

FREQUENTLY ASKED QUESTIONS

These are the most commonly asked questions raised in discussions with stakeholders, agents and the public.

REGULATION 347/04

Conflicts of Interest

1. Q. Are conflicts of interest prohibited?

A. Any real or potential conflict of interest associated with each transaction or recommendation must be declared to the client in writing by the agent. The client is then in a position to determine whether or not to proceed with the transaction or accept the recommendation.

2. Q. How do I identify conflicts of interest?

A. Conflicts will arise whenever any interests of the agent may be placed ahead of the interests of the client. Agents have a responsibility to disclose conflicts to the client, in writing, and to ensure that all transactions are conducted with openness and transparency.

When advising a client, an agent should ask himself or herself these two questions in connection with any recommendation or proposed transaction:

1. Would the advice given or product offered be different if the situation or incentive giving rise to the potential conflict of interest did not exist?
2. Would it appear to a reasonable and informed third party looking at the facts that the agent has an incentive to act other than in the best interest of the client or prospective client?

If in doubt, declare.

3. Q. Will FSCO provide a standard disclosure form?

A. No. The regulation does not require the use of a standard form. It is the responsibility of the agent or the company to provide appropriate written disclosure. Disclosure should be clear and appropriate to the client. Disclosure documents which are not clear and appropriate may be found to not meet the written disclosure requirement under the regulation.

**4. Q. Is the onus on the agent or the company to provide disclosure?
Who keeps a copy of the written disclosure?
Does the client sign the disclosure as evidence of receipt of written disclosure?**

- A. Disclosure is the agent's responsibility. It is the insurer's responsibility to ensure that agents comply with the regulation. Agents should keep a record as proof that the required disclosure took place.
5. **Q. Do the new conflict of interest requirements apply to policies in force, i.e. a whole life policy, or a universal life policy requiring revisions to investments or deposits?**
- A. There is no "grandfathering" of existing relationships under the new regulation. Therefore, just because there is an existing client and an existing policy does not mean the conflicts regulation has no application. However, refer to section 16 of the new regulation. It refers to a conflict of interest associated with a "transaction or recommendation". If there is no transaction or recommendation concerning an existing contract, (e.g. if there are no changes or advice provided), there is nothing to disclose. It is not intended that agents would have to revisit and identify actual or potential conflicts that existed when the original contract was signed (although nothing prevents it either). On the other hand, if the agent is giving advice or making changes to the contract after November 1, 2004, the disclosure rule applies.
6. **Q. If an agent sells a policy during a contest period, should he or she disclose that?**
- A. The agent should consider the two questions noted below to assess if he or she should disclose. The agent should ask whether the advice would be different, absent the incentive. Assuming the advice would not change, would an informed third party perceive that the agent has an incentive to act other than in the client's best interest. Asking these questions should serve as a guide to assess whether or not a conflict exists, in the majority of situations.

If there is any doubt at all, disclose.

Concurrent Employment

7. **Q. Will removing the full-time requirement for general and A&S agents and permitting concurrent occupations for all agents result in decreased consumer protection?**

- A. No. The changes do not lower standards.

All agents are required to pass the provincial licensing examinations and maintain currency of knowledge. All agents are bound by the same requirements regarding licensing and conduct, regardless of the number of hours they work as an agent.

This regulation extends the opportunity that Level II agents already had under previous regulation, to all agents, and treats insurance agents like other professionals.

Ontario joins nine other Canadian jurisdictions that permit insurance agents to hold concurrent employment. The new changes are subject to the requirement that the other employment does not result in the use of coercion or undue influence or jeopardize the agent's integrity, independence or competence.

Other jurisdictions have not found an increase in consumer complaints or enforcement actions as a result of permitting agents to hold additional employment.

8. Q. If my company (sponsor) won't let me hold other employment, what can I do?

A. While the regulation removes the prohibition against an agent holding concurrent employment, an employer or sponsor may have its own requirements governing its agents.

9. Q. If I get another job while licensed, do I need to advise FSCO?

A. You are not required to advise FSCO that you hold another job in addition to being a licensed agent until your next licence renewal application. However, if you are directly asked by FSCO to provide this information at any other time, as in the case of an audit for example, you are required to provide the information.

10. Q. Why were the lists of prohibited occupations contained in Regulation 663 eliminated?

A. The former rules deemed that certain occupations put agents in a position to use undue influence or coercion, whether or not any existed. Regulation 347 recognizes that the use of coercion and undue influence arise through the interaction of an agent and client during a transaction but that it may, or may not, have any connection to a concurrent occupation held by the agent.

The avoidance of the use of coercion and undue influence, including through the influence of a business or professional relationship, is a requirement imposed on all life agents. This establishes a better and more direct standard of care with which to ensure the protection of the public.

The Superintendent retains the authority to refuse a licence application if the Superintendent is of the view that the occupation or business would jeopardize the applicant's independence, integrity or competence, as an agent.

The right to appeal a decision of the Superintendent has not changed.

11. Q. As an insurance agent, can I hold a previously excluded occupation or share office space with those who are engaged in a previously excluded occupation?

A. There is no longer an automatic prohibition. You do not need approval from FSCO. The occupation you are engaged must not jeopardize your integrity, independence or competence as an agent.

Your employer or sponsor, however, may have corporate policies which restrict your ability to hold other employment. You should discuss your plans with the company.

In addition, if you intend to hold an occupation which is regulated under other legislation which has restrictions against holding other occupations, including acting as an insurance agent, you must comply with that legislation.

Ontario Mailing Address for Service of Legal Documents

12. Q. Why do I need an Ontario address for service of legal documents?

A. It is not reasonable for the Superintendent or an Ontario resident to have to go outside the province to enforce the *Insurance Act* or take legal action against an agent.

13. Q. Can my home address be my address for legal service if I live in Ontario?

A. Yes. Agents who reside in Ontario may use their home address as their address for legal service, if it meets the criteria set out in the regulation.

14. Q. If my home address is not in Ontario, can I use my home address as the address for service of legal documents?

A. No. Agents residing outside Ontario must arrange for an address for legal service in Ontario and advise FSCO of the address.

FSCO will, however, send all regular mail to your home address in order to ensure that it is received promptly. FSCO has found that business address information often becomes obsolete and is not a reliable way of getting mail to agents.

Non-resident Agents

15. Q. I live in Gatineau. Can I get an Ontario licence?

A. Provided you have an Ontario address for the service of legal documents which meets the requirements (i.e. is suitable to permit the delivery of registered mail, and is not a post office box) and you meet all other licensing requirements, you can apply for an Ontario agent's licence.

16. Q. I'm an agent in New York state. Can I sell insurance in Ontario or get an Ontario licence?

A. You cannot sell insurance in Ontario unless you hold an Ontario insurance agent's licence and have an Ontario address for service. If you meet the Ontario licensing requirements you can sell insurance in Ontario. At the present time, however, there is no policy regarding non-Canadian licensing equivalencies, particularly, those related to the educational requirements set out in licensing regulations.

17. **Q. Can an Ontario Head Office address be used by out of province agents?**
- A. Yes. The Ontario mailing address requirement can be met in a number of ways by the agent. One way is to use the mailing address of the head office of the insurer or the agency, if that address is in Ontario, and provided the insurer or agency agrees to accept documents on behalf of the agent.
18. **Q. I've held a life licence in another Canadian province for 6 months. Do I need to re-write the exams to get an Ontario life licence? Do I need a sponsor? If so, for how long?**
- A. You do not need to re-write the LLQP exams. Ontario requires new life agents to be sponsored for two years. Therefore, you will need a sponsor for the remainder of the two year period, i.e. 18 months.

Agency Licensing

19. **Q. I'm the sole officer of an agency. Do I need an insurance licence?**
- A. The agency must be licenced as does any individual who engages in the activities of an agent. However, if you are not engaged in any activity described in the *Insurance Act* or regulations that requires licensing as an agent, such as the solicitation or selling of insurance to clients, and the company employs a staff that carries out these activities, you do not need to hold an agent licence to own or be an officer or director of an agency.

General Questions

20. **Q. What penalty could apply to insurers if they do not live up to their compliance duties in section 12?**
- A. If insurers don't meet requirements in this or any other regulation, the insurer is subject to prosecution for failure to comply with the regulation. The Superintendent can also issue an order against the insurer requiring it to take such action as the Superintendent feels is necessary to remedy the situation, impose terms and conditions, or suspend or revoke a licence.
21. **Q. Is the insurer still responsible for notifying FSCO of termination of sponsorship of agents?**
- A. Yes, this is still a requirement.
22. **Q. As a life agent, do I still need to obtain 30 hours CE credits if I'm only working part-time?**
- A. Yes. All life agents, regardless of whether they hold other employment, must complete 30 hours CE credits in each licensing period.

23. **Q. Are we anticipating the issuing of licenses with conditions?**
- A. Yes, if necessary.
24. **Q. A new “restricted” agent needs a supervisor for the first 2 years. Can the supervisor be a non-resident?**
- A. Yes, as long as they meet the requirements under the regulation to supervise agents holding restricted licences.
25. **Q. Are there any changes in the requirements regarding a life insurance agent needing to maintain errors and omissions insurance?**
- A. No. The requirements have not changed. A life insurance agent must maintain errors and omissions insurance with a limit of at least \$1,000,000 in respect of any one occurrence and with extended coverage for loss from fraudulent acts. In addition, the regulation requires that the errors and omissions insurance be in a form approved by the Superintendent. Under this provision, the Superintendent requires that an aggregate limit be at least \$2,000,000 and a deductible be no more than \$1,000.

INTERNET APPLICATION SYSTEM

26. **Q. To use the Internet Application System, are companies to be given an ID account or number?**
- A. Companies must contact FSCO to obtain this information. The related forms are on FSCO’s website.
27. **Q. Will FSCO still be issuing paper licenses?**
- A. Yes.
28. **Q. Can one company have more than one account?**
- A. Yes.
29. **Q. When can we get copies of the new paper application form?**
- A. FSCO expects that most applications will be made via the IAS, which is currently ready for use. The paper application form will be available soon, and will be posted on the FSCO website.