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Report on Administrative Monetary Penalties and Defined Contribution pension plan engagement


Introduction

Plan administrators are required under the *Pension Benefits Act* (PBA) and regulations to submit their pension plan filings to the Financial Services Regulatory Authority of Ontario (FSRA). Filings and associated deadlines are set out in the PBA and regulations. These filings help FSRA and plan administrators monitor the health of the pension plan. As a risk-based regulator, FSRA uses filings as a vital part of our oversight of a pension plan.

Ensuring that FSRA has up to date information for the pension plans we regulate is an essential element of meeting FSRA's objects. FSRA's objects in respect of pension plans under the *Financial Services Authority of Ontario Act, 2016*, include:

- promoting good administration of pension plans
- protecting and safeguarding the pension benefits and rights of pension plan beneficiaries

Since 2018, FSRA has had the authority to impose Administrative Monetary Penalties (AMPs) for certain contraventions under the PBA and regulations. FSRA expects AMPs will encourage plan sponsors and administrators to adopt good pension plan governance, risk management and business practices. Although FSRA paused its efforts due to the global pandemic, in a [Pension Update dated November 12, 2021](#), FSRA informed the pension sector and stakeholders that FSRA would be resuming processes to follow-up with plan administrators on late filings. The Pension Update noted that FSRA would start levying AMPs starting in 2022.

Initial observations noted a concentration of delinquent filings in the Defined Contribution (DC) sector. Specifically, FSRA found that some smaller DC plans struggled to submit Financial Statements and Annual Information Returns (AIRs) on time. The [report of the Office of the Auditor General of Ontario's Value for Money Audit of the Financial Services Regulatory Authority dated November 2022](#)  (the AG Report) had similar findings.

The Defined Contribution pension plan engagement project

FSRA launched the DC Project in September 2022. The purpose of the DC Project was to initiate a strategy to address filing non-compliance. It aimed to educate the DC sector and enhance FSRA's understanding of compliance issues, with the goal of achieving enhanced future compliance.

The initial step of the DC Project was to reach out to 256 DC plan administrators who, as of August 2022, had filed their required documents late and to:

- Remind them of their responsibilities to file on time, including FSRA's authority to impose AMPs.
- Ask them why their filings were late in case there was something FSRA could do to assist in getting their filings in on time in the future.

- Provide helpful information to assist them with filings and with und administrator.

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Reasons for late filings and FSRA's response



FSRA has already introduced or is in the process of introducing several initiatives to improve the experience of plan administrators and to help them complete their filings before the due dates. These initiatives were introduced based on what we heard from plan administrators in our conversations.

Key highlights from these conversations and how FSRA responded to assist plan administrators are summarized in the table below.

What FSRA heard: Reasons for late filings

What FSRA has done

45% indicated that the reason for the late filing was that a new person had replaced the plan administrator's delegate and that person was not aware of this responsibility and was not set up on FSRA's portal.

- Emailed helpful links related to filing, AMPs, and FSRA contact information for any follow up questions to each plan administrator we spoke to.
- Developed two at-a-glance documents for the FSRA website that describe a DC pension plan administrator's responsibilities:
 - [Defined Contribution \(DC\) Pension Plans – What Employers need to know](#) 
 - [DC Pension Plans Summary](#) 
- FSRA mailed the at-a-glance documents to over 3,000 DC Plan administrators and asked major insurance companies to share the links to these documents with the pension plans they provide services to.
- Provided instructions to plan administrators on [how to add a delegate from their organization](#) and encouraged them to do so. This will give continuity if a plan administrator leaves the organization, and help ensure emails, including filing reminders and late filings notices, will continue to a second person.

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What FSRA heard: Reasons for late filings

14% found it difficult to navigate FSRA's Pension Services Portal (PSP). This was often an issue noted for filers who were not significantly late.

10% did not see the outstanding filing requirement for the financial statements in the PSP. These were typically listed on a second (or third) page after the list of all Annual Information Returns that were late or pending filing. To find the list of outstanding financial statements, the plan administrator had to click to subsequent pages. This was an extra step, which they did not realize was needed.

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- Developed new educational how-to videos:
 - [How to accept/reject a delegated role](#)
 - [How to activate your account](#)
 - [How a Primary Administrator can delegate or revoke access to the PSP](#)
 - [Filing a pension plan amendment](#)
- FSRA anticipates these videos will be helpful to plan administrators who find the PSP challenging to navigate and/or the online written instructions difficult to follow. More videos coming soon – stay tuned.

- Updates to the PSP:
 - The filing record status will now show outstanding filings as the default filter. For instance, DC plan administrators will not have to filter to view the outstanding financial statement filings.
 - The first and second late filing notices are sent directly from the PSP. This will ensure consistency and timeliness in sending these notices. New DC plan administrators will also be able to view any notices previously sent in the PSP.
 - Filing reminders are now sent to all plan administrators regardless of whether they had begun filing on the PSP. Previously, if an administrator had started the submission process, the reminder would not go out. Now, the only time where the reminder notice will not be sent is if the filing has been submitted and received.

For about 12%, FSRA believes the filings were not considered a priority.

A few plan administrators (3%) misunderstood [FSRA's announcement in February 2022](#), that “audited” financial statements were no longer required for DC plans to mean financial statements were no longer required.

The remaining reasons were varied, including issues with their service provider, plan mergers, and other reasons related to business distractions.

- Officially resumed the process to impose summary AMPs.
- Developed an internal procedure that outlines the steps for FSRA to follow before and after imposing an AMP. This includes engaging with plan administrators to ensure that they understand their responsibilities related to their FSRA filing requirements.

FSRA has taken significant steps to engage with plan administrators to bring pension plans into compliance. After a series of notices (e.g., two reminders prior to the filing date and two warnings after the due date or the extended due date), we made a focused effort to engage pension plan administrators directly through methods other than email such as telephone calls and meetings. If these steps were not successful in bringing the pension plan into compliance, FSRA then sent a Written Notice of the intention to impose a summary AMP.

Administrative Monetary Penalties

AMPs are a way for FSRA to encourage filing compliance. Administrative penalty provisions are set out in sections 108.1 to 108.5 of the PBA and in the [administrative penalties regulation \(O.Reg. 365/17\)](#).

There are 2 types of AMPs:

- **General AMPs** may be imposed where a person has not complied with a specified requirement of the PBA and regulations, a requirement imposed by order of the CEO, or an obligation assumed by way of an undertaking.
- **Summary AMPs** may be imposed for late/outstanding regulatory filings.

FSRA expects plan administrators to understand their responsibilities with respect to their pension plan including keeping their pension plan administrator contact information up to date.

FSRA process for late filings

Before the filing deadline, FSRA sends two automated reminders to the plan administrator via email through the PSP. Extensions for a filing deadline may be requested through the PSP (even if the filing is overdue), if the extension length is within the period permitted (that is, within 60 days for financial statements and AIRs^[1]). For longer extensions, plan administrators should contact FSRA directly via email.

If a filing is delinquent, five calendar days after the deadline (or extended deadline) FSRA sends a “Letter of Warning” to the plan administrator through the PSP. If no action is taken, then 20 calendar days after the (extended) deadline a “Letter of Proposed Action” is sent.

If by 30 days after the (extended) deadline the filing is delinquent, FSRA will work to engage the plan administrator (including reaching out via phone and email and finding out who the new contact person is if necessary).

A "Written Notice", as required by the PBA ^[2], will be sent prior to imposing a summary AMP on a plan administrator a reasonable opportunity to make written submissions.

If the plan filings remain delinquent or FSRA is not satisfied with the explanation provided, an Order imposing a summary AMP will be sent to the plan administrator, and the Financial Services Tribunal will be given a copy.

Administrative Monetary Penalties going forward

FSRA has demonstrated considerable flexibility with respect to late filings and has made significant efforts in educating the industry on the responsibilities of pension plan administrators and improvements to the PSP. FSRA now intends to be more robust in its approach to late filings. Starting in 2024 FSRA will expect all plan administrators to ensure that their contact information is up to date in the PSP and, should filings be late after warning letters are sent, a summary AMP Order may be imposed.

Administrative Monetary Penalties imposed to date

FSRA has imposed nine summary AMP Orders (two defined benefit (DB) pension plan, six DC pension plans, one combination DB/DC plan). Four of the nine summary AMP Orders imposed have been appealed to the Financial Services Tribunal. Summary AMP Order amounts imposed to date range from \$25,000 to \$100,000. Summary AMP Order amounts are set out in regulations under the PBA and are not at the discretion of FSRA. For instance, the daily penalty for a delinquent Annual Information Return is \$100, up to a maximum total penalty of \$25,000 (after 250 days late).

These summary AMP Orders were related to late filings due in 2022 and earlier. FSRA is completing its review of late filings due in 2023 and earlier (due dates vary based on the fiscal period and pension plan year end) and summary AMPs will be expected to be imposed for any remaining outstanding filings by the end of 2023.

[1] Section 105(2)1. of the PBA limits these filing extensions to 60 days unless FSRA is satisfied extraordinary grounds exist and no person will be prejudiced by a longer extension.

[2] Section 108.3(2) of the PBA: Before imposing a penalty, the Chief Executive Officer shall give the person a reasonable opportunity to make written submissions.

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