



SECTION: Surplus

INDEX NO.: S900-900

TITLE: Allocation of Surplus Distributed to Members and Former Members
on Wind Up
- PBA, 1990 ss. 63(7), 70(5), O. Reg. 909, s. 8

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Note: Due to legislative changes, all references to "the Pension Commission of Ontario" or "the Commission" should now read "the Superintendent of Financial Services".

The following procedures apply where all or part of the surplus is to be allocated among the members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up, on the wind-up of a pension plan in whole or in part.

Payment of surplus to such persons may be sought on an application pursuant to clause 8(1)(a) of Regulation 909, as the result of a surplus sharing agreement pursuant to clause 8(1)(b) of Regulation 909, or under subsection 8(2) of Regulation 909. Any allocation must be in the context of a wind up report otherwise approved by the Superintendent after considering all legislative requirements, including subsection 70(5) of the *Pension Benefits Act* (the PBA).

Superintendent's Discretion

1. Pursuant to subsection 70(5) of the PBA, the Superintendent may refuse to approve a wind up report that does not meet the requirements of the PBA and the regulations or that does not protect the interests of the members and former members of the plan.

Allocation of Surplus

2. Regulation 909 clause 8(1)(a) provides for the payment of surplus out of a pension plan that is being wound up in whole or in part to or for the benefit of members, former members and other persons entitled to payments out of the plan on the date of wind up. Accordingly, all three groups named in that clause should share in the allocation of surplus when proceeding under that clause.
3. The Superintendent may refuse to approve any allocation of surplus contained in a wind up report, whether by cash or by benefit enhancements, that does not protect the interests of members and former members of the plan pursuant to subsection 70(5) of the PBA, and subject to the provisions of the plan.

4. The following examples of surplus allocation would, under the circumstances of most plans, be acceptable as protecting those interests:
 - a. indexing benefits to inflation;
 - b. in defined benefit plans, sharing in proportion to liabilities;
 - c. in a contributory plan, an application to the Commission under subsection 63(7) of the PBA for refund of member and deferred member contributions with an appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for the refund of member contributions;
 - d. in defined contribution plans, sharing in proportion to accumulated contributions plus interest;
 - e. distributing surplus in proportion to length of credited service under the plan;
 - f. retroactive application of the 50 per cent funding rule, with the appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for retroactive 50 per cent funding.
5. The benefit enhancements listed above may be notional enhancements for the purposes of allocating the surplus where the distribution will be made in the form of cash. Alternatively, the benefit enhancements may be provided as actual pension benefits in which event they will be treated as pension benefits for all purposes of the Act, including locking in. The same method of allocation need not be applied to each of the three groups of members, former members, and other beneficiaries under the plan on wind up. If the plan provisions do not stipulate the form in which the surplus is to be provided, the plan text must be amended.
6. Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.
7. Other methods of allocating surplus will be considered. If another method is proposed, the applicant will be asked to describe why the recommendation is thought to protect the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA.

Methods of Distribution

8. The following examples of methods of distributing the surplus allocated among members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up would, under the circumstances of most plans, be acceptable as protecting the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA:
 - a. benefit enhancements;
 - b. cash distribution; or
 - c. a combination of a. and b.
9. Anyone who is entitled to a deferred pension benefit either generally or as a result of a surplus distribution is entitled to the section 42 portability options and the subsection 73(2) transfer rights on wind up.

Documentation

10. The Administrator is required by section 70 to file a wind up report that sets out the benefits to be provided, and the methods of allocating and distributing the assets of the plan. A proposal for the allocation and distribution of plan surplus must be consistent with the provisions of the pension plan and, thus, plan amendments must be filed as appropriate to maintain this consistency.
11. No payment may be made out of a pension plan once a notice of proposal to wind up the plan has been given, except with the Superintendent's approval in accordance with section 70 of the PBA. Any assets of the plan, including surplus, may be disbursed only after the Superintendent's approval has been obtained in accordance with section 70, and in accordance with the approved wind up report.

Sharing Surplus with Plan Beneficiaries and Employer

12. These principles and procedures apply where surplus is shared among members, former members and other persons entitled to payments out of the plan on the date of wind up, or where an employer proposes to share surplus among the employer and members, former members and other persons entitled to payments out of the plan on the date of wind up. For payment of all or part of the surplus to an employer, the employer must make application to the Pension Commission of Ontario under Regulation 909 subsections 8(1)(b) or 8(2).