



SECTION: Administrator

INDEX NO.: A300-901

TITLE: Waiver of Biennial Statements for Missing Former and Retired Members
PBA s. 22, 27(2), (3)

APPROVED BY: Superintendent of Financial Services

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Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), the Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, the PBA or Regulation govern.

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies notes can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

General

This policy sets out FSCO's expectations of a pension plan administrator (administrator) with respect to making an application to the Superintendent of Financial Services (Superintendent) for a waiver of the requirement to provide biennial statements to missing former and retired members. While compliance with this policy is intended to facilitate the waiver application process, the Superintendent has the ultimate authority to consent to the application or reject it.

For the purpose of this policy, a former or retired member is considered missing where:

- the administrator is reasonably certain that the last known contact information is no longer correct;
- and where the administrator has conducted an individual-directed search that did not result in correct contact information for the member being found.

It should be noted that where the administrator is utilizing electronic communication as the method of providing biennial statements to former and retired members, FSCO's policy on electronic communications between plan administrators and plan members requires that the administrator provide a paper copy of any document if electronic delivery failed.

Section 27(2) of the PBA and sections 40.1 and 40.2 of the Regulation requires administrators to provide statements to all former and retired members of a pension plan every two years.

Section 27(3) of the Act permits the Superintendent to waive the requirement in section 27(2) if the Superintendent is satisfied there are reasonable and probable grounds to believe the former member or retired member is missing.

The waiver granted by the Superintendent under section 27(3) cannot be applied to any other section of the PBA or Regulation that requires the dissemination of information to former or retired members that the administrator is unable to locate.

It is the administrator's responsibility to establish a sufficient basis to satisfy the Superintendent that they cannot locate a former or retired member.

The Search Process

Before submitting a waiver application, the administrator must ensure an individual-directed search has been undertaken for all individuals who are part of the waiver application. FSCO's policy on searching for pension plan beneficiaries provides guidance on the search process.

The Waiver Application

The waiver application should include the following:

1. A description of the biennial statement to be waived, identified by the period covered by the statement.
2. Pension plan information:
 - plan name and registration number;
 - plan sponsor name; and
 - name, title and business address of the administrator.
3. A full description of the waiver application, with reference to the specific sections of the PBA and Regulation pursuant to which the waiver application is being made. For example:

Application is made for the Superintendent's waiver under subsection 27(3) of the Pension Benefits Act (PBA) of the biennial statements required under subsection 27(2) of the PBA and sections 40.1 and 40.2 of Regulation 909. This waiver is applicable to # former members and # retired members.

4. A list of the missing members for whom the waiver is being requested, each identified as either a former member or a retired member. The list should be provided in an electronic format (i.e. not paper) and contain:
 - the member's name;
 - the member's last known contact details;
 - a description of the search conducted for each missing member, and identifying the party that conducted the search (e.g. employer, third-party administrator, professional search company); and
 - the date the search was conducted.

5. A Certification of Compliance

The waiver application must contain a Certification of Compliance that includes the information found in the example on page 4 of this policy. The authorized representative of the administrator must sign the Certification of Compliance. Agents of the administrator (e.g. consultant, actuary, insurer) are not permitted to sign the Certification of Compliance. The authorized representative of the administrator must send the waiver application to FSCO.

The Review Process

6. If FSCO staff considers a waiver application incomplete and/or non-compliant with this policy, they will advise the applicant in writing, specifying the period within which the applicant must provide a written response. The applicant then has the opportunity to provide additional information and/or comply with this policy.
7. If the application is acceptable, FSCO will send a letter to the applicant, granting the waiver. The applicant must keep a record of the application and supporting documents indefinitely.
8. If the application is not acceptable, the applicant will be advised by letter of the Superintendent's decision not to grant the waiver. The Superintendent's decision cannot be appealed to the Financial Services Tribunal.
9. FSCO will publish information concerning the waiver application on its website in accordance with the policy on disclosure by the Superintendent of decisions made under the PBA.

Subsequent Waiver Applications

Each waiver application approved by the Superintendent is applicable to a specific biennial statement, and not to all biennial statements required to be distributed in the future. If the administrator cannot send a required biennial statement, a separate waiver application must be made each time.

However, the administrator is not required to conduct another individual-based search for each missing member for whom a waiver was previously granted.

In addition, as part of their broad-based communications initiatives, administrators should consider providing information concerning the waiver application. This can be done by providing information similar to that posted on the FSCO website on their own website, or through other channels normally used to communicate with plan members. Such notifications may help reduce the number of missing members in subsequent waiver applications.

Certification of Compliance

Period covered by the Biennial Statement: *Identify the period covered by the biennial statement(s).*

Type of Biennial Statement: *Identify if the biennial statement(s) to be waived are for Former Members and/or Retired Members.*

Plan Sponsor: *Provide the legal name of the plan sponsor.*

Pension Plan: *Provide the full name of the pension plan and the registration number.*

Name of the Administrator: *Provide the name, title and business address of the authorized representative of the administrator.*

I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES:

That I, the individual making this certification, am the authorized representative of the administrator of the pension plan within the meaning of section 8 of the Pension Benefits Act.

That an individual-directed search was conducted for each former member or retired member identified in the list of missing members.

That the list of missing members and supporting information provided with this waiver application is, to the best of my knowledge and belief, complete, true and correct.

That all records and supporting documentation pertaining to this waiver application will be kept indefinitely.

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

Signature of Authorized Representative of the Administrator

Name and Title of person signing above

Address of Administrator