

Good morning! I'm Brian Mills and I'm the Deputy Superintendent of Pensions at the Financial Services Commission of Ontario.

I'm pleased to welcome you to this webcast on Financial Hardship Unlocking.

Effective January 1, 2014, it is the responsibility of financial institutions that hold locked-in accounts to review applications for financial hardship withdrawals. If a financial institution determines that an application meets the requirements set out in the Regulation, it must make payment from the locked in account. The financial institution will also be responsible for answering questions and providing information to owners of locked-in accounts relating to their applications.

This webcast is intended to assist financial institutions with the new process.

We will also be posting on our website, additional material to help owners of locked-in accounts who wish to apply to withdraw money due to financial hardship.

FSCO has developed new Superintendent-approved forms on which the applications must be made. We'll continue to provide new forms on our website each year.

When you've finished listening to the webcast, please complete the short survey. This will enable us to identify topics of interest for future webcasts.

Our two speakers, Pauline & Michael will now take over.

Good morning.

My name is Pauline

....and I'm Michael.

We'll begin with an overview, followed by details of the new review process that financial institutions are required to follow.

Next, we'll discuss some general requirements and issues.

We'll then go through the features that are common to all four Forms.

In the final section, we'll walk you through Part 2 in each form. As the information required in Part 2 is different in each form, we'll look in detail at these special features. We will also look at Part 5 which is only required for Form 1.

Let's begin with an overview of the new process.

The person who applies for financial hardship withdrawal must be the owner of the locked-in account. This can be a Locked-in Retirement Account, a Life Income Fund or a Locked In Retirement Income Fund.

Each application must be made on Superintendent approved forms. These forms may not be altered in any way that will affect the substance of the form. FSCO has prepared four application forms for 2014; one for each category of financial hardship. A User Guide has been developed to provide assistance with the forms. FSCO will post new forms on its website at the beginning of each calendar year.

Applications must be made using the form for the calendar year in question. If an application is made to a financial institution on a 2013 form, it must be refused.

There are four categories of financial hardship:

1. medical expenses;
2. arrears of rent or default on debt secured on a principal residence (such as a mortgage),
3. payment of first and last months' rent, and
4. low expected income.

Each application must be based on one of these categories.

It has been FSCO's experience that the overwhelming majority of applications fall under the 'low expected income' category.

The minimum amount that an owner can withdraw is \$500. If the maximum amount an owner is entitled to withdraw is less than \$500, the application must be refused. For example, if a physician or dentist states that the owner needs \$400 for medical expenses, this is less than the minimum withdrawal amount and the application must therefore be refused.

The maximum is different for each category under the Regulation. The owner cannot apply for an amount greater than the maximum he or she is entitled to. If he or she does so, the financial institution should advise the owner to amend the application. If the amount applied for is still greater than the maximum, the financial institution must refuse the application.

This section outlines elements of the review process which can result in the approval or the refusal of an application.

A financial institution must review the application to determine if it meets the criteria for the category it is based on.

If it does not meet the requirements and the individual has not responded to the request for additional information or amendments to the application, as applicable, the financial institution must refuse the application.

It is the responsibility of the financial institution to put in place appropriate procedures for the review.

It's important to verify that the money in the locked-in account is subject to Ontario law and not to federal law or the law of another province.

First, the money must have been earned in Ontario. That means the employment took place in Ontario or was considered to have taken place in Ontario as per the Pension Benefits Act. A person is deemed to be employed in the province where:

- the employer's establishment is located to which the person is required to report for work; or
- if the person is not required to report for work at the employer's establishment, where the employer's establishment is located from which the person's remuneration is paid.

Second, the employment must not have been in federally regulated employment such as banking or interprovincial transportation, or employment in the federal government or one of its organizations or agencies, such as the RCMP.

When money is transferred from a pension fund to a locked-in account or from one locked-in account to another, the transfer is normally accompanied by a Canada Revenue Agency form. This form identifies the jurisdiction whose pension law applies to the money. The financial institution is responsible for keeping a record of the pension law that applies to the locked-in account and for administering it in accordance with the applicable law.

Owners are required to certify that they have not previously applied to withdraw money from that locked-in account in that year and under that category. If there has been a prior application during the calendar year with respect to that category and account, the application must be refused.

However, a different rule applies to the category of medical expenses. We'll provide more details about this rule later on in this webcast.

The financial institution must record the date on which an application is received.

If the financial institution determines that the application meets the requirements of the Regulation for the financial hardship category on which it's based, it must make payment from the fund within 30 days from the date it received the completed application.

This 30 day period excludes the date of receipt of the application and includes the date of payment.

For example, a financial institution receives an application on September 15 and approves it on the same day. The money must be paid within 30 days of September 15, i.e. October 15. If the application is complete but the financial institution does not approve it until September 25, the money must still be paid by October 15 as the 30-day period began on September 15, the date of receipt.

An application is considered complete when all the required information on the form is filled in and the form is accompanied by all the required documents.

An incomplete application affects the 30 day time limit. For example, a financial institution receives an application on May 1 and according to the 30 day limit, it is supposed to make the payment no later

than May 31. Assume that the financial institution reviews the application on May 7 and determines that it's incomplete. Perhaps there's a missing signature or the application doesn't have a required supporting document. At that point, the 30 day "clock" is stopped and reset to zero. The financial institution should contact the owner and advise him or her to provide the missing information or document. When the owner does so, the 30 day clock begins anew.

If the owner does not file the missing information, the financial institution must refuse the application because it is incomplete.

The financial institution is responsible for reviewing each application to ensure that it fulfils all requirements of the applicable section of the Regulation, and must refuse an application that does not meet these requirements.

For example, the applicant is not the owner of the account or the form has not been completed fully or there is no spousal consent where one is required in the circumstances. This presentation contains some of the reasons for refusal. Our website also provides examples of circumstances when the requirements are not met.

The financial institution may contact the owner to address the shortcomings before refusal. If these are not addressed, the financial institution must refuse the application.

Refusal of an application should be made in writing and set out the reasons for the refusal.

An owner who has had his or her application refused may contact FSCO and FSCO will review the refusal. FSCO may contact the financial institution for further details about the refusal.

In this section, we'll highlight some general requirements and issues relating to all applications.

Each financial institution must keep accurate records of the date a completed application was received, when the review was completed, and when the money was paid out or, when the reasons for refusal were communicated to the owner. Since only one application per account per category can be made in a year, the financial institution must be aware of whether the owner has already applied for money from that account during the year.

The date on which a financial institution receives a completed application determines the year an application is made. This could be the date an application was submitted in person or received by mail, fax or e-mail.

Let me explain with an example.

Mr. Smith submits a completed application in 2014 but is not paid the money until 2015. His application date is 2014. He may apply again under the same category in 2015 but must use the 2015 form to do so.

Financial institutions are required to withhold money as a prepayment for income tax. The withholding tax is a percentage of the amount withdrawn from the locked-in account. It is up to each financial institution to calculate the amount that must be withheld and remitted to the Canada Revenue Agency.

The maximum amount determined under the Regulation is the total amount an owner can withdraw. The financial institution cannot “gross up” this amount to add withholding tax and fees. Therefore, the financial institution must deduct income tax and any fee it may impose from the amount requested and that amount may not be more than the maximum permitted by the Regulation. The owner should be informed in advance regarding any deductions from the amount requested.

Let’s use Moe’s application as an example. Moe has \$20,000 in his account and Moe is entitled to a maximum amount of \$13,000 under the Regulation but applies to withdraw \$10,000. The bank approves his application for that amount. \$2,000 is required to be withheld for income tax. The bank also charges an administrative fee of \$10.

The bank cannot add an additional \$2,000 towards tax plus the \$10 fee to Moe’s requested amount of \$10,000. They cannot pay Moe \$10,000, transfer \$2,000 to CRA and deduct \$10 as their fee. Instead, the bank must deduct \$2,000 from the \$10,000 to which Moe is entitled, remit \$2,000 to CRA, pay itself \$10 and give Moe \$7990.

As the maximum amount Moe can apply to withdraw under the Regulation is \$13,000, Moe could instead apply to withdraw up to that amount. The amount of withholding tax will be calculated on the total amount he applies for. So if he applies for \$13,000 the withholding tax will be based on \$13,000.

If the maximum amount that Moe could apply to withdraw under the Regulation were \$10,000 in this example, he could not apply for more than \$10,000 and so would receive \$7990 after deductions.

- The financial institution must pay the money in one lump sum. The money cannot be paid monthly or in any other manner, or transferred to another tax-deferred vehicle, such as an RRSP or RRIF.
- Money in locked-in accounts is exempt from execution, seizure or attachment. Once money is withdrawn from a locked-in account and is in the hands of the owner, it loses its protection from creditors. This applies to all withdrawals including money that was withdrawn for financial hardship. A creditor may want to seize money when it is unlocked and before the financial institution pays it to the owner. The financial institution should seek advice from its legal advisors regarding its obligations in such a situation.
- The financial institution is responsible for advising each owner about the purpose for which personal information is collected, used or disclosed in accordance with any applicable privacy laws.

FSCO has designed four new forms; one for each category of financial hardship unlocking. In this section we will discuss the features that are common to all four forms.

The owner’s personal information is required in Question 1.

There must be only one number in the Policy number or account number box in Question 2 as each application pertains to only one locked-in account.

If the owner has a spouse on the date on which the application is signed, the information about the spouse in question 3 must be filled in. A spouse for this purpose is defined in the Pension Benefits Act as either of two persons who are:

- married to each other, or
- are not married to each other and are living together in a conjugal relationship,
  - continuously for a period of not less than three years, or
  - in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Family Law Act.

If spouses are living separate and apart due to a breakdown in the spousal relationship, that spouse need not consent to the withdrawal. If the spouses are living in different residences on the date the application is signed, that does not automatically mean they are not spouses for the purpose of this application. If one spouse is living elsewhere for reasons not related to their spousal relationship, for example, due to work or to look after a relative or friend or for health reasons, that does not constitute being separate and apart for the purpose of this application.

It is possible that an owner has “more than one spouse”. That is, he or she may be married but is separated from the spouse, and is living with another person common-law who meets the definition of spouse in the Pension Benefits Act. In this case, the information about the spouse in question 3 must be filled in with the information about the common-law spouse and the funds may only be withdrawn if the common-law spouse provides consent.

An application is considered signed when the owner signs and dates the certification on page 3, in the presence of a witness. The witness must be at least 18 years of age and should not be a spouse or dependant of the owner. An employee of the financial institution may be a witness.

The financial institution should ask for identification in accordance with its usual practices and procedures for withdrawals. If it is still not satisfied, it may refuse the application. The application is only valid if it is signed by the owner.

The owner has 60 days from the date of signing the application, to submit it to the financial institution. If the application was signed more than 60 days before the date it was received by the financial institution, the application must be rejected and a new one filled out and submitted. The date of receipt is excluded in determining whether the application was signed more than 60 days before receipt.

The owner must certify certain information regarding his or her spousal status as of the date of signing the application. The owner must check only one of four boxes:

1. The owner has a spouse and the spouse consents to the withdrawal of money from the locked-in account. The owner must certify that they are spouses within the meaning of the Pension Benefits Act. If the spouse does not consent, the application must be refused.
2. The owner has a spouse but the spouses are living separate and apart as a result of a breakdown in their spousal relationship.

It is deemed to be a term of the contract that the financial institution is entitled to rely on the information provided by the owner in the application. However, the financial institution should check its records for any further information about spousal status. If it has reason to question the accuracy of the information an owner has provided, it should ask the owner for further information. This would include the owner's statement in the application that the spousal relationship has broken down or that he or she is still in a spousal relationship (even if the financial institution has information that they are living in different residences).

As explained earlier, the owner may be living separate and apart from one spouse but have a common law relationship that meets the definition of spouse under the PBA. In that case, the owner must check the first box. If the financial institution is not satisfied with the statement of the owner, it may ask for further information or clarification.

3. The owner has a spouse, but the money in this locked-in account did not come from the owner's pension but from the pension plan of his or her former spouse and the owner became the owner of the money as a result of the breakdown of the spousal relationship.  
For example, as a result of a divorce, John was required to pay a portion of his pension to Susan, and that portion was paid into Susan's LIRA. Susan subsequently marries Bob and wants to apply to withdraw money from her LIRA for financial hardship. Since the money was earned by John, Susan's current spouse Bob is not required to consent to the application. John is no longer Susan's spouse, so his consent is not required.
4. The owner does not have a spouse. In this case, no spousal consent is required.

With limited exceptions, if an owner has a spouse on the day he or she signs the certification, the owner requires the spouse's consent to the application in order for the application to be approved. The financial institution must refuse the application if the spouse does not consent.

Spousal consent is not required if:

- the owner and spouse are living separate and apart as a result of a breakdown in the spousal relationship, or
- the money originated in the pension plan of a former spouse (none of the money was related to the employment of the owner).

The spouse's consent must be given in the presence of a witness, who must be at least 18 years of age. The owner cannot be the witness.

The financial institution may request evidence of the spouse's identity and spousal status.

Providing consent implies that the spouse understands the three statements in the consent box. If the spouse is signing the consent at the financial institution and indicates he or she doesn't understand any of the consent statements, the financial institution should advise the spouse to consult a lawyer. The financial institution may refuse the application if it is not satisfied that the spouse understands what he or she is signing.

We'll now discuss the features that are specific to each form.

There are four categories for applying for financial hardship unlocking, and a specific form is used for each of these.

As mentioned earlier, the vast majority of applications are likely to fall under Form 4 –Low Expected Income.

We now move on to Part 2 of Form 1 – Application for Medical Expenses, including Renovations to a Principal Residence for Medical Reasons.

For Question 1, the affected person must be the owner of the locked in account, the owner's spouse, or a dependant of the owner or the owner's spouse. A "dependant" is a person who was dependent for support on the owner or the owner's spouse, during the calendar year in which the owner signs the application, or during the previous calendar year. The dependant is not required to reside at the same location as the owner or the owner's spouse. For example, the dependant may be living in a short or long-term care home.

For Question 2, under the category of medical expenses, one application may be made each year for each person suffering from an illness or physical disability. A separate application must be made for each person, with a corresponding verification from a physician or dentist.

Medical expenses include:

- expenses for medical or dental goods and services;
- expenses already incurred or to be incurred for renovations or alterations to the owner's or a dependant's principal residence made necessary by the illness (including a mental illness) or physical disability of the owner, his or her spouse or a dependant. For example, a ramp for wheelchair access, installation of bars in a bath tub or shower stall, and a stair-lift;
- expenses incurred in the past, as long as a physician or dentist certifies that the goods or services are or were necessary for the person's treatment, or that the renovations are or were necessary as a result of the person's illness or physical disability. The illness or physical disability may have occurred in the past; and
- any additional expenses actually incurred in the construction of the owner's or dependant's principal residence made necessary by the illness or physical disability of the owner, his or her spouse or a dependant.

A person's principal residence is the primary place of residence. It is the housing unit occupied during the calendar year in which the owner signs the application. This can be a house, a condominium unit, an apartment or other unit in a multi-residential property, a non-seasonal mobile home, a trailer or a houseboat. A person can only have one principal residence at any one time for the purpose of this application.

The expenses incurred for renovations, alterations or construction may relate to the principal residence of the owner or the dependant.



A person can make applications under different categories but must use different forms. Likewise, a person can make two applications under the medical expenses category for two different persons but must use different forms. So if Joe wants to apply under medical expenses for himself and for his son, he must use two separate forms.

Question 3 refers to the maximum amount an owner may withdraw.

50% of the YMPE for the year will be pre-filled in the form in box 3a.

In box 3b, the owner should enter the total amount of medical expenses incurred in the past plus the estimated medical expenses for the 12 months following the date the application is signed.

The owner must attach copies of receipts or estimates to support the total amount of the medical expenses being claimed. It is expected that a receipt for past services or renovations will be dated, show the amount paid, to whom this amount was paid and the nature of the expenses. Estimates for future medical expenses should be dated, show the estimated amount, and the nature of the expenses (i.e., the goods, services or renovations to be purchased).

The amount that is the smaller of boxes 3a and 3b must be set out in box 3c. This is the maximum amount that the owner may apply to withdraw.

The amount the owner is applying for must be set out for Question 4. The amount in box 4 cannot be greater than the amount in box 3c or greater than the amount in the locked-in account for this application.

It cannot be less than \$500.

For example, the maximum Wilma is allowed to withdraw is \$8,000 but she only has \$6,000 in her account. Wilma should not ask for more than \$6,000. If she does, the financial institution should advise her that she has only \$6,000 in her account and suggest that she amend the application. Wilma can then decide whether to amend or withdraw the application.

To support an application under this section, the owner must provide a statement signed by a physician or dentist licensed to practice medicine or dentistry in Canada. This does not include chiropractors, physiotherapists, psychologists, acupuncturists, naturopaths, cosmeticians, and others.

The physician or dentist can either complete Part 5 or provide a separate statement and sign, date and include his or her registration or licence number along with all the other information required in Part 5. The separate statement must also say that the physician or dentist is licensed to practice in Canada.

The physician or dentist must identify the person who is the subject of the application and confirm the following:

- this individual has or had the illness or physical disability, and
- certain medical or dental goods or services are or were necessary for the person's treatment and/or

- certain renovations are or were necessary to the principal residence resulting from the person's illness or physical disability, and/or additional expenses incurred in the construction of a principal residence were made necessary by the person's illness or physical disability.

The physician or dentist's certification must be complete and must not be signed or dated more than 12 months before the financial institution receives it.

#### Financial Hardship Unlocking Form 2:

An owner may apply under this category if either the owner or his/her spouse has received:

- a written demand for payment of arrears of rent on the owner's principal residence; or
- a written demand in respect of a default on a debt secured against the owner's principal residence (such as a mortgage),

and

the owner could face eviction if the debt or amount in default remains unpaid.

The demand for payment of rent or default on secured debt (mortgage) must be in writing; a verbal demand is not sufficient.

While the demand for payment may have been received by either the owner of the locked in account or the spouse, it must pertain to the owner's principal residence.

The list of examples we've provided on the slide is not exhaustive. If the demand relates to another type of debt, the financial institution must determine whether it qualifies.

Question 2 of Part 2 refers to the maximum amount the owner may withdraw under this category.

50% of the YMPE for the year will be pre-populated in box 2a.

In box 2b, the owner should enter either the arrears of rent plus the total rent payable for the next 12 months, or the total amount of all payments in default on a secured debt (such as a mortgage) plus the total amount of payments due and interest payable on the debt for the next 12 months.

The total amount of arrears should not be greater than the amount in the written demand received by the owner or his or her spouse.

The smaller of the amounts in boxes 2a and 2b should be set out in box 2c.

The owner must indicate the amount that he or she is applying to withdraw in box 3. This amount must not be greater than the amount in box 2c or greater than the amount in the locked-in account corresponding to this application. It cannot be less than \$500.

Question 4 requires information about the principal residence. The principal residence on which there are rent or mortgage arrears doesn't have to be where the owner is currently residing. His/her current address may be temporary, or it may be a seasonal residence. However, the principal residence must be occupied as the primary residence.

The owner must provide a copy of the written demand for payment of rent arrears or in respect of the default on the debt secured against the principal residence, as applicable. This demand must be for the owner's principal residence and may be in the form of a letter, a notice or another type of document. It cannot be signed or dated more than 12 months before the financial institution receives it.

Financial Hardship Unlocking Form 3:

The residence that is being rented must be intended to be occupied by the owner as his or her principal residence. Either the owner or the owner's spouse may be the person who requires the money to pay first and last months' rent. For example, Jack owns a locked-in account. His wife Debbie arranges to rent a house as their principal residence and the lease will be in her name. Jack's application should qualify because the house will be Jack's principal residence.

If an individual has applied for first and last months' rent for a principal residence and wants to move to another principal residence and apply again under the same category, in the same calendar year, the application must be refused.

Question 2 of Part 2 refers to the maximum amount the owner may withdraw under this category.

Box 2a will be pre-populated with 5% of the YMPE

The amount in 2b must be the amount required for first and last months' rent.

The smaller of the amounts in 2a and 2b is entered in 2c. This is the maximum amount that can be withdrawn.

In Question 3, the owner sets out in box 3, the amount he or she is applying to withdraw. It cannot be greater than the amount in the locked-in account that is the subject of this application or the amount in 2c. It also cannot be less than \$500.

The owner must fill in the intended principal residence address in Question 4.

The principal residence may be different from the current residence or mailing address.

The owner must include a copy of the rental agreement with the application, if available. If it is not available, it need not be included.

#### Financial Hardship Unlocking Form 4:

In Question 2 of Part 2, the owner must set out how much income he or she expects to receive from all sources, before taxes, for the 12-month period beginning on the date of the application. This refers to income the owner expects to receive for the next 12 months, not the amount he or she received in the past 12 months. The amount should not include the income of the owner's spouse or the amount he or she expects to withdraw under this category.

Some key examples of what's included in income are: wages, salaries, capital gains and payment from pension plans. Examples of what's excluded from expected income are child support payments received under a court order and the amount payable from the locked-in account as a result of an approved financial hardship unlocking application. The Financial Hardship Unlocking User Guide on FSCO's website has additional examples of what is included and excluded in determining expected income.

This total expected income must be entered in box 2. If this amount is greater than 66 2/3 percent of the YMPE for the year in which the application is signed, the application must be refused.

Question 3 refers to the maximum amount that may be withdrawn.

The pre-populated amount in box 3a is 50% of the YMPE for the year in which the application is signed.

The amount in box 3b should be 75% of the amount in box 2 –this is 75% of the owner's total expected income from all sources, for the 12-month period after the date on which the application is signed.

The amount in box 3c is equal to the amount in box 3a minus the amount in box 3b. This is the maximum amount the owner may withdraw.

The amount the owner is applying for must be set out in box 4. It cannot be greater than the amount in the locked-in account that is the subject of this application or the amount in box 3c. It also cannot be less than \$500.00.

This brings us to the end of our presentation on the process for financial hardship unlocking and the review of applications by financial institutions, starting January 1, 2014.

Please visit our website for additional information and resources.

We hope you found this webcast helpful. Please complete the short survey that follows, so that we can continue to provide you with useful and topical information.

Thank you.