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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

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Pension Policy Branch
Ministry of Finance
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To Whom It May Concern:

INTRODUCTION

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

ACPM supports the government's goal to modernize the pension sector and streamline pension plan administration. We are pleased to provide our comments with respect to the proposed amendments to the *Pension Benefits Act* (Ontario) to create a framework that would permit pension plan administrators to use electronic communications as the default method for sending documents to their membership. We commend the government for taking action on this issue.

We offer the following comments and suggested edits that we believe will both advance the government's digital-first strategy, while improving communications to plan members, former members, retired members and other persons entitled to benefits.

RETIRED MEMBERS

We support the inclusion of a mechanism providing for deemed consent to the electronic delivery of documents. However, based on the current proposal, the default method of electronic communication would only apply to active and former members of a pension plan, should the administrator of a plan satisfy the notice requirements in subsection 30.1(3). ACPM supports the default method for active and former members, however, we believe that the default method should extend to retirees as well. The proposal as it stands, would create additional administrative burden on plan administrators to seek out active consent from retirees, even if deemed consent has already been established. This process fails to recognize that many members will already be familiar and prefer to receive their pension documents electronically. Therefore it creates an unnecessary duplicate step.

ACPM acknowledges that over time some retirees may prefer not to receive electronic communication over the course of their retirement. It is important to recognize that many plans have systems in place to maintain contact with retirees on a consistent basis (retirement option documents, biennial statements, annual pension confirmation letters). Administrators can utilize such processes to provide an option to retirees to opt-out of electronic communication, thereby mitigating risk associated with deemed consent for electronic communication. That said, as each plan would have different methods of communicating with their retired members, it should be left to individual administrators to determine the best ways to provide that option to retirees.

To ensure consistency, we believe that the default method should also apply to “other persons entitled to benefits” so long as the notice contained in subsection 30.1(3) is sent to that person.

DOCUMENTS

The proposed language in subsection 30.1(1) is ambiguous as to the scope of the documents that may be sent electronically. Is it the intent that all required documents under the PBA will be permitted to be sent electronically, including notices of amendment, the annual statements in subsections 27(1) and 27(2); the termination options in subsection 28(1), and electronic beneficiary forms in section 30.1.1?

We recommend modifying the language so that it is clear it applies only to required documents under the PBA, and not just any communication between members and a plan administrator. Without this clarification, it may be impossible for administrators to communicate with their members via email for non-prescribed purposes. For example, often members want plan administrators to obtain non-PBA required information such as pension estimates, via email. Plan administrators may also want to send an email to their members advising them of the availability of a PBA-required document into their secure portal for the member’s review.

WRITTEN NOTICE TO MEMBERS

The current wording in subsection 30.1(3) suggests that unless the administrator has an email address on file for a member, it wouldn’t be possible to receive deemed consent. Given that the written notice is sent by postal service rather than via email, it is not necessary at that stage for the administrator to have an email address on file. We recommend amending the subsection to remove paragraph 30.1(3)(b). The administrator would, of course, retain the opportunity to collect email addresses that are not already on file.

PROOF OF RECEIPT OF ELECTRONIC DOCUMENTS

We are concerned about the distinction in requirements as to when a document would be deemed to be given to a member. The proposed paragraph 112(1)(d) provides that, in order for a document to be sufficiently given to a person in an electronic form other than email, the sender must be able to prove receipt. The requirement for proof of receipt is absent from the other forms of delivery in subsection 112(1). We can see no reason to treat documents that are delivered in a secure, alternative electronic form differently from those delivered by letter mail or email. Requiring such proof would pose a heavy, and perhaps impossible, burden on the administrator.

Further, the proposed wording in paragraph 112(1)(d) appears to conflict with paragraph 112(2)(b), under which receipt is deemed to take place on the first business day after the document was sent. We recommend removing the proof of receipt requirement.

We would also recommend revisiting the nature of the deemed receipt provision of s. 112(3). Given the mobility associated with accessing electronic communication as opposed to mail or courier, there should be very few occasions where someone cannot access an electronic communication because of the listed reasons. The plan administrator can only ensure it sends communications appropriately and what happens once sent (and deemed to be received) is beyond its control. Exceptions to the deemed receipt rules should be crafted narrowly and we suggest these provisions need to be better tailored to reflect the accessibility of electronic communications from many locations and environments.

METHOD OF ELECTRONIC COMMUNICATION

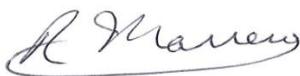
Proposed section 30.1(2) requires that electronic communication involving personal information be sent through an electronic information system which would require the recipient to identify him/herself prior to accessing the documents. This requirement would involve systems that are not available to many administrators in-house. If the only way to use electronic communication is through paying to use a system of a third party provider (or created at great expense in-house), there will be no cost savings to using electronic communications because of the significant start-up costs of creating the member-accessible sites, particularly for defined benefit plans.

This is less of a problem for defined contribution plans who may already be able to access statements via the DC provider's website, but not all DC plans are structured this way. We urge the government to consider permitting distribution via email with other safeguards, such as password protection and encryption, to prevent accidental disclosure. We observe that paper mail is frequently delivered to the wrong address (either by Canada Post or through third party administrator labelling errors), and some recipients might very well open that mail, either purposefully or accidentally. It seems counterproductive to make use of electronic communications more onerous than use of mail when the risks are arguably the same.

If this adjustment is not made, we are concerned that electronic communication may be off limits to many administrators or too costly!

We appreciate the opportunity to provide our comments and would be happy to discuss our comments or provide any further information that may be of assistance.

Sincerely,



Ric Marrero
Chief Executive Officer
ACPM