Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

Ontario

SECTION:	Surplus
INDEX NO.:	S900-876
TITLE:	Surplus Distribution in Cash in Continuing Plan
APPROVED BY:	Superintendant of Financial Services
PUBLISHED:	FSCO website (August 2010)
EFFECTIVE DATE:	August 31, 2010 [up-to-date – February 2011]
REPLACES:	S900-875

This policy replaces S900-875 (Surplus Distribution in Cash in Continuing Plan) 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. *All pension policies can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

May a continuing pension plan provide for a distribution of surplus to the members and former members in the form of cash if no payment is made to the employer?

A continuing plan may be amended, if permitted by the plan documents, to provide for a distribution of surplus to the members, former members and other persons who are entitled to a payment under the pension plan in the form of cash provided that no payment is being made to the employer. The amendment should identify the amount of surplus to be distributed, and the persons to whom surplus will be paid. The prior consent of the Superintendent of Financial Services (Superintendent) is not required in these circumstances. However, the administrator of the pension plan (administrator) is required to file an application for registration of the amendment in accordance with section 12 of the PBA.

The main consideration for the Superintendent is whether the pension plan and the fund are being administered prudently. Therefore, the Superintendent must be satisfied that a surplus exists as determined in accordance with section 26 of the Regulation. For certainty, the administrator may wish to consider the minimum surplus reserve criteria identified in sections 79(1)(c), (d) and (e) of the PBA that apply where a payment of surplus is made from a continuing plan to an employer.

On a case-by-case basis, the Superintendent may conclude that an amendment is adverse in accordance with section 26(1) of the PBA. This may occur where surplus is not allocated to all of the members, former members and any other persons who are entitled to receive a payment under the plan, or the method of allocation is not determined on a basis that is consistent for each class of employee.