



Submission to the Financial Services Regulatory Authority of Ontario on the draft guidance for the Issue of Missing Pension Members

Canadian Life and Health Insurance Association
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The Canadian Life and Health Insurance Association (CLHIA) is a voluntary association with member companies which account for 99 per cent of Canada's life and health insurance business. The life and health insurance industry is a significant economic and social contributor in Canada.



\$2.8 billion in provincial tax contributions

- \$210 million in corporate income tax
- \$351 million in payroll and other taxes
- \$592 million in premium tax
- \$1.64 billion in retail sales tax collected



Investing in Ontario

- \$337 billion in total invested assets
- 98% held in long-term investments

The industry also plays a key role in providing a social safety net to Ontarians.



Protecting 11 million Ontarians

- 10.2 million with drug, dental and other health benefits
- 8.4 million with life insurance averaging \$234,000 per insured
- 4.9 million with disability income protection



\$46.8 billion in payments to Ontarians

- \$25.7 billion in annuities
- \$16 billion in health and disability claims
- \$5.1 billion in life insurance claims paid

Our industry is pleased to provide its comments to the Financial Services Regulatory Authority (FSRA) on two guidance documents about principles and practices for dealing with missing pension plan members and the biennial requirement to provide statements of entitlements to such members.

It is important to note that the task of locating plan members and beneficiaries has often placed a significant burden on pension plan administrators. While some argue that plan administrators' failure to maintain adequate records is the issue, the situation is often complicated by factors beyond their control.

For instance, there can be a significant period of time between when an employee leaves their employment and when they become eligible to start receiving pension payments. This creates an increased likelihood of the member's contact information becoming out of date. In a plan wind-up situation, the challenge is intensified if the administrator is unable to locate all members or former members of the pension plan who are entitled to benefits from the pension fund. In most jurisdictions, the administrator must allow the unlocatable members' entitlements to remain in the pension fund until the member is located. As a result, the administrator cannot complete the plan wind up until pension plan assets have been fully disbursed. Plan administrators maintain their responsibilities and fiduciary duties until assets are distributed to all former plan members and/or their beneficiaries before a plan can be fully wound up.

In addition, the reliance on electronic communications may compound this challenge. For instance, the use of a work-based email address, rather than a personal address, virtually guarantees that at least one means of contact will be broken upon a change of employment. Further, the sense of connectedness that arose from long employment relationships and lives spent in small communities in years gone by has given way to less communal connectivity and a greater awareness of and respect for personal privacy, with a result that once common information search efforts may no longer be legally possible or appropriate.

Our industry greatly appreciates the opportunity to provide input on the two guidance documents and offer a few comments for your consideration below.

Principles and Practices Regarding Missing Members

Section 3.4.1 sets out appropriate communications and engagement strategies for plan administrators, including additional emphasis on termination activities. Putting additional emphasis on termination activities creates additional burden for companies. It is important to note that there are instances in which a plan member is not missing but may not be responding to correspondence. We believe that terminated plan members share some responsibility in ensuring their contact information is accurate and are seeking guidance on how to manage these situations.

With respect to subsection 3.4.2 in the draft guidance, it is suggested that administrators seek plan member consent to authorize release of information to the plan administrator to help locate the plan member should they become “missing” in the future. As you may be aware, the Ontario government recently launched consultations to strengthen privacy protections for personal data within the province. This includes provisions for consent and allowing individuals to revoke consent at any time. We raise this only for awareness to ensure that the draft guideline on principles and practices regarding missing members is consistent and does not contradict any changes brought forward by the Ontario government.

Waiver of Biennial Statements for Missing Former and Retired Members

CLHIA members are supportive of the regulator waiving the requirement of plan administrators to provide biennial statements to former and retired members where the plan administrator is unable to locate the member after making reasonable efforts to do so. However, we understand that, as written, the waiver would only apply for a period of two years. We believe that requiring the plan administrator to submit a waiver application every two years in the case where a waiver has already been granted is cumbersome, will provide little additional protection to plan members, and does not align with the province’s stated goal of reducing red tape. It is also unclear what the intended purpose of the information would be. We believe that once a plan administrator has already received a waiver for a missing plan member, the waiver remains in effect unless the waiver has been revoked or the administrator knows that circumstances with respect to a missing plan member may have changed, such that it would be reasonable to believe that such a plan member would revoke their waiver.

Further to this, section 2.6 of the guidance allows for the plan administrators to not have to obtain another waiver where the plan administrator has already received one under the province’s *Pension Benefits Act* pursuant to the Financial Services Commission of Ontario’s policy in effect

before December 10, 2019. We ask that this section be clarified and specify the relevant time period to which this section applies.

Section 4.1.1 provides the waiver application for the plan administrator. The requirement is for the waiver application to be sent to the attention of the pension officer. This would involve requiring companies to know who the pension officer is associated with each specific plan. In some cases, this would require insurance companies to develop and communicate specific instructions for each client. In addition, this requirement does not account for plans where a retired member was employed in Ontario but is a member of a plan registered outside of Ontario. We would recommend maintaining the previous requirements, which would allow a waiver application to be sent to FSRA's general inbox.

Within the waiver application, the plan administrator must provide the account balance or lump sum of a defined contribution plan (section 3, bullet point 1). It should be noted that this information was not previously required under former guidance and would therefore require CLHIA members to update their templates in order to include this requirement going forward. We ask that FSRA provide CLHIA members with an implementation period in order to allow them adequate time to update their templates.

In section 4.2.2, we do not believe that there is a benefit to allowing anyone other than plan administrators to submit a waiver application. Given that plan administrators are ultimately responsible for statements made in the application, they would still need to review and approve waiver applications. Adding a secondary process would negate this and could create confusion and accountability issues for the information provided.

For section 4.1.5 where it sets out that plan administrators must notify FSRA promptly when current contact information is received for someone for whom a waiver had previously been obtained, we believe that this creates an additional unnecessary step. We believe it is sufficient to re-commence sending statements to newly located plan members rather than requiring the additional step of notifying FSRA.

Finally, section 4.2.2 requires that the applicant must keep a record of the application and any supporting documentation indefinitely. This exceeds records retention requirements and would create additional burden for the applicant.

Reducing regulatory burden for plan administrators

As noted in our opening comments, the task of locating members and beneficiaries has often placed a significant burden on pension plan administrators. We believe that legislative and regulatory requirements need to be harmonized across all Canadian jurisdictions in this area and that mechanisms to share information across entities should be considered.

For instance, it is our understanding that the Annual Information Return (AIR), that is required of CLHIA members to be filed with the Canada Revenue Agency and FSRA, now requires that plan

administrators report on the missing DC members over age 100, missing DC members at or above earliest retirement age, missing DC members with “small benefits”, new missing DC members identified this reporting period number of missing members and total estimated value of benefits for those missing members. While the request for this information is not mandatory, it is recommended that CLHIA members report this information annually. We believe that this creates additional administrative burden for plan administrators and duplicates the request for information in the waiver applications.

Thank you for your consideration of our comments noted above. We would be pleased to expand on these concerns should you wish to discuss any of the issues identified in our comments. Please feel free to contact me at 416-359-2047 or by email at nsimon@clhia.ca.