FTR Now

Waiving the Biennial Statement Requirement for Missing Members: FSCO's New Policy

Date: November 16, 2017

On September 30, 2017, the Financial Services Commission of Ontario (FSCO) published a new policy outlining the procedures administrators must follow to obtain a waiver of the requirement to send biennial statements to missing former and retired members. Find out more in this *FTR Now*.

Waiver Application for Missing Members

As reported in our prior publication, *Hello 2017! New for Pension Plan Administration in Ontario*, pension plans are now required to send biennial statements to former and retired members. The first set of biennial statements had to be distributed no later than July 1, 2017.

This new requirement raised the question of whether administrators needed to take steps to prepare and send statements to former and retired members who are known to be missing. In response, the *Pension Benefits Act* (PBA) was amended effective May 17, 2017 to permit the Superintendent of Financial Services to waive the requirement to send statements to missing former and retired members. On September 30, 2017, FSCO published a policy setting out its expectations for pension plan administrators seeking a waiver, *Waiver of Biennial Statements for Missing Former and Retired Members* (Policy).

What Does the Policy Require?

Under the Policy, FSCO will consider members to be missing when the administrator is reasonably certain the member's last known contact information is not correct, and an individual search for the member did not result in new information being found. The waiver application must include:

- the list of missing members and their last-known addresses
- a description of the search process conducted for each member and the date on which it was conducted
- a certification of compliance.

A failure by a member to respond to a communication from the administrator will not itself be considered by FSCO to be proof that the member is missing. In addition, FSCO has clarified that while a new waiver request must be sent for each statement period, once a member is determined to be missing, the administrator is not expected to conduct an additional search each time a waiver request is made.

Takeaways for Administrators

While there is no deadline in the PBA or the Policy for making the request, if an administrator did not send a biennial statement to former and retired missing members by July 1, 2017, FSCO has indicated that it will expect a waiver request be submitted. For administrators who had applied for a waiver before the Policy was released, there is a possibility that they will need to reapply for a waiver should the initial application not comply with the Policy.

FSCO has also issued another policy effective September 30, 2017 that is intended to provide plan administrators with some guidance about their obligations with respect to managing missing members, including conducting searches for them.

Should you have any questions or require further information, please contact a member of our Pension, Benefits and Executive Compensation Group.

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