



---

SECTION:	Administrator
INDEX NO.:	A300-200
TITLE:	Management and Retention of Pension Plan Records by the Administrator - PBA ss. 19, 22 and 23 - Regulation 909 s. 45
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Website (June 2010)
EFFECTIVE DATE:	June 30, 2010 [references updated – March 2011]

---

*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) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation 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.*

Pension plans, by their very nature, have long term time horizons. It is therefore imperative that the records related to a pension plan and the pension fund of the pension plan be managed and retained for a long period of time.

The main purpose of this policy is to discuss the long term commitments and responsibilities of the administrator of a pension plan (administrator) in the management of pension plan records and to provide guidance for prudent records management and retention practices. The obligations of other pension stakeholders in the management and retention of records are also briefly addressed in this policy.

This policy has a broad application that covers all sizes and types of pension plans (e.g., defined benefit pension plans, defined contribution pension plans, multi-employer pension pensions, etc.). Therefore, certain information and guidance contained in this policy may not be applicable to all pension plans.

In this policy, the term “plan beneficiaries” includes members, retired members, former members, surviving spouses, dependents, former spouses, estates, and other person(s) who have an entitlement under the plan (unless indicated otherwise).

This policy is organized under the following sections:

- 1. Responsibilities of the Administrator**
- 2. Plan Records and Retention Periods**
  - 2.1 Plan Records that Pertain to Legislated Requirements**
  - 2.2 Plan Records that Pertain to Individual Plan Beneficiaries and Payment of their Pension Entitlements**

**2.3 All Other Plan Records that Pertain to the Day-to-Day Operation of the Pension Plan and Pension Fund**

**3. Electronic Records**

**4. Retention of Plan Records After the Wind Up of the Pension Plan**

**5. Importance of Appropriate Records Management and Retention Practices**

**6. Developing a Written Policy on Records Management and Retention**

**7. Transferring the Administrator's Record Keeping Responsibilities to Other Parties**

**7.1 Sale of the Employer's Business**

**7.2 Insurance Company as Administrator**

**7.3 Insolvency of a Plan Sponsor**

**8. Other Legislation Applicable to Retention of Records Under a Pension Plan**

**9. Responsibilities of Other Pension Stakeholders**

**9.1 External Third-Party Service Provider(s) and Employee(s) of the Administrator**

**9.2 Plan Beneficiaries**

**9.3 Employers**

**APPENDIX A**

**Frequently Asked Questions**

**1. Responsibilities of the Administrator**

Section 19 of the PBA requires the administrator to administer the pension plan and pension fund in accordance with the PBA, Regulation and filed documents.

Section 22 of the PBA imposes a duty on the administrator to exercise the care, diligence and skill in the administration and investment of a pension fund that a person of ordinary prudence would exercise in dealing with the property of another person. Section 22 also requires the administrator, in the administration of the pension plan and in the administration and investment of the pension fund, to use all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

Compliance with sections 19 and 22 of the PBA cannot realistically be achieved if plan records (that are discussed below) are missing or inaccurate. Without complete and accurate records, the administrator may not be able to meet its primary obligation to plan beneficiaries — to pay pension benefits in the correct amounts when payments become due. The administrator should therefore implement and maintain prudent record keeping practices.

FSCO recognizes that inadequate record keeping practices may have resulted in the loss of important plan records for some administrators. In such cases, administrators may be able to obtain copies of plan records that have been filed with FSCO through a written request under section 30 of the PBA. However, FSCO does not maintain records about individual plan members. To prevent or minimize loss of important records, FSCO strongly recommends that all administrators make it a priority to establish a formal and comprehensive written records management and retention policy. Such a policy should set out appropriate practices and procedures that address for example, how plan records are to be managed, how long records are to be retained and the individuals who are responsible for these records.

The remainder of this policy discusses in detail the rationale for prudent records management and retention practices, and provides guidance on how such practices can be implemented. This policy is not intended to prevent

administrators from establishing more extensive records management and retention practices if that would be appropriate for their particular plans.

## **2. Plan Records and Retention Periods**

Plan records include any documents related to the pension plan and pension fund (this includes documents in paper, electronic or any other format) that have been created or received by, or for the administrator, in connection with the operation of the pension plan and pension fund. These records generally include, but are not limited to, the following:

- documents that create and support the pension plan and pension fund;
- documents that pertain to the operation of the pension plan and pension fund;
- documents that pertain to the investment of the pension fund; and
- documents that pertain to individual plan beneficiaries.

Terminologies and retention periods for plan records may vary from plan to plan, and they may also change over time. However, for the purpose of determining retention periods, plan records generally fall under one of the following three categories:

- a) Plan records that pertain to legislated requirements.
- b) Plan records that pertain to individual plan beneficiaries and payment of their pension entitlements.
- c) All other plan records that pertain to the day-to-day operation of the pension plan and pension fund.

Plan records that fall under categories (a) and (b) are critical to the proper administration of the pension plan and pension fund, because they are essential to the determination of pension entitlements and for regulatory submissions.

The following information may assist administrators in determining under which of the three categories a particular plan record falls. Retention periods for plan records will vary depending on the category. A [Sample Retention Schedule for Pension Plan Records](#) tool is available to administrators on FSCO's website and may be used as a guide in developing a records management and retention policy.

### **2.1 Plan Records that Pertain to Legislated Requirements**

Plan records that fall under this category include all records that create and support the pension plan and pension fund. Some of these documents are listed under section 45 of the Regulation. For example, this includes:

- pension plan documents/texts and all amendments related to the current pension plan and predecessor pension plan(s), if any;
- documents that must be filed in support of an application for plan registration or amendments to the current pension plan and predecessor pension plan(s), if any (e.g., trust agreements, insurance contracts, collective bargaining agreements, member booklets, etc.);
- documents that set out the employer's or previous employer's responsibilities with respect to the pension plan(s);
- documents that delegate the administration of the pension plan or pension fund;
- copies of filings, reports or statements that are required to be filed with FSCO (e.g., annual information returns, pension fund financial statements, actuarial valuation reports, etc.);
- copies of correspondence between the administrator, the administrator's third-party service provider(s) and FSCO staff (excluding correspondence concerning individual plan beneficiaries);
- the parts of an agreement that pertain to the purchase or sale of a business or other assets of a business that relate to the pension plan; and
- copies of any statements of investment policies and procedures.

Neither the PBA nor the Regulation limit the retention period for the above plan records. These records must always be made available to those who are eligible to inspect the records under section 29 of the PBA.

## **2.2 Plan Records that Pertain to Individual Plan Beneficiaries and Payment of their Pension Entitlements**

Plan records that pertain to individual plan beneficiaries should be retained as long as they have an entitlement under the pension plan. This may include information related to plan enrolment, beneficiary designations, pension statements, court documents related to breakdown of a spousal relationship, etc. (See [Sample Retention Schedule for Pension Plan Records](#) for examples of individual plan records.)

Once a plan member has terminated his or her employment or plan membership, and has elected to transfer his or her entitlement out of the pension plan, all plan records that pertain to the plan member do not necessarily have to be kept. However, it is important for the administrator to retain at least a summary of the terminated member's plan records that will provide confirmation that his or her entitlement under the plan has been settled. The summary for a terminated member should include, as a minimum, the following information:

- the employee's name or identifying employee or social insurance number;
- the plan membership entry date;
- the termination date;
- the vested status as of the termination date;
- evidence of the disclosure made to the member at termination;
- any options that were elected by the member; and
- the payment amount and date it was made, including any evidence that substantiates the payment information (e.g., bank statements, a receipt that shows the transferred amount and destination, the name of the financial institution, a receipt for cash payment, the date when the cheque was cleared, or any other forms of evidence).

The summary information that is retained must be sufficient to clearly identify the recipient of the payment, the exact amount that was paid to him or her, and date when the payment was made.

Similarly, when final payment has been made from the pension plan to a plan beneficiary, the administrator should retain at least a summary of the plan records relating to the beneficiary. The summary for the plan beneficiary should include, as a minimum, the following information:

- the plan beneficiary's name, employee number or social insurance number (as applicable);
- the plan membership entry date (as applicable)
- the retirement date (as applicable);
- the retired member's date of death;
- the date of death of the retired member's spouse or his or her designated beneficiary (as applicable);
- the pension amount that was paid to the retired member, his or her spouse, designated beneficiary or estate (as applicable), including any evidence that substantiates the payment information (e.g., payment stubs, T4A statements, or any other forms of evidence);
- the date(s) when payment(s) commenced and terminated, if periodic payments were made; and
- the date payment was made and the amount of the payment, if a lump-sum payment was made.

The summary information that is retained must be sufficient to clearly identify the recipient of the payment(s), the exact amount(s) paid to him or her, and the dates when the payment(s) commenced and terminated.

It is important for the administrator to retain the records pertaining to individual members (or at least the summary of their records), because it is not uncommon for former members of the plan to come forward at the time of their retirement (which may be long after their termination) to make claims for payment of their pension entitlements. After the death of a former or retired member, such a claim may be made by the former or retired member's

beneficiaries or estate. Therefore, it is important for the administrator to have sufficient documentation to be able to verify the payment status of former and retired members' entitlements, in order to avoid duplication of the payment.

In addition, in situations where a member's entitlement to a stated amount of pension benefit is challenged, the administrator may be required to provide historical information in order to verify benefit calculations. This could include any information relevant to the benefit calculation (e.g., a member's period(s) of employment service, plan membership and/or union membership, employment earnings, pension plan contributions, plan provisions or any other documents that applied during the member's period of plan membership).

In cases where it is optional for an employee to join the plan, the administrator should retain a copy of the election form or notice that was signed by the employee, as it provides evidence of his or her decision to join or not to join the plan. The administrator should also retain a copy of the employee's plan enrolment form as evidence of the employee's plan entry date. (This is particularly important in cases where the employee joins the plan some time after he or she first became eligible to join under an optional membership arrangement.)

The administrator should consider communicating with members on an ongoing basis, to remind them of their obligations to notify the administrator whenever there is a change in their spousal relationship, beneficiary designation or mailing address. Such reminders can be built into the members' annual statements of benefits and termination statements.

By educating members of their obligations regarding their entitlements under the plan, the administrator may be able to avoid the delays and costs associated with finding missing former members and dealing with conflicting spousal or beneficiary information after a member's death. The administrator may also wish to consider communicating with other plan beneficiaries about their obligations regarding their entitlements under the plan.

In order to have an effective communication process between the administrator and plan beneficiaries, it is important for individuals to be able to easily update their personal and plan-related information. For example, a sponsoring employer's website may be used as one of the resources to serve this purpose (i.e., provided that personal information can be entered under a secured site).

### **2.3 All Other Plan Records that Pertain to the Day-to-Day Operation of the Pension Plan and Pension Fund**

Plan records that fall under this category generally tend to be plan-specific (e.g., minutes of board meetings, investment manager's reports, etc.) and do not have to be filed with FSCO. The administrator should review and identify plan records that may fall under this category and make a decision about the retention period for these records. When deciding on the retention period, the administrator should consider, as part of its decision making process, whether the records will be required for purposes of determining pension entitlements and for making regulatory submissions.

### **3. Electronic Records**

FSCO recognizes that it may not be practical, due to storage limitations, to retain all plan records in paper format. All three categories of records mentioned above may be stored and retained electronically, provided that they meet certain legal requirements as explained below. Electronic records encompass any documents or data that are stored and retained on a computer or any other electronic equipment (e.g., word processing applications, databases, spreadsheets, electronic mail, multimedia, web pages from the Intranet/Internet, etc.). When the records management and retention policy is being developed, the administrator should ensure that electronic records are treated with equal importance as paper records.

Plan records in category (a) (i.e., records that pertain to legislated requirements) may be stored electronically, provided that imaged documents can be certified as true copies of the original paper documents. Imaged documents should be reliable, authentic and have sufficient integrity to be legally admissible in court. For information on the validity and legality of electronic records in court, refer to the [Evidence Act](#) ([www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)) and the

[Canada Evidence Act \(www.justice.gc.ca\)](http://www.justice.gc.ca). The administrator may also wish to refer to the national standard that is published by the Canadian General Standards Board, entitled Electronic Records as Documentary Evidence (CAN/CGSB-72.34-2005) ([www.tpsgc-pwgsc.gc.ca/cgsb/](http://www.tpsgc-pwgsc.gc.ca/cgsb/)).

Plan records in category (b) (i.e., records that pertain to individual plan beneficiaries and payment of their entitlements) may also be stored electronically as long as the administrator is able to reproduce or generate the information that is provided to plan beneficiaries (including any responses). For additional information, refer to FSCO policy [A300-806 \(Electronic Communications Between Plan Administrators and Plan Beneficiaries\)](#) and the Canadian Association of Pension Supervisory Authorities [Guideline No.2 \(Electronic Communication in the Pension Industry\)](#) ([www.capsa-acor.org/](http://www.capsa-acor.org/)).

If the administrator decides to manage and retain records electronically, the administrator must ensure that adequate backup systems exist. The administrator must also ensure that electronic records will always be accessible upon request by regulatory bodies or plan beneficiaries, despite future changes in technology.

#### **4. Retention of Plan Records After the Wind Up of the Pension Plan**

In the event of a full wind up of the pension plan, the pension fund of the pension plan will continue to be subject to the PBA and Regulation until such time as all assets of the pension fund have been disbursed in accordance with section 76 of the PBA. However, the pension plan may also remain subject to the PBA and Regulation in cases where the administrator's obligations to those who are affected by the wind up have not been satisfied due to errors in the wind up report (e.g., missing members, incorrect calculations, etc.). Therefore, the administrator may remain responsible for the records long after the wind up date of the pension plan.

#### **5. Importance of Appropriate Records Management and Retention Practices**

Current and historic plan records are often required for purposes of determining a member's pension entitlement and for regulatory filing and reporting. For example:

- As the primary source of information about the pension plan, the administrator is responsible for answering or obtaining answers to plan-related questions from plan beneficiaries and any other parties with respect to their interests in the pension plan. Members rely on the information that is provided by the administrator when making decisions about their entitlements.
- It is essential for the administrator to maintain accurate and complete plan records, to ensure that correct payments are made to those who are entitled to them.
- In situations where an individual's entitlement to a stated amount of pension benefit is challenged, the administrator may be required to provide historical information in order to verify the benefit calculations.
- In situations where a former member of the plan claims that he or she did not receive his or her pension entitlement, the administrator may be required to provide proof of payment.
- Certain applications that must be filed with the Superintendent of Financial Services (Superintendent) require the filing of plan documents from the inception of the pension plan (and relevant documents from any prior plans, if applicable). These documents may be required in support of the applicant's assertion that the application satisfies the requirements of the PBA and Regulation.
- Accurate and complete records are a necessary source of information for regulatory filings (e.g., actuarial valuation reports, annual information returns, financial statements, etc.).

- The administrator may be responsible for reproducing excerpts from old plan documents in disclosure notices that are required to be distributed to plan beneficiaries (e.g., proof of surplus ownership for surplus sharing agreement notices, etc.).

Inadequate records management and retention practices may lead to incomplete, inaccurate and therefore unreliable plan records, which may result in additional costs and delays for the plan sponsor and plan beneficiaries. In addition, recreating records from other sources is difficult, time consuming and sometimes impossible. If information that is required to be filed in support of an application or to meet compliance requirements is missing, the Superintendent may not be able to approve or consent to the application.

Appropriate records management and retention practices are therefore essential for meeting the administrator's standard of care and other obligations to plan beneficiaries, and for protecting the integrity and accuracy of the information that is used in the administration of the pension plan and pension fund. These practices may also contribute towards operating efficiencies and reduce litigation risks.

## **6. Developing a Written Policy on Records Management and Retention**

Plan records may be maintained by the administrator, by an external third-party service provider, or a combination of both. Plan records must be maintained in order for the administrator to fulfil various obligations with respect to the pension plan and pension fund. Therefore, FSCO recommends that the administrator develop a formal and comprehensive written records management and retention policy that will encourage consistent standards and contribute towards efficient management and control of the records. The development of a such a policy is also recommended by the Canadian Association of Pension Supervisory Authorities under [Guideline No. 3 \(Guidelines for Capital Accumulation Plans\)](#) and [Guideline No. 4 \(Pension Plan Governance Guidelines and Self-Assessment Questionnaire\)](#) ([www.capsa-acor.org/](http://www.capsa-acor.org/)).

FSCO recognizes that records management and retention policies will vary from plan to plan, depending on the complexity of each pension plan. The administrator should determine the policy's content, based on what is most appropriate for the pension plan. However, as a minimum, the following items should be considered and addressed in the policy:

- the types of documents that must be retained and their retention period;
- where the documents will be stored;
- the form in which the documents will be stored;
- how the documents can be accessed;
- how private and confidential documents will be treated;
- the details of any delegations related to management of the documents;
- the individuals (or positions) that are responsible for managing the documents;
- the individuals who may access the documents;
- training requirements for those who are responsible for the documents;
- contractual agreements with service provider(s);
- whether there will be an audit of record keeping processes;
- the process for maintaining a back-up of the records;
- the process for monitoring the documents;
- the process for notifying members of the prudence of retaining their individual plan records; and
- the process for disposing of the documents at the end of their retention period (including the process for the proper disposal of personal and confidential records).

The administrator should monitor how well the plan records are being managed and the accuracy of those records. The administrator must be satisfied that those who are responsible for the plan records are complying with the policy.

## **7. Transferring the Administrator's Record Keeping Responsibilities to Other Parties**

As described below, there may be circumstances where the administrator's responsibilities may be transferred to a different person or entity.

### **7.1 Sale of the Employer's Business**

In the event that the employer's business is sold, the administrator of the seller's plan may remain responsible for the plan records with respect to benefits that have accrued up to the date of the sale unless this administrator can demonstrate that the responsibility has been transferred to the administrator of the purchaser's plan. The purchase and sale agreement should clearly identify the entity (or entities) that will be responsible for the administration of both accrued and future pension entitlements and the plan records related to those entitlements. Specifically, where the purchaser assumes responsibility for the accrued benefits under the seller's plan, the purchase and sale agreement should stipulate that the seller must provide the purchaser with general plan records from the inception of the plan to the date of sale, along with records that pertain to current and former members of the seller's plan. The administrator of the purchaser's plan must have access to those records in order to satisfy, for example, section 45(1)3 of the Regulation which requires the administrator to provide the provisions of any previous plan to those who are entitled to view the plan documents.

### **7.2 Insurance Company as Administrator**

Section 8(1)(d) of the PBA specifies that in order for an insurance company to be the named administrator of a pension plan, all pension benefits must be guaranteed by the insurance company. In situations where an insurance company is the administrator, the insurance company would be responsible for the plan records.

### **7.3 Insolvency of a Plan Sponsor**

In the event that the plan sponsor becomes insolvent, the entity that is acting as the administrator would become responsible for the plan records.

Insolvency can cover a broad range of situations from creditor protection under the Companies' Creditors Arrangement Act to bankruptcy under the Bankruptcy and Insolvency Act. If the employer is the administrator and has not been relieved of administrative functions, the employer (as administrator) remains responsible for the management and retention of the records. If a new administrator is appointed by the Superintendent, the appointed administrator must take over this responsibility. There is no distinction in the PBA between the "administrator" and the "appointed administrator". Consequently, all administrators are held to the same standard of care under section 22 of the PBA, and must administer the pension plan and pension fund in accordance with section 19 of the PBA.

FSCO recognizes the special challenges faced by appointed administrators, especially in cases where they take over pension plans with missing records. However, if an individual files a claim for an entitlement under the plan, the appointed administrator would be required to review and investigate this individual's claim, as would be required of the previous administrator. The appointed administrator may have to take extra steps to verify and locate plan records. Therefore, the response time to plan beneficiaries may be slower than under normal circumstances.

The appointed administrator may access plan documents that are filed with FSCO by making a written request under section 30 of the PBA.

## **8. Other Legislation Applicable to Retention of Records Under a Pension Plan**

Other legislation that may be applicable to retention of records by a pension plan may also specify retention periods for employee records. They include, but are not limited to, 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. Some legislation may permit or require

the destruction of records after a specified period of time. However, even though other legislation may not require the retention of plan records, it does not mean it overrules the administrator's obligations under the PBA and Regulation, as these records are required to ensure proper administration of the plan. The administrator may be asked at any time to verify whether pension benefits were paid to plan beneficiaries in accordance with terms of the plan and the requirements of the PBA and Regulation.

## **9. Responsibilities of Other Pension Stakeholders**

### **9.1 External Third-Party Service Provider(s) and Employee(s) of the Administrator**

The administrator may delegate responsibility for the management of plan records to its employee(s) or to one or more external third-party service provider(s) (e.g., the custodian of the pension fund, a consulting firm, a company specializing in third-party administration, etc.). However, the administrator must continue to supervise the plan records management activities of its employee(s) and its service provider(s), and be satisfied that records are kept in compliance with the standards set out by the administrator. The administrator remains ultimately responsible for plan records and accountable for any plan-related issues that may arise in relation to those records.

A copy of the administrator's records management and retention policy should be provided to the service provider(s). If a service provider has its own policy on the management and retention of plan records, and the administrator is satisfied that the policy meets legislated and plan-specific requirements, the administrator may rely on the service provider's policy. The administrator must ensure that the agreement or contract between the administrator and the service provider addresses the items in the records management and retention policy, as well as the treatment of all records (e.g., paper, electronic, etc.) during the period the services are provided and at the termination of the contract (e.g., returning records to the administrator or transferring records directly to the successor service provider, etc.).

If records are maintained in electronic form by the service provider, the agreement or contract should specify the administrator's ability to obtain licence rights to the service provider's technology. If the service provider is unwilling to share technology rights, the service provider must find a way of returning the records to the administrator in a usable format. The original signed copies of plan documents that create and support the pension plan and pension fund (e.g., plan texts, amendments, trust agreements, etc.) must always be returned to the administrator.

At the termination of the contract, the service provider must not destroy the records that it managed and retained on behalf of the administrator. Records must be transferred to the administrator or to another entity as specified in the agreement or contract. The service provider will be held responsible for the records that it controls and manages on behalf of the administrator. The standard of care that applies to the administrator under section 22 of the PBA also applies to the service provider.

### **9.2 Plan Beneficiaries**

Plan beneficiaries are responsible for keeping plan records that they receive from the administrator (e.g., pension statements, notices, member booklets, etc.) They are also responsible for reviewing the pension statements that they receive from the administrator (e.g., annual statement of benefits, termination statements, etc.) and notifying the administrator if any information appears incorrect on their statements.

It is to the benefit of plan beneficiaries to keep records related to the pension plan as proof of their entitlement to pension benefits (especially in cases where plan beneficiaries terminate their employment or plan membership prior to their retirement date with a deferred pension that is payable to them at a later date). It is also important for plan beneficiaries to keep the administrator up-to-date about any change(s) to their personal situation (e.g., change in mailing address, marital status, designated beneficiary, etc.).

In cases where the administrator is unable to verify an individual's membership in the company's pension plan, the individual has to provide the administrator with evidence of his or her employment and/or plan membership. The type of evidence that is required may vary depending on whether the pension plan provides mandatory or optional membership. For example, if the terms of the plan required all employees to join the plan from their date of hire, the individual may only be required to provide proof that he or she was a former employee of the company (e.g., Record of Employment statements, payroll stubs, T4 statements, etc.). However, if the terms of the plan gave employees the option of joining the plan, the individual may need to provide proof of plan membership (e.g., annual pension statements, plan enrolment or termination form, T4 statements, etc.). Once the individual's employment and/or plan membership has been established, the administrator will be required to verify whether or not this individual has been paid his or her entitlement under the plan. The administrator must be able to provide evidence in support of the administrator's actions.

An individual may be denied entitlement if he or she does not have any records, or is unable to obtain records from any other sources (e.g., Canada Revenue Agency) that may provide proof of his or her employment in the company or membership in the pension plan.

It should be noted that FSCO does not maintain records about individual plan members.

### **9.3 Employers**

In cases where the employer is not the administrator (e.g., in multi-employer pension plans), section 23 of the PBA requires the employer to provide the administrator with any information that the administrator needs to comply with the PBA, Regulation and the terms of the plan. The employer is responsible for verifying the accuracy of the information that it provides the administrator and notifying the administrator of any updates to an individual's records that may affect his or her entitlements under the pension plan (e.g., date of hire, date of birth, change in salary, etc.).

The administrator is responsible for the records it receives from the employer(s). The administrator must be satisfied of the accuracy of the information provided by the employer(s) at the time when the information is received and at the time when payments are processed. The administrator must resolve any inconsistencies in the information that it has received from the employer(s).

## APPENDIX A

### Frequently Asked Questions

#### *Questions from Plan Administrators*

**Q. My employee has retired and is receiving a pension from the plan. How long do I have to keep this individual's plan records?**

A. Plan records pertaining to an individual plan member should be retained as long as the member and his or her beneficiaries or estate have an entitlement under the pension plan. Upon the death of the plan member and his or her entitled beneficiaries, the administrator should retain a summary of their plan records which should include, as a minimum, the following information:

- the plan beneficiary's name, employee number or social insurance number (as applicable);
- the plan membership entry date (as applicable);
- the retirement date (as applicable);
- the retired member's date of death;
- the date of death of the retired member's spouse or his or her designated beneficiary (as applicable);
- the pension amount that was paid to the retired member, his or her spouse, designated beneficiary or estate (as applicable), including any evidence that substantiates the payment information (e.g., payment stubs, T4A statements, or any other forms of evidence);
- the date(s) when payment(s) commenced and terminated, if periodic payments were made; and
- the date payment was made and the amount of the payment, if a lump-sum payment was made.

The summary information that is retained must be sufficient to clearly identify the recipient of the payment(s), the exact amount(s) paid to him or her, and the dates when the payment(s) commenced and terminated.

**Q. My employee terminated his or her employment and his or her pension entitlement was transferred out of the plan. Do I still have to maintain the plan records for this individual?**

A. All plan records pertaining to this individual do not necessarily have to be kept. However, it is important for the administrator to retain at least a summary of the individual's plan records that will provide confirmation of his or her payment status. The individual's records should include, as a minimum, the following information:

- the employee's name or identifying employee or social insurance number;
- the plan membership entry date;
- the termination date;
- the vested status as of the termination date;
- evidence of the disclosure made to the member at termination;
- any options that were elected by the member; and
- the payment amount and date it was made, including any evidence that substantiates the payment information (e.g., bank statements, a receipt that shows the transferred amount and destination, the name of the financial institution, a receipt for cash payment, the date when the cheque was cleared, or any other forms of evidence).

The summary information that is retained must be sufficient to clearly identify the recipient of the payment, the exact amount that was paid to him or her, and date when the payment was made.

**Q. An individual has come forward claiming that he or she was a former employee of the company over 30 years ago and is certain that he or she has an unpaid entitlement under the company's pension plan. What is the administrator's obligation to this individual?**

A. If the administrator is unable to verify the individual's membership under the company's pension plan, the individual has to provide the administrator with evidence of his or her employment and/or plan membership. The type of evidence that is required may vary depending on whether the plan provides mandatory or optional membership. For example, if the terms of the plan required all employees to join the plan from their date of hire, the individual may only be required to provide proof that he or she was a former employee of the company. However, if the terms of the plan gave employees the option of joining the plan, the individual may need to provide proof of plan membership.

Once the individual's employment and/or plan membership has been established, the onus is on the administrator to verify whether this individual had an entitlement under the terms of the plan and whether such entitlement has been paid. The administrator must be able to provide evidence in support of its actions.

**Q. If plan records are missing, what are some of the resources available to plan administrators?**

A. The administrator may request a plan viewing at FSCO's premises to view current and historic plan documents that are in FSCO's possession. Please note, however, that FSCO does not maintain records about individual plan members.

If annuities have been purchased for employees or their beneficiaries, the OmbudService for Life & Health Insurance (OLHI) may be able to direct the administrator (or the owner of the annuity) to the insurance company that holds the purchased annuity (contact OLHI toll-free at 1-800-268-8099 or visit OLHI's website at [www.olhi.ca](http://www.olhi.ca)).

**Q. A company has closed down its business and wound up its pension plan. When do the administrator's responsibilities end with respect to the plan records?**

A. When a pension plan is terminated, the pension fund of the pension plan will continue to be subject to the PBA and Regulation until such time as all pension entitlements which are owed to the plan beneficiaries have been paid in full and no assets remain in the pension fund. In order to be discharged of further obligations with respect to the pension plan, the administrator must be able to demonstrate that the payments from the pension fund have been made in accordance with terms of the plan and the requirements of the PBA and Regulation. This means that the administrator may remain responsible for the plan records long after the wind up date of the plan. Therefore, it is important for the administrator to make arrangements with an external service provider (e.g., the custodian of the pension fund, an insurer, a consulting firm, a company specializing in third-party administration, etc.) to ensure that members will continue to have a contact person for the settlement of their pension entitlements.

**Q. An individual who has a certificate showing that he or she is a deferred vested member of a pension plan has come forward several years after the plan was wound up. This individual is claiming that he or she did not receive his or her entitlement under the plan. What is the administrator's obligation to this individual?**

A. The administrator must be able to confirm whether or not this individual was included in the wind up and confirm if payment has been made to this individual. If payment has not been made, the administrator must take appropriate steps to ensure that this individual receives his or her entitlement under the plan. The termination of the plan does not relieve the administrator of the obligations in respect of members who did not receive their entitlements.

***Questions from Plan Members***

**Q. What are my responsibilities for record keeping? What records should I keep?**

A. It is to your benefit to keep records that show you are a member of the pension plan, and that you have an entitlement under the plan. As a minimum, you should keep the following records (at least until such time you are ready to start the payment of your pension entitlement):

- plan enrolment form (if completed)
- annual pension statements
- termination statement
- certificate of a deferred vested entitlement (if issued by the plan)

You are also responsible for reviewing the content of any pension statements that you receive from the administrator and notifying the administrator if any information appears incorrect on your statements.

**Q. I was an employee of company ABC over 30 years ago and was a member of the company's pension plan. When I left the company, I am certain that I did not receive my pension entitlement. What should I do?**

A. You should first check your records and find any documents that indicate you were a member of the pension plan or an employee of the company (e.g., plan enrolment or plan termination forms, annual statements of pension benefits, T4 statements, Record of Employment statements, etc.). Once you have this information, you should contact the human resources department of the company and ask to speak with the individual who is responsible for the administration of the pension plan. You may need to write to the individual and provide him or her with proof of your plan membership and/or proof that you were a former employee of the company.

If the company was not able to help you, or if you are not satisfied with the company's response, you may write to FSCO for a review of your case at:

Pension Plans Branch  
Financial Services Commission of Ontario  
5160 Yonge Street  
Box 85, 4<sup>th</sup> Floor  
Toronto ON M2N 6L9

Please include any correspondence between you and the administrator of the pension plan. You should also include written authorization that allows FSCO staff to contact the administrator on your behalf and forward to the administrator copies of any correspondence you have provided to FSCO.

**Q. I am a deferred vested member of company ABC. I recently found out that the pension plan was wound up and the company closed its operations. I did not receive my pension entitlement. What should I do?**

A. You may write to FSCO for assistance at:

Pension Plans Branch  
Financial Services Commission of Ontario  
5160 Yonge Street  
Box 85, 4<sup>th</sup> Floor  
Toronto ON M2N 6L9

Please note that FSCO does not maintain records about individual plan members. Therefore, you will need to provide FSCO with copies of any relevant documents that indicate you were a member of the pension plan, along

with written authorization that allows FSCO staff to contact your former employer or any other person on your behalf, and forward that person copies of any correspondence you have provided to FSCO. FSCO will assist you in determining who to contact for the payment of your pension entitlement.