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Ontario regulator issues guidance for pension plan administrators

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On 28 Jul 2021, the Financial Services Regulatory Authority of Ontario (FSRA) issued an Interpretation of pension plan administrators' roles and responsibilities that replaces several policies issued by the prior pension regulator. Administrators of pension plans registered in Ontario should comply with this Interpretation as it reflects "FSRA's view of requirements, legislative and otherwise, so that noncompliance can lead to supervisor action." The Interpretation is consistent with the typical findings from FSRA's on-site reviews of a plan's administration. Areas that could require plan administrator action follow.

Governance policy

The Interpretation makes clear that a written governance policy is necessary and that "failure to have and follow a governance framework exposes the administrator to potential sanction and liability for breaching its fiduciary and statutory standard of care." Although Section 105 of the Ontario Pension Benefit Act (PBA) was adopted in 2017 and requires a written governance policy, it has not been proclaimed in force, and some administrators have not complied. The FSRA Interpretation refers to the Canadian Association of Pension Supervisory Authorities' (CAPSA's) guideline for what the written policy should include.

Another key component of the FSRA guidance that is often unaddressed by plan sponsors is a written funding policy for defined benefit (DB) plans. Similar to the written governance policy not proclaimed in force, the PBA contains a 2017 requirement for plans to have a funding policy. CAPSA has a funding policy guideline that may be referenced as to what should be included.

Permissible administration expenses

FSRA guidance discusses how, subject to the plan documentation and the PBA, an administrator can determine which expenses can reasonably be paid from the plan assets. Expenses should be appropriate for the circumstances of the pension plan and in the interest of plan beneficiaries, and should not be incurred solely in connection with the role of the plan sponsor or employer. While those principles are broadly agreed upon within the industry, the Interpretation provides examples of "impermissible" expenses such as the "preparation of off-cycle valuation reports where the primary goal is to reduce employer contributions." That example is surprising as there are many reasons for an off-cycle valuation to be prepared, such as locking in employer contributions at a given level, reducing pension benefits guarantee fund assessments, or allowing commuted values to be fully paid out to terminating plan members if the plan's solvency ratio improves. Further, as part of best governance practices, many plan administrators have actuarial valuations prepared annually to monitor the funded status of the plan. Until FSRA provides further guidance, plan administrators should carefully consider if fees related to the preparation of an off-cycle valuation should be paid from the plan assets.

Defined contribution plans

FSRA guidance is clear that its requirements generally apply to DB and defined contribution (DC) pension plans. While the existence of well-documented governance policies is less prevalent for DC plans, the fiduciary responsibilities and inherent risks may differ from DB plans. Therefore, it is just as important for a plan administrator to properly document how DC plans will be administered.

Related resources

- Interpretation: Pension plan administrator roles and responsibilities (FSRA)
- Guideline No. 7: Pension plan funding policy guideline (CAPSA, May 2021)
- Guideline No. 4: Pension plan governance guideline (CAPSA, December 2016)

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