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SECTION:	Surplus
INDEX NO.:	S900-802
TITLE:	Surplus Attributable to Employer and Employee Contributions on Plan Wind Up - PBA s. 78(2) - Regulation 909 s. 28(5)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (August 2010)
EFFECTIVE DATE:	August 31, 2010 [up-to-date - February 2011]
REPLACES:	S900-801

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This policy replaces S900-801 (Surplus Attributable to Employer and Employee Contributions on Plan Wind Up) as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

The PBA provides that an employer who applies to the Superintendent of Financial Services (Superintendent) for consent to payment of money that is surplus out of a pension fund to an employer must transmit notice of the application, containing the prescribed information, to the parties listed in section 78(2) of the PBA.

Section 28(5) of the Regulation provides that:

A notice required under subsection 78(2) of the PBA for a plan that is being wound up shall contain, ...

(c) the surplus attributable to employee and employer contributions; ...

The following practice will be followed by FSCO staff in assessing compliance with this requirement:

1. Where circumstances warrant, FSCO staff may question the reasonableness of methods or information used to attribute surplus between employee and employer contributions. In all cases, the final decision as to whether section 28(5)(c) has been satisfied rests with the Superintendent.

2. The plan actuary should provide FSCO staff with:
  - a) a detailed description of the method used to determine the surplus attributable to employee and employer contributions;
  - b) any information relevant to the attribution method, including information on the actual annual amount of employer contributions and employee contributions remitted since the inception of the plan or prior plan(s), if any, or for such period of time for which this information is available.
  - c) a statement by the actuary performing the calculation that, in his/her opinion:
    - i) the data is sufficient and reliable (the data statement could be qualified with an explanation if appropriate), and
    - ii) the method used is reasonable given the Regulation and FSCO's policy.
3. The onus is on the actuary to use a reasonable method. In general, FSCO will not accept an assertion that it is not possible to estimate the amount of surplus attributable to employee and employer contributions. Also, FSCO will not accept a notice which does not contain an estimate of the amount attributable to each. (It should be noted that it is acceptable to show a range of results based on different methods or assumptions, assuming those methods and assumptions are acceptable to FSCO.)
4. Subject to any professional standards established by the Canadian Institute of Actuaries, it is not the intention of FSCO to specify a method that must be used. However, FSCO has in the past requested the actuary to consider:
  - a) the contributions of all members, not just the contributions of members remaining at the time of plan wind up or surplus withdrawal;
  - b) historic fund rates of return applied to the member contributions;
  - c) events for the life of the plan and not only for part of the period (assuming the data is available or a reasonable approximation for the data can be made). For example, it is not appropriate to consider events just from when the first ongoing surplus was revealed; and
  - d) the method should account for and disclose the following information:
    - i) employee and employer contributions for the life of the plan if available (from 1966 this information can usually be obtained from FSCO records);
    - ii) fund rates of return (net of expenses is acceptable);
    - iii) previous refunds of surplus to employer(s) or employees.
5. It may be appropriate under some surplus attribution methods to take into account specific events in the life of the plan. In these cases, the actuary should consider all significant events which have a material impact on the surplus in the plan such as:
  - a) annuity purchases (group or individual);
  - b) annuity purchases for less than the value of member contributions accumulated with interest;
  - c) rates of return credited on member contributions over the history of the plan;
  - d) partial wind ups (with respect to surplus and/or other asset distributions);
  - e) benefit enhancements, such as ad hoc adjustments to pensions in pay;
  - f) changes in assets, liabilities and surplus resulting from mergers;
  - g) dividend income (or asset transfers) from predecessor group annuities;

6. In addition to setting out the amounts of surplus attributable to employee and employer contributions, the notice to plan members and others should include the following information:
- a) there is no generally accepted interpretation of “surplus attributable to employee and employer contributions”;
  - b) other interpretations of “surplus attributable to employee and employer contributions” are possible, which may lead to different results;
  - c) there is no one method generally accepted within the actuarial profession of calculating the amount of surplus attributable to employee and employer contributions;
  - d) the amounts of surplus attributable to employer and employee contributions are estimates determined by the actuary retained by (whomever retained the actuary -- such as the employer, Joint Board, union, etc.); and
  - e) a detailed description of the method of attribution is available from the plan administrator.

*Please note that wherever a reference to “fund rate of return” is used in this policy, an approximation or reasonable proxy may be used in lieu of the fund rate of return if the actual fund rate of return is not available or impractical to calculate. It should also be noted that, generally speaking, employee and employer contribution information may be available at FSCO (subject to section 30 of the PBA).*