



**Property and Casualty -
Auto Bulletins**

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Bulletins by Sector

Bulletin

No. G-10/04

- General

New Agent Licensing Regulation 347/04 (and Revocation of Regulation 663), Enhancements to FSCO's Internet Application System and Changes to the Life Licence Qualification Program Examination Fees

**To the attention of all Insurers licensed to transact insurance business in the Province of Ontario, Course
Providers and Insurance Associations**

This Bulletin addresses the following topics:

1. New Ontario Regulation 347/04
2. Enhancements to FSCO's Internet Application System (IAS)
3. FSCO's Response to Incidents of Cheating on Provincial Exams

1.1 NEW ONTARIO REGULATION 347/04 - Including new Conflict of Interest requirements for life agents.

The Government has made important enhancements to insurance agent licensing requirements designed to:

- Provide an enhanced level of consumer protection.
- Eliminate unnecessary barriers to licensing.

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The bulletins posted may contain forms that are no longer current. For the current version of any FSCO form, please visit the [forms area](#) of this website.

- Update certain licensing requirements including the agent application process.

Ontario Regulation 347/04 under the *Insurance Act* took effect on November 1, 2004. It replaces Regulation 663 which has been revoked.

Duties of Insurers - Section 12 of the regulation

The duty of care standard that currently requires insurers to maintain a compliance system for its agents, is continued in the new regulation. However, since the underlying responsibilities and standards of agents have changed, insurers' monitoring procedures may need to be updated to reflect the new standards applying to agents.

Conflict of Interest Duty Enhances Consumer Protection

The insurance industry and FSCO have worked together to develop steadily improving standards governing agents' qualifications. This regulation builds on existing standards by implementing a disclosure requirement for conflicts of interest and potential conflicts of interest that is consistent with the standards employed in other professions.

Existing insurance company and agent practices may need to be re-examined in light of the new requirements.

1.1 Changes Affecting Life Agents

Conflict of Interest Disclosure Requirements - Section 16 of the regulation

The regulation requires that agents provide their clients with written disclosure of any conflict of interest or potential conflict associated with each transaction or recommendation.

Agents must take this standard into account each time they deal with a client. Once an agent has advised his/her client about the conflict, the client can decide whether or not to proceed with the transaction or recommendation.

A conflict of interest in simple terms means that the agent has an incentive to act other than in the best interest of the client or prospective client.

FSCO does not propose to itemize all possible conflict situations, as each situation or transaction entails knowledge of the unique circumstances. As guidance, however, agents must handle all of their dealings with their clients with

openness and transparency, and provide written disclosure if any doubt exists as to whether a particular situation will give rise to a conflict or potential conflict.

When dealing with clients, an agent should ask him or herself two questions to ensure he or she can comply with the regulation:

1. **Would the advice given or product offered have been different if the situation or incentive giving rise to the potential conflict of interest did not exist?**
2. **Would it appear to a reasonable, informed third party looking at the facts that the agent acted in the best interest of the client?**

FSCO recognizes that all agents establish their own networks in order to sell various products. A conflict of interest does not exist simply because one agent has better access to a market than another agent. The regulation does not require disclosure of commissions as a routine matter, unless a difference in commissions would influence, or be perceived to influence, the recommendation or choice of insurance product.

Agents should retain copies of the written disclosure, or other records, to demonstrate compliance with the standard. They also need to understand how the concept of conflict of interest differs from the use of coercion and undue influence. The fact that there is no conflict does not make the transaction acceptable if an agent uses coercion or undue influence, including coercion through the influence of a professional or business relationship, in order to obtain the business. Also, disclosure does not relieve the agent of his/her responsibility to act in the best interests of his/her client in accordance with the licensing qualification requirements such as suitability and carrying on business in good faith.

There is nothing in the regulation that precludes an insurance company from establishing standards that exceed the minimum requirements in the regulation.

Agents do not require pre-approval or post-approval from FSCO, and therefore, FSCO will not be providing rulings on individual situations. If there is doubt in any transaction - disclose.

Elimination of Unnecessary Barriers

Life insurance agents are no longer restricted to working in the financial services sector during their two-year sponsored period.

Life agents can now obtain credit in calculating their sponsored period for the time they were licensed in another Canadian or U.S. jurisdiction if the Superintendent is satisfied that the licence is equivalent to an Ontario life insurance licence.

Application Processes

The Internet Application System (IAS) application process has been revised to reflect the changes made necessary by Regulation 347/04.

Revised paper application forms will be available shortly.

Life Licence Qualification Program (LLQP) Recognized in the Regulation

There are no changes to current policies or procedures concerning the LLQP. However, insurers are reminded that:

- A restricted licence will expire on the earlier of the 180th day after it is issued, or December 31, 2006 unless, by that time, the licensee is enrolled in the remainder (Part B) of the LLQP.
- Companies sponsoring agents who hold restricted licences are responsible for maintaining records documenting that the agents are complying with the requirements applicable to restricted licence holders.
- The transition period allowing restricted licences ends December 31, 2006. All restricted licences expire on December 31, 2006. All agents holding such licences must complete the LLQP by December 31, 2006.
- Current Level I agents are grandfathered but must pass the Level II exam or complete the LLQP exam within the earlier of 4 years from the date they obtained their Level I licence or December 31, 2006.

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1.2 Changes Affecting All Agents

Elimination of Prohibition Against Other Occupations

The ability to hold concurrent employment that was available only to unsponsored (formerly known as Level II) life

agents under previous regulation has been extended to all insurance agents. The lists of prohibited occupations that were deemed to place an agent in a position to use coercion or undue influence, have been eliminated.

These changes are being implemented to harmonize Ontario requirements with those of other Canadian jurisdictions and with other similar professionals.

The new regulation, however, requires that an agent not engage in any other business or occupation that would jeopardize his/her ***integrity, independence or competence***.

Now, when applying for a new or renewal licence, an agent must declare any other business or occupation in which they are engaged. The Superintendent must be satisfied, based on the information provided, that the other business or occupation will not have a negative impact on the agent's integrity, independence or competence. This consideration becomes a part of the test of suitability.

There are many different occupations and combinations of occupations. Therefore, each case depends on its own facts.

As an aid to compliance, agents should consider the following three questions:

- Does this other occupation affect his/her integrity as an agent?
- Does this other occupation restrict the independence of the advice an agent is providing to his/her clients?
- Does this other occupation prevent an agent from maintaining or increasing his/her competence as an agent because he/she will not be receiving adequate experience or training?

As with conflict of interest, the general rule applies - if in doubt, an agent should not engage in the other occupation.

New Requirement for Ontario Address for Service of Legal Documents

In addition to an agent's home address, the new regulation requires that agents and agencies licenced in Ontario now provide the Superintendent with an address in Ontario that is not a post office box, that is suitable for service of documents by registered mail. This change is being introduced to enable FSCO to initiate any necessary enforcement action and to facilitate service of legal documents such as those related to lawsuits brought against agents.

Agents who reside in Ontario may use their home address as their address for legal service if it meets the criteria set out above.

Agents residing outside Ontario must arrange for an address for legal service in Ontario and advise FSCO of the address.

The *Insurance Act* permits the Superintendent to send mail to the last known address of an agent on record at FSCO and the agent is deemed to have received the mail sent to that address. Therefore, it is in agents' best interests to ensure that FSCO has current, accurate, information at all times.

Failing to provide and update this information in a timely manner places the agent in violation of the regulation and could result in an agent being unaware of enforcement proceedings.

Regular Correspondence with Agents

FSCO recognizes that it is important that all agents receive regular correspondence on a timely basis, as it impacts their licence and livelihood. Therefore, FSCO will now send all regular correspondence to the agent's home address in order to ensure that it is received promptly. FSCO has found that business address information often becomes obsolete and is not a reliable way of getting mail to agents.

1.3 Changes Affecting General and Accident and Sickness Agents

General and accident and sickness agents are no longer required to work full-time or solely as an insurance agent.

1.4 Changes Affecting Agencies

The majority shareholder of a corporate agency no longer has to be a licensed agent. However, anyone who solicits from the public must still be licensed.

Insurance agencies with a foreign head office are now permitted.

The regulation no longer requires that the incorporating documents expressly state that the agency was incorporated for the purpose of acting as an agent.

For further information on these changes please refer to the attached Frequently Asked Questions.

2. ENHANCEMENTS TO FSCO'S INTERNET APPLICATION SYSTEM (IAS)

Save Time and Monitor Your Sponsored Agents More Easily With FSCO's Enhanced Internet Application System (IAS) !

In response to industry requests, a new pre-payment option has been developed. It enables companies to make convenient bulk pre-payments by cheque on behalf of future sponsored agents. In addition, FSCO has improved the suite of reports that companies can access. Available exclusively through IAS, the reports provide real-time, up-to-date information on the status of applications and pre-payment account information, all of which help to move agents into the workforce faster and aids companies in managing their agent workforce.

Now, life, general and A&S agents can use the IAS for almost any type of licensing activity.

IAS, which has been used for 21,572 applications to-date, is fast, secure and convenient. Paper-based applications are costly and time-consuming. As you know, the existing licensing fees have not been increased for over a decade because of steps taken by FSCO to control costs. FSCO encourages all insurance companies to utilize IAS for all agent licence applications to help control future costs and fees.

What Does this Mean to Your Company?

- IAS allows new agents to enter the workforce faster and reduces paperwork for existing agents.
- IAS reports provide the most accurate and timely information available on your agent sales force. Information is easily accessible by company licensing staff. As database and website information is updated immediately, FSCO's website provides a better indication of an agent's licensing status than does a paper licence.
- IAS provides insurance company staff with more control of the licensing process.

What Can Your Company Do?

- Take advantage of IAS training offered by FSCO staff.
- Visit the IAS tutorial located in the licensing section of FSCO's website at www.fSCO.gov.on.ca.

- Complete the IAS User Agreement and the Pre-payment Agreement, and send them to FSCO to obtain your company's secure passwords.
- To take advantage of the convenient pre-payment option, complete the Pre-payment Deposit form and send it with a cheque to FSCO.

3. FSCO'S RESPONSE TO INCIDENTS OF CHEATING ON PROVINCIAL EXAMS

Cheating on examinations is not new, but as a result of inappropriate incidents involving some candidates who were taking the LLQP examination, FSCO has asked Durham College to implement additional security measures. These security measures have resulted in an additional cost to the insurance industry.

The insurance industry has indicated strong support for a fair examination process that will ensure the highest standards of professionalism. It is highly inappropriate for candidates to compromise the integrity and fairness of the examination process. Regulators, companies and agents must all work together to ensure that only candidates with the highest level of integrity are introduced into the industry.

While reasonable security standards were in place, inappropriate incidents involving some candidates and companies required FSCO to work with Durham College, course providers, and expert consultants, to implement additional security measures. The cost associated with these measures is being charged to examination applicants through examination fees. This situation could have been avoided if these candidates had demonstrated the qualities expected of all agents.

Under a contract with Durham College, examination fees would have decreased to the levels shown below as the contract fee. The cost of additional security procedures prevents this.

The examination fees for both the paper and electronic versions of the LLQP examination have now been changed to the amounts shown in the last column in the chart shown below.

	<u>Current Fee</u>	<u>Contract Fee</u>	<u>New Fees</u>
Paper examinations	\$90.23	\$58.72	\$85.00
Electronic examinations	\$62.38	\$47.60	\$67.60

The exam questions are the property of the regulators and are not made available to anyone else, for any purpose.

Any insurer that is offered questions which are purported to be from any LLQP exam should contact the Senior Manager, Licensing and Registration at FSCO, immediately. Any insurer that is found to have obtained questions which are, or are purported to be, LLQP exam questions may be subject to enforcement action which could include licence conditions, prosecutions, or civil actions to recover costs.

Please note that these fee revisions are only effective in Ontario. Other jurisdictions are making their own decisions regarding exam fees and security procedures. FSCO will continue to closely monitor the examination results and security requirements, and fees will continue to reflect the cost of security arrangements that are deemed necessary.

For Further Information on These Changes

- Refer to the attached Frequently Asked Questions.
- Visit the Licensing section of FSCO's website at: www.fSCO.gov.on.ca, "What's New", "New Regulation Governing Insurance Agents (Nov. 1, 2004)" where you can download a copy of Regulation 347/04. FSCO's website is continually updated with new information that is important to you.
- contact FSCO's licensing hot line at: (416) 250-9209, toll-free: 1-800-263-0541.

Bryan P. Davies

Chief Financial Officer

Financial Services Commission of Ontario

December 17, 2004

Attachment (PDF):

- [Frequently Asked Questions](#)



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Last Modified: 8/23/2005 3:30:57 PM

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FREQUENTLY ASKED QUESTIONS

These are the most commonly asked questions raised in discussions with stakeholders, agents and the public.

REGULATION 347/04

Conflicts of Interest

1. Q. Are conflicts of interest prohibited?

- A.** Any real or potential conflict of interest associated with each transaction or recommendation must be declared to the client in writing by the agent. The client is then in a position to determine whether or not to proceed with the transaction or accept the recommendation.

2. Q. How do I identify conflicts of interest?

- A.** Conflicts will arise whenever any interests of the agent may be placed ahead of the interests of the client. Agents have a responsibility to disclose conflicts to the client, in writing, and to ensure that all transactions are conducted with openness and transparency.

When advising a client, an agent should ask himself or herself these two questions in connection with any recommendation or proposed transaction:

1. Would the advice given or product offered be different if the situation or incentive giving rise to the potential conflict of interest did not exist?
2. Would it appear to a reasonable and informed third party looking at the facts that the agent has an incentive to act other than in the best interest of the client or prospective client?

If in doubt, declare.

3. Q. Will FSCO provide a standard disclosure form?

- A.** No. The regulation does not require the use of a standard form. It is the responsibility of the agent or the company to provide appropriate written disclosure. Disclosure should be clear and appropriate to the client. Disclosure documents which are not clear and appropriate may be found to not meet the written disclosure requirement under the regulation.

**4. Q. Is the onus on the agent or the company to provide disclosure?
Who keeps a copy of the written disclosure?
Does the client sign the disclosure as evidence of receipt of written disclosure?**

- A. Disclosure is the agent's responsibility. It is the insurer's responsibility to ensure that agents comply with the regulation. Agents should keep a record as proof that the required disclosure took place.
5. Q. **Do the new conflict of interest requirements apply to policies in force, i.e. a whole life policy, or a universal life policy requiring revisions to investments or deposits?**
- A. There is no "grandfathering" of existing relationships under the new regulation. Therefore, just because there is an existing client and an existing policy does not mean the conflicts regulation has no application. However, refer to section 16 of the new regulation. It refers to a conflict of interest associated with a "transaction or recommendation". If there is no transaction or recommendation concerning an existing contract, (e.g. if there are no changes or advice provided), there is nothing to disclose. It is not intended that agents would have to revisit and identify actual or potential conflicts that existed when the original contract was signed (although nothing prevents it either). On the other hand, if the agent is giving advice or making changes to the contract after November 1, 2004, the disclosure rule applies.
6. Q. **If an agent sells a policy during a contest period, should he or she disclose that?**
- A. The agent should consider the two questions noted below to assess if he or she should disclose. The agent should ask whether the advice would be different, absent the incentive. Assuming the advice would not change, would an informed third party perceive that the agent has an incentive to act other than in the client's best interest. Asking these questions should serve as a guide to assess whether or not a conflict exists, in the majority of situations.

If there is any doubt at all, disclose.

Concurrent Employment

7. Q. **Will removing the full-time requirement for general and A&S agents and permitting concurrent occupations for all agents result in decreased consumer protection?**

- A. No. The changes do not lower standards.

All agents are required to pass the provincial licensing examinations and maintain currency of knowledge. All agents are bound by the same requirements regarding licensing and conduct, regardless of the number of hours they work as an agent.

This regulation extends the opportunity that Level II agents already had under previous regulation, to all agents, and treats insurance agents like other professionals.

Ontario joins nine other Canadian jurisdictions that permit insurance agents to hold concurrent employment. The new changes are subject to the requirement that the other employment does not result in the use of coercion or undue influence or jeopardize the agent's integrity, independence or competence.

Other jurisdictions have not found an increase in consumer complaints or enforcement actions as a result of permitting agents to hold additional employment.

8. Q. If my company (sponsor) won't let me hold other employment, what can I do?

A. While the regulation removes the prohibition against an agent holding concurrent employment, an employer or sponsor may have its own requirements governing its agents.

9. Q. If I get another job while licensed, do I need to advise FSCO?

A. You are not required to advise FSCO that you hold another job in addition to being a licensed agent until your next licence renewal application. However, if you are directly asked by FSCO to provide this information at any other time, as in the case of an audit for example, you are required to provide the information.

10. Q. Why were the lists of prohibited occupations contained in Regulation 663 eliminated?

A. The former rules deemed that certain occupations put agents in a position to use undue influence or coercion, whether or not any existed. Regulation 347 recognizes that the use of coercion and undue influence arise through the interaction of an agent and client during a transaction but that it may, or may not, have any connection to a concurrent occupation held by the agent.

The avoidance of the use of coercion and undue influence, including through the influence of a business or professional relationship, is a requirement imposed on all life agents. This establishes a better and more direct standard of care with which to ensure the protection of the public.

The Superintendent retains the authority to refuse a licence application if the Superintendent is of the view that the occupation or business would jeopardize the applicant's independence, integrity or competence, as an agent.

The right to appeal a decision of the Superintendent has not changed.

11. Q. As an insurance agent, can I hold a previously excluded occupation or share office space with those who are engaged in a previously excluded occupation?

A. There is no longer an automatic prohibition. You do not need approval from FSCO. The occupation you are engaged must not jeopardize your integrity, independence or competence as an agent.

Your employer or sponsor, however, may have corporate policies which restrict your ability to hold other employment. You should discuss your plans with the company.

In addition, if you intend to hold an occupation which is regulated under other legislation which has restrictions against holding other occupations, including acting as an insurance agent, you must comply with that legislation.

Ontario Mailing Address for Service of Legal Documents

12. Q. Why do I need an Ontario address for service of legal documents?

A. It is not reasonable for the Superintendent or an Ontario resident to have to go outside the province to enforce the *Insurance Act* or take legal action against an agent.

13. Q. Can my home address be my address for legal service if I live in Ontario?

A. Yes. Agents who reside in Ontario may use their home address as their address for legal service, if it meets the criteria set out in the regulation.

14. Q. If my home address is not in Ontario, can I use my home address as the address for service of legal documents?

A. No. Agents residing outside Ontario must arrange for an address for legal service in Ontario and advise FSCO of the address.

FSCO will, however, send all regular mail to your home address in order to ensure that it is received promptly. FSCO has found that business address information often becomes obsolete and is not a reliable way of getting mail to agents.

Non-resident Agents

15. Q. I live in Gatineau. Can I get an Ontario licence?

A. Provided you have an Ontario address for the service of legal documents which meets the requirements (i.e. is suitable to permit the delivery of registered mail, and is not a post office box) and you meet all other licensing requirements, you can apply for an Ontario agent's licence.

16. Q. I'm an agent in New York state. Can I sell insurance in Ontario or get an Ontario licence?

A. You cannot sell insurance in Ontario unless you hold an Ontario insurance agent's licence and have an Ontario address for service. If you meet the Ontario licensing requirements you can sell insurance in Ontario. At the present time, however, there is no policy regarding non-Canadian licensing equivalencies, particularly, those related to the educational requirements set out in licensing regulations.

17. **Q. Can an Ontario Head Office address be used by out of province agents?**
- A. Yes. The Ontario mailing address requirement can be met in a number of ways by the agent. One way is to use the mailing address of the head office of the insurer or the agency, if that address is in Ontario, and provided the insurer or agency agrees to accept documents on behalf of the agent.
18. **Q. I've held a life licence in another Canadian province for 6 months. Do I need to re-write the exams to get an Ontario life licence? Do I need a sponsor? If so, for how long?**
- A. You do not need to re-write the LLQP exams. Ontario requires new life agents to be sponsored for two years. Therefore, you will need a sponsor for the remainder of the two year period, i.e. 18 months.

Agency Licensing

19. **Q. I'm the sole officer of an agency. Do I need an insurance licence?**
- A. The agency must be licenced as does any individual who engages in the activities of an agent. However, if you are not engaged in any activity described in the *Insurance Act* or regulations that requires licensing as an agent, such as the solicitation or selling of insurance to clients, and the company employs a staff that carries out these activities, you do not need to hold an agent licence to own or be an officer or director of an agency.

General Questions

20. **Q. What penalty could apply to insurers if they do not live up to their compliance duties in section 12?**
- A. If insurers don't meet requirements in this or any other regulation, the insurer is subject to prosecution for failure to comply with the regulation. The Superintendent can also issue an order against the insurer requiring it to take such action as the Superintendent feels is necessary to remedy the situation, impose terms and conditions, or suspend or revoke a licence.
21. **Q. Is the insurer still responsible for notifying FSCO of termination of sponsorship of agents?**
- A. Yes, this is still a requirement.
22. **Q. As a life agent, do I still need to obtain 30 hours CE credits if I'm only working part-time?**
- A. Yes. All life agents, regardless of whether they hold other employment, must complete 30 hours CE credits in each licensing period.

23. Q. Are we anticipating the issuing of licenses with conditions?
- A. Yes, if necessary.
24. Q. A new “restricted” agent needs a supervisor for the first 2 years. Can the supervisor be a non-resident?
- A. Yes, as long as they meet the requirements under the regulation to supervise agents holding restricted licences.
25. Q. Are there any changes in the requirements regarding a life insurance agent needing to maintain errors and omissions insurance?
- A. No. The requirements have not changed. A life insurance agent must maintain errors and omissions insurance with a limit of at least \$1,000,000 in respect of any one occurrence and with extended coverage for loss from fraudulent acts. In addition, the regulation requires that the errors and omissions insurance be in a form approved by the Superintendent. Under this provision, the Superintendent requires that an aggregate limit be at least \$2,000,000 and a deductible be no more than \$1,000.

INTERNET APPLICATION SYSTEM

26. Q. To use the Internet Application System, are companies to be given an ID account or number?
- A. Companies must contact FSCO to obtain this information. The related forms are on FSCO’s website.
27. Q. Will FSCO still be issuing paper licenses?
- A. Yes.
28. Q. Can one company have more than one account?
- A. Yes.
29. Q. When can we get copies of the new paper application form?
- A. FSCO expects that most applications will be made via the IAS, which is currently ready for use. The paper application form will be available soon, and will be posted on the FSCO website.