



You are here: [Home](#) > [Pensions](#) > [Administrators](#) > FAQs on overpayments and plan wind up

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FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

Overpayments and Plan Wind Up - FAQs

Q1. When a pension plan winds up and the employer has over contributed to the pension plan to fund the wind up deficit, can the employer apply for a reimbursement of the overpayment?

A1. When an employer makes contributions to the pension plan to fund a deficit while the plan is in the course of winding up (either in whole or in part), and this results in a surplus in the plan as defined by the PBA, the employer may make an application to the Superintendent for consent to the payment from the pension fund to reimburse the employer for the overpayment under section 62.1(3) of the PBA.

Such an application should include the following information:

- the amount of contributions made by the employer to fund the wind up deficit;
- the surplus in the plan as a result of the overpayment; and
- the amount of the payment being requested by the employer from the pension fund to reimburse the employer for the overpayment.

The application should also include supporting documentation. In respect of the amount of contributions made by the employer to fund the wind up deficit, the supporting documentation should include extracts from the custodian’s fund statements showing the contributions that were remitted to the plan. In respect of the surplus in the plan as a result of the overpayment, the supporting documentation should include a detailed reconciliation of the plan’s assets and liabilities discharged covering the period from the date of the wind up report to the date the application is filed.

The Superintendent may consent to a payment from the pension fund to reimburse the employer for an amount equal to the lesser of:

- The assets remaining in the pension fund (or, in the case of a partial wind up, the assets remaining in the wound up portion of the pension fund) after all pension benefits related to the wind-up have been settled, and
- The sum of all special payments made to the pension fund by the employer to fund the deficit under section 75, plus investment earnings thereon, from the date that the special payments were made to the date that the overpayment is paid to the employer. – 12/2011

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Q2. How will FSCO apply the deadlines for making an application under section 62.1(4) to a full or partial wind-up?

A2. Section 62.1(4) sets out the deadline within which an application by an employer must be made to the Superintendent under section 62.1(3) of the PBA, for payment from the pension fund where the employer has paid an amount in respect of the pension plan that should have been paid out of the pension fund, or if an employer has made an overpayment into the pension fund. Section 62.1(4) provides:

The application must be made before the later of,

- (a) 24 months after the date on which the employer made the payment, and
- (b) six months after the date on which the administrator, acting reasonably, becomes aware of the payment.

In a wind up, the administrator may not know that there has been an overpayment by the employer resulting from the funding of the wind up deficit until all the benefits have been settled. In a full wind up the settlement may not occur until all of the annuities have been purchased. In a partial wind up this may not occur until the annuities have either been purchased or, if not purchased, transferred to the ongoing portion of the pension plan. The settlement of the benefits may take longer than 24 months from the date on which the employer made the payment to fund the wind up deficit. If it does take longer than 24 months to become aware that the overpayment exists, the employer must make its application to the Superintendent within six months of the date on which the administrator, acting reasonably, becomes aware of the overpayment. The administrator would reasonably be expected to become aware once the benefits have been settled. In this situation, the reason for the delay in uncovering the overpayment should be clearly explained in the employer's application

The Superintendent does not encourage the filing of an application for a reimbursement of the overpayment prior to the settlement of benefits (i.e., prior to knowing whether or not there will be excess assets remaining in the pension fund). Therefore, if an application is made prior to the settlement of benefits, the Superintendent will inform the applicant that the application will be held in abeyance until the benefits are settled and the applicant files proof as to the existence and amount of the excess assets remaining in the pension fund. In this situation, the reason for the delay in uncovering the overpayment should be clearly explained in the employer's application – 12/2014

Q3. In what format should the application be made?

A3. The application can be made using the same format as an application for reimbursement of an employer overpayment from a continuing pension plan, which is found in Schedules I and II of FSCO pension policy R350-103. The Schedules should be modified to reflect the fact that the application is being made in the context of the full or partial wind up of the plan. – 12/2011

