; or
- Replace a variable indexation formula with a fixed indexation rate.

GOOD PRACTICES

- Discuss special circumstances with FSRA before filing.
- It may be possible for an indexation formula to be amended without violating subsection 14(1) of the PBA.

AMENDMENT NOTICE REQUIREMENTS

Plan administrators **must transmit notice to persons affected** by the following adverse amendments that:

- Reduce accruals subsequent to the effective date of the amendment; or
- Would otherwise adversely affect the rights or benefit entitlements of beneficiaries prospectively.

*Administrators can **request in writing that FSRA exercise its discretion to not require notice** in certain circumstances (e.g., technical change, agreed to change by union, etc.). Do not assume notice requirements will not apply.*

Administrator must submit to FSRA a written request to exercise its discretion to dispense with notice requirements for amendments in all circumstances.

GOOD PRACTICES

An amendment notice to members:

- Must contain **appropriate description or explanation** of the amendment (the word “adverse” is not required);
- Should indicate where members can **direct questions or comments** to the administrator or FSRA;
- **Does not affect the filing timing** of the amendment (i.e., do not delay filing the amendment with FSRA); and
- **Does not remedy an otherwise void or non-compliant amendment** nor cure prior non-compliance with plan terms.

Summary

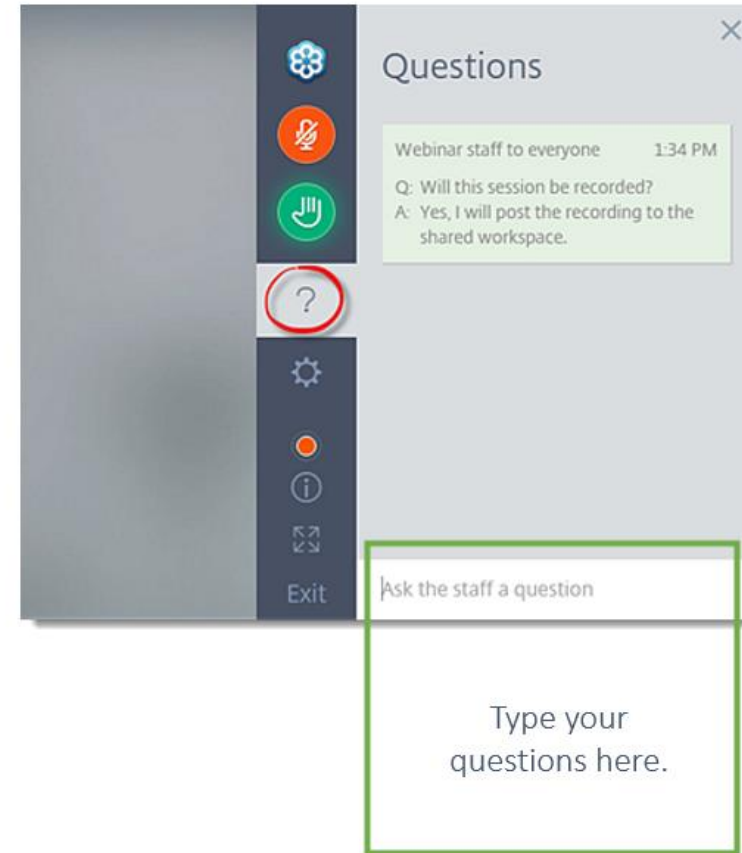
Pension Plan Roles and Responsibilities Guidance

- Sets out FSRA's interpretation of PBA requirements relating to a plan administrator's roles and responsibilities and leading practices for administrators to consider.

Pension Plan Amendments Guidance

- Sets out FSRA's interpretation and approach to Retroactive Adverse Amendments, certain void amendments and notice requirements.
- Informs stakeholders how FSRA will exercise its discretion in certain limited circumstances to register plan amendments determined to be both retroactive in their application and adverse.
- FSRA will publish on its website anonymized fact patterns of Retroactive Adverse Amendments it has decided to register.

Participating in today's Webcast Attendee Control Panel



Thank You

If you have any questions, please email pensioninquiries@fsrao.ca