

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016*

RULE 2024 – 001

CREDIT UNIONS – UNCLAIMED DEPOSITS

March 18, 2024

Introduction

Pursuant to subsection 22 (1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”) the Financial Services Regulatory Authority of Ontario (“**FSRA**” or the “**Authority**”) is publishing the following Notice of Rule (“**Notice**”) for comment. In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the proposed Unclaimed Deposits Rule (“**Proposed Rule**”), within 60 days of publishing the Notice. The consultation period will close on May 16, 2024.

If approved, the Proposed Rule will prescribe requirements, where applicable, under section 147 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**Act**”). More specifically, the Proposed Rule will prescribe the timing and processes by which a credit union or caisse populaire (“**credit union**”) shall be required to transfer an unclaimed deposit¹ to FSRA. The Proposed Rule will also prescribe the corresponding information required by persons claiming entitlement to transferred unclaimed amounts² that have been transferred to FSRA.

For the text of the Proposed Rule please see **Appendix A** to this Notice.

Background

Section 147 of the *Act*, when proclaimed into force, will require credit unions to transfer any unclaimed deposits to FSRA. Section 147 further requires FSRA to pay transferred unclaimed amounts to persons that are entitled to receive the transferred unclaimed amount upon being furnished with satisfactory evidence of the person’s entitlement. Section 147 in conjunction with paragraph 45 of subsection 285(1) of the *Act* gives FSRA

¹ “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

² “transferred unclaimed amount” means an unclaimed deposit that has been paid by a credit union to the Authority, and includes interest, if any accrues

the authority to give effect to the requirements outlined in section 147 in accordance with the Proposed Rule outlined in this Notice.

To better understand how the Proposed Rule should give effect to section 147 of the *Act*, FSRA consulted with key credit union sector stakeholders through FSRA's Technical Advisory Committee on Regulatory and Supervisory Initiatives (TAC) and Consumer Advisory Panel (CAP), respectively. This input was considered by FSRA in drafting the Proposed Rule.

Substance and Purpose of the Proposed Rule

The purpose of the Proposed Rule is to provide clarity, direction, and information necessary to credit unions and their members regarding the treatment of unclaimed deposits. FSRA's goals in operationalizing the Proposed Rule include:

- assisting eligible persons in claiming unclaimed deposits from FSRA,
- reducing the amounts of unclaimed deposits that are ultimately transferred to FSRA due to the Proposed Rule's requirement for credit unions to make reasonable efforts to locate members with inactive accounts, and
- preventing deposits in members' inactive accounts from being eroded by fees associated with their accounts and protecting such deposits from being targeted for fraudulent activity.

The substance of the Proposed Rule centers around requirements imposed on credit unions and persons claiming entitlement to an unclaimed deposit. With regards to the former, the Proposed Rule will require credit unions to:

- notify members at prescribed intervals when a member's account becomes inactive, and take reasonable steps to locate and notify members of inactive accounts,
- transfer unclaimed deposits to FSRA on an annual basis according to certain manner and form requirements outlined in the Proposed Rule, and
- provide all prescribed information in the Proposed Rule to FSRA associated with an unclaimed deposit to be transferred to FSRA.

With regards to persons claiming entitlement, the Proposed Rule will:

- require persons to submit an application to the Authority that includes satisfactory evidence to demonstrate entitlement to an unclaimed deposit, and

- provide a mechanism by which a person can request the Authority to reconsider a decision regarding a person's entitlement to an unclaimed deposit that has been transferred to the Authority.

Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will regulate how credit unions transfer unclaimed deposits to FSRA, and how persons so entitled can claim transferred unclaimed amounts from FSRA.

Section 1 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 2 – Unclaimed Deposits – Credit Unions

This section sets out several requirements to which credit unions must adhere when transferring unclaimed deposits to the Authority pursuant to subsection 147(2) of the *Act*. This section requires credit unions to:

- take reasonable steps to locate members and notify members in writing that their accounts are inactive, as defined by the Proposed Rule, at two, five, and nine year intervals following a member's account becoming inactive,
- transfer unclaimed deposits to the Authority on an annual basis via an electronic fund transfer between October 15th and December 15th of the same calendar year the deposit becomes an unclaimed deposit, or, if the deposit becomes an unclaimed deposit between October 1st and December 31st of a calendar year, the unclaimed deposit will be transferred to the Authority between October 15th and December 15th of the following calendar year.
- submit all material information, including any personal information, necessary to establish the identity of the member(s) entitled to the unclaimed deposit when transferring an unclaimed deposit to the Authority,
- ensure, by way of an officer of the credit union's attestation, that all material information is accurate, complete, and up to date,
- maintain original records of all information related to an unclaimed deposit, for as long as FSRA is required to hold the unclaimed deposit pursuant to subsection 147(7) of the Act

- provide the authority with evidence of all attempts by the credit union to notify a member with inactive accounts and copies of all material information in the credit union's possession related to an unclaimed deposit,
- convert any foreign currency amounts to Canadian currency in accordance with an exchange rate prescribed by the Proposed Rule, and
- refrain from charging any fees on an account or pay out interest on an account once an inactive account has become an unclaimed deposit.

Section 3 – Transferred Unclaimed Amounts – Person(s) claiming entitlement

This section requires persons claiming entitlement to a transferred unclaimed amount to submit an application to the Authority that includes satisfactory evidence to demonstrate entitlement to a transferred unclaimed amount, and sets out FSRA's service standards for replying to such an application.

This section further clarifies that the Authority has the discretion to decide whether a person has provided satisfactory evidence to demonstrate entitlement to a transferred unclaimed amount.

Section 4 – Request for reconsideration regarding entitlement to transferred unclaimed amounts

This section outlines a process whereby a person can seek reconsideration of the Authority's decision to reject a claim of entitlement to a transferred unclaimed amount.

The process requires a written request to be made to the Authority that establishes a reasonable basis for the Authority to reconsider its original decision, and further requires any material information or satisfactory evidence that was not originally considered during the initial claim of entitlement.

This section also requires FSRA to respond to any requests for reconsideration within 120 calendar days of the date the Authority issues a receipt confirming that it has received a complete request for reconsideration.

Section 5 – Interest on transferred unclaimed amounts

This section clarifies that no interest is payable by the Authority to a person claiming entitlement on transferred unclaimed amounts held by the Authority. FSRA may invest transferred unclaimed amounts in a vehicle the Authority deems appropriate to offset the costs related to the administration of this Rule.

If earnings from the investment of transferred unclaimed amounts exceed the costs of administering the Rule, any excess amount will be used to offset costs to the credit union sector in the assessment outlined in the section 3.1 of the Fee Rule.

If earnings from the investment of transferred unclaimed amounts are insufficient to cover the costs of administering this Rule, the difference will be recovered from the credit union sector in the assessment outlined in the section 3.1 of the Fee Rule.

Section 6 – Transitional matters

This section clarifies that credit unions will be immediately subject to the requirement to take reasonable steps to locate and notify members in writing that their accounts are inactive.

This section further clarifies that if a credit union holds an unclaimed deposit after the Proposed Rule comes into force it will have twelve months from the coming into force date of the Proposed Rule to notify members that have unclaimed deposits that their amounts will be transferred to FSRA in accordance with the *Act* and the Proposed Rule.

For greater clarity, any unclaimed deposit held by a credit union once the Proposed Rule comes into force would not have to be transferred to FSRA until twelve months after the coming into force date of the Proposed Rule.

Section 7 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that section 147 and clause 45 of subsection 285(1) of the *Act* comes into force and 15 days after the Rule is approved by the minister.

Unpublished Material

In making the Proposed Rule, FSRA has not relied on any significant unpublished report, decisions or other written materials, other than internal reports prepared by FSRA staff for FSRA management.

Alternatives Considered

1) Interest payable on transferred unclaimed amounts

FSRA has the discretion under subsections 147(5) and 147(6) of the *Act* to pay interest on transferred unclaimed amounts. FSRA decided not to pay interest on unclaimed amounts for the following reasons.

First, any costs associated with paying interest would result in higher administration costs, which would necessitate recovering costs through charging a fee to persons claiming entitlement to transferred unclaimed amounts. FSRA decided it was more important to promote accessibility and minimize financial barriers by not charging any fees for submitting a claim for entitlement to a transferred unclaimed deposit.

Secondly, accumulating and paying out interest on transferred unclaimed amounts would pose significant administrative complexity, which would result in additional undue administrative burden and higher annual assessments to the credit union sector, as FSRA does not otherwise have the resources to fund this new program.

Finally, FSRA is not a deposit-taking institution with expertise in computing and paying out interest in the manner a bank or credit union would. The purpose of the unclaimed deposits regime is not to secure returns on a member's investment, but rather to safekeep transferred unclaimed amounts until a person rightfully claims entitlement to the deposit.

2) Alternate remittance windows for credit unions to transfer unclaimed deposits to the Authority

The Proposed Rule requires credit unions to transfer unclaimed deposits electronically annually to the Authority. This timing requirement was chosen because it was agreed by both FSRA and FSRA's credit union TAC for Regulatory and Supervisory Initiatives that annual remittance is most operationally efficient for both the regulator and the sector.

As an alternative, FSRA also considered bi-annual remittance and other periodic remittance windows to transfer unclaimed deposits to the Authority, but determined that alternate remittance windows would result in operational inefficiencies, which would result in higher administration costs that would have to be passed onto the sector.

3) Prescribing information required by credit unions transferring unclaimed deposits to the Authority and persons claiming entitlement to transferred unclaimed amounts

The Proposed Rule requires credit unions to submit all material information, including any personal information, necessary to establish the identity of members entitled to an unclaimed deposit before transferring the amount to the Authority. The Proposed Rule also requires persons claiming entitlement to a transferred unclaimed amount to provide satisfactory evidence of their entitlement when submitting an application to demonstrate their entitlement to the amount.

FSRA intentionally required "material information" and "satisfactory evidence" to allow flexibility in the type of information that would be required both of credit unions transferring unclaimed deposits to the Authority and persons claiming entitlement to transferred

unclaimed amounts, respectively. This approach also affords FSRA the necessary discretion to determine whether to accept an unclaimed deposit or to transfer a transferred unclaimed amount on a case-by-case basis depending on the information received from credit unions or persons claiming entitlement.

FSRA intends to publicly consult on, and issue, Guidance that would, among other things, set out FSRA's views on the types of information that may satisfy the requirement to provide material information or satisfactory evidence. The Guidance will also confirm the process by which credit unions can transfer unclaimed deposits to the Authority through an electronic portal, and how persons claiming entitlement to transferred unclaimed amounts can submit an application to the Authority.

As an alternative, FSRA considered prescribing in the Proposed Rule exact data points and information required by credit unions and persons claiming entitlement, respectively.

This approach was rejected for three reasons. First, a prescriptive approach to defining "material information" and "satisfactory evidence" would not give FSRA the necessary amount of flexibility to validate a wide range of forms and manners in which information and or evidence is presented. Second, a prescriptive approach may unduly burden both credit unions and claimants if some, but not all, prescribed information is provided to the Authority. Third, the flexibility with the current approach aligns with FSRA's outcomes-focused approach to regulation, allowing the regulator to determine each transfer and each claim of entitlement on a case-by-case basis if necessary.

4) Best efforts or prescriptive approach to notifying members

The Proposed Rule requires credit unions to take reasonable steps to locate members and notify members in writing that their accounts are inactive at the two-, five-, and nine-year intervals following a member's deposit becoming inactive. The Proposed Rule requires a credit union to take reasonable steps proportionate to the balance of the inactive account at the five- and nine-year marks. This requirement aligns with FSRA's principles-based and outcomes-focused approach to regulation, as it allows credit unions flexibility necessary to organize their internal policies and procedures accordingly to meet the outcome of locating and notifying members to avoid deposits becoming unclaimed.

Another alternative FSRA considered was to require credit unions to make "best efforts" to locate a member. FSRA believed this approach would also place undue burden on credit unions, as it would not accommodate scaling of costs incurred to be appropriate for the amount of the deposit. FSRA is concerned that the cost of making best efforts would be passed onto the member via expensive fees, which would further reduce the deposit balances.

5) No right of reconsideration

The Proposed Rule allows for a procedure wherein a person claiming entitlement to a transferred unclaimed amount may submit a written request for reconsideration to the Authority if they disagree with the Authority's decision regarding entitlement to a transferred unclaimed amount. This aligns with a principles-based and outcomes focused approach to regulation, supporting FSRA's statutory objects of contributing to public confidence in the regulated sectors and promoting transparency and disclosure of information. This approach ultimately supports FSRA's desired outcome to ensure that all persons who are properly entitled to a transferred unclaimed amount are able to access the amount from FSRA.

As an alternative, FSRA considered not creating a right of reconsideration. This approach was not pursued because it was viewed as procedurally unfair to deny a claimant's ability to make its case for entitlement to a transferred unclaimed amount.

6) Not including foreign currency accounts

The Proposed Rule requires credit unions to convert any foreign currency amounts to Canadian currency before transferring an unclaimed deposit to FSRA.

As an alternative, FSRA considered not including foreign currency accounts. This approach was rejected because excluding foreign currency deposits from the unclaimed deposits requirements could be seen as a consumer protection gap. FSRA's principles-based and outcomes-focused approach to regulation emphasizes the protection of the rights and interests of consumers, leading the Proposed Rule to offer the same protection afforded to a CAD deposit held by a credit union to foreign currency deposits held by a credit union.

7) Broadening the definition of "deposit"

FSRA considered broadening its interpretation of deposits that credit unions would be required to transfer to FSRA. For example, assets beyond cash held in a savings or checking account – such as unredeemed balances on gift cards or pre-paid credit cards – could also be required to be transferred to FSRA.

This approach was rejected for two reasons. First, the primary policy rationale for the Proposed Rule is to protect the balance of CU deposit accounts from being eroded and not establish a broader unclaimed property framework. Second, the administrative and operational issues associated with broadening the definition of "deposits" would place a significant burden on credit unions and FSRA.

Anticipated Costs and Benefits

The Proposed Rule supports and aligns with FSRA's statutory objects, namely the protection of the rights and interests of consumers and the promotion of high standards of business conduct by CUs.

In terms of qualitative costs and benefits, the introduction of the Rule will ensure that credit unions transfer unclaimed deposits in a timely and appropriate manner, and subsequently will assist eligible persons in claiming unclaimed deposits directly from FSRA. FSRA's holding of unclaimed deposits will reduce deposit balance erosion by preventing fees applying to inactive accounts.

In terms of quantitative costs and benefits, credit unions will incur initial implementation costs associated with the establishment of internal systems designed to transfer unclaimed deposits to FSRA in accordance with the Proposed Rule. FSRA also anticipates that credit unions will incur ongoing operating costs associated with complying with the unclaimed deposits regime established by the Act and the Proposed Rule. Further, credit unions may incur costs associated with the requirement to take reasonable steps to locate and notify members that their accounts are inactive. However, FSRA's view is that this cost is outweighed by the benefit to deposit holders, in terms of being more effective in reuniting deposit owners with their unclaimed deposits. Other costs that credit unions incur to comply with the Proposed Rule are likely to be offset by account fees.

FSRA will similarly incur up-front and ongoing costs associated with the implementation and maintenance of internal systems designed to receive and hold unclaimed deposits transferred by credit unions. These ongoing costs will be sufficiently offset by the passive interest accrued by FSRA. The Rule supports FSRA as an independent, self-funded agency.

FSRA would not charge any fees to consumers who wish to claim an unclaimed deposit, and costs incurred by FSRA to process claims would be offset by interest revenues to the extent possible. Finally, it is FSRA's view that the benefit to members of having better deposit protection outweighs any potential nominal regulatory costs associated with implementing the Proposed Rule, in the event that such costs are not fully offset by interest revenue.

Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

Appendix A – Proposed Rule

UNCLAIMED DEPOSITS

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO RULE 2024 – 001

CREDIT UNIONS – UNCLAIMED DEPOSITS

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Credit Union and Caisses Populaires Act, 2020, SO 2020, c 36, Sched 7*, as amended.
- (ii) “Fee Rule” means Authority Rule 2022 – 001 Assessments and Fees
- (iii) “personal information” means personal information within the meaning of the *Freedom of Information and Protection of Privacy Act, RSO 1990, c F.31*, as amended.

1(2) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2 Unclaimed deposits – Credit unions

2(1) For the purposes of this Rule, a member’s account is deemed inactive if:

- (i) no transaction has taken place by the member(s) on any of the accounts associated with the member’s profile for two years, or
- (ii) no statement of account has been requested or acknowledged by the member(s) for two years following:
 - (a) the member(s) last transaction, or
 - (b) the last request or acknowledgment of a statement of account made by a member(s) on any of the accounts associated with the member’s profile.

2(2) Prior to paying an amount to the Authority under subsection 147(2) of the Act, a credit union shall take reasonable steps to locate members and notify

members in writing once their accounts have become inactive in accordance with subsection 2(1) of this Rule.

- 2(3) If a member has not responded to a credit union following the credit union's attempt to locate members and notify members in writing as required under subsection 2(2) of this rule, then the credit union shall take reasonable steps to locate members and notify members once their accounts have been inactive for five and nine years, respectively.
- 2(4) If a credit union receives a response from a member after the credit union has taken reasonable steps to notify the member under subsection 2(2) or subsection 2(3) of this Rule but before the inactive account becomes an unclaimed deposit, then the member's response constitutes an acknowledgement of a statement of account under subsection 147(1) of the Act.
- 2(5) A credit union shall make payments under subsection 147(2) of the Act in accordance with the following requirements:
 - (i) for any deposits that become an unclaimed deposit between January 1st and September 30th of a calendar year, the credit union shall make payment to the Authority between October 15th and December 15th of the same calendar year, or
 - (ii) for any deposits that become an unclaimed deposit between October 1st and December 31st of a calendar year, the credit union shall make payment to the Authority between October 15th and December 15th of the following calendar year.
- 2(6) Payments made under subsection 147(2) of the Act shall be transferred to the Authority through an electronic fund transfer.
- 2(7) When transferring an unclaimed deposit to the Authority, a credit union shall submit all material information, including any personal information, necessary to establish the identity of the member(s) entitled to the unclaimed deposit.
- 2(8) All material information provided by the credit union to the Authority pursuant to subsection 2(7) of this Rule shall be attested by an officer of the credit union to be accurate, complete, and up to date.
- 2(9) When making payment under subsection 147(2) of the Act, the credit union shall concurrently provide the Authority with the following:
 - (i) evidence of all attempts by the credit union to notify a member with inactive accounts as required under subsection 2(2) or subsection 2(3) of this Rule;

- (ii) copies of all material information related to an unclaimed deposit in the credit union's possession as required under subsection 2(7) of this Rule; and
 - (iii) documentation of any foreign currency conversions required under subsection 2(14) of this Rule.
- 2(10) Information required by subsection 2(9) of this Rule shall be transferred to the Authority through the Authority's electronic portal.
- 2(11) A credit union shall maintain original records of all information related to an unclaimed deposit for at least as long as FSRA is required to hold the unclaimed deposit pursuant to subsection 147(7) of the Act.
- 2(12) If a credit union fails to provide the information required by subsection 2(7) of this Rule, then the Authority may reject payment in which case:
- (i) The Authority shall not accept payment under subsection 147(2) of the Act, and
 - (ii) until such time that payment is accepted, a credit union is still liable for the purposes of subsection 147(3) of the Act.
- 2(13) A credit union shall provide the Authority with any information related to subsection 2(11) at the Authority's request.
- 2(14) Prior to making a payment under subsection 147(2) of the Act, the credit union shall convert any foreign currency amounts to Canadian currency.
- 2(15) The conversion in subsection 2(14) of this Rule shall be based on a credit union's exchange rate as of September 30th of the year the payment under subsection 147(2) of the Act is to be made, as used by the credit union for their regulatory reporting pursuant to section 199 of the Act.
- 2(16) A credit union shall not charge any fees or pay interest on a member's account once the account has become an unclaimed deposit and is thereby required be paid to the Authority under subsection 147(2) of the Act.

3 Transferred Unclaimed Amounts – Person(s) claiming entitlement

- 3(1) A person claiming entitlement to a transferred unclaimed amount shall submit an application to the Authority that includes satisfactory evidence to demonstrate entitlement to a transferred unclaimed amount.

- 3(2) The Authority shall determine whether a person claiming entitlement to a transferred unclaimed amount has furnished sufficient satisfactory evidence to demonstrate entitlement to the transferred unclaimed amount under subsection 147(4) of the Act.
- 3(3) The Authority shall respond in writing to an application made under subsection 3(1) of this Rule within 120 calendar days of the date the Authority issues a receipt confirming that it has received a complete request under subsection 3(1) of this Rule.
- 3(4) The response by the Authority under subsection 3(3) may approve, deny or require additional information from the claimant.

4 Request for reconsideration regarding entitlement to transferred unclaimed amounts

- 4(1) If the Authority has rejected 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 to the Authority.
- 4(2) Requests for reconsideration under subsection 4(1) shall include a reasonable basis for the Authority to reconsider its original decision.
- 4(3) If a request for reconsideration under subsection 4(1) is made because material information or satisfactory evidence was not considered during an initial claim of entitlement, then all material information or satisfactory evidence must be included in the request for reconsideration.
- 4(4) The Authority shall respond in writing to a request made under subsection 4(1) of this Rule within 120 calendar days of the date the Authority issues a receipt confirming that it has received a complete request under subsection 4(1).
- 4(5) The response by the Authority under subsection 4(4) may:
 - (i) confirm the Authority's original decision;
 - (ii) reverse the Authority's original decision; or
 - (iii) request further documentation from the person claiming entitlement to a transferred unclaimed amount.
- 4(6) The Authority's decision to either confirm its original decision or reverse its original decision under subsection 4(5) shall be final and binding for all purposes.

5 Interest on transferred unclaimed amounts

- 5(1) No interest is payable by the Authority to a person claiming entitlement on transferred unclaimed amounts held by the Authority.
- 5(2) The Authority may invest transferred unclaimed amounts in a vehicle the Authority deems appropriate to offset the costs related to the administration of this Rule.
- (i) If earnings from any investments made under subsection 5(2) of this Rule exceed the costs of administering this Rule, the excess amount will be used to offset costs to the credit union sector in the assessment outlined in the section 3.1 of the Fee Rule.
 - (ii) If earnings from any investments made under subsection 5(2) of this Rule are insufficient to cover the costs of administering this Rule, the difference will be recovered from the credit union sector in the assessment outlined in the section 3.1 of the Fee Rule.

6 Transitional Matters

- 6(1) Credit Unions will be subject to the requirements in subsection 2(2) and subsection 2(3) of this Rule immediately after the coming into force date specified in subsection 7(1).
- 6(2) Credit Unions will have twelve months following the coming into force date specified in subsection 7(1) to notify members with unclaimed deposits that their unclaimed deposits will be paid to the Authority in accordance with subsection 147(2) of the Act.
- 6(3) Credit Unions are not required to pay amounts pursuant to subsection 147(2) of the Act and in accordance with the requirements prescribed by this Rule during the twelve-month period following the coming into force date specified in subsection 7(1).

7 Coming into Force

- 7(1) This Rule will come into force on the later of the date that section 147 and clause 45 of subsection 285(1) of the Act comes into force and 15 days after the Rule is approved by the minister.