



SECTION:	Refund of Contributions to Plan Members
INDEX NO.:	R400-101
TITLE:	Application for Refund of Contributions to Plan Members, Former Members and Retired Members - PBA ss. 63(7) and (8)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website
EFFECTIVE DATE:	April 2, 2001 [up to date – July 1, 2012]
REPLACES:	R400-100, R400-107, R400-200

This policy replaces R400-100 (Applications to the Commission for Consent to a Refund), R400-107 (Locking-in Provisions - Prior Consent of the Commission Required for Refunds) and R400-200 (Applications to the Commission - Funding Deficiency) 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 govern.

*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.*

General Principles

1. As a general rule, section 63(1) of the PBA provides that members, former members and retired members are not entitled to a refund of contributions from the pension fund. Sections 63(2) to (8) of the PBA set out a number of exceptions to this general rule.
2. In particular, sections 63(7) and (8) of the PBA provide:
 - 63(7) Despite subsection (1), on application by the administrator of a pension plan, contributions may be refunded to a member, former member or retired member with the consent of the Superintendent.
 - (8) On application by the administrator of a pension plan, the Superintendent may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.

3. In addition to satisfying the requirements of section 63(8) of the PBA, the Superintendent requires:
 - (a) either:
 - (i) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and, where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or
 - (ii) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund; and
 - (b) the refund will result in the equitable treatment of all active members, all deferred members or all retired members.
4. Where the actuarial opinion identifies any additional contributions which are necessary to satisfy the requirements in paragraphs 3(a)(i) or (ii) above, and the application satisfies all other applicable requirements of the PBA, Regulation and relevant policies, the Superintendent may consent to the application subject to the condition that the plan administrator confirm in writing that the additional contributions identified in the actuarial opinion have been made to the pension fund.
5. If the plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of section 63(8) of the PBA and the administrative requirements set out above will apply.
6. In all cases, and notwithstanding that the foregoing requirements are met, the Superintendent has discretion under section 63(8) of the PBA to grant or refuse consent.
7. If the applicant amended the plan to provide for the refund, the applicant should ensure the applicable requirements of the PBA, Regulation and relevant policies concerning plan amendments have been satisfied.
8. This policy does not apply to refunds arising from provisions of the Income Tax Act (Canada) respecting the refund of contributions to plan members, former members or retired members to avoid revocation of registration by the Canada Revenue Agency. Refunds for this purpose must comply with the requirements of sections 47(13) and 47(14) of the Regulation as applicable.

Applicants should refer to 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).

The Application for Refund of Contributions to Plan Members, Former Members or Retired Members

9. The format and content of the application should be consistent with Schedule I to this policy.
10. 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.

Filing the Application

11. (a) The general procedure is outlined in policy S850-200 (Filing Applications with the Superintendent of Financial Services).
- (b) The application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).
12. The application is filed with the Superintendent by sending **three (3)** copies to:

Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Suite 1600
Toronto, Ontario M2N 6L9
13. **Three (3)** copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the application should be filed with the Superintendent.
14. Upon receipt, the application will be acknowledged.

Decision or Proposed Decision of the Superintendent

15. The Superintendent will make a decision about the application after the Superintendent receives either:
 - (a) a complete application; or
 - (b) a written request from the applicant asking that the application proceed as is, where the applicant has been advised by FSCO staff that the application is incomplete.
16. Following a review of the application, the Superintendent will make a decision and will issue either:
 - (a) an unconditional consent;
 - (b) a notice of proposal to attach terms and conditions to a consent; or
 - (c) a notice of proposal to refuse to consent.
17. If the Superintendent consents unconditionally to the refund, the Superintendent's consent along with written reasons will be communicated to the applicant.
18. If the Superintendent proposes to consent to the refund with attached terms and conditions or to refuse to consent, the Superintendent will serve a notice of proposal on the applicant as required by section 89(4) of the PBA.
19. A notice of proposal issued under section 89(4) of the PBA shall state that the person on whom the notice is served is entitled to a hearing by the Financial Services Tribunal (Tribunal) if the person delivers to the Tribunal, within thirty days (30) days after service of the notice of proposal, a written notice requiring a hearing.

20. If no notice requiring a hearing is received within the specified time period, the Superintendent may carry out the proposed decision.
21. Applicants should refer to policy S850-100 (Delegation of the Superintendent's Authorities) and policy S850-200 (Filing Applications with the Superintendent of Financial Services) for additional information on the decision-making process.

SCHEDULE I

**FORMAT AND CONTENT OF THE APPLICATION TO THE SUPERINTENDENT
FOR CONSENT TO A REFUND OF CONTRIBUTIONS TO PLAN MEMBERS, FORMER MEMBERS
OR RETIRED MEMBERS**

Date: *Enter the date of the application.*

Plan Administrator: *Provide the full legal name of the plan administrator 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 corporate officer authorized to act on the administrator's behalf. (Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the agent who files the application on the applicant's behalf.)*

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 63(7) of the Pension Benefits Act, R.S.O. 1990, c. P.8, to a refund of contributions plus interest to (identify the members, former members or retired members to whom the contributions are being refunded) in the aggregate amount of \$ (enter the total amount of contributions plus interest at the effective date of the refund) as at (enter the effective date of the refund), plus interest thereon to the date of payment.

Actuary/Counsel/Agent:

Provide the name of any person acting as actuary, counsel or agent for the plan administrator making the application, or acting on behalf of the members, former members or retired members or other persons. If there are no such persons, please indicate "None".

Actuary/Counsel/Agent for the Applicant (and name of firm):

Actuary/Counsel/Agent for the members/former members/retired members/union/etc. (and name of firm):

Collective Bargaining Agent:

Provide the name of the Collective Bargaining Agent(s) who represent any members, former members or retired members of the pension plan.

Background:

Provide a brief summary of the background of the plan leading up to the application including:

- < *the effective date of the plan;*
- < *description of the members, former members and/or retired members (e.g., all actives, all deferreds or all retirees) to receive the refund;*
- < *the basic benefit structure; and*
- < *any other information which will assist in understanding the application.*

Section 63(8) of the PBA - Conditions:

In the following sections, the applicant must satisfy the Superintendent that the conditions of section 63(8) of the PBA have been met.

(a) Plan Provisions:

Indicate the provisions of the plan or plan amendment that provide for the refund of contributions to plan members, former members or retired members. Attach a copy of the relevant plan provisions or plan amendment.

(b) Employer Funding Responsibility:

Indicate the provisions of the plan or plan amendment that provide that the employer has assumed responsibility for funding all pension benefits associated with the contributions being refunded. Attach a copy of the relevant plan provisions or plan amendment.

Funded Status:

Either include:

- (i) *an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and, where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or*
- (ii) *an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund.*

Members, Former Members or Retired Members to Receive Refund:

The applicant must explain how the refund will result in the equitable treatment of all active members, all former members or all retired members.

Other Jurisdictions:

The applicant must disclose whether or not the plan has members, former members or retired members with benefits resulting from employment in a jurisdiction other than Ontario. Where the application affects members, former members or retired members with benefits resulting from employment in a jurisdiction other than Ontario, the applicant must include a table indicating the number of members, former members or retired members in each jurisdiction, including Ontario, affected by the application. The applicant must provide certification in the form set out in Schedule II that the applicant has complied with the requirements of those jurisdictions for refunds of contributions to members, former members or retired members with respect to the affected members, former members or retired members.

Certification:

The application must include as an attachment a completed certification in the form set out in Schedule II to this policy signed by the administrator making the application, or an agent or representative of the administrator authorized to act on the administrator's behalf.

Indicate where in the application the certification may be found.

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

Other Submissions:

The application should include copies of any written representations relating to the application received by the applicant directly or through the Superintendent, as well as any responses by the applicant.

The application should also include any other submissions which may be relevant.

Attachments:

Provide a list 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 be listed.

SCHEDULE II

**ADMINISTRATOR'S CERTIFICATION OF APPLICATION IN ACCORDANCE WITH
SECTION 63(7) OF THE PENSION BENEFITS ACT**

Re: PENSION PLAN: _____
(insert full plan name and plan registration number)
(the APension Plan@)

I AM: *(please mark the appropriate box with an AX@)*

G the administrator as set out in this application (the AAdministrator@); or

G an agent or representative of the Administrator authorized by the Administrator to make this application and provide this certification.

I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

(a) *(identify the members, former members or retired members to whom the contributions are being refunded)* made contributions to the pension fund of the Pension Plan, plus interest, totalling \$ *(enter the total amount of contributions to be refunded plus interest to the effective date of the refund)* as at *(enter the effective date of the refund)*, plus interest thereon to the date of payment;

(b) the Pension Plan provides for the refund referred to in (a);

(c) the Employer, *(name of employer)*, as defined in the Pension Plan, has assumed responsibility for funding all pension benefits associated with the contributions;

(d) the application contains all of the documents and information material to an application made in accordance with s. 63(7) of the Pension Benefits Act, R.S.O. 1990, c. P.8;

(e) the information contained in the application and the attached documents is true and accurate, and the application is complete;

(f) the pension legislation of the following Canadian jurisdictions other than Ontario applies to one or more members, former members or retired members or other beneficiaries of the Pension Plan affected by the application:

_____; and
(insert names of all relevant Canadian jurisdictions; if none, leave blank)

(g) where the pension legislation of one or more Canadian jurisdictions other than Ontario applies to one or more members, former members or retired members or other beneficiaries of the Pension Plan affected by the application:

(i) I am aware of, or have consulted with professionals who have advised me of, the requirements of the pension legislation of those other jurisdictions;

(ii) I have reviewed this application; and

- (iii) to the best of my knowledge and belief, based on the information and advice provided to me, including that referred to herein, this application complies with the requirements for refunds of contributions to members, former members or retired members in the pension legislation of those other jurisdictions.

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

Signature of Administrator, or Administrator's Agent or Representative

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

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

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