

Proposed Regulations - Financial Hardship Unlocking

I. Background

The 2012 Budget announced the government's intention to restructure the financial hardship unlocking program to enable eligible individuals to access locked-in funds in a simpler, more streamlined manner.

In order to implement this restructuring, regulations are required. A description of the proposed regulatory requirements is set out below. Comments from interested stakeholders are welcome.

II. Proposed Regulation

1. General Application Information

The rules relating to the application process for unlocking funds in circumstances of financial hardship would require applicants to deal directly with their financial institutions and entitle these institutions to rely on the information provided by the applicant.

The proposed regulations would mirror the general application requirements related to other forms of fund withdrawals in Schedules 1-3 of Regulation 909 under the *Pension Benefits Act* (PBA) where the consent of the Superintendent of Financial Services Commission of Ontario (FSCO) is no longer required:

- Individuals would apply directly to the financial institution that administer their locked-in accounts.
- The application would be made on a form approved by the Superintendent.
- Individuals would apply to withdraw a lump sum amount, or monthly instalments, equal to all or part of the money in the locked-in account.
- During any calendar year, an individual could make no more than one successful application under each of the four financial hardship criteria.
- The application would be signed by the owner and accompanied by any relevant documents, depending on the criteria under which the application is being made.
- The application would be signed within 60 days of the date the financial institution receives it and relevant documents would be signed or dated within 12 months of the date the financial institution receives it.
- The contract governing the fund would include the following terms and, if it does not, the contract is deemed to include them:

- The financial institution would be entitled to rely upon the information provided by the applicant.
- An application that meets the legislative requirements related to financial hardship unlocking authorizes the financial institution to make payment from the fund.
- The financial institution would be required to make the payment within 30 days after the financial institution receives a complete application form.

2. Application Criteria

Currently, subsection 87 (1) of Regulation 909 sets out the seven criteria under which an applicant can apply to unlock funds in circumstances of financial hardship. These would be consolidated into four criteria, as follows:

1. The applicant or applicant's spouse has received a written demand in respect of arrears in the payment of rent or a default on a debt that is secured against the applicant's principal residence, and the applicant could face eviction if the debt remains unpaid.
2. The applicant, applicant's spouse, or dependant has incurred or will incur medical expenses that are due to illness or physical disability of any of them.
3. The applicant or applicant's spouse requires money to pay the first and last months' rent to obtain a principal residence for the applicant.
4. The applicant's expected total income from all sources before taxes for the 12-month period following the date the application is signed is less than or equal to two-thirds of the Year's Maximum Pensionable Earnings (YMPE) which is \$50,100 in 2012.

3. Conditions for Approval & Maximum Withdrawal Amounts

A financial institution would approve an application once certain conditions are met.

General Conditions

Similar to other forms of unlocking, the following conditions would need to be met by all applicants:

- (a) Spousal Consent: An applicant would be required to provide the written consent of his/her spouse, if any, prior to the withdrawal of money from the fund.

- (b) Non-exemption from Execution, etc.: An applicant would be required to provide a signed statement that he or she understands that any monies released will not be exempt from execution, seizure or attachment under section 66 of the PBA.
- (c) Minimum Withdrawal Limit: Consistent with the current rules, the minimum withdrawal limit would be \$500 plus withholding tax.

Criteria-Specific Conditions & Maximum Withdrawal Amounts

The following conditions would also need to be met by each applicant, depending on the criterion under which they apply. In addition, the “asset test” which determines the maximum amount that can be unlocked would be eliminated and replaced with a maximum withdrawal limit, which would vary depending upon the criteria under which the application is made.

Criteria 1: Risk of Eviction from Principal Residence

- (a) Written Demand: The applicant would be required to provide a letter from the creditor (e.g., landlord, financial institution) demanding payment of unpaid rent or debt, including the amount owed.
- (b) Maximum Withdrawal Limit: Lesser of: 50% of YMPE or, the amount indicated in the demand letter plus an amount equal to 12 monthly rent or mortgage payments.

Criteria 2: Medical Expenses Related to Illness or Physical Disability

- (a) Doctor's Certificate: The applicant would be required to provide a statement, signed by a physician or dentist, as applicable, who is licensed to practice medicine or dentistry in a jurisdiction in Canada, indicating that in his or her opinion, the expenses claimed are or were necessary for the person's treatment.
- (b) Receipt/Estimate: The applicant would be required to provide a copy of a receipt or estimate, outlining the total expense.
- (c) Maximum Withdrawal Limit: Lesser of: 50% of YMPE or, the amount indicated in receipt or estimate plus an amount equal to 12 monthly payments for medical expenses.

Criteria 3: First and Last Month's Rent

- (a) First and Last Month's Rent: An applicant would be required to provide a signed statement, setting out the amount required for first and last month's rent, or a copy of the rental agreement.

- (b) Maximum Withdrawal Limit: Lesser of: 5% of YMPE or, the amount required for first and last months' rent.

<i>Criteria 4: Low Income</i>

- (a) Expected Total Income: An applicant would be required to provide a signed statement, setting out his or her expected total income from all sources before taxes for the 12-month period following the date the application is signed. The exclusions from an applicant's "expected total income" found in subsection 89 (3) of Regulation 909 would continue to apply.
- (b) Maximum Withdrawal Limit: 50% of YMPE minus 75% of the applicant's expected total income from all sources before taxes for the 12-month period following the date the application is signed.

Appendix 1: Criteria for Applying for Financial Hardship Unlocking

	Criteria	
	Old Regime	Proposed New Regime
A) Low Income	1. Low Income	1. Low Income
B) Housing	2. Unpaid Mortgage Debt 3. Risk of Eviction from Rented Residence 4. Rent Deposit	2. Risk of Eviction from Principal Residence 3. Rent Deposit
C) Health	5. Medical Expenses 6. Renovations due to Illness/Disability of Self 7. Renovations due to Illness/Disability of Spouse or Dependant	4. Medial Expenses due to Illness or Disability, of Self, Spouse or Dependant.

Appendix 2: Summary of Requirements for Proposed New Financial Hardship Unlocking Regime

The requirements of the proposed new financial hardship unlocking regime would include:

- Application must be made to the financial institution on a form approved by the Superintendent of FSCO.
- Application must be for a lump sum, monthly instalments or a combination of the former.
- Only one application per criteria during a calendar year.
- Application must be signed by the owner, certifying the validity of information provided.
- The financial institution is entitled to rely on the information provided in the application.
- If the application meets the requirements, the financial institution must make payment within 30 days from receipt of a complete application.
- Spousal consent is required for all unlocking criteria.
- Owners must sign an acknowledgement that unlocked money will no longer be exempt from execution, seizure, or attachment.
- The minimum withdrawal amount would be \$500.
- Permitted criteria for financial hardship unlocking are as follows, subject to the conditions outlined below:

Criteria		Conditions for Approval	
Category		Evidence Required	Withdrawal Amount
1.	Risk of Eviction from Principal Residence	<ul style="list-style-type: none"> ▪ Written demand for payment outlining amount of arrears and the consequences of non-payment. 	Lesser of: 50% of YMPE or, the amount required plus an amount equal to 12 monthly rent / mortgage payments
2.	Need for rent deposit	<ul style="list-style-type: none"> ▪ Statement of need, outlining amount required to pay first/last month's rent, or ▪ Copy of rental agreement 	Lesser of: 5% of the YMPE or, the amount required
3.	Medical Necessity	<ul style="list-style-type: none"> ▪ Certification of need from physician or dentist ▪ Receipts or estimates outlining total expense 	Lesser of: 50% of YMPE or, the amount required plus an amount equal to 12 monthly payments of medical expenses
4.	Low Income	<ul style="list-style-type: none"> ▪ Statement of expected income for following year (current exemptions to be retained) 	50% of YMPE <u>less</u> 75% of expected income