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Financial Hardship Unlocking Questions & Answers - Financial Institutions

This page provides Questions and Answers on the rules and process effective January 1, 2014, for applications related to Financial Hardship Unlocking

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Part 1 – Questions that apply to all applications and forms

Applications and forms

Q1. When will the new application forms be posted?

A2. The final 2014 application forms that must be used for each category will be posted on FSCO's website on January 2, 2014 and hard copies will be available at FSCO's offices at 5160 Yonge Street, 8th floor, Toronto, Ontario on the same date. -12/13

Q2. Can the form be customized or altered?

A2. No. The forms are required to be approved by the Superintendent, and no changes to the wording or structure of the forms are allowed. -12/13

Q3. What does each application relate to? How many applications may be made?

A3. Each application relates to one locked-in account for the year in question. An individual can apply once each year under each category from any locked-in account he or she owns. For the medical expenses category, the owner of the account may make one application each calendar year for each person who is suffering from an illness or physical disability if that person is (1) the owner, (2) the owner's spouse, or (3) a dependant of the owner or the owner's spouse. -12/13

Q4. If an individual is eligible to apply under more than one category of financial hardship, may all the applications be made at the same time?

A4. Yes, but each application must be made on a separate form. -12/13

Q5. May an individual apply for financial hardship unlocking and another type of non-financial hardship unlocking, such as small amounts at 55 or shortened life expectancy, at the same time?

A5. Yes, but each application must be made on a different form. The financial hardship application must be made on one of the financial hardship unlocking forms depending on the category (FHU 1, 2, 3 or 4), and the non-financial hardship application must be made on FSCO pension Form 5. Both applications must be made to the financial institution. -12/13

Q6. If an application is refused, may the same individual apply again under the same category in the same year?

A6. No. Each person is entitled to one application per year for each account, regardless of whether it is approved or refused. -12/13

Q7. Does an application have to be accompanied by a letter from either the Canada Revenue Agency or the pension plan of which the applicant was a member authorizing the withdrawal?

A7. No. - 02/14

Transition Questions – 2013 to 2014

Q8. In 2014, can a financial institution accept an application made on a 2013 form?

A8. No. The 2013 form is not effective after December 31, 2013. -12/13

Q9. Assume an individual submitted the consent letter of the Superintendent to the financial institution in 2013 and he or she is being paid every month. Under the new rules, monthly payments are not permitted. Can the financial institution continue to make monthly payments in 2014 until the full amount that was approved in 2013 is paid?

A9. Yes. Monthly payments that began under a 2013 consent may continue to be paid until the payments have been completed. -12/13

Q10. Under the pre-January 1, 2014 rules, individuals who have received a consent from the Superintendent in 2013 have 12 months to submit it to the financial institution. If the consent is submitted in 2014, can the financial institution accept it? If yes, does this count as an application for 2013 or 2014?

A10. Yes. The financial institution can make the payment based on the Superintendent's consent as long as the consent is submitted to the financial institution within 12 months of the date the Superintendent signed it. The application is considered to have been made in 2013 and the individual can apply again in 2014 under the new rules, using a 2014 form. -12/13

Responsibility for processing applications

Q11. Who is responsible for processing the application?

A11. The financial institution that administers the locked-in account is responsible for reviewing the application, determining whether the requirements set out in the Regulation are met, answering the applicant's questions, advising the applicant in writing if the application is refused, and paying the money to the applicant within the prescribed time period if the application is successful. -12/13

Q12. What is FSCO's role in the application process? Can applications be sent to FSCO for review?

A12. From January 1, 2014, the financial institution that administers the locked-in account is responsible for reviewing the application and answering the applicant's questions. The application must be on a form approved by the Superintendent. FSCO is not responsible for reviewing applications or preliminary decisions made by financial institutions on financial hardship applications.

In addition to the Superintendent-approved forms, FSCO has made several resources available on its website to help financial institutions and applicants understand the changes to the rules for financial hardship unlocking applications. It is expected that additional Questions and Answers will be posted periodically.

If an owner does not agree with the decision of the financial institution on the application, the financial institution should advise the owner to contact FSCO. -12/13

Keeping track of applications

Q13. Why should financial institutions keep track of applications after the review is complete?

A13. Since an applicant may make only one application per category each calendar year (other than for medical expenses), the financial institution needs to know if that individual has applied and been approved or refused during the same year. For the medical expense category, the financial institution needs to know that the medical expenses relate to the person who is named in the application. -12/13

Q14. How long must financial institutions retain the application and supporting documents?

A14. This is not addressed in the Pension Benefits Act or Regulation. Financial institutions should consult their legal advisors. -12/13

Relying on information provided by the owner

Q15. To what extent can a financial institution rely on the certification provided by the applicant?

A15. Under the Regulation, it is deemed to be a term of the contract governing the locked-in account that the financial institution is entitled to rely on the information provided by the owner

in the application. However, the financial institution is still responsible for ensuring that the requirements of the Regulation have been satisfied. For example, the application is a nullity if it is signed by the owner (or his or her spouse, if applicable) more than 60 days before the financial institution receives it.

As part of the financial institution's due diligence, it should review the application to ensure that the information in it is consistent with the information in the financial institution's records (for example, if the spouse identified in the application is the same as the spouse in the financial institution's records). If the financial institution has reason to question the accuracy of the information, it should make further inquiries of the owner. If the financial institution is not satisfied that the requirements of the Regulation have been met, it should refuse the application.

If a financial institution has questions about possible liability associated with the review of applications, it should consult with its legal advisors. -12/13

Q16. What are some examples of where the financial institution should make further enquiries?

A16. A financial institution may be aware or become aware that the information the applicant has provided or the statement he or she has made is not true, or that there is a discrepancy between what the owner has stated in the application and the information the financial institution has in its records. Some examples of when a financial institution should make further enquiries are:

- an applicant states that he has no spouse but the financial institution's records indicate a spouse
- the name of the applicant's spouse is different from the name of the spouse in the financial institution's records;
- the application contains conflicting information, such as different principal residence addresses;
- the application states that the applicant has not previously applied to withdraw money under the same category from the same account in the same year, but the financial institution has information indicating he or she has in fact done so.

These are only examples; this is not a comprehensive list. -12/13

Q17. Is the financial institution responsible for checking to see if the application is complete and accompanied by all necessary supporting documents?

A17. Yes, the financial institution is responsible for reviewing the application to ensure that the application is complete and that all supporting documents accompany it.

The financial institution should record the date the complete application with all required documents is received, review the application, determine if it meets the requirements set out in the Regulation for the particular category of financial hardship on which the application is based, and if it does, make one payment of the entire amount to which the owner is entitled from the account (less withholding taxes and fees, if any), all within 30 days from the receipt of the complete application. -12/13

Q18. Must applications and documents be notarized?

A18. Neither the Pension Benefits Act nor Regulation requires that an application or supporting documents be notarized. The form does require that certain signatures be witnessed. -12/13

Refusing to Review an Application

Q19. If an individual has a locked-in account with a financial institution, may that financial institution refuse to review an application for financial hardship unlocking?

A19. No. A financial institution must review an application if it holds the locked-in account. -12/13

Q20. What should the financial institution do if the application is not complete? Should an incomplete application be refused?

A.20. The financial institution should advise the applicant that the application is incomplete and he or she should be given an opportunity to complete it. -12/13

Q21. What are some of the other grounds for refusing an application?

A21. A complete application must be refused if it does not meet the requirements of the Regulation. It is the financial institution's responsibility to review the application to ensure that it meets all requirements. The following are some examples of where the requirements will not be met:

- Any documents required by the applicable category to accompany the application have not been submitted or do not meet the requirements of the category.
- The locked-in account is not held by the financial institution.
- The money was not earned in Ontario regulated employment.
- The applicant is not the owner of the account.
- The owner has already made an application under that category during that calendar year with respect to that account (or for medical expenses has already made an application under that category during that calendar year in respect of that particular person).
- The owner applies to withdraw an amount that is less than \$500.
- The maximum amount permitted under the category is less than \$500.
- The owner applies to withdraw an amount that is greater than the maximum permitted under the category.
- There is no spousal consent to the withdrawal (and one is required in the circumstances.)
- The spouse who signs the consent is not the spouse identified in Part 1 of the application.
- The owner certification or the spousal consent is dated more than 60 days before the date the financial institution receives the form.
- The owner does not use the Superintendent approved form for the correct category of financial hardship.
- The spouse's signature is not witnessed by an adult who is not the owner of the locked-in account.

These are only examples; it is not a comprehensive list. -12/13

Q22. What actions should a financial institution take when it refuses an application?

A22. When an application is refused, the financial institution should advise the applicant in writing and explain the reason for the refusal. -12/13

Q23. If the applicant does not agree with the refusal or with the amount that has been approved, what should the financial institution do?

A23. If the applicant does not agree with the refusal or does not agree with the amount that has been approved, the financial institution should discuss its decision with the applicant. If the applicant is still not satisfied, he or she should be advised to contact FSCO. -12/13

Deadlines and timelines

Q24. What are the key timing considerations for making applications?

A24. The owner of the locked-in account has 60 days from the date he or she signs the certification in the application (Part 3) and his or her spouse signs the consent, if applicable (Part 4) to submit the application to the financial institution. If the application was signed by either the owner or the spouse more than 60 days before the date it was received by the financial institution, the application is a nullity.

In addition, certain required statements or documents cannot be signed and dated more than 12 months before the financial institution receives it. If the statement or document is dated more than 12 months before, the statement or document cannot be accepted. The financial institution should give the applicant an opportunity to provide a new statement that complies with the 12-month timeline. -12/13

Q25. What are the key timing considerations for processing applications?

A25. Once a financial institution receives a complete application including all required accompanying documents, it has 30 days in which to review the application and, if it is approved, to pay out the money. In determining the 30 day time limit, the date of receipt is excluded and the date of payment is included.

For example, a financial institution receives a complete application and all required documents on September 15 and approves it on the same day. The money must be paid within 30 days of September 15, which is October 15 – you begin counting on the next day, September 16. If the application is complete but the financial institution does not approve it until September 25, the money must still be paid by October 15 as the 30-day period began September 15, the date of receipt. -12/13

Q26. What happens if an application is not complete?

A26. The 30-day “clock” begins on the date the application is received. If the application is incomplete, the 30-day clock stops and is “reset to zero” on the date the financial institution discovers that the application is incomplete and advises the applicant. When the applicant provides the missing information or document, the 30-day clock begins anew.

For example, an application is received by a financial institution on May 1. The financial institution must make the payment within 30 days from May 1, which would be no later than May 31. Assume that the financial institution reviews the application on May 7 and determines that the application is incomplete – it may be missing a signature or there might not be a necessary accompanying document. At that point, the 30 day “clock” is stopped and is reset to zero. The financial institution should contact the applicant and advise him or her to provide the missing information or document. When the applicant does so, the 30 day clock begins anew. -12/13

Minimum amounts that can be applied for and withdrawn

Q27. The minimum amount that can be withdrawn is \$500. What happens if the applicant applies for \$500 (or more) but has less than \$500 in his or her account when his or her application is approved?

A27. The Regulation provides that the minimum amount that may be withdrawn is \$500. If the applicant has less than that amount, no money can be paid. -12/13

Maximum amounts that can be applied for and withdrawn

Q28. If the maximum amount an applicant can withdraw is less than \$500, can the lesser amount be withdrawn?

A28. No. If the maximum amount that may be withdrawn is less than \$500, no money can be paid. -12/13

Q29. In calculating the maximum amount an individual can apply for, must the financial institution take into account the total of all the monies in all the applicant's locked-in accounts?

A29. No. Each application relates only to the locked-in account from which the individual is applying to withdraw money. -12/13

Q30. If an individual is approved for a certain amount, can he or she withdraw some of the money he or she is approved for immediately and withdraw the remainder later?

A30. No, there is no authority for partial payments. All the money must be paid out in full once the application is approved (and within 30 days of the receipt of the completed application with all required accompanying documents). -12/13

Q31. If the maximum amount an individual is allowed to withdraw is \$6,000 and he or she has \$3,000 in one account and \$3,000 in another account, can the applicant make one application for \$6,000 and be paid from both accounts?

A31. No. Each application relates to only one account. The individual would have to first combine the two accounts and then make his or her application or make separate applications with respect to each account. -12/13

Q32. Can an individual apply for more than the amount he or she has in his account on the date of the application, assuming that the amount applied for is less than the maximum? How should the financial institution process such an application?

A32. If an applicant applies for an amount greater than the amount in the account on the date of the application, the financial institution may request the applicant to amend the application. If the applicant does not do so, the application must be refused. -12/13

Q33. How should the financial institution process an application where the applicant applies for an amount greater than the maximum to which he or she is entitled?

A33. The financial institution may request the applicant to amend the application. If the applicant does not do so, the application must be refused. -12/13

Spouses

Q34. Can a financial institution rely on the information provided by the applicant regarding his or her spousal status?

A34. Under the Regulation, it is deemed to be a term of the contract governing the locked-in account that the financial institution is entitled to rely on the information provided by the owner in the application (see question above with respect to reliance on information provided by the applicant [link]). However, as part of the financial institution's due diligence, it should ensure that the information in the application is consistent with the information in the financial institution's records. If the information is not consistent, the financial institution should make further inquiries. -12/13

Witnesses

Q35. What constitutes an adult witness for the certification?

A35. A person 18 years or older who is not a dependant or spouse of the applicant. -12/13

Q36. Can a spouse or dependant of the applicant witness the applicant's certification?

A36. No. If a spouse or dependant is the witness, the financial institution should advise the applicant to sign again in the presence of another witness. -12/13

Q37. For the spousal consent, can the applicant be the witness?

A37. No. -12/13

Q38. Can an employee of the financial institution be a witness?

A38. Yes, a financial institution employee can witness the owner's certification or the spouse's consent. -12/13

Withholding tax and deduction of additional amounts

Q39. How should the financial institution deal with withholding tax?

A39. The financial institution is required to deduct withholding tax when a payment is made from a locked-in account. The financial institution would calculate the amount that must be withheld in accordance with the rules in the federal Income Tax Act and regulations, and deduct that amount from the amount withdrawn from the account before payment to the individual. If the financial institution has any questions about how to deal with withholding tax, it should consult CRA or its tax advisors. -12/13

Q40. Is the amount that the individual applies to withdraw a gross or net amount?

A40. The amount that the owner applies to withdraw and that is approved is the total amount that may be paid out of the account and is the gross amount. Withholding tax plus any additional fee that is charged is withheld from this amount and the balance is paid to the owner. -12/13

Q41. Can the amount approved be "grossed up" to include withholding tax?

A41. No. The amount approved is the total amount that may be withdrawn from the account. Therefore, the amount that is withheld for income tax must be deducted from the amount withdrawn from the account and remitted to CRA. For example, if an individual is approved to

be paid \$20,000.00 and the amount to be withheld for income tax is \$6,000.00, the individual should be paid \$14,000.00 and \$6,000.00 should be remitted to CRA. -12/13

Q42. Can a financial institution charge an administrative fee?

A42. The Pension Benefits Act and Regulation do not prohibit the charging of administrative fees. -12/13

Q43. If a financial institution charges an administrative fee to the applicant, should that amount be deducted from the amount that is paid to the individual?

A43. The amount approved is the total amount that may be withdrawn from the account. Therefore, if the financial institution charges an administrative fee, that amount must be deducted from the amount that is withdrawn from the account unless it is paid by the individual directly. -12/13

Part 2 – Questions about specific categories of financial hardship

FHU Form 1 - Medical Expenses

Q44. Whose medical expenses can be covered under the application?

A44. An application to withdraw money from a locked-in account for financial hardship for medical expenses may relate to an illness or physical disability of (1) the owner of the locked-in account; (2) the owner's spouse; or (3) a dependant of the owner or a dependant of the owner's spouse. The application must be made by the owner of the locked-in account. -12/13

Q45. May an owner apply under the medical expenses category for more than one person during the same year?

A45. Yes, as long as the medical expenses relate to the owner, the owner's spouse or a dependant of the owner or owner's spouse. -12/13

Q46. If the owner is applying for medical expenses for different persons in the same calendar year, must the owner make a separate application for each person?

A46. Yes. An owner may make applications under the medical expenses category for any of the eligible persons in the same calendar year, but separate forms for each person must be used. In addition, there must be separate supporting documents and certifications from a physician or dentist. -12/13

Q47. May an individual apply for medical expenses that were incurred in the past? Is there a time limit?

A47. As long as a physician or dentist certifies that the medical expenses are or were necessary for the person's treatment, they may be included in the application. The Regulations do not set out a time limit for past expenses. -12/13

Q48. Must the subject of the application be suffering from an illness or physical disability at the time the application is signed?

A48. The Regulation does not require that the individual have the illness or physical disability at the time the application is signed. -12/13

Q49. May medical expenses that are required for a person suffering from a mental illness be included?

A49. Yes. A person suffering from a mental illness can claim for medical expenses. The physician or dentist must certify that the medical expenses are or were necessary for the person's treatment. -12/13

Q50. If the owner and his or her spouse are living in separate residences but their spousal relationship has not broken down, can the owner make an application under medical expenses if his or her spouse is suffering from an illness or physical disability?

A50. Yes. However, the medical expenses cannot be made for renovations to the spouse's principal residence. -12/13

Q51. How is a "dependant" defined for the purpose of this application?

A51. A dependant is any person who was dependent for support on either the owner of the locked-in account or on the owner's spouse at some time during the calendar year in which the owner signs the application or during the previous calendar year. -12/13

Q52. Does a dependant have to reside in the same residence as the owner or spouse?

A52. No. The dependant is not required to reside at the same residence as the owner or the owner's spouse. -12/13

Q53. Is there an age limit for a dependant?

A53. No, there is no age limit for dependants set out in the Regulation. -12/13

Q54. May an individual apply for future renovations for medical reasons to a principal residence he or she is currently living in? What supporting documents should be submitted?

A54. Yes, future renovations to the owner's or the dependant's existing principal residence may be included if they are made necessary by the illness or physical disability of the owner, his or her spouse or a dependant, as verified by a physician or dentist licensed to practice medicine or dentistry, as the case may be, in a jurisdiction in Canada. The applicant must submit an estimate to account for the total cost of the renovations being claimed. The estimate should be dated, show the proposed amount to be paid and what work must be done. -12/13

Q55. May an individual apply for renovations for medical reasons to a principal residence he or she does not yet live in? For example, if he or she intends to move into a new home that requires renovations for a medical reason, can those expenses be covered?

A55. No. The Regulations distinguish between expenses for renovations for an existing principal residence and additional expenses in the construction of a future principal residence. However, once the owner or dependant moves into the new home and it becomes his or her principal

residence, an application may be made for additional expenses that were incurred in the construction of the principal residence made necessary by the illness or physical disability of the account owner, his or her spouse or a dependant. -12/13

Q56. What constitutes an acceptable receipt for a medical expense?

A56. Medical receipts should be signed and dated, show the amount paid and to whom the amount was paid, and should identify the product or service for which it was given. It is up to each financial institution to determine if a receipt is acceptable. -12/13

Q57. Must the physician or dentist's certification be made within a certain time period?

A57. The certification cannot be signed or dated more than 12 months before the date the financial institution receives the application. -12/13

FHU Form 2 - Arrears of Rent or Mortgage (Secured Debt)

Q58. What kind of demand must have been received and by whom?

A58. 1) The owner of the account or the owner's spouse must have received a written demand for:

- a. payment of arrears of rent on the owner's principal residence; or
- b. payment in respect of a default on a debt secured against the owner's principal residence;

and

- 2) the owner could face eviction if the arrears or debt remains unpaid.

The demand must be in writing; a verbal demand is not sufficient. -12/13

Q59. Who must face eviction? Can it be the spouse?

A59. The owner must be the person who could face eviction from his principal residence, not the owner's spouse. If both the owner and the spouse could face eviction, that would qualify. -12/13

Q60. Who can receive the written demand for payment?

A60. The written demand can be received by the owner of the principal residence or the owner's spouse but the owner must be the one who could face eviction. -12/13

Q61. Form 2 refers to a "secured debt (mortgage)". Does this mean that only a mortgage can be considered a "secured debt" under this category?

A61. No. The Regulation provides that an owner or his or her spouse must have received "a written demand in respect of a default on a debt that is secured against the owner's principal residence". A mortgage may be the most common example of a debt secured against a principal residence but there are others. The financial institution must determine whether the debt the applicant is facing qualifies as a "debt that is secured against the owner's principal residence". -02/14

Q62. What are some examples of a secured debt against a principal residence?

A62. Examples of debts secured against a principal residence include a mortgage on the principal residence, a line of credit secured against the principal residence, and a lien registered against the principal residence. There may be other types of secured debt; each financial institution should ask its legal advisors if it is unsure. -12/13

Q63. What is a principal residence for the purpose of this application?

A63. A principal residence means, in respect of an individual, the premises, including a non-seasonal mobile home that is occupied by the individual as his or her primary place of residence. -12/13

Q64. The written demand for payment must relate to the principal residence of the owner. What if the spouses are living in different residences?

A64. The written demand for payment may only relate to the owner's principal residence, not the spouse's principal residence (if it is different from the owner's). -12/13

Q65. What if the owner's principal residence is owned by the spouse or the spouse's name is on the rental agreement?

A65. The application may still be approved as long as it is the owner's principal residence and either the owner or his or her spouse received the written demand. -12/13

Q66. If a person is approved for arrears of rent in a calendar year, and subsequently moves and falls into rent arrears for a different principal residence in the same year, can he or she apply again from the same locked-in account?

A66. No. Only one application under this category may be made during a calendar year. -12/13

Q67. What information should be included in the written demand for arrears of payment of rent or default on a secured debt?

A67. The demand should state the name of the person who is in arrears; the total amount of arrears in the payment of rent on the owner's principal residence or the total amount of the default on the debt secured against the owner's principal residence; and the address of the owner's principal residence. -12/13

Q68. Can arrears of rent include any costs to the landlord, including any cost to cover the landlord's application with the Landlord and Tenant Board?

A68. No. the Regulation does not provide for the inclusion of any costs to the landlord. - 02/14

Q69. In box 2b under Part 2, if the applicant enters an amount that includes the cost of future payments of rent or a mortgage in addition to the amount of arrears, the total amount will be greater than the amount set out in the written demand. Can the amount in box 2b be greater than the amount in the written demand?

A69. Yes. The amount in box 2b would include the sum of the total arrears and future payments for a period of 12 months after the date the application is signed. - 02/14

Q70. Must the first and last months' rent be to obtain a principal residence for the owner or can it be to obtain a principal residence for the owner's spouse?

A70. The first and last months' rent must be needed to obtain a principal residence for the owner. It is acceptable if the owner and spouse both live in the residence. -12/13

Q71. What if the spouse enters into the rental agreement?

A71. Either the owner or his or her spouse may require the money to pay the first and last months' rent (i.e., either one's name may be on the rental agreement) as long as the premises are intended to be occupied by the owner as his or her principal residence.

Q72. If a person has been approved for first and last months' rent and is paid a certain amount, and he or she then moves and requires first and last months' rent for another residence in the same calendar year, may he or she apply again from the same locked-in account?

A72. No. An individual may make only one application per calendar year for first and last months' rent.

Q73. If the applicant has a rental agreement, must it be included with the application? May a financial institution require a rental agreement?

A73. The Regulation provides that if a rental agreement is available, it must be included with the application. However, it is not necessary for there to be a rental agreement to approve the application. A financial institution cannot require an applicant to produce a rental agreement.

FHU Form 4 - Low Expected Income

Q74. Can the financial institution rely on the amount of expected total income for the next 12 months that the applicant provides?

A74. The Regulation requires the owner to provide a statement, signed by the owner, setting out the amount of his or her expected total income from all sources, before taxes, for the 12 months after the date on which the application is signed. The Regulation does not require the owner to provide any evidence to support this statement. [See question above on **Relying on information provided by the owner**] -12/13

Q75. In determining the expected total income for the next 12 months, should the applicant include the amount he or she is applying for under this category?

A75. No. The amount he or she expects to withdraw under this category should not be included. -12/13

Q76. Who determines whether an amount should or should not be included as expected total income?

A76. The Regulation sets out certain amounts that are not included in an owner's expected total income from all sources before taxes. Examples of amounts that should and should not be included in expected total income are set out in the Financial Hardship Unlocking User Guide for Financial Institutions. -12/13

