



SECTION:	Surplus
INDEX NO.:	S900-901
TITLE:	Allocation of Surplus to Members, Former Members and Other Persons on Wind Up - PBA s. 63(7) and 70(5) - Regulation 909 s. 8
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2007)
EFFECTIVE DATE:	March 30, 2007
REPLACES:	S900-300 and S900-900

This policy replaces policies S900-300 (“Distribution of Surplus to Plan Beneficiaries on Wind Up”) and S900-900 (“Allocation of Surplus Distributed to Members and Former Members on 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.

The following procedures apply where all or part of a pension plan surplus is to be allocated among members, former members and any other persons, other than the employer, entitled to payment on the date of full or partial wind up of a pension plan. Unless specifically noted otherwise, use of the term “wind up” in this policy refers to both full and partial wind up of a pension plan.

These procedures do not apply to the payment of all or part of the surplus to an employer. For these payments, the employer must apply to the Superintendent of Financial Services (Superintendent) under section 78 of the PBA. See policy S900-510 (“Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan”) or policy S900-511 (“Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan”), as appropriate, for information on the surplus application process. For guidance on the methods of distribution of the surplus to the employer on partial wind up, see policy S900-910 (“Distribution of Surplus to Employer on Partial Wind Up”)

Authority for Surplus Payments

1. Payment of surplus to members, former members and other persons entitled to payment on wind up may be sought pursuant to section 8(1)(a) of the Regulation, a surplus sharing agreement in regard to an application pursuant to section 8(1)(b) of the Regulation or an application under section 8(2) of the Regulation. Any allocation of surplus must be in the context of a wind up report otherwise approved by the Superintendent after considering all legislative requirements, including section 70(5) of the PBA.

Superintendent's Discretion

2. Section 70(5) of the PBA permits the Superintendent to refuse to approve a wind up report that does not meet the requirements of the PBA and the Regulation, or that does not protect the interests of the members and former members of the plan.

Allocation of Surplus

3. Section 8(1)(a) of the Regulation provides for the payment of surplus out of a pension plan that is being wound up to or for the benefit of members, former members and other persons entitled to payments out of the plan, other than the employer, on the date of wind up. Accordingly, all three groups named should share in the allocation of surplus when proceeding under that section.
4. The Superintendent may refuse to approve a wind up report where the allocation of surplus contained in a wind up report, whether by cash or by benefit enhancements, does not protect the interests of members and former members of the plan pursuant to section 70(5) of the PBA or is contrary to the provisions of the plan.
5. The following examples of surplus allocation would, under the circumstances of most plans, be acceptable as protecting the interests noted in section 70(5) of the PBA:
 - (a) indexing benefits to inflation;
 - (b) in defined benefit plans, sharing in proportion to liabilities;
 - (c) in a contributory plan, an application to the Superintendent under section 63(7) of the PBA for refund of member and deferred member contributions with an appropriate adjustment for retirees, provided that any surplus remaining after the surplus allocation to replace the refunded contributions is distributed using one of the other methods, and the plan provides or is amended to provide for the refund of member contributions;
 - (d) in defined contribution plans, sharing in proportion to accumulated contributions plus interest;
 - (e) distributing surplus in proportion to length of credited service under the plan; or
 - (f) retroactive application of the 50 per cent funding rule in section 39 of the PBA, with an appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for retroactive 50 per cent funding.

6. The benefit enhancements listed above may be notional enhancements for the purposes of allocating the surplus where the distribution will be made in the form of cash. Alternatively, the benefit enhancements may be provided as actual pension benefits in which event they will be treated as pension benefits for all purposes of the PBA, including locking in. The same method of allocation need not be applied to each of the three groups of members, former members and other persons entitled to payment under the plan on wind up. If the plan provisions do not stipulate the form in which the surplus is to be provided, the plan text must be amended.
7. Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.
8. Other methods of allocating surplus will be considered. If another method is proposed, the applicant should describe how the method protects the interests of the members and former members of the plan.

Methods of Distribution

9. The following examples of methods of distributing the surplus allocated among members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up would, under the circumstances of most plans, be acceptable:
 - (a) benefit enhancements;
 - (b) cash distribution; or
 - (c) a combination of (a) and (b).
10. A person who is entitled to a deferred pension benefit (including any benefit enhancements) on wind up is entitled to transfer rights under section 42(1) of the PBA pursuant to section 73(2) of the PBA.
11. On partial wind up of a pension plan, the surplus allocated to members, former members and other persons entitled to payments, other than the employer, must be distributed from the wound up portion of the pension plan.

Documentation

12. The plan administrator is required by section 70(1) of the PBA to file a wind up report that sets out the benefits to be provided and the methods of allocating and distributing the assets of the plan. A proposal for the allocation and distribution of plan surplus must be consistent with the provisions of the pension plan; therefore, plan amendments must be filed as appropriate.
13. No payment may be made out of a pension fund after a notice of proposal to wind up the plan has been given and before approval of the wind up report, except in accordance with section 70(3) of the PBA. Once the Superintendent's approval of the wind up report has been obtained in accordance with section 70(2) of the PBA, assets of the plan, including surplus, can be distributed in accordance with the wind up report.

Completion of Partial Wind Up

14. The administrator must advise the Superintendent in writing once all assets have been distributed from the wound up portion of the pension plan. Once the Superintendent is advised of this distribution, the file on the partial wind up will be closed.