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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

October 5, 2020

Caroline Blouin
Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

Re: Missing Members; Finding Solutions

Dear Ms. Blouin:

ACPM (THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT)

ACPM is the leading advocate for Canadian plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers. Our membership represents over 400 companies and retirement income plans that cover millions of plan members. The Ontario Regional Council (“**ONRC**”) represents plan sponsors and administrators with hundreds of plans registered, and millions of members reporting to work, in Ontario.

We, the ONRC of ACPM, applaud the recent willingness of the Financial Services Regulatory Authority of Ontario (“**FSRA**”) to tackle the complex and multifaceted issue of missing members (a term that, like FSRA, we use to refer to all missing plan beneficiaries).

In this vein, the ONRC wishes to contribute our feedback on two recent draft FSRA Guidance documents: *Principles and Practices Regarding Missing Members*, No. PE0203INF (the “**Missing Members Guidance**”) and *Waiver of Biennial Statements for Missing Former and Retired Members*, No. PE0204APP (the “**Waiver Guidance**”, and, together with the Missing Members Guidance, the “**Guidance Documents**”).

Our submission is divided into two parts: (1) where we see opportunities for clarification in the Guidance Documents; and (2) logistical issues for FSRA’s further consideration.



1. CLARIFICATIONS

We believe that the Guidance Documents could benefit from some clarifications on key points.

Clarification regarding personal information

The Missing Members Guidance provides (at section 2.6 and in Appendix 1) that an administrator should not send a document containing “sensitive personal information” to an address that it reasonably believes is no longer current. However, there is no indication as to FSRA’s intended meaning of “sensitive personal information”. Further, the Waiver Guidance advises (at section 2.5) against sending a document with “personal information” (without the qualifier “sensitive”) to such an address.

We suggest that the Guidance Documents adopt the same formulation of this important advice so that it is understood that both cautions refer to the same type of personal information (which we believe to be FSRA’s intent).

Further, administrators would benefit from clarification as to what type of personal information may be sent to an address that may not be current. This could include, for example, the recipient’s contact details, the fact that they are, or were in the past, a member of the plan and to contact the pension plan administrator in respect of benefits under the plan.

Clarification regarding legal compliance

Sections 40, 40.1 and 40.2 of the *General Regulation* (“**Regulation 909**”) made under the *Pension Benefits Act* (“**PBA**”) provide that an administrator “shall” transmit annual member, or biennial former or retired member, statements, as applicable, without any stated exception or relief for statements with respect to which the administrator knows, or has reason to believe, that the recipient is missing. As noted above, section 2.5 of the Waiver Guidance indicates that, “[a]s a fiduciary and a custodian of personal information, an administrator ... 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.”

We believe that it would greatly assist the industry if FSRA clarified that it views the fiduciary standard of care imposed on the administrator under the PBA (section 22) to take precedence over the apparent mandatory language of sections 40, 40.1 and 40.2 of Regulation 909, to the limited extent that that mandatory language could otherwise be read to require administrators to send statements to known stale addresses. In other words, it would be helpful for FSRA to clarify that, in order to comply with the PBA, an administrator should not send statements to known stale addresses.

This clarification is not just academic. Page 4 of FSRA’s approved form of Annual Information Return (“**AIR**”) for pension plans contains a “Confirmation of Compliance” for administrators to certify that, in the reporting period, the pension plan and fund have been administered in compliance with the PBA and Regulation 909. We believe that not sending statements to known stale addresses should not be viewed as non-compliance with the legislation.

It would be helpful to have a clearer articulation that FSRA’s position is that this omission is not by itself non-compliance that would need to be reported in an AIR.

Clarification regarding active members

While the Waiver Guidance by its nature is focused on the PBA’s waiver for biennial former and retired member statements, it is important to note that in some plans, particularly multi-employer pension plans (“**MEPPs**”), even active members may occasionally go “missing”, since termination of employment often does not by itself terminate plan membership in a MEPP. We were pleased that the Missing Members Guidance separately recognized that many MEPPs face unique challenges in this regard.

Accordingly, the clarification requested above regarding PBA compliance should extend to annual member statements as well, while recognizing that it may be uncommon for active members to stay missing for very long.

Administrators with existing waivers

Regarding the Waiver Guidance’s approach, we understand that the waiver is optional for administrators. Since the Waiver Guidance provides that the current waivers (under the PBA as it read prior to December 10, 2019) will continue to apply permanently, it is unclear how these administrators can choose to opt out of the new waiver process post-December 10, 2019. We would appreciate clarification on this transitional point.

Multi-Jurisdictional plans

The effect of the Canadian Association of Pension Supervisory Authorities’ 2020 Agreement Respecting Multi-Jurisdictional Pension Plans (“**MJA**”) on the Guidance Documents is unclear. For example, different jurisdictions have taken different legislative and policy approaches to the question of missing members. Some provinces, such as British Columbia, permit the administrator to pay qualifying unclaimed pension balances to the British Columbia Unclaimed Property Society. Other jurisdictions, such as Ontario, do not provide for a similar scheme. In our view, it would assist the industry for FSRA to clarify how it views the MJA affecting Ontario-registered plans with missing members employed or last employed in another jurisdiction (such as, to use the foregoing example, an Ontario-registered plan with missing members who last worked in British Columbia).

2. LOGISTICAL CONSIDERATIONS

Missing member data collection

FSRA has added a new filing profile to the AIR asking if the plan has any missing members. If a “yes” answer is selected, the administrator is asked to populate a table providing a number of data points relating to different categories of missing members. We appreciate that collecting data of this nature will assist FSRA in developing policies on missing members going forward.

However, the manner in which these data points have been requested and the absence of clear guidance on the basis for the calculations have posed problems for administrators on several fronts. Firstly, each field in the table must be populated with a number.

However, some administrators are unable to provide information in relation to some of the fields. We propose that FSRA permit an administrator to enter “not known” or a similar answer where it is unable to provide the data in question or a reasonable estimate.

In addition, we encourage FSRA to add comments fields for each row of missing member data. The comments fields would allow administrators to report qualifications on any data entered, which, in turn, could provide FSRA with a more accurate view of the information that is being reported (*e.g.*, in a comment field, the administrator could clarify if the “total estimated value of benefits” has been based on commuted values vs. other lump sum estimates, or to clarify the currency date(s) for the calculations or estimates).

Secondly, under the current AIR setup, the administrator is unable to conduct preparatory work on its AIR until it has answered this question. We suggest that the AIR portal be reconfigured to permit the administrator to work on the rest of the AIR without populating the fields relating to missing members.

Finally, the fields relating to benefit values are capped at \$10,000,000, a threshold that may be exceeded in some cases.

We understand that FSRA takes the view that completion of this table is optional for the current year. Nevertheless, the logistical comments with respect to the table noted above will apply on a go-forward basis as well, and, in some cases, solving for them in the current year may lead to better, immediate missing member data for FSRA rather than an administrator simply skipping the “optional” process because of challenges completing the table.

Given that completion of the table can involve additional administrative resources (especially if it is ever to become mandatory), we also believe that it would help mitigate any potential additional administrative burden for FSRA to explicitly provide administrators with flexibility associated with how certain data points are determined (including the currency date(s) as of which each of the various data elements can be prepared).

For example, FSRA could give administrators the discretion to report monthly pension amounts determined as of the member's termination/retirement date vs. the date of the AIR.

Ontario Death Registry

Appendix A to the Missing Members Guidance refers to the Ontario Death Registry as a potential source of information as to a missing member's status. Since many plan members remain in Ontario after retirement, we agree that cross-referencing missing member names against the Registry could alert administrators to a deceased member and ultimately prevent pension benefit overpayments and even fraud (which can be difficult to collect and come at the expense of remaining plan members).

However, to our knowledge, there is currently no easy mechanism for administrators to access the Ontario Death Registry on a "cross-reference" basis. Given that this access would be within the Government of Ontario's control and ability to provide, we recommend that FSRA advocate internally among its government partners in order to make the Registry more accessible to administrators. Similar processes have been put in place in other Canadian jurisdictions, such as Québec.

Deferred members

Keeping addresses up to date for former employees with deferred pensions is challenging, as it relies upon the co-operation of the former employee to provide updated address information when they move. Without valid addresses, administrators are unable to remind these members when they have reached (a) the date at which they are entitled to an unreduced pension; (b) their normal retirement date; and (c) as a matter of *Income Tax Act* compliance, their 71st birthday without having commenced their pension benefits. We would encourage the government to explore solutions that would provide relief from the legislative requirements when these members cannot be located, such as those that exist in other Canadian jurisdictions such as Québec.

Deceased retirees and survivors

We are often aware of situations in which pension payments are deposited into a joint account and where the bank or credit union seemingly does not take an action upon the death of the joint account holder (the pensioner, in this case) to cease receiving payments payable to that person.

While in some cases payments equal to the pensioner's periodic pension amount may still be due upon a pensioner's death, for example to a survivor or as part of a guarantee period, even in those cases, the payments are not payable to the deceased person.

Records must be adjusted to ensure tax reporting reflects the actual individuals to whom payments are being made. A potentially more problematic situation occurs when payments continue to a person to whom no payment is payable, in some cases for many years. The situations can amount to fraud but identifying the situations and attempting to recover those payments creates a time consuming and expensive administrative exercise.

We understand that the banking system allows a bank to track incoming payments and in theory could allow a bank or credit union to notify a payee of the person's death. However, plan administrators have advised us that in many cases, financial institutions have refused to acknowledge the death of a pensioner to a plan administrator (usually citing general "privacy" laws).

This question should be explored and if necessary, clarified so as to create a positive duty on banks and credit unions to notify payees of a recipient's death and to somehow facilitate communications between the payee and the remaining account holders.

For example, a financial institution could notify the payor of the recipient's death and provide the contact information of the payee to the other bank account holders. The payor (plan administrator in this example) could then suspend payments until records are updated and then institute survivor benefits or guarantee benefits once the required information (*e.g.*, social insurance number and updated address) from the survivor / beneficiary is provided to the plan administrator.

While FSRA does not regulate banks, this does not preclude FSRA from advocating that banks follow this approach, or working with its federal counterpart, the Office of the Superintendent of Financial Institutions, to provide direct guidelines in this regard. Of course, for Ontario credit unions, FSRA could take a more binding approach as it is the regulator for those bodies.

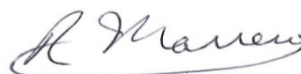
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Again, the ONRC is very supportive of FSRA's attention to the issue of missing members. We appreciate FSRA's principles-based, practical approach to this administrative challenge, including FSRA's acknowledgment that different strategies will work differently for different plans and administrators. In the spirit of FSRA's continued transparency and collaboration with industry, we would welcome the opportunity to discuss any aspects of our submission further.

Yours truly,



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Chair, Ontario Regional Council
ACPM



Ric Marrero
Chief Executive Officer
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