



SECTION:	Surplus
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TITLE:	Undistributed Surplus on Full or Partial Wind Up - PBA s. 76
APPROVED BY:	Superintendent of Financial Services
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This policy replaces S900-750 (“Surplus Remaining in Wound-up Plans”) 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.

On the wind up of a pension plan, section 76 of the PBA states that the pension fund of the plan continues to be subject to the PBA and Regulation until all assets of the pension fund have been disbursed. On partial wind up of a pension plan, section 76 of the PBA applies to the wound up portion of the pension plan, as determined at the date of the partial wind up. Unless specifically noted otherwise, in this policy use of the term “wind up” refers to both full and partial wind up of a pension plan. Likewise, within the context of a partial wind up, the terms “pension plan” and “pension fund” refer only to the wound up portion of the pension plan and pension fund.

This policy highlights some of the responsibilities of the pension plan administrator with respect to the distribution of any surplus remaining in the pension plan on wind up after the settlement of all plan liabilities. When a pension plan is wound up, the administrator has a fiduciary obligation to ensure that any surplus assets remaining at the time of the wind up are allocated and distributed in an expeditious manner. The administrator must ensure that any interests the affected members, former members and any other person entitled to benefit payments (collectively, the “plan beneficiaries”) and the employer have in the surplus are assessed and protected. To satisfy its fiduciary duty in this regard, the administrator should obtain all advice necessary to resolve any surplus entitlement issues.

In determining surplus entitlement, a review should be made of all relevant plan and trust documents that have existed since the plan’s inception, such as amendments, provisions regarding the power to amend, relevant predecessor plans, employee booklets, etc.

If the administrator determines that the plan beneficiaries are entitled to the surplus, or if the employer decides that all surplus will be distributed to the plan beneficiaries, the wind up report which was filed or a subsequent addendum to the wind up report must set out the method by which the surplus will be distributed. Where the Superintendent of Financial Services (the Superintendent) approves the wind up report or addendum, the surplus should be distributed as set out in the report or addendum as soon as possible following the date that the Superintendent's approval is received.

If the administrator determines that the employer is entitled to the surplus and the employer wishes to receive any portion of the surplus distribution, the administrator should advise the employer to apply to the Superintendent for consent. Detailed information on the application requirements and process are set out in policy S900-510 ("Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan") and policy S900-511 ("Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan"). Where the Superintendent consents to the payment of surplus to the employer and approves the wind up report, the surplus should be distributed.

Should the administrator believe, after having obtained appropriate advice, that the matter of surplus entitlement is not likely to be readily resolved, appropriate legal steps should be taken to clarify the situation so that the surplus can be distributed.

Where the administrator has received approval from the Superintendent under section 70(3) of the PBA to pay basic benefits, but surplus has not been addressed in the wind up report nor has an application to allocate and distribute surplus assets been made, the administrator should finalize and submit the report or application at the earliest possible date. On a partial plan wind up, surplus assets held in the wound up portion of the pension plan are required to be allocated and distributed at the time of the partial wind up. Until the distribution of all assets is completed:

- the assets of the pension fund, or the wound up portion, should be invested in accordance with the statement of investment policies and procedures (amended if necessary) and in a manner that reflects the size and nature of the benefit and surplus obligations; and
- the actual or notional split of assets on partial wind up must be maintained.

Where the administrator fails to address the surplus issues arising from a wind up of a pension plan, the Superintendent will take appropriate action (and may make orders as required under the PBA) to ensure that the surplus is distributed in order to complete the wind up. Should the administrator fail to act, the Superintendent may exercise a number of remedies that exist under the PBA. For example, the Superintendent may replace the administrator and appoint an independent administrator (under section 71(1) of the PBA) to ensure that:

- any interests the beneficiaries and employer have in the surplus are fully assessed;
- entitlement to surplus is resolved without undue delay; and
- appropriate steps are taken to pay out the surplus.