



SECTION: Pension Benefits Guarantee Fund (PBGF)

INDEX NO.: P200-001

TITLE: Filing Requirements and Procedure
- PBA, 1990 ss. 83(1), s. 84 and O. Reg. 909 ss. 34(5), 47(2)

APPROVED BY: The Pension Commission of Ontario

PUBLISHED: Bulletin 6/3 (Winter-Spring 1996)

EFFECTIVE DATE: When Published

Pension Benefits Guarantee Fund - Filing Requirements and Procedure

The purpose of this paper is to identify the filing requirements and procedure for making a claim against the Pension Benefits Guarantee Fund where the administrator of a pension plan which is being wound up in whole or in part believes that the Guarantee Fund applies to the pension plan. It is hoped that administrators and their agents will use this information to prepare Guarantee Fund filings in order to ensure that they comply fully with the requirements of the *Pension Benefits Act* and Regulations and address related policies of the Commission. Improved compliance will enable PCO staff to process claims against the Guarantee Fund more quickly and efficiently.

The material which follows is general in nature and is intended for guidance only. Since the provisions and history of each pension plan are unique, it is not possible to identify all issues which may be relevant to every situation. If an administrator wants to proceed with a Guarantee Fund application in a manner different than that described in this procedure, it is the administrator's responsibility to demonstrate that the application complies with the *Pension Benefits Act* and Regulations.

Plans Excluded

This procedure applies only to pension plans which provide benefits guaranteed in whole or in part by the Guarantee Fund. Accordingly, plans that do not provide benefits guaranteed in whole or in part by the Guarantee Fund on or after wind up, such as plans which provide only defined contribution benefits, multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement or those pension plans specifically exempted by the Regulations, are excluded.

Throughout this document, the Act refers to the Pension Benefits Act, R.S.O. 1990, Chapter P.8 and the Regulations refer to Regulation 909, R.R.O. 1990, as amended.

Although we have tried to be thorough, it is not possible to anticipate and address all Guarantee Fund situations. Administrators, therefore, are reminded that the application of the Act and Regulations is subject to the facts of each case. Accordingly, the contents of this procedure should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if you have a particular interest in any of the matters addressed in this paper.

Glossary

For the purposes of this paper:

- ! "guaranteed benefits" means the benefits guaranteed by the Guarantee Fund pursuant to section 84 of the Act taking into account the benefits excluded under section 85 of the Act and subsection 47(2) of the Regulations;
- ! "included benefits" means the benefits provided under subsection 34(5) of the Regulations.

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SECTION I - Making a Claim Against the Guarantee Fund: An Overview

The purpose of the Guarantee Fund is to guarantee payment of certain benefits in respect of employment in Ontario in the event a pension plan is wound up in whole or in part under certain circumstances. Subsection 83(1) of the Act provides that the Pension Commission of Ontario (the "Commission") shall declare that the Guarantee Fund applies to a pension plan in the following circumstances (subsection 83(2)):

- (a) *the pension plan is registered under this Act or is registered in a designated province to provide for the reciprocal application of this Act;*
- (b) *the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;*
- (c) *the pension plan is wound up in whole or in part; and*
- (d) *the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied.*

This section describes the procedure for making an application to the Commission for a declaration under section 83 of the Act and for an allocation from the Guarantee Fund under subsection 34(7) of the Regulations.

1.1 Wind Up of a Pension Plan

Subsection 68(1) of the Act provides that a decision to wind up a pension plan in whole or in part may be made by the employer of the pension plan. Where an employer is no longer in existence, or is no longer empowered to wind up a pension plan (due to bankruptcy, for example), the Superintendent of Pensions (the "Superintendent") may issue an order pursuant to his authority under section 69 of the Act requiring the wind up of the plan. In some circumstances, the Superintendent may appoint an administrator to wind up the pension plan, as provided under subsection 71(1) of the Act.

1.2 Filing of Wind-Up Report

The administrator of a pension plan that is being wound up in whole or in part is required to file a wind-up report setting out the information as specified under subsection 70(1) of the Act. Subsection 2.1 of this procedure identifies the information that should be contained in a wind-up report filed in support of a claim against the Guarantee Fund.

1.3 Guarantee Fund Application

1.3.1 Timing of Application

Generally, the wind-up report should be filed with, and approved by the Superintendent before an application is considered by the Commission for a declaration that the Guarantee Fund applies to a pension plan. The administrator may file the application with the wind-up report or await the Superintendent's approval of the wind-up report prior to filing the application.

If the administrator wishes the Commission to consider an application prior to the Superintendent's approval of the wind-up report, the administrator should identify the unique situation which warrants consideration of such an application by the Commission. An example of a unique situation may be a large plan that is very poorly funded and for which the wind up will take a protracted period of time due to complex issues which must be resolved. In order to avoid imposing extreme financial hardship on the pensioners by immediately reducing pension payments to the level

the pension fund can support, the administrator may apply for a declaration that the Guarantee Fund applies and an interim allocation to maintain pension payments while the wind up process carries on.

1.3.2 Content of Application

It is the responsibility of the administrator to make an application to the Commission for a declaration that the Guarantee Fund applies to a pension plan. The application is filed with the Commission by sending 18 copies to:

The Registrar
Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto ON M2N 6L9

The application to the Commission for a declaration should be prepared in a format consistent with Appendix A.1 at the end of this procedure. The documents that should normally accompany an application include the following:

- ! the Superintendent's order winding up the pension plan, if applicable;
- ! the letter from the Superintendent approving the wind-up report (if approved); and
- ! extracts of the wind-up report consisting of a copy of the title page and the balance sheet showing the funded status of the pension plan as of the effective date of wind up, and the actuary's certification.

If subsequent to the effective date of wind up there is a change in the financial condition of the plan that is material to whether the conditions are satisfied for the Commission to declare that the Guarantee Fund applies, the administrator should provide evidence supporting the extent to which the funding requirements of the Act and Regulation cannot be met at the date the application is considered by the Commission. The evidence may be in the form of a supplement to the wind up report as described in subsection 2.2 of this procedure or in the form of a cost certificate in which the actuary certifies that the assets of the plan would not be sufficient to cover the liabilities of the plan as at the date of application.

Staff will review an application, and provide their comments and conclusions in respect of the application in a submission to the Commission. A copy of that submission will be provided to the applicant 14 days prior to the Commission meeting at which the application is to be considered. Applicants who wish to respond to staff's submissions must file their response with the Registrar 9 days prior to the Commission meeting at which the application is scheduled to be heard or request that consideration of the application be deferred if more time is required.

1.3.3 Notice of Proposal

Subsections 90(1), (2) and (3) of the Act provide as follows:

90.-(1) Where the Commission proposes to consider,

- (a) making a declaration that the Guarantee Fund applies to a pension plan;
- (b) ...
- (c) ...

the Commission shall serve notice of the proposal together with written reasons therefor on

the administrator of the pension plan.

- (2) The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.
- (3) A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection.

The administrator must provide advice to the Registrar as to the last date the administrator transmitted the Commission's notice to the required parties.

1.3.4 Declaration that the Guarantee Fund Applies

The Registrar will place the application on the agenda for the Commission meeting next following the expiry of forty-five days after the last notice was transmitted by the administrator. At that meeting the Commission will consider the application along with any representations received as a result of the notice when deciding whether to declare that the Guarantee Fund applies.

Pursuant to subsection 90(5) of the Act, the Commission shall transmit a copy of its decision, together with written reasons, to the administrator, the employer (if applicable) and any other person who made representation to the Commission.

In accordance with section 91 of the Act, a party to a proceeding before the Commission under section 90 may appeal to the Divisional Court from the decision of the Commission.

1.4 Allocation from the Guarantee Fund

The administrator may apply to the Commission for an allocation of funds from the Guarantee Fund pursuant to subsection 34(7) of the Regulations for purposes of settling all benefits once the following have occurred:

- (a) the wind-up report has been approved by the Superintendent;
- (b) the administrator has issued the election forms to the members, former members and other persons entitled to make elections, and has either received the completed elections or there is a deemed election pursuant to subsection 72(2) of the Act; and
- (c) the Commission has declared that the Guarantee Fund applies to the pension plan. (Note that an application for allocation may be consolidated with the application for a declaration that the Guarantee Fund applies provided conditions (a) and (b) above have been satisfied.)

The application for an allocation from the Guarantee Fund should generally be made in close proximity to the date when the administrator will be in a position to process settlements (commuted value transfers and annuity purchases) in order that the actual allocation required may be determined with some accuracy.

If the allocation approved by the Commission is not sufficient to complete the wind up, a further application to the Commission will be required. In order to avoid the cost and time required for additional applications, the initial application for an allocation from the Guarantee Fund should include some margin for adverse deviations from the date

of the application to the settlement date.

The application is made by filing with the Registrar 18 copies of an application in the format set out in Appendix A.2 under this procedure.

The attachments which should normally accompany the application include the following:

- ! the Commission's declaration that the Guarantee Fund applies to the pension plan;
- ! extracts of the wind up report consisting of a copy of the title page and the page(s) containing the information on the estimated claim against the Guarantee Fund as of the effective date of wind up, and the actuary's certification; and
- ! the letter from the Superintendent approving the wind-up report.

In addition the administrator must provide an up-to-date estimate of the claim against the Guarantee Fund (at a date as close as possible to the date of application) and the projected time frames for fully disbursing all entitlements. The up-to-date estimates may be provided in the form of a supplement to the wind-up report (refer to subsection 2.2).

If the application is accepted by the Commission, it will approve an allocation from the Guarantee Fund of the funds required to supplement the plan assets in order to pay 100 per cent of the benefits guaranteed by the Guarantee Fund plus a proportion of other benefits as prescribed in subsections 34(5) and (6) of the Regulations.

After the Commission has approved the allocation from the Guarantee Fund and the administrator has completed all preparations to proceed with the distribution of lump sum settlements and/or the purchase of annuities, the administrator should submit a request to the PCO staff responsible for the plan identifying the specific amount required in order to complete lump sum settlements and/or purchase annuities. The Coordinator will arrange for the disbursement to be made from the Guarantee Fund to the pension fund, normally within two business days of the request. In the event an annuity provider will not hold their quotation for two business days, the administrator should contact the PCO staff in advance to arrange to have the funds from the Guarantee Fund available by the closing date for the quotation.

Upon receipt of funds from the Guarantee Fund, the administrator should proceed with the disbursement of benefits in accordance with the elections made by the affected persons.

1.5 Reconciliation of Payments

Once all benefits have been settled, the administrator is expected to provide a reconciliation of the pension fund including all disbursements, Guarantee Fund allocations, and any recoveries made from the assets of the insolvent employer.

SECTION II - Preparing the Wind-up Report

Often, when the administrator is making an application to the Commission for a declaration that the Guarantee Fund applies or for an allocation from the Guarantee Fund, the financial information on the pension plan as provided in the report(s) previously filed in connection with the wind up may be out of date. In such circumstances, it may be necessary to file a supplement to the wind-up report providing an update of the funded status of the pension plan or the estimated claim against the Guarantee Fund.

The required disclosures in the initial wind-up report and the subsequent supplement(s) are outlined below.

2.1 Initial Wind-up Report

The basic requirements of a wind-up report filed under subsection 70(1) of the Act are described in the procedure W100.101. This subsection identifies the additional information that should be provided in a wind-up report in support of a claim against the Guarantee Fund.

2.1.1 Benefits Upon Guarantee Fund Declaration

The wind-up report should describe the guaranteed benefits and included benefits (defined in the Glossary at the beginning of this procedure) in detail. Appendix B addresses some technical issues related to the determination of guaranteed benefits and included benefits when the Guarantee Fund is declared to apply.

For the purpose of determining the included benefits, the Commission requires that the ratio referred to in subsection 34(6) be determined *as of the wind-up date, without regard to any plan experience or changes in annuity purchase rates subsequent to the wind-up date*. The provision for expenses related to employment in Ontario, based on the administrator's initial estimate of expenses that would be incurred to complete the wind up and Guarantee Fund application(s) (normally provided at the time the administrator was appointed by the Superintendent), should be deducted from the Ontario assets before the ratio is calculated.

2.1.2 Membership Data

Where a wind up involves members in more than one jurisdiction, the report should provide a summary of statistics for various categories of membership (e.g., members, deferred vested former members, retired former members etc.) within each jurisdiction of employment.

Pursuant to subsection 29(5) of the Regulations, the report should include sufficient information so as to permit PCO staff to determine the persons whose pension benefits are guaranteed under section 84 of the Act, the amounts of such guaranteed benefits and the amounts to be contributed to the plan under section 75 of the Act. PCO staff may request a listing of members and former members (only those with Ontario employment) and other eligible persons showing the information as described in subsection 2.2 of procedure W100.101. **For reasons of privacy, such information should be provided in an anonymous form, i.e., no names, social insurance numbers or other personal identifiers should be provided.** It should be a part of a detachable list should members wish to review the report.

Unless sufficient information has already been included in the wind-up report to permit PCO staff to assess the calculations of guaranteed benefits, included benefits, Guaranteed Benefit liability, Ontario wind up liability, modified Ontario wind up liability (if applicable), and the liability for included benefits (see Appendix B), sample calculations should be made available under separate cover if requested by PCO staff.

2.1.3 Financial Position of the Plan on Wind Up

The report should provide information on the funded status of the pension plan as of the effective date of wind up, in accordance with procedure W100.101. Where the plan covers members and former members in more than one jurisdiction, a valuation balance sheet showing the assets and liabilities as of the effective date of wind up should be established for Ontario employment and non-Ontario employment separately.

Section 30 of the Regulations prescribes how the assets of the plan are to be allocated between Ontario employment

and non-Ontario employment. Specifically, the market value of assets, with adjustments for receivables or payables at the effective date of wind up and excluding the value of any qualifying annuity contract and additional voluntary contributions plus interest, is allocated between Ontario employment and non-Ontario employment in proportion to the basic liabilities as defined in clause 30(2)(b). The portion of assets allocated to Ontario employment is termed Ontario assets. The distribution of assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

2.1.4 Estimated Claim Against the Guarantee Fund

In addition to the valuation balance sheet, the report should provide an estimate of the claim against the Guarantee Fund as of the effective date of wind up. This is the amount by which the liability for included benefits exceeds the Ontario assets as of the effective date of wind up, adjusted for any provision for expenses and/or adverse deviations (see subsections 3.1 and 3.2 of this procedure). It should be noted that the final claim amount will depend on the subsequent plan experience up to and including the date at which all included benefits are settled as well as the annuity purchase rates in effect on the settlement date(s).

2.2 Supplement to Wind-up Report

A supplement to the wind-up report should be prepared on the basis of the membership data and the provisions of the pension plan used in the initial wind-up report(s) previously filed with and approved by the Superintendent. As a minimum, it should contain the information detailed below.

2.2.1 Purpose of the Supplement

The supplement should indicate clearly whether it is to be used for the Commission to make a declaration under section 83 of the Act or for an allocation from the Guarantee Fund under subsection 34(7) of the Regulations, or both. The effective date as of which the financial information in the supplement is reported (which for purposes of this procedure, will be called the "information date") should be as close as possible to the date at which the application to the Commission is made.

2.2.2 Membership Data

The supplement should provide a summary of membership (only for persons with Ontario employment) as of the information date, unless there have not been changes in the members' and former members' status since the effective date of wind up. If there have been changes in the members' and former members' status, the report should provide a reconciliation of membership from the effective date of wind up to the information date. Changes in status may include, for example, instances where members or former members commenced to receive pensions or retired former members died after the wind-up date. Such changes may result in a change in the benefit entitlements of the members or former members.

Where there have been changes in the benefit entitlements of the members and former members as a result of their change in status, information on the benefit changes should be provided.

2.2.3 Financial Information

The supplement should provide financial information relevant to the particular purpose(s) of the supplement, including a valuation balance sheet showing the Ontario assets and liabilities (i.e., Ontario wind up liability or liabilities for included benefits, as the case may be) as at the information date. It should reflect the plan experience and other relevant events (e.g., changes in annuity purchase rates) occurring after the effective date of wind up and up to the information date.

Ontario assets should be updated from the effective date of wind up to the information date taking into account the benefit payments, expenses, investment gains or losses etc. as related to Ontario employment.

The liabilities in respect of members and former members who are expected to receive a commuted value transfer should be based on the commuted value at the effective date of wind up, accumulated with interest to the information date at the same rate used to calculate the commuted value. Where there has been a significant change in market interest rates since the effective date of wind up, the liabilities in respect of members and former members who are receiving or have elected to receive a pension benefit as well as those who are expected to receive a pension benefit should be revalued using the current market interest rates to approximate the cost of annuities at the information date.

2.2.4 Actuarial Assumptions and Methods

The supplement should disclose the actuarial assumptions and methods used, in accordance with the standards of practice established by the Canadian Institute of Actuaries as applicable to the valuation of pension plans (the "CIA Standards"). It is acceptable to refer to the initial wind-up report(s) for those assumptions which have not been changed.

2.2.5 Actuary's Statements of Opinion

The supplement must be prepared and signed by an actuary. Accordingly, statements of opinion should be given by the actuary in accordance with the CIA Standards.

SECTION III - Specific Issues Related to Guarantee Fund Applications

In this section, a few specific issues related to Guarantee Fund applications are discussed. To the extent possible, the current practice with respect to those issues is explained.

3.1 Provision for Expenses

For the purpose of determining the ratio referred to in subsection 34(6) of the Regulations, subsection 2.1.1 of this procedure sets out the expense provision to be taken into account.

For all other purposes the expense provision used in the report (or supplement) should be based on the most current estimate provided by the administrator to the Superintendent of all expenses to be incurred in completing the wind up and disbursing the assets of the plan. It should include all expenses incurred up to and including the date the report (or supplement) is prepared, if not already reflected in the market value of assets, plus the administrator's estimate of all future expenses to be incurred in completing the wind up and disbursing the assets of the plan. Only Ontario related expenses should be used for purposes of a Guarantee Fund allocation and the settling of Ontario related benefits; and non-Ontario related expenses should be used for purposes of settling any benefits related to employment in other jurisdictions.

3.2 Provision for Adverse Deviations

In establishing the funded status of a pension plan or a claim against the Guarantee Fund, the actuary may find it appropriate to include an explicit provision for adverse deviations to take account of, for example, the uncertainty of the assumptions and data for the valuation. The inclusion of a provision for adverse deviations should not be in conflict with the actuary's statements of opinion provided in the wind-up report or supplement. For instance, if a provision is made for data errors or inaccuracies, the actuary's statement of opinion as to data should be consistent.

Note that the ratio referred to in subsection 34(6) of the Regulations should be determined without regard to any provision for adverse deviations in respect of plan experience or changes in annuity purchase rates after the wind-up date.

3.3 Reduction to Pensions in Payment

Winding up a pension plan that has insufficient assets may affect pensions already in payment at the wind-up date and those due to commence after the wind-up date. Until the administrator has applied for and received the Commission's approval of an allocation from the Guarantee Fund, the administrator should decide whether it is necessary to reduce those pension payments in accordance with subsection 29(9)(b) of the Regulations.

Once an allocation from the Guarantee Fund has been approved by the Commission, the administrator should make necessary adjustments to the pensions in payment to reflect the included benefits of the affected persons. When making an application for allocation, such adjustments should be reflected in the estimated claim against the Guarantee Fund.

APPENDIX A - Format and Content of Guarantee Fund Applications

A.1 Application for a Declaration that the Guarantee Fund Applies

Date: *Enter the date of the application.*

Plan Sponsor: *Provide the full legal name of the plan sponsor.*

Pension Plan: *Provide the full legal name of the pension plan.*

Reg. No: *Provide the registration number of the pension plan.*

Prepared By: *Provide the name of the person(s) or firm(s) who prepared the application.*

Nature of the Application:

Provide a full description of the Commission application with reference to the specific sections of the Act and Regulations pursuant to which the application is being made. For example:

Application for the Pension Commission to make a declaration pursuant to subsection 83(1) of the Pension Benefits Act, R.S.O. 1990, that the Pension Benefits Guarantee Fund applies to the (insert pension plan name and registration number).

Administrator/Actuary/Counsel:

Provide the names of those persons connected to the application, namely, the administrator, agents of the employer or administrator etc. If there are no such individuals, please indicate "none".

Administrator of the Pension Plan (and name of firm):
Actuary for the Applicant (and name of firm):
Counsel for the Applicant (and name of firm):

Trustee/Receiver/Manager:

Provide the names of those persons or firms appointed to administer the assets of the employer if the employer is bankrupt or in receivership.

Trustee in Bankruptcy:
Receiver/Manager:

Collective Bargaining Agent:

Provide the name of the collective bargaining agent(s) who represented any members or former members of the pension plan. Identify the class (e.g., hourly, salaried etc.) and/or status (e.g., active, deferred vested, retired etc.) of employees they represented.

Background: *Provide a brief summary of the background of the plan leading up to the application including:*

- ! the effective date of the plan,*
- ! the classes of members covered by the plan,*
- ! the basic benefit structure (e.g. "non-contributory", "flat benefit plan")*
- ! a brief chronology of the plan and any predecessor plans including reference to plan mergers/splits or conversions that may have occurred,*
- ! the relevant corporate history including the background to any changes in the name of the employer associated with the pension plan,*
- ! the effective date of wind up of the pension plan, and*
- ! any other information which will assist in understanding the application.*

Indicate the status of the wind-up report and if applicable, the date of the Superintendent's letter approving the wind-up report. Include reference to the attachments or tabs at which extracts of the wind-up report and/or supplement to the wind-up report and a copy of the Superintendent's letter can be found.

Include a summary of the balance sheet, in respect of employment in Ontario, as at the effective date of wind up along with an updated balance sheet (as provided in a supplement to wind-up report) if there has been a significant change in the funded status of the plan. In lieu of filing a supplement, the administrator may file a cost certificate in which the actuary certifies that the assets of the plan would not be sufficient to cover the liabilities of the plan as at the date of application. For example:

Balance Sheet

	As of <i>(effective date of wind up)</i>	As of <i>(current date)*</i>
<u>Assets:</u>		
Ontario Assets	\$0.00	\$0.00
less:		
Provision for expenses	\$0.00	\$0.00
	—	—
Ontario assets available for benefits	\$0.00	\$0.00
 <u>Liabilities:</u>		
Ontario wind up liability	\$0.00	\$0.00
Plus:		
Provision for adverse deviations	<u>\$0.00</u>	<u>\$0.00</u>
Total	\$0.00	\$0.00
 (Surplus) Deficit**	 \$0.00	 \$0.00

* if information available

** Ontario wind up liability plus provision for adverse deviations less Ontario assets available for benefits

Indicate the ratio, determined as at the wind-up date, in accordance with subsection 34(6) of Regulation 909, R.R.O. 1990.

Where there has been a significant change in the funded status of the plan since the effective date of wind up, provide a reconciliation of the funded status identifying the significant factors contributing to the change.

Subsection 83(2) of the Act - Conditions Precedent

(a) Clause 83(2)(a) - The plan is registered under this Act

Provide the Registration Number.

(b) Clause 83(2)(b) - The plan provides defined benefits that are not exempt from the application of the Guarantee Fund

Provide information that demonstrates compliance with clause 83(2)(b), for example:

The plan provides defined pension benefits that are not exempt from the application of the Guarantee Fund. The plan is over 3 years old and is not exempt from the application of the Guarantee Fund under paragraphs 4 (MEPP), 5 (negotiated defined benefit/defined contribution plans), or 6 (prescribing authority) of section 85 of the Act or sections 47, 47.1, or 47.2 of the Regulations.

(c) Clause 83(2)(c) - The plan is wound up in whole or in part

Indicate the effective date on which the pension plan was wound up in whole or in part, and refer to the Superintendent's order winding up the plan or the employer's declaration of plan wind up, as applicable.

(d) Clause 83(2)(d) - The Commission is of the opinion, upon reasonable and probably grounds, that the funding requirements of this Act and the Regulations cannot be satisfied

Provide explanation as to why the funding requirements of the Act and Regulations cannot be met, including reference to the supporting documents.

In addition, the applicant should provide information concerning any non-remittance of required contributions, and demonstrate to the Commission and provide evidence, if necessary, that sufficient effort has been made to collect any funds owing to the plan at wind up. The applicant should also provide an assessment of the probability of collecting the outstanding funds in the future.

Attachments:

The applicant should provide an index of all attachments to the application. Where an application is bound, the relevant tabs should be listed.

A.2 Application for an Allocation from the Guarantee Fund

Date: *Enter the date of the application.*

Plan Sponsor: *Provide the full legal name of the plan sponsor.*

Pension Plan: *Provide the full legal name of the pension plan.*

Reg. No: *Provide the registration number of the pension plan.*

Prepared By: *Provide the name of the person(s) or firm(s) who prepared the application.*

Nature of the Application:

Provide a full description of the Commission application with reference to the specific sections of the Act and Regulations pursuant to which the application is being made. For example:

Application for the Pension Commission, pursuant to subsection 34(7) of Regulation 909, R.R.O. 1990 (the

"Regulations"), to allocate from the Guarantee Fund and pay to the fund of (*insert pension plan name and registration number*) such amount, not to exceed \$(*insert amount*) which together with the assets of the plan will provide the benefits determined under subsections 34(5),(6) of the Regulations and pay the reasonable administration costs of the administrator.

Administrator/Actuary/Counsel:

Provide the names of those persons connected to the application, namely, the administrator, agents of the employer or administrator etc. If there are no such individuals, please indicate "none".

Administrator of the Pension Plan (and name of firm):

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

Trustee/Receiver/Manager:

Provide the names of those persons or firms appointed to administer the assets of the employer if the employer is bankrupt or in receivership.

Trustee in Bankruptcy:

Receiver/Manager:

Collective Bargaining Agent:

Provide the name of the collective bargaining agent(s) who represented any members or former members of the pension plan. Identify the class (e.g., hourly, salaried etc.) or status (e.g., active, deferred vested, retired etc.) of employees they represented.

Background: *Refer to the previous application for a Guarantee Fund declaration and the Commission's declaration that the Guarantee Fund applies to the plan.*

Refer to any interim allocation from the Guarantee Fund that has been approved by the Commission.

Describe any other developments since the Guarantee Fund declaration was issued that are relevant to this application.

Subsections 34(5),(6) & (7) of the Regulations

Provide information supporting the claim against the Guarantee Fund. Include reference to the attachments or tabs at which extracts of the wind-up report and/or supplement to the wind-up report and a copy of the Commission's declaration can be found.

	As of <i>(effective date of wind up)</i>	As of <i>(current date)</i>
<u>Assets:</u>		
Ontario Assets	\$0.00	\$0.00
plus:		
Interim Guarantee Fund allocation, if applicable*	\$0.00	\$0.00
less:		
Provision for expenses	\$0.00	\$0.00
	—	—
Ontario assets available for benefits (including interim allocation, if any)	\$0.00	\$0.00
<u>Liabilities:</u>		
Liabilities for included benefits**	\$0.00	\$0.00
Plus:		
Provision for adverse deviations	<u>\$0.00</u>	<u>\$0.00</u>
Total	\$0.00	\$0.00
Net estimated claim against Guarantee Fund***	\$0.00	\$0.00

* an interim allocation may be granted by the Commission under certain circumstances (for example, to enable continued payment of benefits to retired former members)

** benefits provided under subsection 34(5) of the Regulations that remain to be paid

*** Liabilities for included benefits plus provision for adverse deviations less Ontario assets available for benefits

Where there has been a significant change in the estimated amount of claim against the Guarantee Fund since the effective date of wind up, provide a reconciliation of claim amounts identifying the significant factors contributing to the change.

Attachments: *The applicant should provide an index of all attachments to the application. Where an application*

is a bound application, the relevant tabs should be listed.

APPENDIX B - A Technical Guide to Guarantee Fund Calculations

This Appendix outlines the key provisions of the Act and Regulations related to the determination of the benefits guaranteed by the Guarantee Fund and the benefits provided when the Guarantee Fund is declared by the Commission to apply to a pension plan. For complete information, readers should refer to the relevant sections of the Act and Regulations.

Benefits and amounts that are not in respect of employment in Ontario are not guaranteed by the Guarantee Fund. Accordingly, the benefits and amounts described throughout this Appendix relate only to employment in Ontario.

B.1 Benefits and Other Amounts Guaranteed by the Guarantee Fund

Section 84 of the Act identifies the benefits and other amounts that are guaranteed by the Guarantee Fund if the Guarantee Fund is declared to apply, subject to section 85 of the Act and subsection 47(2) of the Regulations which set out the benefits that are not guaranteed by the Guaranteed Fund. Note that part or all of the benefits excluded under section 85 may be payable pursuant to subsections 34(5) and (6) of the Regulations (see B.5 below).

B.1.1 Act - section 84

For a deferred vested former member whose employment or membership was terminated before January 1, 1988, the deferred pension to which the former member is entitled is guaranteed only if the former member, at the date of termination of employment, (i) was at least 45 years of age and (ii) had at least 10 years of continuous employment, or was a member of the pension plan for a continuous period of at least 10 years.

For a member or deferred vested former member whose employment was terminated on or after January 1, 1988, the benefit to which the member or deferred vested former member is entitled under section 36 of the Act (45 & 10 vesting in respect of pre-1987 benefits) or section 37 of the Act (2 years vesting in respect of post-1986 benefits) is guaranteed up to a percentage in accordance with clause 84(1)3. The percentage is determined based on the age and years of employment or membership of a member at the date of wind up, or of a deferred vested former member at the former member's date of termination. For this determination, one-twelfth credit should be given for each full month of age and for each full month of continuous employment or membership. The membership or employment includes the period of notice of termination of employment required under Part XIV of the *Employment Standards Act*.

Any pension benefit payable to a retired former member, surviving spouse or beneficiary is guaranteed except as noted in B.1.2 below.

Guaranteed benefits include any benefits or options provided under section 74 of the Act (i.e., provision for grow in).

B.1.2 Act - section 85 and Reg.- subsection 47(2)

Among the benefits that are not guaranteed, the following should be particularly noted:

- ! any pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up;
- ! any increase to a pension or pension benefit, or the value of a pension or pension benefit, that became effective within three years before the date of wind up;
- ! the amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month;

! the pension benefits and ancillary benefits listed under subsection 47(2) of the Regulations.

B.2 Guaranteed Benefit Liability

Subsection 34(4) of the Regulations defines the Guaranteed Benefit liability as the total liability of the plan for benefits guaranteed by the Guarantee Fund and other amounts guaranteed by the Guarantee Fund. This liability excludes the amount by which the contributions made by any member or former member, plus interest, exceed the liability for the member's or former member's guaranteed benefits and other amounts. Also, it excludes the value attributable to the minimum 50% cost rule for post-1986 contributory benefits.

In determining the Guaranteed Benefit liability in respect of a member or former member, the member or former member should be assumed to commence benefits at the retirement age at which the pension benefit payable to the member or former member, through the application of the provision in the plan, the Act and the Regulations respecting the wind up of the plan, would have the highest commuted value, unless the member or former member has already elected to commence a pension. In the latter case, the assumed retirement age should be based on the pension commencement age elected by the member or former member.

B.3 Ontario Wind Up Liability

Subsection 29(10) of the Regulations contains a definition of the Ontario wind up liability. In the case of a pension plan where the employer is making payments in accordance with section 75 of the Act, subclause 29(10)(b)(v) includes the benefits that had not vested at the effective date of wind up under the provisions of the plan and that have not been included under subclause 29(10)(b)(i), (ii), (iii) or (iv) (the "non-vested benefits"). If there is no employer making the referenced payments, such as in an insolvency situation, the condition for the inclusion of non-vested benefits in the Ontario wind up liability has not been met, and, as a consequence, the non-vested benefits are not included in the calculation.

It should be noted that clause 29(10)(b) provides for the exclusion of the liability for any benefit under a qualifying annuity contract (see the definition in subsection 1(2) of the Regulations) from the calculation of Ontario wind up liability. To be consistent, such a contract should also be excluded from the calculation of Guaranteed Benefit liability and Ontario assets.

In order to calculate the Ontario wind up liability, it is not necessary to compute each of the components described in clause 29(10)(b). A more direct method is to calculate it as the liability for the member's or former member's pension benefits accrued at the effective date of wind up, including the value of, as applicable:

- ! deemed consent benefits under subsection 40(3) of the Act;
- ! benefits under section 74 of the Act;
- ! minimum value of employee contributions for pre-1987 benefits under subsections 39(1),(2) of the Act;
- ! minimum 50% cost rule for post-1986 contributory benefits under subsections 39(3),(4) of the Act

but excluding the value of:

- ! non-vested benefits;
- ! benefits under a qualifying annuity contract.

The special benefits listed under subsection 47(2) of the Regulations are included in the manner as described in subsection 4.5 of procedure W100-101. Since additional voluntary contributions, if any, are excluded from the determination of Ontario assets, they should also be excluded from the calculation of Ontario wind up liability.

B.4 Modified Ontario Wind Up Liability

Subsection 34(3) of the Regulations defines the modified Ontario wind up liability as the Ontario wind up liability excluding any liability for benefits described in subsection 47(2) of the Regulations.

B.5 Benefits to be Provided When Guarantee Fund is Declared to Apply

Subsections 34(5) and (6) of the Regulations prescribe the benefits provided to each member and former member entitled on wind up to payment of benefits guaranteed by the Guarantee Fund, if the Guarantee Fund is declared by the Commission to apply (i.e., the included benefits).

If the Ontario assets at the wind-up date (after deduction of any provision for expenses at that date) are less than the modified Ontario wind up liability at the wind-up date, the included benefits are the sum of:

- ! the benefits and other amounts included in the calculation of the Guaranteed Benefit liability, and
- ! the amount of benefits included in the calculation of the modified Ontario wind up liability but not included in the calculation of the Guaranteed Benefit liability, multiplied by a ratio, not to be less than zero or greater than 1.0, determined in accordance with subclause 34(6)1. (i.e., the ratio of the Ontario assets to the modified Ontario wind up liability).

If the Ontario assets at the wind-up date (after deduction of any provision for expenses at that date) are equal to or greater than the modified Ontario wind up liability at the wind-up date, the included benefits are the sum of:

- ! the benefits included in the calculation of the modified Ontario wind up liability, and
- ! the total of the benefits referred to in subsection 47(2) of the Regulations, multiplied by a ratio, not to be less than zero or greater than 1.0, determined in accordance with subclause 34(6)2. (i.e., the ratio of the amount by which the Ontario assets exceed the modified Ontario wind up liability to the amount by which the Ontario wind up liability exceeds the modified Ontario wind up liability).

Note that in calculating the ratio referred to above, the Ontario assets at the wind-up date should first be reduced by any provision for expenses before they are compared to the liabilities at that date. The Ontario or modified Ontario wind up liability at the wind-up date should be determined without regard to any plan experience or changes in annuity purchase rates subsequent to the wind-up date and without regard to any provision for adverse deviations in respect of plan experience or changes in annuity purchase rates after the wind-up date (see subsections 2.1.1 and 3.2 of this procedure).

The value of benefits payable to each member or former member must not be less than the person's required contributions plus interest.

B.6 Examples

For the purpose of illustrating the Guarantee Fund calculations, the following plan scenario has been assumed:

- ! The plan was wound up effective January 1, 1995;
- ! The plan vesting rule in a non-wind-up situation was 100% after 10 years of continuous employment for pre-1987 benefits and 100% after 2 years of membership for post-1986 benefits;
- ! None of the benefits described in subsection 47(2) of the Regulations were provided under the plan;
- ! The ratio pursuant to subsection 34(6) of the Regulations was 70%. (Please note that the ratio would not, in practice, be determined until after the Ontario wind up liability for the entire plan has been calculated.)

Calculations shown below are for individual members or former members.

Example A

Plan type	Non-contributory
Status of member	Active
Age at wind up	30 years
Continuous employment*	9 years
Membership*	9 years

* includes notice period under Employment Standards Act

	Employee Contributions With Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$30	\$311
Post 1986	\$0	\$240	\$2,485
Total	\$0	\$270	\$2,796

a) Vested status

In respect of pre-1987 benefits, the member is not vested under the statutory "45&10" vesting rule nor the 10 year vesting rule under the plan.

In respect of post-1986 benefits, the member is vested under the statutory "2 year membership" vesting rule.

b) Guaranteed benefits

Since the member's age plus employment is less than 50, none of the benefits are guaranteed under section 84 of the Act.

c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of post-1986 benefits of \$2,485. The component in clause 29(10)(b)(v) of the Regulations, i.e., the liability for pre-1987 benefits in this example, is not included because the employer is insolvent and cannot make payments pursuant to section 75 of the Act.

d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$0	\$0
Subclause 34(5)(a)(ii)	70% * (\$240 - \$0) = \$168	70% * (\$2,485 - \$0) = \$1,739

Total	\$168	\$1,739
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Example B

Plan type	Non-contributory
Status of member	Active
Age at wind up	40 years
Continuous employment*	15 years
Membership*	14 years

* includes notice period under *Employment Standards Act*

	Employee Contributions With Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$180	\$2,464
Post 1986	\$0	\$240	\$3,285
Total	\$0	\$420	\$5,749

a) Vested status

In respect of pre-1987 benefits, the member is not vested under the statutory "45&10" vesting rule but is vested under the 10 year vesting rule under the plan.

In respect of post-1986 benefits, the member is vested under the statutory "2 year membership" vesting rule.

b) Guaranteed benefits

The pre-1987 benefits are not guaranteed under section 84 of the Act. The post-1986 benefits are partially guaranteed under clause 84(1)3 of the Act as follows:

Age plus employment or membership (whichever is greater)	$40 + 15 = 55$
Portion guaranteed by formula under clause 84(1)3	$20\% + (2/3\% * 60) = 60\%$
Guaranteed benefits	$60\% * \$240 = \144
Present value of guaranteed benefits	$60\% * \$3,285 = \$1,971$

c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of vested benefits, i.e., \$5,749.

d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$144	\$1,971
Subclause 34(5)(a)(ii)	$70\% * (\$420 - \$144) = \$193.20$	$70\% * (\$5,749 - \$1,971) = \$2,644$
Total	\$337.20	\$4,615

Example C

Plan type	Contributory
Status of member	Active
Age at wind up	40 years
Continuous employment*	15 years
Membership*	14 years

* includes notice period under Employment Standards Act

	Employee Contributions With Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$3,100	\$180	\$2,464
Post 1986	\$4,200	\$240	\$3,285
Total	\$7,300	\$420	\$5,749

a) Vested status

See comments in Example B.

b) Guaranteed benefits

See comments in Example B.

c) Ontario wind up liability

The Ontario wind up liability is calculated as follows:

Present value of vested benefits	\$5,749
Minimum value of employee contributions for pre-1987 benefits (i.e.,\$3,100-\$2,464)	636
Minimum 50% cost rule for post-1986 benefits (i.e.,\$4,200-50%*\$3,285)	<u>2,557</u>
Total	\$8,942

d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$144	\$1,971
Subclause 34(5)(a)(ii)	$70\% * (\$420 - \$144) = \$193.20$	$70\% * (\$8,942 - \$1,971) = \$4,880$
Total	\$337.20	\$6,851 (1)
Subclause 34(5)(b)	(3)	\$7,300 (2)

(3) The commuted value of the included benefits is the greater of (1) and (2), i.e., \$7,300. The amount of monthly pension benefits payable to the member is that which could be provided by the commuted value of \$7,300.

Example D

Plan type	Non-contributory
Status of member	Active
Age at wind up	46 years
Continuous employment*	19 years
Membership*	18 years

* includes notice period under Employment Standards Act

	Employee Contributions With Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$300	\$7,610
Post 1986	\$0	\$240	\$6,088
Total	\$0	\$540	\$13,698

In this example, it is assumed the plan was amended within three years before the date of wind up, effective January

1, 1993. The member's accrued benefits based on the plan prior to the amendment are \$504 per month and the associated present value is \$12,784.

a) Vested status

The member is vested under the statutory vesting rules for both pre-1987 and post-1986 benefits.

b) Guaranteed benefits

The member's age plus employment exceeds 60 points. All benefits except those attributable to the January 1, 1993 amendment ("3 year exclusion" under section 85 of the Act) are guaranteed under section 84 of the Act. The guaranteed benefits and the associated present value are \$504 per month and \$12,784, respectively.

c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of vested benefits, i.e., \$13,698.

d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$504	\$12,784
Subclause 34(5)(a)(ii)	$70\% * (\$540 - \$504) = \$25.20$	$70\% * (\$13,698 - \$12,784) = \$640$
Total	\$529.20	\$13,424

Example E

Plan type	Non-contributory
Status of former member	Deferred vested
Date of termination	December 31, 1980
Age at termination	41 years
Continuous employment at termination	10 years
Membership at termination	10 years
Age at wind up	55 years

	Employee Contributions With Interest	Monthly Benefit	Present Value of Benefit
Pre-1987	\$0	\$150	\$5,940
Post 1986	\$0	\$0	\$0
Total	\$0	\$150	\$5,940

a) Vested status

The former member was not vested under the statutory "45&10" vesting rule but was vested under the plan vesting rule.

b) Guaranteed benefits

Since the former member terminated before January 1, 1988 and he was not "45&10" at the date of termination, his deferred pension is not guaranteed under section 84 of the Act.

c) Ontario wind up liability

The Ontario wind up liability is equal to the present value of deferred pension, i.e., \$5,940.

d) Included benefits under subsection 34(5)

	Monthly Benefit	Commuted Value
Subclause 34(5)(a)(i)	\$0	\$0
Subclause 34(5)(a)(ii)	$70\% * (\$150 - \$0) = \$105$	$70\% * (\$5,940 - \$0) = \$4,158$
Total	\$105	\$4,158