

Interpretation



Effective Date: [TBD]

Identifier: No. PE0302INT

Proposed guidance on actions to avoid deregistration of a pension plan under the *Federal Income Tax Act*

1. Purpose

1.1 To support plan administrators and sponsors, and to protect the rights of pension plan members, this Guidance interprets the notice and evidence requirements set out in sections 47(11) to 47 (16) of Regulation 909 (General) under the *Pension Benefits Act (PBA)*.

2. Scope

2.1 This guidance affects the following entities regulated by FSRA:

- Pension plans that are subject to the *PBA*

3. Rationale and background

3.1 *The Income Tax Act (Canada) (ITA)* permits deferral of taxation of income through registered savings vehicles, including pension plans. Registration of a pension plan with the Canada Revenue Agency (CRA) and compliance with the *ITA* is necessary to maintain this tax deferral. Separately, pension plans in Canada must also be registered with the appropriate provincial or

federal pension standards regulator under the applicable pension standards legislation. In Ontario, FSRA is the pension standards regulator, and the legislation is the *PBA*.

3.2 The *ITA* sets limits on benefits and contributions to limit tax sheltering. The *PBA* sets minimum standards, protects benefits and restricts payments out of a plan to specific situations.^[1] The requirements of these regimes sometimes conflict. For example, the *ITA* may require an employer to refund a contribution that exceeds the *ITA* limits – contrary to *PBA* prohibitions on such refunds.

3.3 The federal Minister of National Revenue may revoke the registration of a pension plan under the *ITA* if the plan permits or provides for contributions or benefits that are not permitted under the *ITA* and its regulations. In recognition of the need to maintain registration under the *ITA*, Regulation 909 provides exemptions from certain *PBA* requirements:

- filing an amendment which reduces the amount or commuted value of a benefit that has already been earned^[2]
- refunding members', former members' or retired members' contributions from a pension fund^[3]
- paying an amount from a pension fund to the employer without FSRA's prior consent^[4]

The Regulation sets out that these exemptions only apply in cases where they are necessary in order to avoid revocation under the *ITA*, and administrators must provide evidence to that effect, as well as 60 days advance notice to FSRA.^[5]

In the past, and unlike all other pension plans, the *ITA* permitted specified multi-employer plans to continue to accept contributions with respect to individuals who had already commenced receipt of a pension from the plan or who had already turned age 71 in a previous calendar year – even though those individuals would not be earning a benefit with respect to those contributions. In recent years the *ITA* was revised to provide that these plans could no longer accept such contributions. As a result, these plans must either implement processes that will keep such contributions from being made in the first place or they must pay such contributions out of the plan in order to that the plan remain registrable under the *ITA*. FSRA has set out a special approach for MEPPs in clause 4.3 to help them address these new *ITA* requirements.

3.4 In supervising and regulating the pension sector, FSRA must administer and enforce the *PBA* and its regulations to carry out FSRA's objects to:

- promote good administration of pension plans

- project and safeguard the pensions benefits and rights of pension plan beneficiaries

Maintaining *ITA* registration is the key to good pension plan administration and for a pension plan to be able to provide pension benefits.

3.5 FSRA's [Pension Sector Guiding Principles](#) and the above objects have guided FSRA in developing this Interpretation Guidance.

4. Interpretation

4.1 To support administrators' compliance with the Regulation, this Guidance interprets the exemptions set out in sections 47(11) to 47(16) of Regulation 909 under the *PBA*, to set out that manner in which administrators can meet the requirement to provide notice and evidence to FSRA. The Guidance also provides an interpretation of the administrators' fiduciary obligations in the context of communicating such matters to plan members.

4.2 Notice to FSRA – information and evidence

Notice to FSRA must be in writing and should include all information necessary for FSRA to understand the proposed action and the provisions under the *ITA* and Regulation 909 that it would address, as well as to verify that the proposed action is necessary in order to avoid revocation under the *ITA*. As a result, plan administrators should include the following information in their notice:

- 1.** a description of the action proposed to avoid revocation of the plan's registration under the *ITA*, including identification of:
 - the requirement(s) of the *ITA* being addressed
 - the provision(s) of section 47 of Regulation 909 that apply
 - any section(s) of the plan text that provide for, or support, the action proposed
- 2.** certification that the action proposed is required to avoid revocation of registration of the plan under the *ITA*, and complies with the relevant provisions of section 47 of Regulation 909, and
- 3.** confirmation that any plan amendment for which an exemption under subsection 47(11) of Regulation 909 is sought, or that may be adopted to provide for a refund of contributions to members or former members and/or a payment to an employer (as applicable), is attached / enclosed with the notice or has already been filed with FSRA.

Additionally, for exemptions under subsection 47(11),

- identification of the provision(s) of the plan which do not comply with the *ITA*.
- confirmation that the administrator has or will notify members whose accrued benefits will be immediately affected by the amendment, explaining the impact of the amendment on their benefit, and

Additionally, for exemptions under subsections 47(13) or (15),

- a description of how the amount of refund or payment will be determined, the number of members affected and an estimate of the total amount to be refunded or paid out, including any interest payable
- confirmation that the administrator has or will notify members whose contributions, or in respect of whom contributions are being refunded or paid out of the pending refund or payment

4.3 Special Approach for MEPPs

4.3.1 FSRA recognizes that the unique nature of MEPP administration may benefit from a special approach. FSRA will monitor this approach for effectiveness, and may modify, expand or restrict it as FSRA determines is appropriate. In order to meet the required outcomes for notice and evidence set out in clause 4.2 of this Guidance, administrators of MEPPs should ensure that the following matters are addressed:

4.3.2 the notice to FSRA should address refunds or payments with respect to contributions made before the date notice is given to FSRA. The notice may also address any refunds or payments that are proposed to be made later in the same calendar year. For clarification, money cannot be paid out or refunded unless and until the offending contribution has actually been received by the pension plan. In any case, the notice to FSRA should separately identify the actual and estimated number of affected members and total amount to be refunded or paid out.

4.3.3 Where an estimate of future refunds or payments are included, the administrator must inform FSRA as soon as the information is available in the next calendar year, of the total amount that was in fact refunded or paid during the previous year and the actual number of members affected in that previous calendar year.

4.4 Member communication

Administrators have a fiduciary duty to communicate with members when proposing or acting on an exemption under subsections 47(11), (13) or (15) of Regulation 909:

- there should be advance communication to members who will be immediately affected by the exempted activity

In situations where subsection(s) 47(11) and/or (13) and/or (15) are relied upon, administrators, as fiduciaries, should provide, in advance of acting on an intended exemption, a detailed explanation to any member impacted by the exempted activity, describing the effect of

- an amendment that reduces an accrued benefit or the value of an accrued benefit
 - a refund or payment of money to or with respect to the member
- if an amendment is filed in connection with the proposed exemption, then notices under 26(1) and 26(3)^[6] of the *PBA* may be required if the amendment is adverse as per section 26(1) and notices may be required as discussed in FSRA’s Interpretation Guidance #PE0301INT on “Pension Plan Amendments”

4.5 Other considerations

- as noted in clause 3.4, maintaining a plan’s registration is central to the purpose of the plan. Administrators have a fiduciary duty to administer their plan such that it remains registered under the *ITA* and *PBA*
- A certification or statement described in clause 4.2 under the heading “Notice to FSRA - Information and Evidence”, can be made by a person who has sufficient relevant knowledge and has been authorized by the plan administrator to make such a certification or statement. This person may be an employee of the administrator or a service provider engaged by the administrator. The certification must include the name of the person signing and their role.
- FSRA may request additional information from time-to-time and may take further steps to audit the use of sections 47(11) to (16)
- A payment pursuant to section 47(15) is a payment to an employer. The payment may be used or directed as the employer chooses, subject to any applicable requirements (e.g., *ITA* requirements for income reporting and tax).
- FSRA may acknowledge receipt of a notice provided pursuant to section 47(12), (14) or (16). FSRA’s consent or approval of an exemption under those sections is not required if the administrator is acting in compliance with the *PBA* and regulations. Administrators are entitled to act upon an exemption after at least 60 days have passed since notice is given to FSRA. FSRA may, at any time, ask for additional information or request additional evidence.
- There may be other ways, in certain situations, that administrators can address contributions that would otherwise make a plan’s registration be revocable under the *ITA*. These include:
 - A pension plan that holds additional voluntary contributions as defined under the *PBA*,^[7] may, subject to plan terms, pay out those contributions at any time without notification to or approval by FSRA. In those situations, acting in accordance with

- sections 47(13) and (14) is not necessary, although fiduciary standards would continue to call for advance notice to affected individuals.
- Section 62.1^[8] of the *PBA* provides a process by which certain errant payments or over-contributions made by an employer to a pension fund may be paid back to the employer. Under this section there is no requirement that the payment out of the pension fund be required to avoid the plan's registration from being revoked under the *ITA*. The section 62.1 process requires prior consent by FSRA. The facts and circumstances surrounding any given situation will dictate whether an administrator can proceed using section 62.1 or regulation sections 47(15) and (16). In some cases, both approaches may be available, and the administrator may choose.

Effective date and future review

5.1 This Interpretation guidance became effective on **(date following consultation)** and will be reviewed no later than **[date], 2027**.

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.

^[1] For example, see section 62.1 of the *PBA* which permits a refund of payments to an employer in specific situations and section 63 of the *PBA* which prohibits refunds of contributions to members except, again, in specific situations.

^[2] *PBA* section 14(1).

^[3] *PBA* section 63(1).

^[4] *PBA* section 78(1).

^[5] Regulation 909 sections 12, 14, 16.

^[6] See section 26(1) and 26(3) of the *PBA* re amendments which reduce or adversely affect benefits.

^[7] A member contribution that is voluntary, but which attracts an employer contribution to the same plan is not an additional voluntary contribution under the *PBA* and cannot be paid out as described in this paragraph.

^[8] See section 62.1 of the *PBA* for information on overpayments. A Guidance document is available on FSRA's website concerning applications under section 62.1