



SECTION:	Reimbursement of Employer Overpayment from a Continuing Pension Plan
INDEX NO.:	R350-103
TITLE:	Application for Reimbursement of Employer Overpayment from a Continuing Pension Plan - PBA s. 62.1
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	R350-102

This policy replaces R350-102 (Application for Refund of Employer Overpayment) as of the effective date of this policy.

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 governs.

*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. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Introduction

The purpose of this policy is to provide guidance to an employer, or in the case of a jointly sponsored pension plan or a multi-employer pension plan an administrator, applying for the reimbursement of an overpayment made to a continuing defined benefit pension plan or a continuing defined contribution pension plan in the two situations identified in section 62.1(1) of the PBA. This policy describes the procedures and documentation for filing an application with the Superintendent of Financial Services (Superintendent) for consent to the reimbursement from the pension fund under section 62.1(3) of the PBA. While an employer may be reimbursed for a payment described under section 62.1 of the PBA when the requirements of the legislation and this policy are satisfied, it should be noted that an employer may not be entitled to such a payment if the payment is prohibited under the documents that create and support the pension plan or the pension fund. Applicants should examine these documents before making the application.

Employer Overpayment

1. This policy applies to an application for consent to the reimbursement from the pension fund:
 - (1) where an employer pays an amount in respect of a pension plan that should have been paid out of the pension fund, or
 - (2) where an employer makes an overpayment into the pension fund.

In the context of this policy, for a defined benefit plan, “overpayment” generally means contributions that have been made in excess of the contributions required under the terms of the pension plan and set out in the actuarial report. For a defined contribution plan, “overpayment” means any contributions that have been made in excess of the amount set out in the terms of the plan.

2. This policy does not apply to:

(a) Payments of money to an employer if the payment is required to avoid revocation of the pension plan under the ITA. Such payments must comply with the requirements of subsections 47(15) and (16) of the Regulation. Applicants should refer to FSCO pension policy A400-500 (Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Canada Revenue Agency of Registration of a Pension Plan); or

(b) A wind up in whole or in part where an employer has contributed to fund a wind up deficiency and assets remain in the pension fund after all benefits have been settled.

Time Limit for Submitting the Application

3. The time limits for submitting an application for reimbursement of an overpayment are set out in section 62.1(4) of the PBA. The application must be made before the later of,

(a) 24 months after the date on which the employer made the payment described in paragraph 1 of this policy, and

(b) six months after the date on which the administrator, acting reasonably, becomes aware of the payment described in paragraph 1 of this policy.

4. If application is made under subsection 62.1(4)(b), the applicant must satisfy the Superintendent that it was reasonable that the administrator became aware of the overpayment when it did. In normal circumstances, it should not take an administrator longer than 24 months to become aware of the overpayment, as one would expect that such a payment would have come to the administrator’s attention before then as a result of its review of a number of documents that are required to be prepared by the administrator for the pension fund, including financial statements and, for a defined benefit plan, actuarial reports.

The Application for Reimbursement of Employer Overpayment

5. The format and content of the application should be consistent with Schedule I to this policy.

6. The onus is on the applicant to satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the applicable policies published by FSCO. It is the applicant’s responsibility to consider whether plan-specific circumstances require the inclusion of additional information or documentation supporting the application. For example, the applicant should address any specific plan provisions related to payment of expenses to the employer that may be relevant.

Filing the Application

7. The application should be sent to:

Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street
Box 85
Toronto ON M2N 6L9

If the application is delivered to FSCO, it should be delivered to the mailroom on the 16th floor at the above address.

8. Upon receipt, the application will be acknowledged.

Staff Review and Decision or Proposed Decision of the Superintendent

9. FSCO staff will review the application in accordance with the process and service targets described in FSCO pension policy P510-403 (Process for Reviewing Defined Benefit Pension Plan Applications and Service Targets), which also applies to defined contribution applications. If the application is complete and compliant, the Superintendent will serve a notice of intended decision (NOID) to consent to the application, together with written reasons for it, on the applicant. The Superintendent may require the applicant to transmit a copy of the NOID and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the NOID. For additional information please refer to FSCO pension policy P510-403.
10. If the application is incomplete and/or non-compliant at the conclusion of the review process, the Superintendent will serve a NOID to refuse the application, together with written reasons for it, on the applicant. The Superintendent may require the applicant to transmit a copy of the NOID and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the NOID.
11. Where the Superintendent requires that the applicant transmit a copy of the NOID to other persons or classes of persons, the applicant must advise the Superintendent as to the last date on which the applicant transmitted a copy of the NOID.
12. The NOID will state that the person on whom the NOID is served is entitled to a hearing by the Financial Services Tribunal (Tribunal) if the person delivers to the Tribunal, within thirty (30) days after service of the NOID, a notice in writing requiring a hearing. Information regarding the process and form to be used to request a hearing is available at, <http://www.fstontario.ca/english/forms/default.asp>
13. If no written notice requiring a hearing is received by the Tribunal within the requisite time period, the Superintendent will proceed to make the intended decision indicated in the NOID.

SCHEDULE I

FORMAT AND CONTENT OF AN APPLICATION TO THE SUPERINTENDENT FOR CONSENT TO A REIMBURSEMENT OF AN OVERPAYMENT UNDER SECTION 62.1 OF THE PBA

Date: *Enter the date of the application.*

**Employer/
Administrator:** *Provide the full legal name of the employer or administrator (in the case of a jointly sponsored pension plan or a multi-employer pension plan) making the application.*

Pension Plan: *Provide the full legal name of the pension plan and the registration number.*

Applicant: *Provide the name, title and business address of the person making the application. The applicant could be the employer or administrator (in the case of a jointly sponsored pension plan or a multi-employer pension plan) or an agent or representative of the employer or administrator authorized to make the application on their behalf. Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the applicant.*

Nature of the Application:

Provide a full description of what is being asked of the Superintendent with reference to specific section(s) of the PBA and Regulation pursuant to which the application is being made. For example:

Application for the Superintendent's consent pursuant to section 62.1 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended, to a payment of \$ (insert the amount as at the effective date of the reimbursement) representing an overpayment by the employer into the pension fund (or "an amount paid by the employer that should have been paid out of the pension fund") as at (insert the effective date(s) of the overpayment(s) into the pension fund), plus investment earnings thereon to the date of payment.

Background:

Provide a summary of how the overpayment occurred and any other information which will assist in understanding the application.

Sections 62.1(1) of the PBA - Requirements:

In the following paragraphs, the applicant must demonstrate to the Superintendent that the requirements of section 62.1(1) of the PBA have been satisfied.

(a) Amount and Proof of Payment

Indicate what documentary evidence of the payment, including amount(s) and date(s), is being provided in support of the application under section 62.1(1). This evidence could be in the form of:

- *for a defined benefit plan, confirmation from the actuary of the plan or excerpts from actuarial report(s) which indicate the amount of contributions that were required to be paid by the employer in the year the payment was made;*
- *for a defined contribution plan, confirmation from the administrator of the amount of contributions that were required to be paid by the employer in the year the payment was made;*

- *a letter or statement from the pension fund custodian indicating the amount of the employer payment that was actually remitted to the fund; or*
- *evidence that the employer has made payment in respect of the plan from a source other than the pension fund which should have been paid out of the pension fund.*

(b) Timing of Application

Indicate how the timing requirement set out in section 62.1(4) of the PBA has been satisfied. The application is required to be made before the later of 1) twenty-four months after the date on which the employer made the overpayment, and 2) six months after the date on which the administrator, acting reasonably, becomes aware of the overpayment. If the application is made six months after the date on which the administrator became aware of the overpayment, the applicant should provide support as to why it was reasonable that the administrator only became aware of the overpayment at that time.

Certification by the Plan Administrator:

The application must include, as an attachment, a completed certification in the form set out in Schedule II to this policy signed by the plan administrator or its agent. Among other things, the administrator is required to certify, that the pension plan and the documents that create and support the pension plan or the pension fund do not prohibit such a payment to the employer.

Signature by the Applicant:

The application must be signed by the applicant identified at the beginning of the application. Before the signature, the applicant must state that the application contains all the documents and information material to an application made in accordance with sections 62.1 of the PBA, and that the information contained in the application is true and accurate.

Attachments:

Provide an index of all attachments to the application. The attachments should be listed in an order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where an application is bound, the relevant tab numbers and their contents should also be included in the index.

SCHEDULE II

ADMINISTRATOR'S CERTIFICATION RESPECTING AN APPLICATION TO THE SUPERINTENDENT FOR CONSENT TO A REIMBURSEMENT OF AN OVERPAYMENT UNDER SECTION 62.1 OF THE PBA

Pension Plan: Provide the full legal name of the pension plan and the registration number.

I, (full legal name of the administrator or representative of the administrator), AM the administrator of the pension plan or a representative of the administrator of the pension plan authorized by the administrator to provide this certification.

AS PART OF the application for the Superintendent's consent pursuant to section 62.1 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (PBA) for a payment of \$ (insert the amount as at the effective date of the reimbursement, as set out in the application) out of the pension fund of the Pension Plan,

I CERTIFY THAT this payment represents (an amount paid by the Employer in respect of the Pension Plan which should have been paid out of the pension fund of the Pension Plan in accordance with section 62.1(1)(a) of the PBA) or (an overpayment by the Employer into the pension fund of the Pension Plan in accordance with section 62.1(1)(b) of the PBA),

as at (insert the effective date(s) of the overpayment(s), as set out in the application) plus investment earnings thereon to the date of payment.

I ALSO CERTIFY THAT

the documents that create and support the pension plan and the pension fund do not prohibit such a payment to the employer.

DATED this (day) day of (month), (year).

Signature of Administrator or Administrator's Agent or Representative

Name of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

Address of Administrator or Administrator's Agent or Representative (printed)