

Financial Services Regulatory Authority
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

May 15, 2024

RE: CCUA Feedback on Proposed Unclaimed Deposits Rule and Guidance

To the Reader(s),

The Canadian Credit Union Association (CCUA) appreciates the opportunity to provide feedback on the Financial Services Regulatory Authority of Ontario (FSRA)'s Proposed Unclaimed Deposits Rule and accompanying Guidance. As the trade association for Ontario's credit unions and caisses populaires, we recognize the importance of continuously enhancing measures to protect and support credit union members across the province.

The proposed Unclaimed Deposits Rule and Guidance presents an opportunity to ensure that members and claimants can recover funds through a simple and effective process. CCUA is supportive of these goals, and we believe that our feedback below offers effective ways to enhance efficiency for both the sector and FSRA. The transition and workload will be extensive for both parties, particularly during the initial build and first remittance periods. Below, we identify several concerns and areas of where clarification is needed from FSRA to ensure the successful implementation of the Rule and Guidance. **We urge FSRA to consider material changes to the proposed rule and to engage in a second round of consultations with the sector. We believe material changes are necessary, along with further clarity in critical areas of the Rule and Guidance. Our members are seeking a two-year transition window to ensure appropriate build time, testing, implementation, and remittance.** We look forward to further dialogue with FSRA on this important Rule to ensure that our credit union members are supported through a simple and clearly defined Unclaimed Deposits Rule.

Rule and Guidance Feedback

Principles-Based Approach to Information

Based on discussions with FSRA, we agree with the approach of sharing only what is necessary to support a future claim through a principles-based approach. There will be situations where the material information highlighted in Appendix A isn't available or captured for various reasons. Additionally, some cases will be simple and may only require limited information to be transferred. A principles-based approach makes sense to ensure that both the sector and FSRA are not overburdened with requirements and information, where simplification can be achieved.

Appendix A currently requires credit unions to send all listed information. CCUA would prefer a tiered approach to required information to relieve the administrative burden on our members. We believe the following information is critical for identification and readily available across systems:

- Legal and given names.



- Last known address
- Date of Birth
- Social Insurance Number
- Account number/Portfolio number, account type, remaining balance, and signature or membership agreement.

We believe that with this information most claimants would be able to recover funds appropriately. Additionally, we recognize that FSRA has connected with the Bank of Canada to understand federal approach and process. Should a requirement of material information be unique or different than the federal expectations it would be helpful to understand FSRA's rationale for inclusion. Continuity between the federal and provincial approaches to unclaimed deposit information would be helpful for internal systems, approach, and consumer consistency.

System Availability of Material Information

Upon reviewing Appendix A of the Guidance, we believe that the following information is not readily available and should be considered for removal:

- Next of kin information
- Emergency contact information
- Recent credit report (inconsistency in approach around soft bureau pulls and the timing of these should be expected)
- Signature cards and membership agreements (likely not in electronic form; will be physical paper in most cases)
- Business information may be limited or inconsistent depending upon systems (no standard approach)
- Estate and Trust information may be limited or inconsistent depending on systems (no standard approach)

Minimum Threshold for Transfer

CCUA recognizes that the CUCPA 2020 outlines requirements for deposits under \$1000 to be made available for forty years to potential claimants. We believe a minimum threshold should be considered by FSRA to alleviate small dollar amounts that will cost more in internal resources than the transfer itself. FSRA has rule making authority to determine, if it desires, a minimum threshold to better support efficiency and resources within both the sector and FSRA itself. We are curious if this is something that FSRA is open to? CCUA recognizes that nationally low dollar amounts are required to be transferred; however, the sector would be open to discussions around what a minimum threshold could look like if FSRA was interested.

Remittance Process Needs to Be Understood

To keep costs down and to increase efficiencies credit unions are seeking to leverage existing systems. CCUA expects that FSRA will use current systems and portals already established to ensure cost containment within the remittance process. The sooner FSRA can share its expected process, the better for credit unions, as our members are seeking to develop background processes and activities to support the transfer of these funds.



Retention Period Concerns

The proposed retention period in Section 2(11) regarding personal files and records retention for 40 and 100 years respectively is unreasonable and does not follow standard retention schedules in place by our members. Once information is submitted to FSRA, generally credit unions would hold the information for an additional 5-7 years before proper disposal. Retaining records for up to 100 years with personal information increases risk and likelihood of exposure. Once the information is accepted and submitted to FSRA, it is our understanding that the information is now in their full possession. This should allow credit unions to dispose of that information within their standard retention periods.

The Bank of Canada does not require such retention actions from federal institutions and allows them to use their individual retention periods for destruction once information has been sent over. We are seeking alignment with this approach as an industry standard. We recognize that there is a cost associated with storage and retention of files and that the sector bears those costs whether it's a cost borne by the individual credit union or through FSRA premiums. However, duplicating retention costs by requiring both FSRA and the credit union to store information is not effective in our view and introduces increased risks to the sector.

Annual Reporting

Regarding Section 5(2)(i), transparency relating to the financial aspects of administering the Rule is important to our members. We expect that FSRA will report the costs of the rule and investment gains from the pooled amounts of unclaimed deposits annually. We look forward to a transparent process and annual reporting mechanism.

Member Initiated Activity and Transaction Definition

The concept of assumed acknowledgement and digital login as activity was brought forward during the FSRA Unclaimed Deposits webinar on Monday, April 22, 2024. FSRA did not provide a direct response to either question posed by the sector. We believe that digital log in and transactions of any kind should count in the same way as a physical action or acknowledgement. CCUA believes that further clarity is needed in defining acknowledgement and activity on a member's account to ensure consistency across the sector. We recognize that a principles-based approach is necessary around activity; however, consistency would be beneficial in this case.

Members have also shared with us that they are seeking a prescribed listing of what a transaction or activity is. Again, while we recognize that FSRA seeks to be principles-based, we believe consideration of a definition is necessary to ensure consistency across the sector in what counts as a physical/digital transaction. If FSRA has a view on this it would be helpful to bring it to the forefront within the guidance early, as it potentially reduces the impact on our members.

Automatic Renewing Products and Contractual Obligations

The rule does not speak to automatically renewing products and services both between the credit union or a connected third party. In many cases members will sign a contract that speaks to, or authorizes, automatic renewals over an extended period. In our view, a principles-based approach would allow credit unions to make their own determination around automatically renewing products and services



and whether a contract of this nature constitutes activity and/or acknowledgement ongoing, based a case-by-case relationship. We believe that a contractual obligation to the member would supersede the rule. If there are considerations that FSRA has on this topic, feedback would be welcomed.

Registered Products

In conversation with FSRA, it is our understanding that registered products (RRSP, RRIF, TFSA, FHSA) are not considered as deposits and are not transferrable under the Unclaimed Deposits Rule. We would recommend removing the line or adding additional clarity to “Section 1 of CUCPA 2020 defines the term “deposit” as follows: “deposit” includes money deposited with a credit union under a federal or provincial registered savings plan or fund.” This line is causing confusion amongst our members, as its inclusion suggests to credit unions that it’s also being considered as a transferrable deposit.

Youth Accounts

Youth accounts under the new rule may become inactive on a regular occurrence. We are seeking a carve out of youth accounts under the age of 18 from the rule entirely. In speaking with members, data suggests that these accounts can often go multiple years without activity due to age, use of cash, being set up by parents then forgotten by the child, inability to use online channels, among other issues. In most cases, these accounts are active and found within the parent’s portfolio; however, based on the rule the credit unions would need to reach out and contact the member. A carve out would help ensure that no youth accounts would need to be transferred over to FSRA until the member reached the age of eighteen. We believe that this is a better outcome for both the youth member and their parents.

Trust Accounts

We are seeking further clarity around trust accounts. These accounts can be complex and often have legal requirements that create various conditions and restrictions on the funds. We also note that trust accounts are not called out within the deposit section of the Guidance note; however, it is identified within Appendix A as a potential deposit. It would be helpful for clarity purposes as to how FSRA wants trust accounts to be treated within a deposit definition.

Community-Based Accounts

Members have shared with us that community-based accounts (not-for-profit accounts) often have ongoing changes in signers, members, and activity based on evolving needs. Additionally, when a community group folds it can create increased complexity in who should control the money as often there is no direct owner or estate to transfer funds. Success in finding a claimant often relies on local relationships, which credit unions do best, these accounts also are often low dollar amounts and are re-established at later times. We would recommend that community accounts be considered as a carve out within the Rule.

Privacy and Fraud Concerns

Privacy Concerns: It is not a requirement in the Bank Act, s. 438 Unclaimed Balances, to make attempts to notify account holders through alternative contact information including contacting an emergency contact, next of kin contact, or another Member associated with the account (“Alternative Contact



Methods”). There is no precedent for this level of notification and therefore, these alternative methods are not reasonable, nor should they be an expectation as defined within the current draft Rule and Guidance note under Appendix A. We are seeking the removal of the following from Appendix A:

- Next of kin information
- Emergency contact information
- Personal contact information relating to any principal holders of the business.
- Trust account related items (see commentary above on trust account carve-out)

There is no provision within PIPEDA to disclose the account of a member to another individual for the purpose of locating the member. As such credit unions should not be expected to release or collect such information.

Fraud Concerns: Credit unions are regularly faced with “family friendly fraud,” in which family or friends take advantage of Members. Credit unions are concerned about increased risk of fraud in the proposed alternative contact methods, especially if the Member lacks the capacity to act or has passed away. This could create opportunities for additional family friendly fraud by inappropriately raising awareness of the existence of accounts that could be compromised/manipulated.

An additional concern is that a next of kin or emergency contact may have detailed information about a member and could bypass the security measures of a credit union. In summary, alternative contact methods are not reasonable efforts for notification, compromise a credit union’s adherence to privacy regulations, and introduce heightened fraud risk on inactive accounts.

Drafts and Non-Negotiated Certified Cheques

For non-negotiable instruments listed in the Guidance (official cheques/drafts, non-negotiated certified cheques, and non-negotiated money orders), credit unions seek FSRA’s guidance on who is the owner of the funds. We would recommend utilizing the federal process for these types of instruments. Credit unions can attempt notification of the Member on whose account the funds are drawn (the “Payor”). However, the Payor may not be the legal owner of the funds. Additionally, if the person to whom the funds are made out (the “Payee”) is not a member, the credit union may not have sufficient information (or obligation) to notify. This places credit unions in a challenging position as we may not be able to support the Rule without clarity. Credit unions suggest further notification criteria for non-negotiable instruments be provided by FSRA to ensure consistency across the credit union industry.

Escalation Expectations and Outreach Expectations – Considerations of Removal of the 5 Year Point of Contact

Currently within Section 4 of the Guidance, FSRA outlines escalation expectations in terms of locating and notifying members of inactive accounts. The greatest likelihood of locating a member would be within the first few years of inactivity. Often, members change residence, phone numbers, email addresses, and other contact information and are often no longer within the localized area. We believe that the two-year point of location is the most critical out of the three contact points prescribed. The five-year outreach point is likely to have limited success based on member feedback. If FSRA is seeking to support the sector in reducing burden, it may wish to consider using a two- and nine-year approach toward inactive member outreach. If we were to reverse the current escalation approach, we believe



the two year becomes the critical point of outreach, with the nine-year mark becoming a last opportunity to remind the member or try a different approach (i.e. run a soft credit bureau for new number/address). The goal of credit unions is to support their members and establish growing relationships, not inactive ones. If contact is not established at the two-year point likelihood of success declines greatly. It may be worthwhile for FSRA to reconsider the escalation process and outreach points based on likelihood of success.

Post 10 Year Expectations

Members have asked for clarity around expectations should an account reach the ten-year mark and FSRA is unwilling to accept the transfer of funds due to a lack of material information. It is our belief that a principled approach would in turn allow credit unions to use internal processes/policies to continue to manage/hold the funds to support the member in potentially returning for those funds. We are seeking clarity on expectations of funds of this nature that FSRA refuses to take on.

Attestation

We have received concerns from members that based on Appendix A it would be almost impossible for anyone to attest to the accuracy or completeness of the entirety of information required by the Rule. Credit unions will certainly make every attempt and best effort to do so. However, a principles-based approach to Appendix A and desired attestation is needed. Language should consider “best efforts” by an officer of the credit union.

General Feedback and Timeline Comments

Effective Date and Understanding of Inactivity

Based on discussions with FSRA, it is our understanding that once the Rule becomes effective all previous unclaimed balances that have reached the ten-year mark would need to be transferred by the end of the initial yearlong grace period for credit unions. There are some challenges facing the sector within this approach that we highlight here:

1. Administrative Challenges and System Setup

The heaviest lift of work will be within the first round of remittance. Members have shared with us that a minimum of two years is needed to build systems and processes around the new Rule and Guidance, while also reviewing and preparing for the first remittance requirements. They have also shared that one full-time equivalent will be needed to support the first few years of this new rule and guidance. There will be significant administrative resources needed to get this program up and running. We expect this to be similar for FSRA.

2. Inconsistent Historical Approaches and Rule Inconsistencies for Historical Remittances

Today, credit unions do not have a unified approach for how inactivity is tracked and administered. Additionally there is no consistent approach to locating members.. This will create potential challenges for credit unions trying to create reporting and understanding around past inactivity. FSRA is expecting all credit unions to remit historical inactive accounts; however, this



would not comply to the rule in front of us, as there is no clarity around how to address historical inactive accounts. If we were to submit the funds for remittance without outreach to the member at a the two-, five-, and nine-year points we would be in contradiction of the rule and guidance. This presents significant concerns to our members. This must be addressed by FSRA, or else credit unions risk being offside of the rule, as outreach on historical accounts will not have occurred as prescribed. As the rule stands, we cannot remit any payments until a nine-year outreach and notification requirement is met. A section outlining FSRA's views on this and how it is to be addressed is necessary for credit unions to move forward.

3. Transitional Time

Our members require more transitional time to ensure they can meet the expected Rule and Guidance requirements. CCUA is requesting a minimum of two years once the Rule is approved as appropriate transitional time for credit unions prepare, build systems, and implement the rule. An example of how the transitional period would work based on a calendar approach would also help our members. As it stands, we believe that were the rule to be enacted on January 1, 2025, then the first remittance would not be required until December 15, 2026 due to the one-year grace period provided. Clarity around timing and expected first remittance with examples would be helpful.

The two-year build and implementation request comes from the following system and resource intensive needs of our members, which include:

- Building automation flagging into current CRM and bank systems.
- Creating tracking systems/process and connect with CRM systems.
- Creating outreach communication and attempting to automate the process (where possible).
- Building annualized reporting mechanisms around inactivity that works within current CRM and bank systems.
- Updating service agreements, getting reviews, and communicating those to members.
- Building and developing processes related to remittance needs.
- Creating and understand resourcing needs pertaining to staff time and accountabilities.
- Potentially adjusting retention schedules and automation within this area.
- Creating policy and procedures relating to the new Rule and Guidance around member outreach and communication relating to five- and nine-year marks of inactivity.
- Possible by-law changes around membership shares for inactive accounts transferred to FSRA.
- Building depositor education and awareness alongside FSRA and within branches/online websites.
- Manual reviews of current inactive accounts and historical records.
- Other resource intensive activities as required by individual credit unions.

The work involved will be extensive, and CCUA is requesting a minimum of two years of transition time to reach a comfortable point before beginning the remittance process.



Balance Sheet Considerations

Our members will be operating under the expectation that this Rule/Guidance applies from the day of implementation, specifically for income and revenue considerations with individual balance sheets. Credit unions will not adjust previous income statements, as expectations are based solely on a forward-looking basis when funds are transferred. We believe this aligns with the intention of the Rule/Guidance. If our interpretation is incorrect, we would appreciate clarification on the matter.

Depositor Education

It will be imperative for FSRA to market this new Rule to depositors, ensuring they understand the process and the effective dates for when the first remittances will be available for searching. Based on our interpretation of the Rule, this will not be until at least 2034, as the effective date of inactivity is when the Rule comes into force, creating a ten-year period before remittances are searchable. It is crucial for consumers to understand how this works and how they can access this process if they believe they have a rightful claim. The sector is open to working with FSRA on how best to market the new approach to unclaimed deposits.

Conclusion

Within our response, we note several areas where we would like to see enhanced clarity, understanding, and changes. We are seeking a two-year transition timeline to support the needs of our members; this will be critical to allow the sector to prepare and support the requirements around the first remittance transfer. Additionally, we believe that a second round of consultation is necessary to ensure that the sector has the clarity and support needed to implement the rule on behalf of members/depositors.

We welcome the opportunity to connect with FSRA regarding the concerns shared and will proactively discuss these over the course of the coming weeks to support a second consultation.

Sincerely,



Brent Furtney
Regional Director – Ontario Government Relations
Canadian Credit Union Association

