FSRA Proposes Interpretation Level Guidance On Pension Benefits Guarantee Fund Assessment Calculations And Deadlines

On February 14, 2022, the Financial Services Regulatory Authority of Ontario (FSRA) proposed guidance on:

- the acceptable valuation dates for actuarial valuation reports used to calculate a Pension Benefits Guarantee Fund (PBGF) assessment; and
- the deadlines for PBGF assessments and assessment certificates in the normal course and on wind up of a pension plan (the Guidance).

This will be an "Interpretation" level of guidance, which means it sets out FSRA's view of legislative and regulatory requirements and is an indication of its expectations around compliance for Ontario-registered pension plans.

Background context: PBGF

In 1980, the PBGF was introduced in Ontario. It is a special fund that was established by the Ontario government to cover pension benefits for certain defined benefit pension plans if they are wound up due to the employer being insolvent and there being a funding shortage. The PBGF is funded by certain employers who sponsor defined benefit pension plans and who qualify for this coverage. These employers are responsible for making yearly payments into the PBGF based on the pension plan's financial status and the number of Ontario plan beneficiaries who are part of the pension plan.

The specific rules governing the PBGF are prescribed in the Ontario Pension Benefits Act and its accompanying regulation R.R.O. 1990, Reg. 909: General (the Regulation).

The Guidance provides clarification with respect to how an administrator calculates the PBGF assessment and the deadline for making the required payment.

PBGF assessment – payment calculation

The PBGF is funded by certain employers sponsoring pension plans covered by the PBGF. Employers covered by the PBGF must pay an annual assessment to it. For the PBGF, FSRA has interpreted the word "annual" to mean the fiscal year of a pension plan. Section 37(4) of the Regulation requires the amount of the assessment to be based on a formula that references the number of Ontario plan beneficiaries at the end of the plan fiscal year immediately preceding the assessment date (i.e., nine months after the fiscal year end).

Section 37(7) of the Regulation requires a PBGF assessment to be calculated based on the last report filed or submitted on or before the assessment date. FSRA notes in the Guidance that some administrators have calculated the annual PBGF assessment on the basis of a report filed or submitted on or before the assessment date, but with a valuation date later than the fiscal year end immediately before the assessment date.

While this has been an acceptable practice in the past by FSCO and continued by FSRA, this is no longer the case. FSRA notes that "[a]llowing plans to obtain and rely on later valuations, in particular to reduce their assessment, is inconsistent with the need to ensure all PBGF eligible plans contribute fairly and equitably to the PBGF to better protect plan members."

Moving forward, for pension plan fiscal years ending on or after December 31, 2021, FSRA will require the PBGF annual assessment to be based on the information set out in the most current valuation report filed with FSRA that has a valuation date that is on or before the fiscal year end immediately preceding the assessment date.

PBGF assessment – payment deadline

The deadline for paying the PBGF assessment is the assessment date. Section 37(2) of the Regulation states the assessment date is nine months after the last day of each fiscal year of the pension plan. This deadline applies to pension plans that are ongoing or being wound up. As per section 37(14) of the Regulation, an administrator who fails to pay an amount due within the time provided is required to pay 120% of the amount to the PBGF, together with interest on the 120% calculated from the date the amount is due to the date of payment.

In addition to paying the PBGF assessment, administrators are also required to file a Form 2.2 – PBGF Assessment Certificate (PBGF Certificate) for every PBGF assessment payable. The employer must file the PBGF Certificate on or before the assessment date. Finally, FSRA notes that, for a pension plan that is winding up, the administrator is encouraged to file the PBGF Certificate for the final fiscal year of the plan that ends on the plan's wind up date, within six months after the wind up date.

The proposed Guidance came into effect on February 14, 2022. FSRA invites stakeholders and the public to submit feedback on the proposed Guidance until March 14, 2022.

by Andrea Boctor and Jonathan Wypych
Osler, Hoskin & Harcourt LLP