

Guidance

Interpretation

Approach

Information

Decision



Effective date: TBC

Identifier: No. CU0091INT

Proposed Guidance: Credit Unions - Unclaimed Deposits

Purpose

This interpretation and approach (“**Guidance**”) outlines the Financial Services Regulatory Authority of Ontario’s (“**FSRA**” or “**Authority**”) interpretation of requirements under Authority Rule 2024-004 – Unclaimed Deposits (“**UD Rule**”) and section 147 of the *Credit Unions and Caisses Populaires Act, 2020* (“**CUCPA 2020**”). This Guidance also provides FSRA’s approach to operationalizing key requirements of the UD Rule.

FSRA is issuing this Guidance to enable the following outcomes:

- To provide clarity for credit unions and caisses populaires (“**CUs**”), and for depositors and other parties claiming entitlements to transferred unclaimed amounts, regarding FSRA’s interpretation of requirements under the *CUCPA 2020* and the UD Rule.
- To ensure transparency and consistency in the administration and operationalization of the UD Rule.

Scope

This Guidance affects the following entities regulated by FSRA:

- Credit unions and caisses populaires incorporated under the *CUCPA 2020*.

This Guidance is also relevant for:

- Persons claiming entitlement to transferred unclaimed amounts held by FSRA.

Rationale and background

Section 147 of the *CUCPA 2020*, once proclaimed into force, will establish FSRA's unclaimed deposits regime requiring CUs to transfer unclaimed deposits to FSRA after ten years of account inactivity, in accordance with FSRA's Rules, if approved. Paragraph 45 of subsection 285(1) of the *CUCPA 2020* will provide FSRA with rule-making authority to govern several elements of the unclaimed deposits regime.

The Guidance supports the regime provided by the *CUCPA 2020* and the UD Rule by detailing FSRA's interpretation of certain requirements in the UD Rule and outlining FSRA's approach to operational processes and practices in administering the unclaimed deposit regime.

In supervising and regulating the credit union sector, FSRA is guided by its statutory objects under section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* ("**FSRA Act**"). Specifically, this Guidance supports and aligns with the following objects:

- to promote high standards of business conduct;
- to protect the rights and interests of consumers;
- to contribute to public confidence in the credit union sector; and
- to foster a strong, sustainable financial services sector.

FSRA’s interpretation of requirements set out in the UD Rule and its approach to administering the unclaimed deposit regime is also informed by the following principles:

- **Efficiency:** The process for receiving payment of, maintaining, and claiming unclaimed deposits is efficient for FSRA and CUs to administer, while also being accessible for claimants.
- **Consumer Focus:** The unclaimed deposit claims process is flexible, accessible, and transparent, allowing claimants to easily submit the documentation needed to validate their claim and/or request for reconsideration.
- **Consistency:** Where appropriate, FSRA’s requirements and approach are informed by best practices as reflected by other jurisdictions that have enacted unclaimed deposit regimes, in order to promote an equivalent level of protection for depositors of CUs.

Interpretation

The Interpretation section of this Guidance provides FSRA’s interpretation of the requirements in the UD Rule for both CUs and persons claiming entitlement to a transferred unclaimed amount.

1. Deposits

To further FSRA’s statutory objects of promoting high standards of business conduct and protecting the rights and interests of consumers, a common understanding of what constitutes a “deposit” and consequently, how a deposit becomes an “unclaimed deposit”, is fundamental for CUs’ ability to comply with the UD Rule.

Meaning of Deposit

Section 147(1) of *CUCPA, 2020* defines the term “unclaimed deposits” as follows:

“unclaimed deposit” means a deposit that has been made to a credit union and in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the depositor during a period of 10 years from the day

on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later.

For the purpose of the UD Rule, FSRA interprets the definition of “deposit” in section 1 of the *CUCPA, 2020* to include, among other things:

- Chequing account balances;
- Savings account balances;
- Guaranteed Investment Certificates (GICs);
- Term deposits;
- Official cheques/drafts;
- Non-negotiated certified cheques; and
- Non-negotiated money orders

There may be cases where a CU holds an instrument that may fall outside FSRA's interpretation of what constitutes a "deposit". Examples of some of the instruments that should not be transferred to FSRA, include: the contents of a depositor's safety deposit box, securities, membership shares and/or other shares issued by a CU or mutual funds.

Deposits excluded from the UD Rule

Some deposits are excluded from the scope of the UD Rule. Specifically, CUs are not required to comply with any requirements under the rule with respect to deposits of \$50 or less, or with respect to registered accounts such as a Registered Retirement Savings Plan, Registered Disability Savings Plan and Registered Education Savings Plan. These exclusions are found in section 1(3) of the UD Rule, which provides that:

1(3) This Rule does not apply to:

- i. deposits less than or equal to \$50 in Canadian dollar currency (CAD), or
- ii. money deposited with a credit union under a federal or provincial registered savings plan or fund.

Requesting clarification

If a CU is unsure whether an instrument is a "deposit", or whether it is included in the scope of the UD Rule, the CU is encouraged to contact their FSRA Relationship Manager to determine if the amount is required to be transferred under FSRA's Unclaimed Deposits regime.

2. Depositor's Profile, Account, and Inactivity

Subsection 2(1) of the UD Rule provides:

2(1) For the purposes of this Rule,

- i. a **depositor's account** is deemed inactive if:
 - a. no transaction has taken place by the depositor(s) on any of the accounts associated with the **depositor's profile** for two years, and
 - b. no statement of account has been requested or acknowledged by the depositor(s) for two years following:
 1. the depositor(s) last transaction, or
 2. the last request for or acknowledgment of a statement of account made by a depositor(s) on any of the accounts associated with the **depositor's profile**.

Depositor

Under section 1 of the *CUCPA 2020*, a “*depositor*” means a person with funds on deposit with a CU.

For non-negotiated instruments (including certified cheques, money orders, official cheques, and drafts), the owner of the account that issued the instrument remains the owner of the funds until the instruments are negotiated and that individual is entitled to the funds once the unclaimed transferred deposit has been transferred to FSRA.

Account

FSRA interprets the term “account” in subsection 2(1) of the UD Rule to include any investment or deposit vehicle offered by a CU that holds a depositor’s “deposit”, including but not limited to:

- chequing account,
- savings account,
- investment vehicles holding term deposits, GICs, or other deposits.

Inactivity or activity

According to section 2(1) of the UD Rule, a depositor’s account is considered inactive if:

2(1)(i) (a) ... no transaction has taken place by the depositor(s) on any of the accounts associated with the depositor’s profile for two years, and

(b) no statement of account has been requested or acknowledged by the depositor(s) for two years following:

1. the depositor(s) last transaction, or
2. the last request for or acknowledgment of a statement of account made by a depositor(s) on any of the accounts associated with the depositor’s profile.

Multiple accounts

It is important to note that whether an account is inactive may depend on whether any activity has occurred with respect to another account of the same depositor. FSRA interprets the term “depositor’s profile” in subsection 2(1) of the UD Rule to include the entirety of a depositor’s portfolio, which may include several distinct accounts and/or investment vehicles. For greater clarity, an account will not be considered inactive if only one account out of several of the depositor’s accounts is inactive. For example, if a depositor has a savings account that would otherwise be considered inactive but regularly makes transactions from their chequing account, then FSRA would not consider the savings account to be inactive under subsection 2(1) of the UD Rule.^[1]

Third party actions

Whether a depositor’s account is inactive may also depend on actions taken by another person. For example, suppose person A has a savings account, and persons A and B have a joint chequing account. If person B regularly uses the chequing account, person A’s savings account will not be inactive, even if person A has not recently conducted a transaction on either account in the last two years. Person B is one of the “depositor(s)” mentioned in section 2(1)(i)(a) of the UD Rule.^[2] Given the challenges with accurately determining which account holder has made a transaction in a joint account, this approach reduces the risk of erroneously classifying a depositor’s account as unclaimed.

If person C has a chequing account and has named person D as an attorney under a Power of Attorney, person C’s account will not be inactive if person D has recently made a transaction on person C’s behalf, even if person C has not personally conducted a transaction.^[3] Similarly, if the “account” in subsection 2(1) of the UD Rule is a trust account, inactivity is based on the actions of the depositor that holds the account; if the trustee performs actions in the relevant time, those actions keep the account active, even though the beneficial owner does not take any action with respect to the account.^[4]

[1] Similarly, FSRA would consider the savings account to be active under subsection 2(3)(i) of the UD Rule.

[2] Similarly, Person B would also be one of the “depositor(s)” mentioned in section 2(3)(i) of the UD Rule.

[3] Similarly, Person D’s transaction would also constitute an activity described in section 2(3)(i) of the UD Rule.

[4] Similarly, if the “account” in section 2(3) of the UD Rule is a trust account, a trustee that performs actions in the relevant time would keep the account active.

Accessing accounts online

FSRA does not consider a depositor's account to be inactive if the depositor accesses a statement of their account through the CU's online services. Accessing the statement online counts as requesting it for the purpose of section 2(1)(i)(b) of the UD Rule.

Transactions on term deposits

With regards to how a depositor's term deposits affect the activity of their depositor profile, FSRA does not consider the maturity of a term deposit to constitute a transaction that would interrupt a depositor's otherwise inactive profile. Similarly, a term deposit automatically renewing itself does not constitute a transaction under section 2(1)(i)(a) of the UD Rule that would interrupt a depositor's otherwise inactive profile. FSRA considers only the active initiation of a term deposit by a depositor, requesting or acknowledging a statement, and the depositor's confirmation of its renewal as account activity within the tests set out in section 2(1)(i) of the UD Rule.

3. Contacting depositors in writing

In furtherance of its statutory object of fostering a strong and sustainable financial services sector, FSRA promotes the use of electronic communication as an efficient and cost-effective method for the CU sector to communicate with its depositors. The use of electronic communication must, however, be balanced with the need to protect the rights and interests of consumers and their deposits.

Subsection 2(2) of the UD Rule requires CUs to contact depositors "in writing":

- 2(2)** Prior to making payment to the Authority, a credit union shall take reasonable steps to locate depositors and notify depositors **in writing** that their accounts have become inactive in accordance with subsection 2(1) of this Rule.

The *Electronic Commerce Act, 2000* (the "ECA") applies both to the *CUCPA 2020* and the UD Rule, meaning that the term "in writing" in subsection 2(2) of the UD Rule includes both written and electronic communication (e.g., mailed notices, e-mails, web-portal alerts etc.). However, a CU can only rely on electronic communication as notice in writing where it has complied with the requirements of the *ECA* to do so. For example, according to section 3(1) of the *ECA*:

- 3 (1)** Nothing in this Act requires a person who uses, provides or accepts information or a document to use, provide or accept it in an electronic form without the person’s consent.

How a CU notifies depositors should align with the depositor’s communication preferences, for example as set out in an electronic communication agreement between the CU and its depositor. In other words, to comply with the UD Rule, a credit union is permitted to notify depositors either through written means like mailed notices, or through electronic means such as emails or web-portal alerts where the depositor has agreed to electronic communications for this purpose.

Please see the *ECA* for other criteria that apply to electronic notices “in writing.”

4. Reasonable Steps to Locate and Notify Depositors

Subsection 2(3) of the UD Rule outlines the steps that CUs must take if they have been unable to contact a depositor in writing:

- 2(3)** If a depositor does not respond to a credit union following the credit union’s attempt to locate the depositor and notify the depositor in writing as required under subsection 2(2) of this Rule, then the credit union is required to take **reasonable steps to locate the depositor and notify the depositor** once their accounts have been inactive for five and nine years, respectively.
- i. transaction by the depositor(s) on any of the accounts associated with the depositor’s profile, or
 - ii. statement of account has been requested or acknowledged by the depositor(s) on any of the accounts associated with the depositor’s profile.

When determining if a CU has complied with the requirement in the UD Rule to take “reasonable steps” to locate and notify depositors in writing, FSRA will consider, for example, but not limited to, the extent to which a CU:

1. **Used means of notifying depositors that align with the depositor’s communication preferences:** This should be in writing or by electronic means, as set out in an electronic communication agreement between the CU and its depositor.
2. **Made further attempts to locate and notify depositors proportionate to the amount of the deposit:** A depositor who holds an account with a large deposit has a greater financial interest at stake when it comes to re-claiming a transferred unclaimed amount from FSRA. It may not be reasonable, for example, if for a large deposit, a CU only sends notification via a web-portal. In such a circumstance it may be more reasonable to send notification through various means, for example, by email, registered mail, and a web-portal notification. CUs may charge reasonable cost recovery fees to offset costs incurred to locate/notify a depositor as governed by the terms and conditions of the deposit agreement between the CU and its depositor. Examples of these fees include the cost of a new credit check to obtain updated contact information, courier fees, and fees charged by tracing companies. Cost recovery fees should be reasonable and proportionate to the size of the deposit.
3. **Attempted to contact a depositor through alternative contact information:** Based on the information a CU may hold about a depositor, it may be reasonable for a CU to attempt to locate and notify a depositor through alternative contact information, including but not limited to:
 - a. Contacting an emergency contact;
 - b. Contacting a next of kin contact;
 - c. Contacting another depositor associated with the account; or
 - d. Contacting the depositor at updated address (obtained through a new credit report).

4. **Maintained documentation of all attempts to locate and notify depositors:** A CU that is able to document all attempts made to locate and notify depositors is more likely to be able to contact a member with a prospective unclaimed deposit and thus meet the requirement of taking reasonable steps. Relevant documentation may include but is not limited to:
- a. copy of the notices sent to depositors about their unclaimed deposit;
 - b. copy of depositor's updated credit report;
 - c. report from tracing company, if used;
 - d. return to sender notice, if received;
 - e. resources used for prior attempts of locating or notifying depositors;
 - f. cost-effectiveness of the prior attempts of locating or notifying depositors;
 - g. knowledge of next of kin in a certain geographic location; and
 - h. obituary/death certificate.

5. Transferring Unclaimed Deposits

Amount transferred

When transferring unclaimed deposits, CUs are required to pay to FSRA a cash equivalent equal to the value of the depositor's unclaimed deposit. The CU is not transferring the vehicle or instrument of the unclaimed deposit itself. As noted in section 2(7) of the UD Rule:

- 2(7)** Immediately prior to making a payment, a credit union shall:
- i. convert the value of the deposit to a cash amount equal to the principal amount of the unclaimed deposit, plus interest, if any, calculated in accordance with the terms of the unclaimed deposit; and

- ii. convert any foreign currency amounts to Canadian currency (CAD).

The dollar amount that results from this conversion is the payment the CU will make to FSRA.

Term deposits

If a term deposit becomes unclaimed in the middle of its term, the CU will need to convert the value of the term deposit to a lump sum made up of principal and interest in order to transfer the unclaimed amount to FSRA. Note that according to section 2(9) of the UD Rule:

- 2(9)** A credit union shall not charge any fees, or pay interest that accrues to the depositor, after the depositor's account has become an unclaimed deposit including, for greater clarity, charging any fees in relation to converting a deposit to a lump sum in Canadian dollars that will a payment.

FSRA interprets sections 2(7) and 2(9) of the UD Rule to mean that where a term deposit such as a guaranteed investment certificate (GIC) becomes unclaimed before it reaches maturity:

- the CU will pay interest that has accrued under the deposit to the date it becomes unclaimed,
- the CU will not charge any fee as a result of the early termination of the investment, and
- in particular, the CU will not fail to pay interest with respect to the part of the term that elapsed before the deposit became unclaimed simply because the investment ended before the end of its term.

The transferred cash amount should include the full value of the GIC principal, and the interest earned up to the date the GIC becomes unclaimed.

Information with Transfer

Subsection 3(1) of the UD Rule requires CUs to submit all “material information” related to the unclaimed deposit when transferring the amount to FSRA:

- 3(1)** When transferring an unclaimed deposit to the Authority, a credit union shall submit all **material information**, including personal information, as described

in Appendix A, necessary to establish the identity of the depositor(s) entitled to the unclaimed deposit.

“Material information”, as interpreted by FSRA under the UD Rule, includes all relevant information necessary to establish proper entitlement to an unclaimed deposit and enable FSRA to authenticate and validate future claims of entitlement to a transferred unclaimed amount. At a minimum, the information the CU provides FSRA should include the items listed in **Appendix A** of the UD Rule, if the CU possesses that information. The more likely that information provided by a CU can support these outcomes, the more likely that a CU will be in compliance with subsection 3(1) of the UD Rule.

Protecting the privacy of individuals is a top priority for FSRA in administering the UD Rule regime. Personal information should be included in the material information provided by a CU only to the extent that it is necessary for establishing the identity of the depositor(s) entitled to the deposit.

6. Claiming Unclaimed Deposits – Satisfactory evidence

Section 5(1) of the UD Rule requires persons claiming entitlement to a transferred unclaimed amount to submit an application to FSRA that includes “satisfactory evidence” to demonstrate their entitlement to such an amount.

- 5(1)** A person claiming entitlement to a transferred unclaimed amount shall submit a written application to the Authority’s electronic portal that includes **satisfactory evidence** to demonstrate entitlement to a transferred unclaimed amount including, to the extent the person possesses it, information listed in Appendix C.

When considering an application from a person claiming entitlement, FSRA interprets the phrase “satisfactory evidence” to include identifying elements that correspond, confirm, or correct the material information provided by a credit union when an unclaimed deposit is transferred to FSRA in accordance with section 2 of the UD Rule. FSRA will exercise its discretion on a case- by-case basis to determine if satisfactory evidence has been provided as

a means of ensuring unclaimed amounts are transferred only to the person who is properly entitled.

The more information that a person claiming entitlement can provide in their application that corresponds or confirms the material information provided by a CU, the more likely that FSRA will be able to conclude in accordance with subsection 5(2) of the UD Rule that the person has provided sufficient satisfactory evidence and is properly entitled to the transferred unclaimed amount. Conversely, if a claimant has provided insufficient satisfactory evidence, then FSRA retains the discretion to require additional information under subsection 5(4) of the UD Rule (**see Appendix A** of the UD Rule for a list of material information to be provided by CUs to FSRA when transferring an unclaimed deposit and **Appendix C** for additional information FSRA may request of claimants).

FSRA requires the data points listed in **Appendix A** of the Rule, which include personal information, to establish the identity of person(s) entitled to the unclaimed deposit(s) and to prevent fraudulent claims. Collecting the data points listed in **Appendix A** of the Rule will reduce delays in claimants accessing their funds and reassure claimants that their claims will be handled fairly and accurately. The data points listed in **Appendix A** of the Rule align with the standards of the National Association of Unclaimed Property Administrators which are also adopted by other unclaimed deposit regimes. Adhering to these widely recognized standards helps ensure the implementation of best practices for FSRA, CUs and depositors in Ontario, thereby enhancing the efficiency and reliability of the unclaimed deposit management process. See below for further details:

- **Account holder information:** These fields are necessary to enable FSRA to verify if the claimant is entitled to the transferred unclaimed amount, including whether the claimant is the original account holder or if the account holder information aligns with the claimant's evidence supporting their claim.
- **Account information related to unclaimed deposits:** These fields are necessary to confirm that the account details provided by claimants align with the account holder's information. This allows FSRA to verify a claimant's entitlement to a transferred unclaimed amount.
- **Credit union information:** These fields are necessary to ensure that the details provided by claimants align with the account information of the account holder, as well as the credit union information. This helps FSRA verify the entitlement to a transferred unclaimed amount.

- **Business account information:** These fields are required to confirm that the details provided by claimants align with the information of the account holder. This enables FSRA to verify entitlement to a transferred unclaimed amount.
- **Trust account information:** These fields are necessary to ensure that trust account details provided by claimants align with the information provided by the CU. This allows FSRA to verify entitlement to a transferred unclaimed amount.

7. Reconsideration on a reasonable basis

Section 6 of the UD Rule provides a “request for reconsideration” process to claimants whose initial claim of entitlement was rejected by FSRA on the grounds that FSRA may have failed to consider or otherwise misunderstood either material information or satisfactory evidence when making an initial decision regarding a claim of entitlement. Section 4(2) of the UD Rule requires all requests for through the Authority’s electronic portal reconsideration to include a “reasonable basis” for the FSRA to reconsider its original decision:

- 6(1)** If the Authority rejects a person’s claim to a transferred unclaimed amount, then the person claiming entitlement to a transferred unclaimed amount may submit a written request for reconsideration.
- 6(2)** Requests for reconsideration under subsection 6(1) of this Rule shall include a **reasonable basis** for the Authority to reconsider its original decision.

When deciding if a claimant has demonstrated a “reasonable basis”, FSRA considers the extent to which the claimant includes a valid reason(s) for the original decision to be reconsidered and offers evidence or proof in support of that reason. In other words, a claimant may demonstrate, for example:

- That FSRA has made an error in assessing the information when initially deciding a claim to entitlement (e.g., administrative error; proof that material information provided to FSRA is inaccurate).
- That FSRA failed to consider information when deciding a claim to entitlement (e.g., material information was not provided by a CU).

- That FSRA’s decision was inconsistent with the provisions of the UD Rule or *CUCPA 2020* (e.g., FSRA did not respond within the timelines outlined in the UD Rule).

Depending on the reason, the claimant must provide evidence or proof of FSRA’s error, for example, by providing satisfactory evidence that demonstrates inaccurate material information provided by a CU, and/or by providing new satisfactory evidence not originally submitted or considered.

A “reasonable basis” will not exist where a person provides no reason for their request for reconsideration and no new evidence. In other words, if a claimant does not agree with FSRA’s decision, but cannot provide a reason for FSRA to reconsider and cannot offer any evidence or proof to support such a reason, then FSRA may not consider the request for reconsideration to have a “reasonable basis”. In that case, the request for reconsideration is not “complete” as described in subsection 6(4) of the UD Rule and FSRA would not need to formally confirm or reverse its original decision or request further documentation, as is required under subsection 6(5) of the UD Rule. Instead, the original decision would stand without further action by FSRA but FSRA would inform the claimant of that fact.

Approach

The Approach section of this Guidance sets out FSRA’s internal principles, processes, and practices (i.e. approach) to operationalizing key elements of the UD Rule.

1. The authority’s electronic portal

FSRA will establish an electronic portal that will be accessible in separate capacities for:

- CUs to report all material information associated with an unclaimed deposit; and
- Claimants to submit applications for entitlement to an unclaimed amount.

Once the electronic portal has been completed, both CU's and claimants will be provided with detailed instruction on how to access and use the electronic portal.

2. Request for reconsideration

Section 4 of the UD Rule provides a “request for reconsideration” process to claimants whose initial claim of entitlement was rejected by FSRA, on the grounds that a claimant believes FSRA failed to consider material information or satisfactory evidence when making an initial decision.

The reconsideration of the claim is delegated by FSRA and will be conducted by a FSRA employee(s) who is independent of the initial decision regarding entitlement, informed, and in a senior position (i.e. Director level or higher). The decision-maker will be someone who was not involved in, or consulted during the formulation of, the original decision. When deciding on a request for reconsideration, the decision-maker will exercise their judgment keeping in mind new or overlooked material information or new or overlooked satisfactory evidence. The decision-maker will provide a final written decision with a rationale for why the claim, on reconsideration, was denied or granted or if additional information is needed. FSRA may ask CUs for additional information in connection with reconsideration of a claim. CUs will either make the records accessible to FSRA at their storage site or transfer them to FSRA as requested.

3. Transitional matters

Section 8 of the UD Rule provides a transitional period for CUs to develop internal policies, procedures and practices to comply with the requirements of the UD Rule.

To prevent unclaimed deposits from prematurely being transferred to FSRA once the UD Rule is effective, and to give CU depositors sufficient time to acknowledge a statement of account and thereby become active on their accounts:

- CU's will be required to take reasonable steps to locate depositors and notify depositors in writing that their accounts have become inactive, in accordance with subsection 2(2) and 2(3) of the UD Rule.

- CU's will have a 24-month grace period to notify depositors who may already have unclaimed deposits at the coming-into-force date before being the CU is required to make payment to FSRA.
- CU's will have a 24-month grace period to make payments to FSRA.

Effective date and future review

This Guidance became effective on **TBC** and will be reviewed no later than **TBC**.

About this Guidance

This document is consistent with [FSRA's Guidance Framework](#). The Interpretation section of this Guidance provides FSRA's interpretation of the requirements in the UD Rule for both the CUs and persons claiming entitlement to a transferred unclaimed amount. While the interpretation Guidance does not set out mandatory requirements, depending on the facts of a particular case the Interpretation Guidance may assist a CU in assessing whether it has met obligations under the UD Rule and, if not, whether FSRA may choose to take enforcement or supervisory action against it. The Approach Guidance describes FSRA's internal principles, processes, and practices for the operationalization of the UD Rule.