

Barbara Amsden

Director, Special Projects
416.687.5488/bamsden@iiac.ca

August 31, 2013

Mr. Jerry Williams

Senior Policy Consultant, Pension Policy Unit, Pension Division
Financial Services Commission of Ontario (FSCO)
5160 Yonge Street, P.O. Box 85
Toronto, Ontario, M2N 6L9
Contact: (416) 226-7771/jerry.williams@fSCO.gov.on.ca

Dear Jerry:

Re: IIAC Comments to FSCO on Ontario Hardship Unlocking Process and Forms

The Investment Industry Association of Canada (the IIAC) thanks you for the opportunity to meet and discuss Ontario's hardship unlocking process and forms. As the national association of investment dealer firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC), the IIAC represents its 170 member firms on securities, tax and other public policy matters to improve the savings-to-investment process. To this end, the IIAC works with the federal and provincial governments.

As set out in our earlier letter to the Ministry of Finance during consultations, our members have reservations with the new unlocking requirements as IIROC-regulated dealers do not have the experience in adjudication that those in the insurance and perhaps certain other industries have. Our members range from the large, which may need to develop a systems-based solution, to the small, which are already facing the considerable challenges of difficult financial markets and increased regulation. However, we sincerely approach your and your team's efforts and willingness to address our members' concerns. To this end, we hope you will reply to the attached list of questions, followed by suggested topics for frequently asked questions (FAQs), as well as comments on Form A that apply equally to the other forms. If we can provide clarification of our comments, please let us know.

Yours truly,



QUESTIONS AND FAQ RECOMMENDATIONS

General Requests

1. We appreciate FSCO's promises of assistance to financial institutions as they prepare for the new unlocking requirements. Could you provide available details and a possible timeline for the webcasts that FSCO is contemplating?
2. Would FSCO be able to begin providing to us an outline of the Users' Guide that is planned, as well as the expected timing for seeing a version on which financial institutions may comment?
3. Can FSCO provide relevant FSCO internal procedures/checklist of all the points that must be verified/confirmed before FSCO – and in future a financial institution – can unlock the accountholder's LIRA (e.g., signed within 60 days, attached documentation within 12 months, form from the year the request is made, must be a doctor or dentist licensed in Canada and not a chiropractor, etc.)?
4. To better allow for financial institution planning, can FSCO provide details on:
 - a. The number of hardship unlocking forms received in 2012?
 - b. How many are rejected/approved?
 - c. The main reasons applications are rejected assuming the forms have been filled in correctly?
 - d. Whether there are any individuals that have been disqualified from the program due to having tried or succeeded in defrauding the system?
 - e. How many attachments (on average) are provided with the applications?
5. Can FSCO host a Q&A webpage for at least six months after the initiation of the new process with FSCO posting answers to financial institution questions as received that are generic (not client specific) so that financial institutions can learn from each other and FSCO will receive fewer calls for assistance?

Suggested Questions for FAQs

Note: If FSCO decides that some of these questions are not required for the FAQs or Guide, it would be helpful to receive a brief response from FSCO on the subject that we may disseminate to our members.

6. Please convert the questions below, from FSCO's August 8th e-mail, into FAQs as we believe they will be useful to our members.
 - i. **Withholding tax and administrative fees.** As per the regulations as they are now, the amount that is approved for withdrawal is a gross amount. This means that any amount that must be withheld for income tax plus any administrative fee would have to be deducted from the amount approved. I have added a paragraph alerting the applicant to this on the first page and it also clarifies that an applicant cannot apply for an amount greater than the maximum permitted under the regulation.

- ii. **Each application pertains to one locked-in account of one owner.** The owner can make one application per calendar year, per category (except that with respect to medical expenses, the owner may make one application per calendar year per applicable person (i.e. owner, spouse, dependent). In determining the maximum that can be withdrawn, the financial institution (FI) is not required to take into account the amount an applicant has in other accounts. We will try to address this in the user guide.

It has been suggested that Section 9(6) of Schedule I, perhaps in connection with section 10.1(1) of Schedule 1, (and similar provisions with respect to other categories and accounts) can be read to mean that the FI must consider monies in all locked-in accounts owned by the applicant regardless of where they are held. This is not the case.

Section 9(6) is relevant only for applications under section 9 (the “small amount” provision for owners who are at least 55), and it is required because one of the criteria for withdrawal under that section is that the total value of all locked-in accounts owned by the owner must be less than 40 per cent of the YMPE for that year. Therefore, it provides a method for determining that total value (it does not define “account”). The sections in Schedule 1 which deal with financial hardship unlocking (ss. 10.1., 10.2, 10.3 and 10.4) do not have a similar requirement. In addition, subsection 9(6) was revised in the recent amendments to move the other paragraphs to section 8 and make them applicable more generally to early withdrawals. The fact that the wording in subsection 9(6) with respect to how to determine the value of all assets in all locked in accounts was not moved to section 8 reinforces the view that it is relevant only to applications for “small amounts”, not to applications for financial hardship.

- iii. **Withdrawals cannot exceed the maximum.** Section 10.1(1) of Schedule 1 reads, “the owner of a life income fund... may, upon application in accordance with this section, withdraw **all or part** of the money in the fund...” It has been suggested that section 10.1 means that all of the money may be unlocked without regard to the maximum amount stipulated under section 10.1(4). This is not the case. Section 10.1(1) permits the withdrawal only if the application is made in accordance with that section, i.e., in accordance with all of the requirements in that section including the minimum and maximum limits in section 10.1(4).
- iv. **Personal information and consents.** We appreciate the suggestions you have made with respect to the wording. The first draft form retained Part 4, which reflected the requirements FSCO had to satisfy under the old (current) regime where we were responsible for administering the application. We attempted to modify Part 4 and invited suggestions on how to do that. However, under the new regime FIs are responsible for administering each application as they do for the non-hardship unlocking applications which use FSCO Form 5. Therefore, we see no reason for the hardship unlocking forms to use different wording than what is in Form 5, which is now inserted at the end of the first section of the form, and have deleted Part 4.
- v. **FIs will be responsible for administering applications.** A suggestion was raised that under the new regime, the information is being collected on behalf of FSCO as FSCO is responsible for administering the application. That will not be the case under the new regime. As of January 1,

2014, responsibility for administering the application rests with the FIs, and it is up to each FI to determine what consent it requires to collect, use or disclose information as necessary to process the application and to request that consent from the applicant. As stated above, this is currently the case with respect to the other types of unlocking applications.

7. Are there special **qualifications** required by individuals assessing these applications to qualify for the role?
8. May financial institutions **refuse** to process a request for hardship unlocking and if so when/why?
9. In the event that a request is not approved, what is **the appeal process** by which a client can dispute the rejection? *(IIROC-regulated dealers have required internal complaint escalation procedures, including to third-party complaint resolution entities)*
10. Will FSCO/the Ontario government **indemnify** financial institutions for errors? Will FSCO provide indemnification if an individual has already sought to unlock accounts contrary to the hardship unlocking requirements or committed fraud against Ontario's social services offerings?
11. Please confirm that, as it is the **account holders' responsibility** to certify that he or she has not withdrawn more frequently than he or she should, financial institutions are not expected to track this; or advise firms to which they transfer locked-in accounts of times and amounts unlocked; or seek such information from firms from which locked-in accounts are transferred in.
12. Will FSCO **audit** financial institutions that must meet hardship unlocking requirements?
13. Please confirm that the financial institution does not need to check that the doctor or dentist is **licensed** in Canada.
14. Please confirm that the financial institution is not responsible for **checking addition** (e.g., of attachments to forms).
15. What will FSCO do if inadvertently a firm accepts more than one application a year per each of the four permitted hardship criteria scenario? Also, please confirm there are **no penalties** associated with the unlocking program.
16. Can FSCO provide **average expected expenditures** for living accommodation modifications, health costs, etc.? How will FSCO ensure that financial institutions without access to the sources available to insurance companies are not penalized by lack of access to information that insurance firms have? If FSCO does not have access to such data, can it confirm that investment dealers will not be held to a higher standard than FSCO met?
17. Please confirm that FSCO does not prescribe in what format and for how much time **supporting documentation** must be held?

18. Will there be any **reporting** required of financial institutions to FSCO and if so what/how? Please confirm what reporting FSCO will provide to financial institutions such as an aggregation of any required reporting, any concerns raised by financial institutions, etc. For example, CRA often arranges annual meetings on particular topics of relevance: is this something that FSCO would do for hardship unlocking?
19. What will be acceptable **spousal evidence** if a client's spouse must sign the application but the client's spouse is not a client of the client's financial institution?
20. Please confirm that the Pension Benefits Act and regulations permit a financial institution to unlock accounts for not only house modifications, etc., but also to cover any associated **HST** (in addition to, as noted in 6. above, tax amounts withheld when amounts are withdrawn and fees).
21. Please include **examples** of the calculations under various scenarios, for example, such as the one provided by the IIAC's August 9th e-mail.
22. Please confirm you can have a form with two or more **Part 2s** with a Form A – please include an example.
23. Is there any required direction regarding administrative fees?



Financial Services
Commission
of Ontario

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

**ADD PHONE/ INFO/ WEBSITE
URL IN CASE CLIENT MUST BE
REFERRED**

Form XA – 2014 Financial Hardship Unlocking Application for Medical Expenses, including Renovations to a Principal Residence for Medical Reasons

*Approved pursuant to the Ontario Pension Benefits Act
(R.S.O. 1990, c. P.8, as amended)*

Only use this form for Applications submitted in 2014

Submit your completed application to the financial institution that administers your locked-in account: Do not submit it to the Financial Services Commission of Ontario (FSCO)

NOTE: Take the time to read the User's Guide to ensure the Application is filled out completely and correctly.

Use this Application to apply to withdraw money from an Ontario locked-in retirement account, life income fund or locked-in retirement income fund (referred to in this Application as a locked-in account) based on financial hardship for medical expenses relating to an illness or physical disability incurred by the applicant, the applicant's spouse, or a dependant of the applicant, including expenses incurred for renovations or alterations to the principal residence of the applicant or the applicant's dependant or the applicant's spouse's dependant as a result of an illness or physical disability.

You cannot apply to withdraw money from this locked-in account under the category of medical expenses and renovations for a principal residence more than one time during a calendar year in respect of a particular person.

You must apply to withdraw at least \$500 and cannot apply to withdraw more than the maximum amount permitted by regulation.

If your application is approved, the money will be paid to you in one lump sum. The money cannot be paid out in any other interval, nor transferred to an RRSP or RRIF.

Please be aware that the amount that is approved will be reduced by the amount of tax that is required to be withheld, and an administrative fee, if any, that may be charged by your financial institution. You should ask your financial institution for an estimate of the amount that will be deducted before you decide how much money you want to apply to withdraw, but you cannot apply for an amount greater than the maximum amount permitted by regulation.

Any withdrawal from your locked-in account may affect your eligibility for certain government benefits. To find out more, contact the government department or agency that provides these benefits.

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

Please be aware that when money is withdrawn from an Ontario locked-in account, the money will lose the creditor protection provided by the PBA and Regulation. In addition, please be aware that any withdrawal you make from your locked-in account will decrease the amount of retirement income you receive or will receive in the future. Also, please note that any amount that is withdrawn from your account cannot subsequently be redeposited in any locked-in account.

This form is required by Regulation 909, R.R.O. 1990 (Regulation), Schedule 1, Schedule 1.1, Schedule 2, or Schedule 3 to the Regulation. **DOES THIS NEED TO BE HERE? IF SO, SUGGEST IT BE SMALLER AND LESS OBTRUSIVE**

Note: Under privacy legislation, it is the responsibility of your financial institution to advise you of the purposes for which personal information is collected, used or disclosed, and to obtain any necessary prior consent from you to any such collection, use or disclosure. **FINANCIAL INSTITUTIONS MAY PROVIDE ADDITIONAL PRIVACY WORDING**

Part 1 Information About the Owner of the Ontario Locked-in Account

1. Provide the following information about yourself:

Last Name	First Name	Middle Initial(s)	Date of Birth (Year / Month / Day)
Mailing Address	Street Number and Name		Suite No.
City		Province/State	Postal Code/Zip
Contact Number	Fax Number		E-mail Address (optional) SUGGEST REMOVE WORD "OPTIONAL"?

2. Provide the following information about your Ontario locked-in account that you are applying to withdraw money from:

Policy Number or Account Number of your Ontario locked-in account

3. "Spouse" is defined in the Pension Benefits Act as either of two persons who,
- (a) are married to each other, or
 - (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*.

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

If you have a spouse on the date you sign this Application, provide the following information about your spouse:

Last name		First name	
Middle name		Date of birth (yyyy/mm/dd)	
Principal Residence Address <input type="checkbox"/> Same as your Mailing Address, or: Street address		Apt./Unit	
City		Province/State	
Postal Code/Zip	Country		
<input type="checkbox"/> Contact number: same as your contact number or _____ E-mail Address SUGGEST E-MAIL BE ADDED			

Part 2 Medical Expenses (Including Renovation Expenses)

Medical expenses under this part includes expenses incurred or that will be incurred for renovations or alterations to the owner's or dependant's principal residence, and any additional expenses incurred in the construction of a principal residence made necessary by the illness or physical disability of the owner, his or her spouse, or a dependant.

You cannot apply for renovation expenses for your spouse's principal residence if it is different from your own.

If you want to apply for medical expenses to treat more than one person, you must complete a separate Part 2 for each person and attach it to this Application.

1. Who has the illness or physical disability?

The person with the illness or physical disability must be one of the following (please check one of the following boxes):

- Yourself
- Your spouse
- A dependant (as defined in the User's Guide)

If you answered "A dependant", provide the following information about the dependant:

Dependant's Last Name		First Name	
Middle Name(s)		Date of Birth (yyyy/mm/dd)	

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

Dependant's Mailing Address Street Number and Name	<input type="checkbox"/> Same as your Mailing Address, or:	Suite No.
City	Province/State	
Postal/Zip Code	Country	
Dependant's Contact Number:	<input type="checkbox"/> Same as your Contact Number, or: _____	E-mail Address SUGGEST THIS BE ADDED?

2. Other than this application, have you applied to withdraw money from this locked-in account based on medical expenses for the person identified in this application at any time during 2014?

- Yes
 No

If you answered "Yes", you cannot apply again based on medical expenses for this person from this account this year. You must wait until 2015 to apply under this category and use the 2015 application form.

3. What is the maximum amount you may withdraw?

The maximum amount you can withdraw is the smaller of:

- a) 50% of the Year's Maximum Pensionable Earnings (YMPE) for 2014, which is **3.a \$INSERT NUMBER**
and
- a) The sum of the amount of medical expenses incurred for the individual who is the subject of this application **for what period?**, and an estimate of the total amount of medical expenses for the 12 months after the date on which this application is signed, including the amount of any renovations made necessary by the illness or physical disability that have been made or will be made to the principal residence of the applicant or dependant **INCLUDING HST**, which is **3.b \$ _____**.

4. How much money are you applying to withdraw from your locked-in account? \$ _____

Note: Must be at least \$500 and no more than that you are not permitted to apply to withdraw an amount: greater than your locked-in account balance; greater than the maximum amount you are allowed to withdraw (the lower of #3.a and #3.b as determined under #3-above); or less than \$500.

Note: If the amount you are applying to withdraw is less than the maximum you are allowed to withdraw, consider adding an amount to your request to cover the tax that must be withheld by law and financial institution service fees. Your financial institution can help you estimate this amount.

5. What principal residence has been or will be renovated?

The principal residence **must** be one of the following:

- Your current principal residence, located at the address below:

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

Your dependant's current principal residence, located at the address below:

Street Number and Name		Suite No.
City	Province/State	
Postal/Zip Code	Country	

Additional documents required:

A statement signed and dated by a medical doctor licensed to practice medicine in Canada, or a dentist licensed to practice dentistry in Canada, regarding the goods and services required must accompany this Application. The doctor or dentist may either complete Part 5 of the Application or provide a letter containing the required information. Individuals who do not qualify as medical doctors include chiropractors, physiotherapists, etc. Please see the User's Guide for more details.

You must attach copies of receipts or estimates to account for the total amount of the medical expenses being claimed (i.e., the goods and services purchased or to be purchased to treat the person's illness or physical disability). Please see the User's Guide for more details.

Part 3 Certification by the Owner of the Locked-in Account

Please read the User's Guide before you complete the Certification.

This Certification will not be valid for the purpose of your application if it is dated more than 60 days before the date the financial institution that administers your Ontario locked-in account receives this completed application.

Certification

I own the locked-in account identified in Part 1 of this Application. I hereby apply to withdraw from the locked-in account the amount set out in Part 2 of this Application. I understand that the amount that is approved will be reduced by withholding tax payable on the money withdrawn from the account and an administrative fee that may be imposed by my financial institution.

I certify that on the date I sign this Part:
(Check only one of the boxes below.)

- I have a spouse*, and my spouse consents to the withdrawal of money from the locked-in account
(If you check this box, you will need your spouse to complete Part 5 of this Application.)
- I have a spouse*, but on the date I sign this Attestation, I am living separate and apart from my spouse as a result of a breakdown in our spousal relationship
- I have a spouse*, but all the money in my Ontario locked-in account was originally earned by my former spouse under his or her pension plan, and I became the owner of that money as a result of the breakdown in my relationship with my former spouse. (See User's Guide for an explanation and examples.)
- I do not have a spouse*

I also certify that:

- (a) all of the information contained in this Application and the documents that accompany this Application is accurate and complete;
- (b) the money I am applying to withdraw from the locked-in account was earned in Ontario in a pension plan that is or was governed by the Ontario *Pension Benefits Act*; and
- (c) I have not previously applied to withdraw money for medical expenses in 2014 from this locked-in account in respect of the person identified in Part 2.

I understand that:

- (a) any money withdrawn from the locked-in account will no longer be exempt under section 66 of the Ontario *Pension Benefits Act* from execution, seizure or attachment by persons such as creditors;
- (b) it is an offence under the Ontario *Pension Benefits Act* to provide information in this Application which is not true, accurate and complete, punishable on conviction by a maximum fine of \$100,000 for a first conviction, and a maximum fine of \$200,000 for any subsequent conviction; and
- (c) it is a criminal offence under the federal *Criminal Code* for anyone to knowingly make or use a false document with the intent that it be acted on as genuine, punishable on conviction by a maximum term of 10 years imprisonment.

*As defined in the Ontario *Pension Benefits Act*.

The owner of the locked-in account must sign this Certification in the presence of an adult witness.

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

Signature of Owner		Signature of Witness		Date Signed (yyyy/mm/dd)
Witness Information				
Last name	First name	Middle name		

DRAFT

Part 4 Consent of the Owner's Spouse to the Withdrawal

This Part needs to be completed **only** if the owner of the locked-in account attests in Part 3 of this Application that the owner has a spouse who consents to the withdrawal of money from the account. The owner of the locked-in account cannot complete this Part.

If you are the spouse of the owner of the locked-in account and you are asked to consent to this Application to withdraw money from the owner's account, you should get advice from a lawyer about your rights and the legal consequences of signing the Consent below. You are not obligated to sign the Consent below.

If you wish to consent, then please read the Consent below. If you are satisfied that the Consent correctly describes your situation, then, **in the presence of a witness (an adult who is not the owner of the locked-in account)**, please sign, date and fill in the information on the bottom of the Consent, and have your witness sign on the bottom of the Consent.

The Consent will not be valid for the purposes of this Application if the Consent is dated more than 60 days before the date the financial institution receives it.

Consent

I am the spouse of the owner of the locked-in account identified in Part 1 of this Application.

I understand that:

- (a) the owner is making an application to withdraw money from the locked-in account, and that the owner cannot withdraw the money from the locked-in account without my consent;
- (b) as long as this money is kept in the locked-in account, I may have a right to a share of this money if there is a breakdown in our relationship or if the owner dies; and
- (c) if any money is withdrawn from the locked-in account, I may lose any right that I have to a share of the money withdrawn.

I consent **freely** to the owner's application to withdraw money from the locked-in account.

I give my consent by signing and dating this Consent in the presence of a witness.

The Owner's Spouse must sign this Consent in the presence of the adult witness **NOTE: Who is not a family member?**

Signature of Owner's Spouse

Signature of Witness

Date Signed

(yyyy/mm/dd)

Spouse Information

Last name

First name

Middle name

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

Witness Information		
Last name	First Name	Middle Name

DRAFT

Part 5 Statement of a Physician or Dentist

You must provide a statement signed by a physician licensed to practice medicine in Canada or a dentist licensed to practice dentistry in Canada indicating that, in his or her opinion, the expenses claimed are or were necessary to treat a person's illness or physical disability or that renovations to a principal residence are necessary as a result of a person's illness or physical disability. This requirement may be satisfied by a physician or dentist completing this Part, or providing a separate document that is signed and dated by the physician or dentist and contains all of the information required by this Part.

The owner of the locked-in account cannot complete this Part.

If you are a physician or dentist licensed to practice in Canada, you may complete the Physician's or Dentist's Statement below for the purposes of this Application. If you wish to complete the Statement, please check only one of the boxes in the Statement and fill in the other information needed to complete the Statement, then sign, date and fill in the information at the bottom of the Statement.

The Physician's or Dentist's Statement will not be valid for the purposes of this Application if the Statement is dated more than 12 months before the date the financial institution receives it.

Physician's or Dentist's Statement

I am a:
(Check only one of the boxes below.)

- physician licensed to practice medicine in a jurisdiction in Canada
- dentist licensed to practice dentistry in a jurisdiction in Canada

In my opinion,

(Print the name of the person identified in Part 2 of this Application who has or had the illness or physical disability)

has an illness or physical disability and the following goods or services are or were necessary for this person's treatment:

(attach additional pages if necessary and specify number of attached pages here - xx).

AND/Or, the following renovations (or additional construction expenses) are or were necessary as a result of this person's illness or disability, at the residence located at

NOTE: IIAC COMMENTS IN TRACK CHANGES ON FORM "A" APPLY EQUALLY TO FORMS B, C, AND D

(Print the address of the principal residence that requires renovations identified in Part 2 of this Application)

(attach additional pages if necessary and specify number of attached pages here - xx)

Physician or Dentist Information

Name (print)	Signature	Date signed (yyyy/mm/dd)
Street address	Apt./Unit	Phone number ()
City	Province/State	
Postal Code/Zip	Country	