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.

Surplus Withdrawal Applications

Under the Pension Benefits Act (PBA), an employer can make an application to the Superintendent for a payment of surplus in three circumstances:

- From a continuing pension plan;
- Where the pension plan is being wound up; and
- From a pension plan that is being partially wound up (where the partial wind up has an effective date prior to July 1, 2012).

FSCO policy **S900-512: Application by Employer for Payment of Surplus on Wind Up of a Pension Plan**provides detailed information about an application for payment of surplus to the employer on a wind up or partial wind up of a pension plan.

These FAQs address the following:

- Transition rules regarding the introduction of FSCO surplus policies **S900-512: Application by Employer for Payment of Surplus on Wind Up of a Pension Plan** and **S900-514: Surplus Distribution by Written Agreement - The Role of Legal Counsel**; and
- An application for payment of surplus to an employer from a continuing pension plan.

Transition rules regarding surplus policies

Q1: If an employer filed either a notice of surplus application ("surplus notice") or a surplus application with the Superintendent before the posting of surplus policies S900-512: Application by Employer for Payment of Surplus on Wind Up of a Pension Plan and S900-514: Surplus Distribution by Written Agreement - The Role of Legal Counsel, how will the new policies impact the filing?

A1: In this situation, the Superintendent will apply the requirements under the old surplus application policies (i.e., S900-510, S900-511 and S900-503, as applicable) except where they are inconsistent with the PBA and Regulation 909 or any direction that was given by FSCO to the applicant. The Superintendent reserves the right to request additional information regarding the surplus notice and/or surplus

Scheduled Online Service Disruption Notice

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application. Any questions or concerns about a specific surplus notice or surplus application should be directed to the appropriate FSCO Pension Officer. You can find your plan's Pension Officer on FSCO's **website**. – 02/2019

Payment of surplus to an employer from a continuing pension plan

Q2: What rules apply for payment of surplus to the employer from a continuing pension plan (i.e., while the pension plan continues in existence)?

A2: Section 79 of the PBA and sections 25 and 26 of Regulation 909 primarily set out the rules for the payment of surplus from a continuing pension plan. Under the surplus withdrawal rules, the legal authority by which an employer can receive payment of surplus from a continuing pension plan can exist in one of three ways:

1. if the documents that create and support the pension plan and pension fund provide for the payment of surplus to the employer; or
2. if there is a written agreement between the employer and at least two-thirds (2/3) of members and an appropriate percentage of former members, retired members and other persons who are entitled to payments under the plan which provides for the payment of surplus to the employer; or
3. if the withdrawal of surplus by the employer while the plan continues in existence is authorized by a court order declaring that the employer is entitled to surplus while the plan continues.

In order for an employer to receive a payment of surplus, the employer will be required to transmit a notice of application ("surplus notice") to the parties listed in section 78(2) of the PBA, and file a surplus application with the Superintendent. The requirements for the surplus notice and surplus application are set out in section 25 of Regulation 909.

The employer's surplus application will require the consent of the Superintendent. Before providing consent, the Superintendent must be satisfied of the following:

a. the pension plan has a surplus, based on the reports provided with the employer's surplus application;
b. there is legal authority by which an employer can receive payment of surplus from a continuing pension plan (i.e., in one of the three ways describe above);
c. where all pension benefits are not guaranteed by an insurance company, the greater of the following amounts has been retained in the pension fund as surplus:

   (i) the sum of "A" and "B" where,
   - "A" is an amount equal to the sum of twice the normal cost of the pension plan and twice the provision for adverse deviations in respect of the normal cost of the pension plan, and
   - "B" is an amount equal to 5 per cent of the liabilities of the pension plan, determined in accordance with the regulations, and

   (ii) an amount equal to 25 per cent of the liabilities of the pension plan, determined in accordance

with the regulations;

d. where all pension benefits under the pension plan are guaranteed by an insurance company, and a discharge has not been obtained with respect to all of the benefits under section 43.1 of the PBA, then the following amount must be retained in the plan as surplus:

    - an amount equal to at least the sum of two years of the normal cost of the pension plan and two years of the provision for adverse deviations in respect of the normal cost of the pension plan, determined in accordance with the regulations (specifically Regulation 909); and

e. the employer and the plan comply with all other prescribed requirements regarding surplus payment.

Section 26 of Regulation 909 prescribes the manner of calculating plan assets and liabilities to be used in determining the required amount of surplus to be retained in the pension plan. – 02/2019

Q3: Who should be a party to a written agreement that provides for payment of surplus to the employer from a continuing pension plan?

A3: Where the employer's application for consent to payment of surplus is made while the plan is continuing, a written agreement among the following persons is required for the payment of surplus to the employer based on a written agreement pursuant to section 77.11(7) of the PBA:

- the employer;
- at least two-thirds (2/3) of the plan members (and for this purpose, a trade union that represents members may agree on their behalf); and
- the number considered appropriate in the circumstances by the Superintendent, of former members, retired members and other persons who are entitled to payments under the pension plan, as of the specified date for payment of the surplus. The specified date must be included in the application. In most cases, the Superintendent has determined the appropriate number is two-thirds of this group. However, the number is ultimately at the discretion of the Superintendent. – 02/2019

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