



SECTION:	Wind Up
INDEX NO.:	W100-801
TITLE:	Successor Plan Does Not Preclude Wind Up of Original Plan - PBA s. 81(1)
PUBLISHED:	December 2011
EFFECTIVE DATE:	December 1, 2011 [No longer applicable - replaced by W100-802 - April 2013]
REPLACES:	W100-800

This policy replaced Policy W100-800 (Successor Plan Does Not Preclude Wind Up of Original 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.*

If an employer that already has a pension plan for its employees establishes a new plan and ceases contributions to the original plan, can the employer wind up the original plan?

Yes. The establishment of a successor pension plan does not preclude the wind up of the original plan. Section 68(1) of the PBA permits the administrator to wind up the pension plan in whole or in part.

Treatment of Original and Successor Plans as One Continuing Pension Plan

Section 81(1) of the PBA creates a legal fiction that the original plan, even when wound up, continues to exist, thus providing further protection to the members of this plan. For example, when determining member rights to benefits, the period of membership in the original pension plan is included with the period of membership in the successor pension plan when determining vested rights or entitlement to benefits under the successor pension plan. Though wound up, the original pension plan is, for all purposes, to be treated as a continuing plan. Consequently, affected members may be provided with their wind up benefits from the original plan. However, if the employer seeks a surplus refund from the original plan, FSCO will deal with the application as a surplus withdrawal from an on-going plan.

Wind Up of Original Pension Plan

Where the administrator wishes to wind up the original pension plan (whether or not the assets have been merged with the successor plan), sections 68(3) and 68(4) of the PBA require the administrator to give written notice to members, former members and other persons affected by the wind up of the original pension plan. The wind up report will disclose the funded status (surplus or deficit) of the original pension plan. Policy **W100-102** (Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan) provides further information on how to address the surplus or deficit in the

original pension plan.