



---

SECTION:	Wind Up
INDEX NO.:	W100-304
TITLE:	Guideline for Notice of Full or Partial Wind Up of Pension Plan - PBA ss. 68(2), 77.2, 78(2), 112(1) and (3) - Regulation 909 s. 28(1)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (October 2013)
EFFECTIVE DATE:	July 1, 2012
REPLACES:	W100-303

---

This policy replaces W100-303 (Guideline for Notice of Full or Partial Wind Up of Pension 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](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

This policy identifies the notice requirements and procedure to be followed on the full or partial wind up of a pension plan. The considerations and procedures for the partial or full wind up of a defined benefit pension plan are substantially similar. Unless specifically noted otherwise, the use of the term "wind up" refers to either the full or the partial wind up of a pension plan.

The PBA was amended July 1, 2012 to eliminate any partial wind ups where the effective date of the partial wind up is on or after July 1, 2012. A plan may still be wound up in part if the effective date of the partial wind up is prior to July 1, 2012. Where a plan is wound up in part, certain sections of the PBA and Regulation as they relate to a full wind up of a plan apply, with necessary modifications, to the partial wind up of a plan.

### **Written Notice of Intended Wind Up of a Pension Plan**

Once the employer or administrator, as the case may be, decides to wind up the plan, section 68(2) of the PBA and section 77.2 (which states that section 68 applies, with necessary modifications with respect to a partial wind up of the plan) require that the administrator give written notice of the intended wind up of the plan to persons specified in section 68(2). Section 68(2) provides that the administrator must give written notice of the intended wind up to the following:

- a) the Superintendent;
- b) each member, former member and retired member of the plan where there will be a full wind up of the plan;
- c) each trade union that represents members of the pension plan or that, on the date of the wind up, represented the members, former members or retired members of the pension plan;
- d) the advisory committee of the pension plan; and
- e) any other person entitled to a payment from the pension fund. Examples of such other person are:
  - the former spouse of a member, former member or retired member who is entitled to a payment from the pension fund as a result of a court order, agreement or arbitration award;
  - the spouse of a deceased member, former member or retired member who is entitled to a pre-retirement death benefit;
  - any beneficiary designated by a deceased member, former or retired member who is entitled to receive a pre-retirement death benefit;
  - the personal representative of a deceased member, former member or retired member who is entitled to receive payment of a pre-retirement death benefit; and
  - any dependent child or children of a deceased member, former member or retired member who is or are in receipt of a payment of pension benefits.

Where only part of the plan will be wound up, the administrator must provide notice of the intended wind up to those members, former members, retired members and any other person entitled to payment from the pension fund who are affected by the partial wind up. The Superintendent may, on a case by case basis, determine if notice of the intended wind up is to be provided to members, former members, retired members and other persons entitled to payment from the pension fund if such persons are indirectly affected by the partial plan wind up.

In accordance with section 28(1) of the Regulation under the PBA, a notice of intended wind up required under section 68 of the PBA must include the following information:

- a) the name of the plan and its provincial registration number;
- b) the proposed wind up date;
- c) notice that each member, former member, retired member or any other person entitled to a pension, deferred pension, any other benefit or a refund will be provided with an individual statement setting out entitlements and options under the plan; and
- d) where a plan provides contributory benefits, notice of the member's right to make contributions in respect of the period of notice of termination of employment required under Part XV of the *Employment Standards Act, 2000*.

### **Surplus Application - Notice Respecting Distribution of Surplus Following the Wind Up**

Where, after all benefits have been provided for and the pension plan has a surplus, that surplus will have to be distributed, in accordance with the PBA and Regulation, to complete the wind up of the plan. Where the employer is applying to the Superintendent for consent to the payment of surplus under section 78 of the PBA, the procedures to be followed, including the notice requirements, are set out in policy S900-510 - Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan.

**Individual Written Notice Served by Personal Delivery or Regular Mail**

In accordance with section 112(1) of the PBA, service of the written notice of intended wind up by personal delivery or regular mail to each person entitled to receive the notice is generally required. However, section 112(3) of the PBA provides that, where the Superintendent is of the opinion that it is not reasonable to give the notice to all or any of the persons individually, the Superintendent may authorize service of the notice or its contents by alternate means. The alternative means of service includes public advertisement or otherwise as the Superintendent may direct. Plan administrators may apply to the Superintendent for authorization to give the notice or its contents to the persons by alternate means. The application for authorization must include the following information:

- i) the reasons why it is not reasonable to give the notice to all or any of the persons individually personally or by regular mail;
- ii) the alternate means proposed for the service of the notice or its contents and the reasons why such alternate means of service of the notice or its contents would be reasonable; and
- iii) details in respect of the intended circulation of such a notice or contents of such a notice.