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SECTION:	Wind Up
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TITLE:	Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan - PBA ss. 52, 68, 70, 72-75, 77 and 81 - Regulation 909 ss. 15, 16, 28 and 29
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This policy replaces W100-101 (“Filing Requirements and Procedure”) 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.*

### **Pension Plan Wind Up - Filing Requirements and Procedure**

This policy identifies the filing requirements and procedure to be followed on the full or partial wind up of a pension plan. The considerations involved and the procedure followed for the partial wind up of a defined benefit pension plan are substantially similar to those applied to a full plan wind up. Unless specifically noted otherwise, use of the term “wind up” refers to both the full and the partial wind up of a pension plan.

The material which follows deals with key wind up requirements and procedure. Readers are reminded that the provisions of each pension plan are unique and the circumstances that trigger the wind up of a pension plan are various. Therefore, it is not possible to identify all issues that may be relevant to every plan situation in this policy. It should further be noted that the purpose of the administrative and actuarial guidelines set out in this policy is to assist administrators and their agents in the preparation of required wind up filings and FSCO staff in the review of the filings. These guidelines do not preclude the use of other bases if deemed appropriate in the circumstances. It is the responsibility of the administrators and/or their agents to demonstrate that the bases chosen are in compliance with the PBA and Regulation.

If administrators and their agents have questions about plan wind ups, they should refer to the relevant sections of the PBA and Regulation. Additional information may be obtained from other policies published by FSCO that deal with related wind up issues. Policies are intended to clarify how the PBA and Regulation are interpreted in certain situations and to assist administrators and their agents in understanding the requirements of the PBA, Regulation and FSCO’s practices so that full compliance can be achieved.

## **Plans Excluded**

This policy does not address multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement or situations involving a claim against the Pension Benefits Guarantee Fund (“PBGF”). Surplus matters are only briefly referenced in this policy, as other policies on this subject have been issued by FSCO.

*While every attempt has been made to be thorough, it is not possible to anticipate and address all wind up situations. Administrators, therefore, are reminded that the application of the PBA and Regulation is subject to the facts of each case. Accordingly, the contents of this policy should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if there is a particular interest in any of the matters addressed in this policy.*

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*Administrators and consultants for pension plans that provide only defined contribution benefits need only reference sections I and IV (4.1 through 4.3 inclusive) and subsection 3.1 of this policy. Unless otherwise specified, this policy applies to partial plan wind ups as well as to full plan wind ups.*

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### **SECTION I Wind Up Process**

For all pension plans, the wind up process consists of five stages. There is a sixth stage if a surplus remains after basic benefits have been distributed. For most stages, some specific action is required by either the administrator or the employer. Administrators should become familiar with this process in order to avoid delays which occur when a wind up report or other required filings do not comply with the PBA, Regulation and applicable FSCO policies.

## **1.1 An Overview of the Process**

*Stage 1 - The employer decides to wind up a pension plan or the Superintendent of Financial Services ("Superintendent") so orders.*

The administrator is required to give notice of proposal to wind up the pension plan as identified under section 1.2 (Legislative Requirements and Current FSCO Practice) of this policy.

*Stage 2 - The administrator files a wind up report and other wind up documentation.*

The wind up report is a key document, which should include information about the funded status of the pension plan and the proposed methods of allocating and distributing assets.

FSCO staff review the submitted wind up documents. If the documentation is incomplete or deficient (e.g., documentation not certified or not signed), staff will write to the administrator or the administrator's agent to request the additional documents or information. Upon receipt and review of the additional documents or information, staff will make a recommendation to the Superintendent as to whether the wind up report complies with the requirements of the PBA and Regulation.

*Stage 3 - The administrator issues benefit statements.*

The administrator provides a statement setting out the benefits and options (including deemed election) available to each person entitled to a benefit or refund on the wind up of the plan. Depending on the situation, the administrator may decide to wait until after the Superintendent's approval of the wind up report to issue benefit statements (see also stage 4 described below).

*Stage 4 - The Superintendent approves the wind up report or approves only the payment of basic benefits.*

Where a wind up report complies with the requirements of the PBA and Regulation:

- if there is a surplus issue to be addressed, the Superintendent will approve only the payment of basic benefits until the disposition of the surplus has been determined. Once the disposition of surplus has been addressed in accordance with the PBA and Regulation, the Superintendent will approve the wind up report.
- if the pension plan has a funding deficit on a wind up date and the employer intends to fund the deficit in accordance with section 75 of the PBA, the Superintendent will approve the wind up report. However, the administrator is required to file annual reports as required by section 32 of the Regulation. In addition, until the Superintendent receives a report certifying that no further amounts are to be funded under section 75 of the PBA, the pension plan is prohibited under subsection 29(8) of the Regulation from using its assets to purchase single premium life annuities or paying out the commuted value of the pension benefits of any person affected by the wind up, except for the current value of any additional voluntary and/or required contributions made by the employee prior to the wind up date.

Where a wind up report does not comply with the requirements of the PBA and Regulation, the Superintendent will refuse to approve it.

*Stage 5 - The administrator distributes benefits.*

When the administrator receives the Superintendent's approval of the wind up report or approval of only the payment of basic benefits pursuant to subsection 70(3) of the PBA, the distribution of benefits can take place in accordance with the wind up report and the options elected, subject to any restrictions imposed by the Superintendent or prescribed by the PBA and Regulation.

*Stage 6 - The administrator distributes surplus.*

If a decision has been made to distribute all surplus available on wind up among plan members, former members or other eligible persons, the formula for distribution should be included in the wind up documentation.

If the employer intends to withdraw or share the surplus with the members, a surplus application is required to be made to the Superintendent. See policy S900-510 (“Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan”) or policy S900-511 (“Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan”), as appropriate, for information on the surplus application process.

**1.1.1. Other Considerations**

1) When a Notice of Proposal to Wind Up a Pension Plan Has Been Given

Subsection 70(2) of the PBA requires that once a notice of proposal to wind up a plan has been given, no payments or expenses can be paid out of the pension fund until the Superintendent has approved the wind up report. This restriction would not, however, interfere with the continuation of the payment of a pension or any other benefit if the payment began before the notice of proposal to wind up was issued. Also, the administrator or an agent of the administrator may request that the Superintendent authorize payment of other benefits or expenses pursuant to subsection 70(3) of the PBA prior to the approval of the wind up report.

2) Wind Up of Defined Benefit/Defined Contribution Hybrid Plans

On the wind up of a pension plan that provides benefits on both a defined benefit and defined contribution basis, the two parts are generally seen as separate. Once all contributions for the defined contribution part required up to the date of the wind up are received by the pension fund, the defined contribution part of the plan is fully funded. The defined benefit part would have a surplus or deficit, as the case may be, based on the assets and liabilities of the defined benefit part of the plan.

3) Split of Assets and Liabilities on Partial Wind Up

As at the effective date of a partial wind up, the liabilities and assets related to the members, former members and other persons affected by the partial wind up must be identified. The split of the pension plan assets between the wound up portion and the on-going portion of the plan must be determined as if the total pension plan were wound up on the partial wind up date. Section 2.5.2 of this policy describes how the asset split should be determined.

4) Approval of the Wind Up Report and Distribution of Assets

Once a wind up report is approved by the Superintendent, assets must be distributed in accordance with the wind up report, subject to the payment of any deficit in accordance with section 75 of the PBA. A pension plan wind up is not complete until all assets in the pension fund, or in the case of a partial wind up all assets related to the wound up portion of the pension fund, have been distributed in accordance with the wind up report approved by the Superintendent.

**1.2 Legislative Requirements and Current FSCO Practice**

**1.2.1 Effective Date of Wind Up**

Subsection 68(5) of the PBA provides that the effective date of wind up cannot be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension plans, or in any other case, on the date the notice of wind up is given to members. Where a wind up results from a specific event such as plant closure, bankruptcy or purchase and sale, the effective date may not be earlier than the date of the specific event precipitating the wind up unless the requirements of subsection 68(5) of the PBA have been met prior to that date.

The Superintendent may change the effective date of wind up by order, if in the Superintendent's view there are reasonable grounds for such a change (subsection 68(6) of the PBA). The effective date of wind up may not be obvious in some circumstances, such as where there are a series of terminations of employment related to a downsizing. In such situations, the administrator or agent is encouraged to submit a written proposal supporting the selection of both the effective date of wind up and the time period during which the termination of a member will result in the member being included in the wind up. FSCO staff will consider the proposal in light of legislative requirements.

### **1.2.2 Notice of Proposal to Wind Up a Pension Plan**

An employer who intends to wind up a pension plan in whole or in part must give notice of proposal, as required under subsections 68(2) and (3) of the PBA, to each of the following:

- the Superintendent;
- all members who are affected by the proposed wind up;
- all former members who are affected by the proposed wind up;
- any trade union(s) representing such members;
- the advisory committee (if any); and
- any other person entitled to a payment from the pension fund who is affected by the proposed wind up.

The notice must contain the information prescribed in subsection 28(1) of the Regulation.

At a minimum, the administrator should provide FSCO staff with:

- a certified copy of the wind up notice;
- a statement outlining who (including any union, if applicable) received the notice; and
- the date the last notice was distributed.

In the event an employer declares bankruptcy, is placed in receivership or otherwise ceases operations, the administrator or the administrator's agent should notify FSCO staff immediately.

### **1.2.3 Persons Who Must be Included in the Wind Up**

When a pension plan is being fully wound up, all members, former members and other persons entitled to payments from the plan on the effective date of wind up must be included in the wind up. In circumstances where a plan is partially wound up, only those members, former members and other persons affected by the partial plan wind up are included.

Where a wind up results from an event affecting the employment of the members, such as a plant closure, all members affected by the event who are participating in the plan on or after the date notice of the event is given must be included as members for the purposes of the wind up. This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring.

If there has been a series of staggered layoffs prior to and/or after the wind up date, the administrator or the administrator's agent should submit a written proposal to identify which group of employees, including those who may have terminated prior to the wind up date and/or may terminate after the wind up date, will be entitled to be included in the wind up.

For more information relating to partial wind ups, please refer to policy W100-301 ("Notice of Proposal for Partial Wind Up").

### **1.2.4 Wind Up Documentation**

In addition to the notice of proposal to wind up the plan, the following documentation must be filed.

### Wind Up Report

Subsection 29(3) of the Regulation requires that, within six months following the effective date of the wind up, the administrator must file a wind up report pursuant to subsection 70(1) of the PBA. Pursuant to section 15 and subsection 29(1) of the Regulation, the report must be prepared by an actuary (i.e., a Fellow of the Canadian Institute of Actuaries), except with respect to the following plan types:

- a plan that provides only defined contribution benefits;
- a fully insured pension plan established prior to January 1, 1987, underwritten by a contract with an insurance company and that does not require employee contributions; or
- a pension plan underwritten by a contract issued under the *Government Annuities Act* (Canada).

The report required for these plan types may also be prepared by an accountant or a person authorized by an insurance company, a trust corporation or the Annuities Branch of the Government of Canada, responsible for administering the pension plan or pension fund.

Specific items to be included in a wind up report are set out under subsection 70(1) of the PBA. Section II of this policy provides further detail to assist actuaries in preparing wind up reports on pension plans that provide defined benefits.

### Amendments, Resolutions and Form 1.1

Appropriate plan amendments and resolutions which affect the wind up should be filed in conjunction with the wind up report. The proposals in the wind up report must conform with the provisions of the plan and amendments.

If an amendment is required (e.g., where there are benefit improvements in conjunction with the wind up), an application for the registration of a plan amendment using FSCO pension Form 1.1 should be included with the wind up documentation. Form 1.1 is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca).

### Superintendent's Checklist for Compliance on Plan Wind Up for Defined Benefit Plans

The administrator should file a completed Superintendent's Checklist for Compliance on Plan Wind Up for Defined Benefit Plans, which is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). This checklist is designed to assist administrators and their agents in compiling the required submissions. It also aids FSCO staff in their review of the wind up. Poorly completed checklists may result in delay of the wind up process.

### Wind Up Report for Defined Contribution Pension Plans

The administrator of a defined contribution pension plan that is to be wound up may wish to complete and file the Wind Up Report for Defined Contribution Pension Plans. This standardized report is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). The report sets out the information required by FSCO staff and expedites the review of defined contribution plan wind ups.

### Other Required Filings in Respect of a Full Wind Up

Pursuant to section 29.1 of the Regulation, the administrator must file the following documents within six months after the effective date of wind up for the period from the most recent plan year end to the effective date of wind up:

- an Annual Information Return ("AIR"), including the Pension Benefits Guarantee Fund Assessment Certificate
- financial statements for the pension plan or fund

The administrator is responsible for ensuring that all AIRs required up to the effective date of full wind up are filed and that all prescribed and outstanding fees and assessments are paid (subsection 29(4) of the Regulation).

### **1.2.5 Distribution of Benefits**

The administrator is required, under section 72 of the PBA, to provide each person entitled to a benefit or refund from the plan on wind up with a statement setting out the person's benefits under the plan, the options available and other information as prescribed under subsection 28(2) of the Regulation. The statement should indicate, in accordance with clause 28(2)(t) of the Regulation, that the benefits and options are subject to the approval of the Superintendent and the Canada Revenue Agency, and may be subject to adjustment.

The statement containing the information prescribed under subsection 28(2) of the Regulation must be given to the specified persons within 60 days after the earlier of the administrator receiving notice that the Superintendent has approved the wind up report, or the payment of benefits under subsection 70(3) of the PBA.

A recipient of a statement issued in accordance with section 28 of the Regulation has 90 days after receipt of the statement to make an election and forward it to the administrator. If the recipient has an election to make and fails to do so within 90 days, that person shall be deemed to have elected to receive an immediate pension, if eligible. If the recipient is not eligible to receive an immediate pension, that person shall be deemed to have elected to receive a deferred pension commencing at the earliest date mentioned in clause 74(1)(b) of the PBA. Information pertaining to a deemed election should be specified in the statement in accordance with subsection 72(2) of the PBA and clause 28(2)(o) of the Regulation.

The administrator has 60 days to make payment in accordance with an election made (or deemed to have been made) by a person on wind up. The administrator must make payment within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice that the wind up report has been approved by the Superintendent.

However, where the Superintendent approves the payment of benefits under subsection 70(3) of the PBA before approving the wind up report, the administrator must make payment in relation to an election resulting from such a statement within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice of the Superintendent's approval to pay basic benefits under subsection 70(3) of the PBA.

If the plan has a deficit, payment of basic benefits described in statements given in accordance with section 28 of the Regulation are also subject to the requirements of subsections 29(7) and (8) of the Regulation and may be delayed due to these requirements.

### **1.2.6 Distribution of Surplus**

Where there is surplus on the full or partial wind up of the plan, the administrator is also required to provide each person entitled to a benefit or refund from the plan on wind up with a statement setting out information and options respecting the distribution of the surplus as prescribed under subsection 28.1(2) of the Regulation. The statement must be given to the specified persons within 60 days after the administrator receives notice that the Superintendent has approved the wind up report.

A recipient of a statement issued in accordance with section 28.1 of the Regulation has 90 days after receipt of the statement to make an election (if the recipient has an election to make) and forward it to the administrator. If the recipient fails to make an election within 90 days, that person shall be deemed to have elected the method of distribution specified in the statement in accordance with subsection 28.1(4) of the Regulation.

The administrator must make payment within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice that the wind up report has been approved by the Superintendent.

Depending on when the basic benefits are to be distributed relative to the distribution of surplus, it may be possible for the administrator to combine the statement requirements for the wind up and the surplus distribution in a single document.

### 1.2.7 Final Distribution of Assets and Confirmation of Distribution

Within 30 days after final distribution of the assets of the pension plan, or the assets of the wound up portion of the plan in the case of a partial wind up, the administrator must give the Superintendent written notice that all assets of the plan or the wound up portion of the plan have been distributed, as required under subsection 29.1(4) of the Regulation.

## SECTION II Preparing the Wind Up Report

A wind up report filed under subsection 70(1) of the PBA must comply with the prescribed requirements of the PBA and Regulation. As well, in preparing a wind up report for a defined benefit plan, subsection 16(1) of the Regulation requires that an actuary "...shall use methods and actuarial assumptions that are consistent with accepted actuarial practice and with the requirements of the Act and this Regulation." As at the date of publication of this policy, applicable professional standards are set out in the document titled *Consolidated Standards of Practice - Practice-Specific Standards for Pension Plans* issued in May 2002 by the Canadian Institute of Actuaries (the "CIA Standards").

Under subsection 70(1) of the PBA, the wind up report must set out at least the following:

- the assets and liabilities of the pension plan;
- the benefits to be provided under the pension plan to members, former members and other persons;
- the methods of allocating and distributing the assets (including any surplus) of the pension plan and determining the priorities for payment of benefits; and
- such other information as is prescribed.

### 2.1 Compliance Items

Where an actuary is required to prepare a wind up report, the actuary should confirm compliance with respect to the following legislative requirements, where applicable:

- Minimum value of employee contributions with interest for pre-1987 benefits... PBA ss. 39(1) & (2)
- Minimum 50% cost rule for post-1986 contributions..... PBA ss. 39(3) & (4)
- Early retirement options.....PBA s. 41
- Joint and 60% survivor option.....PBA s. 44
- Full vesting.....PBA s. 73(1)(b)
- Grow in rights.....PBA s. 74
- Notice period under *Employment Standards Act, 2000*.....PBA s. 74(5)
- Deemed consent of ancillary benefits.....PBA s. 74(7)
- Benefits accrued under all prior plans included in the report.....PBA s. 81(2)
- Minimum credited interest from date of wind up to date of payment.....Regulation s.24(12)
- Minimum commuted value of a pension, deferred pension or ancillary benefit ..Regulation s.29(2)



## 2.2 Membership Data

Among the CIA Standards, the following requirements are included:

- “3600.05        The report should be detailed enough to enable another actuary to examine the reasonableness of the valuation.”
- “3720.16        The data are the responsibility of the plan administrator. The actuary would, however, report on the sufficiency and reliability of the data, including specifically the capitalized values included in the valuation whether or not the plan administrator was the calculator thereof.”
- “3720.17        The finality of wind-up calls for the actuary to obtain precise data.” [The balance of the paragraph goes on to address the situation where precise data on membership is not available.]
- “3720.18        The reported membership data would include details of the amount and terms of payment of each member’s benefits.”

The following information is required by FSCO staff in order to complete their review of a wind up report. Such information should be provided in an anonymous form (i.e., no names, social insurance numbers or other personal identifiers should be provided).

### For members and deferred vested former members:

- age or date of birth
- sex
- years of continuous service, or date of hire (members only)
- years of credited service (pre-1987 and post-1986; members only)
- years of membership, or date of plan entry (members only)
- date of termination (if different than the effective date of wind up)
- accumulated (pre-1987 and post-1986) employee contributions with interest, if any
- salary upon which the benefits are based (members only), if applicable
- accrued (pre-1987 and post-1986) pension
- bridging benefit (pre-1987 and post-1986), if any
- any other benefits provided under the plan
- commuted values of accrued (pre-1987 and post-1986) pension, bridging (pre-1987 and post-1986) and other benefits
- excess contributions due to 50% cost rule
- additional voluntary contributions with interest, if any

### For former members in receipt of pension payments and other beneficiaries:

- age or date of birth
- spousal age or spousal date of birth
- sex
- date of retirement
- amount of pension payable
- bridging benefit, if any
- any other benefits provided under the plan
- form of pension payment
- wind up liabilities or commuted values of pension, bridging and other benefits

The report should include a reconciliation of plan membership from the valuation date of the last filed actuarial report to the effective date of the wind up.

In the case of a partial wind up, a summary of the statistics pertaining to members who are remaining in the on-going portion of the plan should also be provided. However, if there have not been significant changes in membership since the valuation date of the last filed actuarial report, a reference to that report with respect to the remaining members is acceptable.

### **2.3 Plan Provisions**

The report must include a summary of plan provisions that were reflected in the wind up valuation. The actuary should ensure that the summary is consistent with the plan documents filed with FSCO.

### **2.4 Commuted Values of Benefit Entitlements**

Appendix A sets out the actuarial guidelines that are currently followed by FSCO staff in their review of the determination of the commuted values of members' benefit entitlements on wind up. These guidelines do not preclude the use of any other actuarial basis if deemed appropriate by the actuary. However, the actuary should justify the basis used and demonstrate that the commuted values calculated using such a basis would comply with the Act and Regulation.

### **2.5 Financial Position of the Plan on Wind Up**

In addition to the determination of the commuted values of the benefit entitlements of the individual members, the wind up report must provide information on the financial position of the pension plan as a result of the wind up. Determination and reporting of the financial position of a defined benefit pension plan must comply with the CIA Standards.

#### **2.5.1 Valuation Balance Sheet in Respect of a Full Wind Up**

In the case of a full wind up, the wind up report should provide a valuation balance sheet including the assets and the wind up liability of the plan as of the effective date of wind up.

##### Assets

Assets should be valued at market, with adjustments for receivables or payables at the effective date of wind up. The actuary should describe in detail any estimates that were made of market values. In particular, if the actuary has reason to believe that there may be items which might adversely affect the quality of assets, the actuary should disclose this information and quantify the impact, to the extent possible. In making this determination, the actuary may rely on or use the opinion of another person if such reliance or use is justified in the circumstances. Cash out value should be used for insurance company guaranteed annuity contracts and general fund deposit administration contracts.

If expenses are expected to be paid from the fund and the payment of these expenses is permitted under the plan, a reasonable allowance for wind up expenses should be identified and deducted from the value of plan assets. In determining the wind up funded ratio of the plan, this net asset value is taken as the numerator in the funded ratio formula.

The report should include a reconciliation of plan assets from the valuation date of the last filed actuarial report.

## Wind Up Liability

The wind up liability must reflect all benefits provided under the plan and the applicable legislation on wind up and should be separately summarized for each major category of membership. For members and former members who are expected to receive a commuted value, the wind up liability must be consistent with the individual commuted values of the benefit entitlements determined in accordance with subsection 29(2) of the Regulation. For members and former members who are receiving or are expected to receive a pension benefit, the wind up liability should reflect the estimated cost of purchasing the pension benefits. The assumptions should indicate the percentage or category of members/former members for whom benefits will be settled by annuity purchase.

### **2.5.2 Valuation Balance Sheet in Respect of a Partial Wind Up**

The partial wind up report should provide a valuation balance sheet in respect of each of the wound up and on-going portions of the plan as of the effective date of wind up.

Where a plan covers only members with Ontario employment, FSCO staff will accept, as a matter of practice, the splitting of assets between the wound up portion and the on-going portion of the plan in proportion to the wind up liabilities as of the effective date of wind up (the “standard method”). Splitting of assets on another method may also be accepted if the actuary can confirm that, in his or her opinion, such a split would not result in an asset allocation that is materially different than that under the standard method. If the actuary uses a method other than the standard method, comments supporting the appropriateness of the method used should be included in the report.

For the on-going portion of the plan, the actuary should confirm whether the funding requirements as set out in the last filed funding actuarial report would continue to apply or otherwise set out the new funding requirements in a separate actuarial cost certificate or funding actuarial report.

### **2.6 Actuary’s Statements of Opinion**

The actuary must provide statements of opinion in accordance with the CIA Standards.

## **SECTION III Treatment of Surplus/Deficit**

The term “wind up” is defined in the PBA to mean the termination of a pension plan and the distribution of the assets of the pension fund. Therefore, in addition to establishing the benefits to be provided to affected members and former members, the wind up report should identify any excess or shortfall of assets existing after satisfying the liabilities (i.e., the surplus or deficit).

### **3.1 Surplus**

If the pension plan is in a surplus position on full wind up, or the wound up portion of the pension plan is in a surplus position on partial wind up, the administrator should indicate how the surplus assets will be dealt with. Distribution of the assets must conform with the proposals set out in the wind up report approved by the Superintendent. If the wind up report does not indicate how the surplus will be dealt with, a supplement to the wind up report dealing with the surplus assets will be required.

### **3.2 Deficit**

If the wind up report reveals that the plan does not have sufficient assets to pay the liabilities on wind up, the employer must pay into the pension fund amounts required under section 75 of the PBA.

The amount of deficit to be funded pursuant to clause 75(1)(b) of the PBA is the amount by which the Ontario wind up liability, exclusive of the unfunded portion of non-plan-vested benefits, exceeds the value of plan assets allocated for payment of pension benefits accrued with respect to employment in Ontario. Pursuant to clause 29(9)(a) of the Regulation, where payments are being made in accordance with section 75 of the PBA, the employer is not liable to

pay the unfunded portion (based on the wind up funded ratio) of non-plan-vested benefits.

Where the employer funds the deficit by a lump sum payment and the actuary files a certification that the obligations under section 75 of the PBA have been fully funded, the benefits can be paid. As a minimum, the deficit must be funded in accordance with section 31 of the Regulation by annual special payments, payable annually in advance, over a maximum period of five years commencing at the effective date of wind up (for qualifying plans, by monthly special payments over one year).

The administrator is required under section 32 of the Regulation to file a report annually until the employer's obligation under section 75 of the PBA has been fulfilled. This annual report must be prepared by an actuary and must satisfy all standards normally applicable to a valuation report. In addition, the report should provide a gain and loss analysis since the last report filed and specify the special payments required to liquidate the remaining liability obligation under section 75 of the PBA. Where a report shows that no further amount is to be funded, subsection 32(4) of the Regulation provides that any surplus may revert to the employer, subject to the requirements of section 79 of the PBA.

Subsections 29(7) and (8) of the Regulation set out the restrictions on cash out, transfers, and annuity purchases prior to the plan being fully funded. For more information, see policy W100-440 ("Restrictions on Payments in Deficit Situations").

#### **SECTION IV Specific Issues Related to Wind Up**

In this Section, a few specific issues related to wind ups are discussed, along with current FSCO practice with respect to these issues.

##### **4.1 Payments Approved by the Superintendent**

Prior to FSCO's review of a wind up report, the Superintendent may approve, under subsection 70(3) of the PBA, various kinds of payments, including the payment of expenses, commencement of monthly pension payments to retirees under a defined benefit plan and purchase of immediate annuities for eligible retirees under a defined contribution plan. Death benefits will also generally be approved if FSCO staff are satisfied that the plan would be fully funded.

The administrator may obtain approval from the Superintendent for a payment of expenses out of the plan fund. However, the administrator must ensure that such payment would not contravene section 22 of the PBA. See also policy A200-801 ("Costs for Wind Up and Surplus Applications").

Approvals under subsection 70(3) of the PBA will also be given by the Superintendent for payment of all benefit entitlements once FSCO staff have reviewed the wind up report and are satisfied that all benefits have been provided for properly. However, an outstanding issue related to surplus may remain: either the administrator has not determined how the surplus is to be dealt with or there is a pending surplus refund proposal that requires the Superintendent's consent.

Once the wind up report is approved, all payments must be made in accordance with it.

##### **4.2 Prior Plans**

Prior pension plans sponsored by the same employer are deemed to be benefits associated with the current plan whether or not the assets were consolidated as set out under subsection 81(3) of the PBA. To the extent these apply to members affected by the wind up, such prior plans must also be included for the purposes of the wind up.

#### 4.3 Notice of Termination of Employment

Pursuant to subsections 74(5) and (6) of the PBA, membership in a non-contributory plan should include the period of notice of termination of employment required under the *Employment Standards Act, 2000*. The notice period is included for both benefit eligibility and benefit calculation purposes. For contributory plans the members must be given the option to make the required contributions in respect of the notice period in order to have the period included for benefit purposes.

#### 4.4 Grow In Under Section 74 of the PBA

In accordance with subsection 74(1) of the PBA, a member whose age plus service or plan membership equals 55 or more at the effective date of wind up (the “rule of 55”) will be eligible to receive:

- (a) an immediate pension, if eligible under the plan;
- (b) a pension beginning at the earlier of the normal retirement date under the plan, or the date on which the member would be entitled to an unreduced pension under the plan had the plan not been wound up and had the member’s membership continued to that date;
- (c) a reduced pension in the amount payable under the plan beginning on the date on which the member would be entitled to the reduced pension under the plan as if the pension plan were not wound up and the member’s membership had continued to that date.

The benefit entitlements for the “rule of 55” members must reflect this grow in provision.

Furthermore, pursuant to subsection 74(3) of the PBA, if a “rule of 55” member has at least 10 years of continuous service or membership at the date of wind up, the bridging benefits to which the member would have been entitled if the plan were not wound up and if the member’s membership continued, subject to proration under subsection 74(4) of the PBA, must be reflected in the member’s benefit entitlements.

#### 4.5 Treatment of Special Benefits

Certain special benefits require specific treatment on wind up. In addition, grow in to these benefits should be provided in accordance with section 74 of the PBA, where applicable. The treatment of these special benefits is outlined below:

- **Consent benefits** must be provided on a plan wind up as required under subsection 74(7) of the PBA.
- **Escalated adjustments or indexation** (including adjustments that have not been made) are not considered to be ancillary benefits. They are part of the pension benefit under the plan, and thus must be included in the wind up benefits.
- **Early retirement window benefits** should be included to the extent that a member would have become eligible for the benefits prior to the close of the window, had the plan not been wound up and the member’s membership continued.
- **Plant closure benefits and permanent layoff benefits** should be included for wind up purposes where the wind up is in conjunction with or accompanied by one of these events.
- **Prospective benefit increases** are not required to be included on plan wind up.

#### **4.6 Allocation of Assets for Multi-jurisdictional Plans**

In the case of a wind up covering members in more than one jurisdiction in which there are insufficient assets to cover all liabilities, the method for allocating assets among the various jurisdictions is prescribed in section 30 of the Regulation. The assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

#### **APPENDIX A Specific Guidelines on Actuarial Assumptions and Methods for the Calculation of the Commuted Value of Individual Benefit Entitlements on Plan Wind Up**

In their review of the commuted value calculations, FSCO staff use the following actuarial guidelines developed from the *Recommendations for the Computation of Transfer Values from Registered Pension Plans* issued by the Canadian Institute of Actuaries effective September 1, 1993 (the “CIA Recommendations”) that are currently prescribed in subsection 29(2) of the Regulation. These guidelines will remain in effect until subsection 29(2) of the Regulation is amended to refer to any other basis.

##### **A.1.1 Interest**

For non-indexed pensions and fully indexed pensions, the assumed interest rates should not be higher than the respective rates determined in accordance with the CIA Recommendations.

Partially indexed pensions should be valued using the method prescribed in the CIA Recommendations.

##### **A.1.2 Mortality**

The mortality assumption should not be weaker than the *1983 Group Annuity Mortality Table (GAM83)* (including a level 10 per cent margin) as published on pages 880 and 881 of Volume XXXV of the *Transactions of the Society of Actuaries*.

##### Pre-retirement Death Benefits

If the only pre-retirement death benefit is the commuted value of the member’s pension, it is appropriate to assume no mortality before retirement. Otherwise, a full description of how the pre-retirement death benefit, if any, is valued should be provided.

##### Unisex Table

In compliance with section 52 of the PBA, a unisex mortality table must be used to determine the commuted values of post-1986 benefits. The report should state clearly the mix of the male and female rates, and indicate the basis from which the mix is derived (for example, relative to the number of members or liabilities).

As a matter of practice, FSCO staff will also accept the use of unisex rates for pre-1987 benefits.

##### **A.1.3 Retirement Age**

The report should explicitly state the retirement age assumption for each category of membership. FSCO staff will not accept statements which simply state that there has been compliance with section 74 of the PBA.

Reference should be made to section 4.4 of this policy (Grow In Under Section 74 of the PBA). For the purpose of section 74 of the PBA, members meeting the “rule of 55” should be assumed to retire at the most favourable retirement age (i.e., the retirement age that produces the highest commuted value).

To be consistent with the CIA Recommendations, if a plan provides that a deferred vested former member has the right to elect an earlier commencement date with a subsidized early retirement pension (i.e., a pension that exceeds

the amount which is of actuarial equivalent value to the pension payable at normal retirement age), then the assumed retirement age should reflect the full value of the subsidy for all members and deferred vested former members, and not just the “rule of 55” members.

**A.1.4 Marital Status**

The marital status assumptions should be determined in accordance with subsection 3(A) (Demographic Assumptions) of the CIA Recommendations.

**A.1.5 Date of Computation**

Individual commuted values of benefit entitlements normally should be calculated as of the effective date of wind up using a basis in effect on that date. If warranted by the wind up circumstances, other computation date(s) may be used.