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SECTION:	Administrator
INDEX NO.:	A300-806
TITLE:	Electronic Communications Between Plan Administrators and Plan Beneficiaries
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (February 2011)
EFFECTIVE DATE:	February 23, 2011
REPLACES:	A300-805

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This policy replaces A300-805 (Electronic Communications Between Plan Administrators and Plan Beneficiaries) as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA), Regulation 909, R.R.O. 1990 (Regulation) or Electronic Commerce Act, 2000, S.O. 2000, c. 17 (ECA), the FSCO Act, PBA, Regulation or ECA govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

The purpose of this policy is to explain the Financial Services Commission of Ontario's (FSCO) position with respect to electronic commerce legislation and [CAPSA Guideline #2, Electronic Communication in the Pension Industry](#).

In February 2002, the Canadian Association of Pension Supervisory Authorities (CAPSA) released [CAPSA Guideline #2, Electronic Communication in the Pension Industry](#). CAPSA Guideline #2 is intended to help administrators of pension plans (administrators), and members, former members and other beneficiaries (the plan beneficiaries) apply the provisions of the respective electronic commerce legislation for each jurisdiction to communications required under pension benefits legislation. The guideline is intended to apply to electronic communications between a pension plan administrator and a pension plan member.

The electronic commerce legislation for Ontario is the [Electronic Commerce Act, 2000](#), (ECA) which came into force on October 16, 2000. The electronic commerce legislation removes legal barriers to the use of electronic communications and sets out rules for conducting business transactions electronically.

FSCO takes the position that communications between administrators and plan beneficiaries required under the PBA may be provided electronically, if they comply with all of the relevant requirements under the PBA, ECA and CAPSA Guideline #2. An administrator may consider, for example, electronically providing documents such as the annual statement, the explanation of the pension plan provisions and prescribed notices to plan beneficiaries, so long as the documents and their distribution comply with the PBA, ECA and CAPSA Guideline #2. It should be noted that the electronic exchange of information is entirely voluntary on the part of both the administrator and the plan beneficiary. Particular attention should be paid to the consent provisions of the ECA and CAPSA Guideline #2.

CAPSA Guideline #2 explains what plan beneficiary consent should entail and that consent must also be valid at the time that the communication is made.

CAPSA Guideline #2 does not apply to electronic communications between administrators and pension regulators. FSCO is investigating options to permit the submission of prescribed filings in electronic format. In 2010 FSCO introduced new options for administrators to electronically file their Annual Information Returns (AIRs) in accordance with a specified process. Any other documents in respect of the pension plan or the pension fund required to be filed with or provided to FSCO, including any documents the Superintendent of Financial Services (Superintendent) is required to make available under section 30 of the PBA, must continue to be provided to FSCO in the traditional hard copy format. The exception is when the electronic filing option of the AIR is used, and when electronic filing options become available in the future for other prescribed filings.

### **Frequently Asked Questions about Electronic Communications Between Plan Administrators and Plan Beneficiaries**

#### **Q: Must a plan beneficiary receive documents electronically?**

**A:** No. Plan beneficiaries will continue to receive documents in paper form unless they consent, or are deemed to consent as provided under CAPSA Guideline #2, to receiving the documents electronically. A plan beneficiary must designate an electronic medium, such as providing an email address, for receiving these documents electronically.

In deciding whether to receive documents electronically, a plan beneficiary should consider how to store and maintain these documents to ensure future access to the information. For example, if the plan member designates his/her office computer for receipt of documents, might access to and storage of these personal documents be restricted by the employer's policy on the use of computer resources or by changes in the employment relationship?

#### **Q: Must the administrator provide documents electronically?**

**A:** No. There is no requirement under the PBA, ECA and CAPSA Guideline #2, to offer any documents electronically. If the administrator chooses to provide documents electronically, the administrator would determine which documents to offer in electronic format to plan beneficiaries.

#### **Q: Once a plan beneficiary has consented to receive documents electronically, can the beneficiary withdraw the consent?**

**A:** Yes. A plan beneficiary may revoke a consent or a deemed consent at any time, by so advising the administrator either in writing or electronically.

#### **Q: Can the administrator rely on the provision of the document electronically as a valid delivery to the plan beneficiary?**

**A:** Yes, provided the administrator has complied with requirements of the PBA, the ECA and CAPSA Guideline #2 in the creation and transmission of the electronic document. However, if the administrator has received a message that the electronic document is non-deliverable, or if the administrator is otherwise aware that the plan beneficiary cannot receive the document through the electronic means previously identified, the administrator would know that the recipient cannot retrieve and process the electronic document. Therefore, the requirements of the PBA, the ECA and CAPSA Guideline #2 would not have been fulfilled and a paper copy of the document should be provided to the plan beneficiary.

**Q: Must the administrator provide a paper copy of the document, in addition to an electronic copy, once the plan beneficiary has consented to electronic communication?**

**A:** No. The administrator need not provide a paper copy of the document, so long as the consent of the plan beneficiary remains valid. However, the electronic communication must be able to be printed and retained by the plan beneficiary.

**Q: Where a plan beneficiary continues to have a right to receive pension documents following termination of employment or retirement, can these documents be requested electronically?**

**A:** Yes, assuming the administrator offers to provide the documents electronically. To receive the documents electronically, the plan beneficiary must provide consent and designate an electronic medium for the receipt of documents.