

Interpretation



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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.

plan beneficiaries,^[2] and administering the plan in accordance with the filed plan documents and all applicable laws.

1.3. Voluntary employment-based pension plans are an important component of retirement income security for employees and their families in Ontario. Good pension plan administration helps all stakeholders and enhances confidence in the ability of these plans to deliver their intended outcomes.

1.4. FSRA's guiding principles for the supervision of the pension sector are set out in its [Pension Sector Guiding Principles](#). This Guidance supports FSRA's statutory objects to promote good administration of pension plans and to protect and safeguard the pension benefits and rights of pension plan beneficiaries.^[3]

2. Role of administrator

2.1. An administrator is responsible for all aspects of the administration of the pension plan and the related pension fund, including:

- providing information to plan beneficiaries
- complying with plan documents and applicable laws
- establishing, maintaining, and investing the pension fund in accordance with the plan terms
- maintaining complete and accurate plan records
- ensuring that appropriate contributions are made to the pension plan; and
- making benefit payments to plan beneficiaries

² As used in this Guidance, "beneficiaries" refer to any individual with an entitlement under a pension plan, including members, former members, and retired members as defined in the *Pension Benefits Act* (PBA) and any other individual who may be entitled to payment from the plan.

³ See clauses 3(3)(a) and (b) of the *Financial Services Regulatory Authority of Ontario Act, 2016*.

- 2.2.** As a part of the administrator’s governance activities (see below regarding governance policy), the administrator’s role also includes responsibility for implementing processes to ensure plan risks (investment, funding, operational, legal, etc.) are understood and addressed. Especially important in the context of defined benefit pension plans are those risks that might impact the security of the promised pension benefits, such as the financial risks to the plan’s investments and the employer’s ability to withstand variations in its funding commitments.
- 2.3.** The administrator’s role differs from the roles of the plan sponsor and employer.^[4] The plan sponsor’s responsibilities include designing, establishing, amending and terminating the pension plan.^[5] The responsibilities of the employer include making contributions and/or providing sufficient funding to provide the promised pension benefits.^[6] For many defined benefit pension plans, the employer’s responsibilities also include understanding the risks that might impact the security of the promised pension benefits and its ability to withstand variations in its funding commitments based on the plan’s funding and investment strategies.

3. Who can be an administrator?

- 3.1.** An administrator must be a person, body or entity specified by the *Pension Benefits Act* (PBA).^[7] For most plans, the administrator is also the same entity as the employer of plan members and the plan sponsor. Another common form of administrator is a board of trustees.
- 3.2.** The individuals who make decisions for the administrator may delegate decision-making authority to other individuals within or outside of the organization. Notably, subsection 22(7) of the PBA provides that “an administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent’s suitability to perform the act for which the agent is employed, and an administrator must carry out such supervision of the agent as is prudent and reasonable.” When delegating decision-making authority to an agent, an administrator retains their fiduciary duties under

⁴ In many cases the employer is also the plan sponsor. While the PBA is silent on the role the plan sponsor, the Canadian Association of Pension Supervisory Authorities (CAPSA) guidelines differentiate the role of the plan sponsor from the role of the employer.

⁵ CAPSA Guideline No. 4 *Pension Plan Governance Guideline* at <https://www.capsa-acor.org/CAPSAGuidelines>.

⁶ See subsection 55(1) of the PBA.

⁷ Subsection 8(1) of the PBA sets out who or what entity can be the administrator of a pension plan.

section 22 of the PBA. FSRA’s interpretation is that an administrator’s supervision of an agent is “prudent and reasonable” under subsection 22(7) of the PBA if, amongst other considerations, the administrator takes appropriate steps to ensure that the agent fulfills their delegated responsibilities. Administrators should have in place controls and reporting requirements to ensure their responsibilities are fulfilled and pension benefits are protected.

- 3.3.** For some pension plans, the same individuals will have decision-making responsibilities for the administrator, the employer and/or the plan sponsor. In order to demonstrate adherence to the administrator’s standard of care^[8], FSRA’s interpretation of section 22 of the PBA, including applicable law, is that those individuals must clearly understand and document when their decisions are taken as an administrator, an employer or a plan sponsor and be mindful of the potential for conflicts of interest among their roles.^[9]

4. Responsibilities

- 4.1.** Administrator responsibilities are set out in the pension plan documents, the PBA and other applicable law. Administrators also have responsibilities as fiduciaries under common law (see below regarding fiduciary duties).
- 4.2.** To assist administrators in carrying out their responsibilities, FSRA has published regulatory guidance.^[10] The Canadian Association of Pension Supervisory Authorities (CAPSA) has also published documents describing leading practices.^[11] Administrators should be able to demonstrate that they have considered these practices in their administration and investment activities.

5. Fiduciary duties

- 5.1.** Administrators are subject to fiduciary duties under common law and minimum standards prescribed by the PBA.

⁸ Please refer to paragraph 5.3 of the Guidance for the administrator’s standard of care.

⁹ For example see *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6.

¹⁰ <https://www.fsrao.ca/industry/pension-sector/guidance>.

¹¹ <https://www.capsa-acor.org/CAPSAGuidelines>.

5.2. It is well established in law that a fiduciary is required to act with the utmost good faith and in the best interests of beneficiaries. This means that administrators must be honest, act in good faith and treat plan beneficiaries impartially. They must also avoid or manage conflicts of interest – i.e., the individuals and legal entities acting as administrators must not knowingly permit the administrator’s interests to conflict with the administrator’s duties and powers in respect of the pension fund.^[12] If an administrator owes a duty to another person outside of their role as plan administrator, they must not knowingly permit that interest to conflict with their duties and powers as the administrator, including with respect to the interests of plan beneficiaries.

5.3. At a minimum, subsection 22(1) of the PBA provides that the “[a]dministrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.” Subsection 22(2) of the PBA provides that the, “[a]dministrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator’s profession, business or calling, ought to possess” (collectively referred to as the “standard of care”).^[13] This establishes the minimum standard of ordinary prudence to one in keeping with the administrators’ abilities, experience, and profession.

5.4. Individuals carrying out administrator functions must be knowledgeable about their responsibilities and the standard of care they must meet. Depending on the circumstances, the standard of care may require the administrator to obtain the appropriate level of knowledge from third-party advisors.

¹² See, for instance, subsection 22(4) of the PBA.

¹³ The standard of care articulated in the PBA with reference to the “property of another person” is considered higher than the fiduciary standard found in common law. The common law standard is considered to be determined with reference to the fiduciary’s own property.

- 5.5.** In determining whether the administrator’s standard of care has been met, attention is paid to the policies and procedures put in place by the administrator and how they were followed in the course of administering the plan. Appropriate policies and procedures, including written records of administrator decisions and activities, can help ensure and demonstrate that in respect of decision-making, only proper factors are considered (e.g., interests of plan beneficiaries, compliance with plan documentation and applicable law, etc.) and that the standard of care is complied with.
- 5.6.** For pension plans where the administrator is also the plan sponsor and/or employer, there is a greater risk of potential conflicts of interest. For example, the directors and officers of a corporate employer must act in the best interests of the corporation. But, in carrying out administrator duties, those same individuals must act in the best interests of plan beneficiaries. In the context of multi-employer pension plans, individual trustees need to be mindful of potential conflicts of interest that may arise if they also occupy senior roles within the sponsoring union or a participating employer. Service provider engagements can also be a source of conflict of interest if the service provider, including those providing professional advice, provides services to the administrator as well as the plan sponsor or the employer (see below regarding service providers).
- 5.7.** A helpful perspective for dealing with conflicts of interest is to consider how an independent administrator would act in the specific circumstances. This might require obtaining independent, expert advice. Also, a written policy on conflicts of interest, included as part of the administrator’s governance documents (see below regarding governance policy), is an effective way to identify potential conflicts of interest that may arise and the measures through which they can be effectively managed.
- 5.8.** An administrator’s fiduciary duties apply in the context of ensuring that contributions to the plan are paid when due and the plan is sufficiently funded to pay the promised benefits.^[14] For defined benefit pension plans, an administrator’s fiduciary duties may require it to consider the plan’s probability of delivering its promised benefits in situations of increased funding risk, such as an employer’s financial distress, and what

¹⁴ Section 56 of the PBA requires administrators to ensure contributions are paid when due. Section 59 of the PBA provides that administrators may commence proceedings in a court of competent jurisdiction to obtain payment of contributions.

actions are appropriate in light of its standard of care.^[15] Depending on the circumstances, an administrator’s fiduciary duties may require it to consider formal legal action to enforce the payment of contributions and/or ensure that sufficient assets are retained within the employer to fund the plan.^[16]

6. Service providers

6.1. Administrators often engage third-party service providers.^[17] Service providers may provide advice as consultants or perform administration and investment activities for the pension plan. Such activities include, for instance, the preparation of a valuation report and investment decisions for the plan fund or for members’ investment options, as applicable.

6.2. In order to demonstrate adherence to the standard of care, FSRA’s interpretation of section 22 of the PBA, including applicable law, is that,

- administrators must understand how third-party advice informs their decision-making, and also prudently document and supervise the activities performed by those service providers; and ^[18]
- service providers must be subject to clear reporting obligations and should have established policies and procedures that can be reviewed and monitored.

¹⁵ FSRA has set forth its expectations of administrators in connection with the funding of single employer defined benefit pension plans in its [Supervisory Approach for Single Employer Defined Benefit Pension Plans that are Actively Monitored](#).

¹⁶ Legal actions might include actions based on breach of the administrator’s fiduciary duty, breach of contract, corporate statute (e.g., derivative or oppression claims) and the *Fraudulent Conveyances Act*.

¹⁷ Subsection 22(5) of the PBA requires the administrator to be satisfied that it is reasonable and prudent to do so in the circumstances.

¹⁸ Subsection 22(7) of the PBA, for instance, requires administrators to carry out such supervision “as is prudent and reasonable”.

6.3. Service providers that are employed by administrators to carry out any act required for the administration and/or investment of the plan, are subject under the PBA to the same standard of care as administrators.^[19] Such service providers cannot contract out of the legislated standard of care.^[20]

6.4. While the use of service providers does not relieve administrators of liability, their use can be an effective means for administrators to meet their standard of care and manage their exposure to liability. Subsection 22(5) of the PBA provides that, “where it is reasonable and prudent in the circumstances to do so, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.” FSRA’s interpretation is that an administrator’s reliance on a service provider is reasonable and prudent under subsection 22(5) if, amongst other considerations, the administrator supervises their activities and asks questions to understand and verify the reasonableness of relying on any advice received. An effective process for selecting service providers is important in determining whether it is reasonable to rely on a service provider with respect to a particular activity.^[21]

7. Administration expenses

7.1. It is generally permissible, subject to the plan documents and the PBA, to pay reasonable expenses for the administration and investment of the pension plan out of the pension fund.^[22] Permitted expenses are determined on a case-by-case basis. Notably, subsection 22.1(1) of the PBA provides that, “the administrator of a pension plan is entitled to be paid from the pension fund the administrator’s reasonable fees and expenses relating to the administration of the pension plan and the administration

¹⁹ See subsections 22(5) and (8) of the PBA. FSRA interprets “agent” in a broad and purposive manner to include all service providers performing plan administration activities. FSRA recognizes, however, that a distinction can be made for service providers that only provide advice to an administrator and as such may not fall within the PBA’s statutory language regarding an agent.

²⁰ If a service provider seeks to negotiate a contractual provision to limit the amount of its potential liability for its services, the implications of the provision should be considered by the administrator in light of the administrator’s own standard of care.

²¹ For example, such a process should ensure that service providers have the requisite skills and experience and should not simply defer to the lowest cost option.

²² Administrators should be aware of any limitations in their plan documents or under the PBA. Section 22.1 of the PBA provides that expenses must not be paid from the pension fund if they are prohibited, or their payment is otherwise provided for, under the plan documents or the PBA or its regulations. Subsection 10(1) of the PBA requires that the mechanism for the payment of the cost of administration of the pension plan and the pension fund be set out in the plan documents. Where the sponsor or employer acts as the administrator, the sponsor or employer may pay expenses from its account and invoice the fund provided the plan documents permit this practice.

and investment of the pension fund.” FSRA’s interpretation is that fees and expenses under subsection 22.1(1) are reasonable if, amongst other considerations, they are appropriate for the circumstances of the pension plan and in the interests of plan beneficiaries.^[23] Expenses paid out of the pension fund in connection with the role of the employer are generally impermissible except in very limited circumstances.^[24] An administrator should consider having a written expense policy and/or obtain expert advice regarding the ability to pay expenses out of the plan where appropriate. An expense policy forms part of an administrator’s governance policy (see below regarding governance policy).

8. Records retention

8.1. Pension plans have long term time horizons. Administrators must manage and retain records relating to the pension plan and pension fund in a manner that complies with their fiduciary duty, the PBA, and applicable law.

8.2. In order to demonstrate adherence to the standard of care, 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 and others, including by complying with the PBA.

²³ Examples of permitted expenses include: actuarial fees to prepare and file required valuation reports and other reports as considered appropriate by the administrator; investment management fees; legal or consulting fees related to legislative compliance; continuing education costs for the administrator; records retention costs; and expenses related to the wind up of the pension plan.

²⁴ Examples of impermissible expenses include: professional fees to assist an employer in designing or revising the plan benefit structure (although implementing those decisions can result in permissible administration fees and expenses). More broadly, fees and expenses whose primary purpose is to benefit the employer are generally impermissible (e.g., the preparation of off-cycle valuation reports where the primary goal is to reduce employer contributions; professional fees incurred by the employer as part of collective agreement negotiations; expenses incurred in connection with an employer’s surplus withdrawal application). Despite the foregoing, expenses incurred in connection with an employer’s surplus withdrawal application can be permitted expenses if approved by FSRA or by written agreement of the affected plan beneficiaries. Where a pension plan is not sponsored by a single employer, similar principles apply to plan sponsor expenses, but would also require consideration of the relevant legislation, plan documents and case law (see, for example, *OMERS Sponsors Corporation v. OMERS Administration Corporation*, 2008 CanLII 3970 (ON SC)).

Where the administrator does not maintain relevant records, this could adversely affect the administrator’s position should a dispute arise.^[25] It is also possible the administrator may be in breach of its obligations under section 22 of the PBA.

8.3. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to be able to demonstrate adherence to the standard of care, administrators should consider:

- Putting in place records management and retention policies. These may vary based on the size and complexity of the plan as well as the Administrator’s relationship with third party service providers.
- Integrating such policies with the plan’s risk management practices relating to data (e.g., data integrity, cybersecurity, and disaster recovery).
- Ensuring that any record keeping arrangement with a third party service provider allows the administrator to demonstrate compliance with its own policies and obligations with respect to maintaining plan records.^[26]

8.4. The PBA does not prescribe timelines for retention of different types of records.^[27] In order for administrators to meet the standard of care, FSRA’s interpretation of the PBA and applicable law, is that administrators must determine appropriate retention timelines for different types of plan records. In doing so, administrators should consider:

- Putting in place a schedule of reasonable retention periods that balances different factors such as the cost and challenges associated with retaining the

²⁵ For example, if the administrator cannot produce a record to demonstrate they have already paid a benefit entitlement, there is a risk that they may be required to pay that amount where the beneficiary can show they would have been entitled under the plan.

²⁶ For example, contracts with a service provider should ensure either that records are retained for the appropriate amount of time by the service provider or that these records are transferred to the administrator where the service provider is no longer obligated to maintain them.

²⁷ Section 24.1 of the PBA, which provides for a Duty to Retain Records as prescribed, is not yet proclaimed into force. Note that retention of certain records may be prescribed under other statutes such as the *Income Tax Act (Canada)*, the *Employment Standards Act, 2000*, the *Workplace Safety and Insurance Act, 1997*, the *Personal Health Information Protection Act, 2004* and the *Freedom of Information and Protection of Privacy Act*.

records relative to the nature of the records, and whether and to what extent they may be, helpful to effective plan administration.^[28]

- In certain instances, such as for terminated members whose benefits have been settled, retaining only summary information.
- The different challenges and considerations involved in maintaining physical and electronic records.

Administrators must also ensure that their record retention practices comply with all applicable laws with respect to document protection and retention.^[29]

8.5. Administrators are required to make available for inspection the specific types of records set out in section 29 of PBA. The administrator must keep these records indefinitely to meet the requirements of section 29.

9. Complaints and inquiries

9.1. In order for administrators to meet the standard of care, 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.

9.2. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to be able to do so, administrators should put in place written complaint and inquiry handling policies and procedures that align with the principles in FSRA's [Complaints Resolution: Policy Framework and Best Practices Guidance](#) such that they are:

- Accessible

²⁸ Note that appropriate record retention timelessness may differ for pension plan administration purposes and Human Resources records retention purposes.

²⁹ Applicable requirements relating to the retention of records may be contained in other statutes, including the *Income Tax Act (Canada)*, *Employment Standards Act, 2000*, *Workplace Safety and Insurance Act, 1997*, *Personal Health Information Protection Act, 2004* and *Freedom of Information and Protection of Privacy Act*.

- Fair
- Timely
- Transparent
- Effective

Policies and procedures should also respect general principles of natural justice. For example, beneficiaries should be made aware of any issues relevant to their inquiry or complaint and should be given a reasonable opportunity to respond. Beneficiaries should be respected and fairly treated even if they disagree with a decision.

9.3. The content of a complaint and inquiry handling policy may vary depending on the number, frequency, and complexity of complaints and inquiries handled by the plan, as well as whether any service providers are involved. That policy should:

- Provide contact information to which beneficiaries may direct questions or concerns about their pension
- Describe the various roles and responsibilities of those involved in the complaint or inquiry process
- Describe the complaint or inquiry process and set out expected timelines for beneficiaries
- Provide that the administrator should inform beneficiaries of the complaints resolution process available through FSRA to the extent the complaint is not satisfactorily resolved by the administrator.

Administrators should be able to demonstrate proper adherence to any complaint and inquiry handling policies and procedures developed and that effective controls and processes are put in place for operationalization and oversight.

10. Providing information to beneficiaries

10.1. In order for administrators to be able to demonstrate adherence to the standard of care, FSRA’s interpretation of the PBA and applicable law is that administrators must provide appropriate information to beneficiaries that:^[30]

- 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.

10.2. Administrators must be able to demonstrate that they are effectively satisfying the standard of care. In order to meet the standard of care, as well as in recognition that even inadvertent errors in communications may impact the rights and entitlements of beneficiaries,^[31] administrators should:

- Put in place written policies and procedures to ensure that information accessed by beneficiaries is always current and correct^[32]
- Communicate any benefit changes made to the plan in plain language, in addition to statutory notices required under the PBA^[33]
- If providing communications electronically, put in place policies and practices for electronic communications to ensure compliance with the PBA, the *Electronic Commerce Act, 2000* (ECA), and CAPSA Guideline #2 Electronic Communication in the Pension Industry.

³⁰ Certain statutory disclosures are required under the PBA. For example, under subsection 25 (Information from administrator) and subsection 27 (Annual statement of pension benefits) of the PBA.

³¹ There are a number of cases in which Administrators have been found liable for negligent misrepresentation with respect to the terms of the pension plan. See for example *Smith v Casco*, 2011 ONCA 306; *Deraps v. Labourers*, 1999 CanLII 3790 (ONCA).

³² To the extent possible, administrators should ensure that beneficiaries are always accessing up to date information. FSRA recognizes that implementing the necessary changes to ensure that information is up to date may take a reasonable amount of time.

³³ See for example section 26 (Notice of proposed amendment) of the PBA.

11. Governance policy

- 11.1.** As outlined by CAPSA in its *Pension Plan Governance Guideline*,^[34] having a documented governance framework or policy is considered a key practice for pension governance. FSRA's supervisory activities frequently include a review of plans' governance frameworks. Failure to have and follow a governance framework exposes the administrator to potential sanction and liability for having breached its fiduciary duty and standard of care.
- 11.2.** Administrators, in developing their governance policies, should refer to CAPSA's *Pension Plan Governance Guideline*, including the *Self-Assessment Questionnaire* and *FAQs*, and consider other best practices as may be relevant. A key component of a governance policy is a prudential framework. This framework is intended to identify and assess the magnitude and probability of potential risks, including the ability to absorb future fluctuations in funding contributions, based on reasonable assumptions, and to put into effect appropriate risk management practices.^[35]

12. Effective date and future review

This Guidance is an update to the version previously released on July 28, 2021. This updated Guidance became effective on **June 5, 2024** and will be reviewed no later than **June 5, 2027**.

13. 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.

This Guidance replaces FSCO pension policies A300-101 (Administrator Role and Responsibilities), A200-101 (Administrative Fees and Expenses Payable from Pension Fund), A200-200 (Payable from Pension Fund), A200-803 (Fees and Expenses for Wind Ups and

³⁴ CAPSA Guideline No. 4 at <https://www.capsa-acor.org/CAPSAGuidelines>.

³⁵ As part of a defined benefit pension plan's overall governance framework, the investment and funding policies also serve to capture risks and put into place approach risk management practices. See CAPSA Guideline No. 6 Pension Plan Prudent Investment Practices Guideline at <https://www.capsa-acor.org/Documents/View/59> and Guideline No. 7 Pension Plan Funding Policy Guideline at <https://www.capsa-acor.org/Documents/View/1846>.

Surplus Refund Applications), A300-200 (Management and Retention of Pension Plan Records by the Administrator), A300-450 (Administrators Management of Inquiries and Complaints from Plan Beneficiaries), and A300-807 (Electronic Communications Between Plan Administrators and Plan Beneficiaries).

Reference

- Sections 8, 10, 22, 22.1, 24.1, 25, 26, 27, 29, 55, 56 and 59 of the PBA.
- Section 3 of the FSRA Act.
- [FSRA Pension Sector Guidance](#)
- [CAPSA Guidelines](#)