

# Interpretation Approach Information



**Title:** Auto Insurance – Consumer Relief during A Declared Emergency under the *Emergency Management and Civil Protection Act*

**Effective Date:** April 15, 2020

**Identifier:** No. AU0131INT

## Purpose and Scope

The purpose of this guidance<sup>1</sup> is to provide FSRA's (i) Interpretation of whether programs to refund, rebate and otherwise repay insurance premiums to customers (collectively “premium re-payment programs”) are an unfair or deceptive act or practice; (ii) Approach to expedited automobile insurance rate filings; and (iii) Information with respect to an Ontario licensed insurer's ability to provide other financial relief to its customers, all during a declared emergency under the *Emergency Management and Civil Protection Act* (an “Emergency”).

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<sup>1</sup> The guidance is being published as an Interpretation, an Approach and Information under FSRA's Guidance Framework. Each different component is labelled for clarity.

This guidance, which is intended to apply in respect of any such Emergency and the time period immediately thereafter, consists of three elements:

- **Emergency Premium Repayment (Interpretation):** FSRA’s interpretation of the legal framework for Emergency auto insurance premium repayment programs<sup>2</sup> and the process for implementing such programs;
- **Emergency Relief Rate Filing (Approach):** A new use-and-file process for administering the regulatory framework for auto insurance rate regulation<sup>3</sup> that will allow for the immediate introduction of premium relief to consumers during or following an Emergency; and
- **Existing Tools for Insurers (Information):** Examples of actions insurers can take immediately to provide financial relief to their customers during or following an Emergency without any need for FSRA review or approval.

The Interpretation and Approach portions of this guidance are intended to directly apply to Private Passenger Automobiles (PPA) and Other Than PPA (OTPPA) lines of business and the Information portion applies to all insurers and insurance products. FSRA notes that the Interpretation portion of this guidance may also be applied to other insurance products and lines of business; FSRA will be pleased to discuss such application with insurers seeking to provide relief to their customers as a result of an Emergency.

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<sup>2</sup> See Regulation 7/00 Unfair or Deceptive Acts or Practices (“UDAP”)

<sup>3</sup> See s. 410 to s. 417 of the *Insurance Act* and the *Automobile Insurance Rate Stabilization Act, 2003*.

## Rationale and Context

Various circumstances can lead to a declared Emergency under the *Emergency Management and Civil Protection Act*. Some cases will result in insurers serving a larger number of vulnerable consumers and experiencing lower than expected auto insurance claims costs. Moreover, in those cases it is possible that some insurers' approved auto insurance rates may have been approved based on assumptions that will no longer be just and reasonable.

In response to such circumstances FSRA will use its regulatory tools to support insurers where they need to take immediate steps to ensure auto insurance consumers are treated fairly. In addition, it is also important for insurers to understand the wide range of tools available to them to provide relief to consumers.

## Principles

FSRA's [Rate Regulation Principles](#) are foundational to its approach to auto insurance rate regulation. In developing a framework for emergency relief for auto insurance consumers, FSRA was guided by all six principles with a particular emphasis on *Consumer Focus* and *Transparency & Disclosure*. These key principles have been central to the design of this guidance and are incorporated in FSRA's interpretation of the legal framework governing premium repayment programs as well as to its approach to emergency auto insurance rate filings.

In supervising and regulating the insurance sector, FSRA is required to administer and enforce the *Insurance Act* and its regulations in a manner that will carry out FSRA's objects<sup>4</sup>, in particular:

- To contribute to public confidence in the insurance sector
- To promote transparency and disclosure of information by the insurance sector
- To deter deceptive or fraudulent conduct, practices or activities by the insurance sector
- To promote high standards of business conduct in the insurance sector
- To protect the rights and interests of insurance consumer
- To foster a strong, sustainable, competitive and innovative insurance sector

FSRA's Interpretation, Approach and Information provided in this guidance is in furtherance of FSRA's statutory objects.

## Interpretation – Emergency Premium Rebating

In this guidance FSRA is interpreting the legal framework for premium repayment programs found in Regulation 7/00 (Unfair or Deceptive Acts or Practices) under the *Insurance Act*, as amended with the recent addition of subsections 2(3) and 2(4). Specifically, FSRA's interpretation is that an insurer's premium repayment program, which adheres to the following principles, regardless of whether the financial relief provided to consumers is characterized as a refund, rebate or other return or reduction of insurance premium, does not constitute an unfair or deceptive act or practice:

- **Consumer Focus:** Designed with the objective of treating consumers fairly by providing financial relief in circumstances where premium charged was based on risk factors which have materially reduced during a specific period of time related to the Emergency.

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<sup>4</sup> See *Financial Services Regulatory Authority of Ontario Act, 2016*, s.3

- **Transparency & Disclosure:** Clearly and publicly communicated by the insurer.
- **Equitable:** Consistent and not discriminatory (e.g. benefit to consumers only varies based on premium paid).
- **Fair:** Not an anti-competitive practice (e.g. tied selling) or an inducement to purchase or renew insurance.
- **Time-limited:** Is undertaken during or immediately following a declared Emergency under the *Emergency Management and Civil Protection Act* in order to provide financial relief to consumers in respect of such Emergency.

FSRA supports such premium repayment programs since the premium was based on risk factors which have been materially reduced by the Emergency and these programs are intended to relieve financial hardship and avoid unjustified profits and are not intended to permit an insurer to obtain an unfair competitive advantage or to unreasonably favour certain consumers.

Insurers should engage FSRA early in the design of such Emergency premium repayment programs to discuss whether planned relief is an unfair or deceptive act or practice and otherwise appropriate.

Where possible, insurers should notify FSRA of an Emergency premium repayment program prior to implementation and provide the following information:

- How rebates will be provided to the insurer's customers
- How rebates are calculated
- How the rebates comply with FSRA's principles
- High-level impact on the insurer's customers

Insurers seeking the benefit of the Reg. 7/00 s.2(1)3 safe harbour for insurance premium rebates must submit an Undertaking to FSRA regarding its Emergency premium rebating program. Such Undertaking should be provided as soon as practical. A sample form of Undertaking can be found in Appendix 1 and insurers can, when providing information on their premium rebating program, contact FSRA to determine how such Undertaking can be suitably customized to accommodate its premium rebating program.

The Undertaking commits an insurer to administer its rebating program in accordance with the above noted principles. FSRA will sign and return Undertakings to insurers to record that such Undertaking has been approved. Insurers who fail to administer emergency premium rebating programs in accordance with this guidance and their Undertaking will lose the benefit of the Reg. 7/00 s.2(1)3 safe harbour and will be subject to regulatory sanction under the *Insurance Act*.

A new Undertaking must be filed for each Emergency premium rebate program which the insurer establishes.

FSRA expects insurers to maintain records of rebates provided to their customers for use in future supervisory activity and reporting.

## Submissions

Insurers may submit information about, and proposed Undertakings for, premium repayment programs by email to [RatesOperations@fsrao.ca](mailto:RatesOperations@fsrao.ca) with subject line: *Emergency Premium Repayment*.

## Approach – Emergency Relief Rate Filings

FSRA has developed this Approach to define the principles, processes and practices for application of its authority to approve auto insurance rates where rate reductions are being used to provide financial relief or rate reductions to consumers in the context of a declared emergency.

### Eligibility

FSRA will, during an Emergency and the period immediately following, accept Emergency Relief Rate Filings that meet all of the conditions outlined below. FSRA may advise insurers when the period immediately following the Emergency has ceased; after such period, no new Emergency Relief Rate Filings are permitted until a new Emergency arises.

Filings that meet the eligibility criteria will be reviewed on a use and file basis, i.e. rate reductions can be implemented before filing those rates with FSRA.

<b>Overall Rate Level Change</b>	The proposed overall rate level change is less than or equal to 0% calculated on a capped and uncapped basis.
<b>Customer Impact</b>	The proposed changes do not result in a premium increase* to any one customer at renewal.  *The proposed changes do not result in a rate increase (based on a static book) to any one customer at renewal.
<b>Timing of Submission</b>	A filing must be submitted to FSRA no later than 10 business days after the effective date of the implementation of consumer relief measures unless other arrangements are made with FSRA. <sup>5</sup>

Any changes that fail to provide consumers with financial relief are not permitted.

FSRA encourages insurers with previously approved filings that are not yet effective to consider either postponing these changes or using this this Emergency Relief Rate Filing to implement a cap to limit premium increases to customers.

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<sup>5</sup> FSRA will exercise flexibility in managing any short-term technical non-compliance in the period between implementation of rate changes and FSRA’s review/approval of an Emergency Relief Rate Filing.





## Permitted and Prohibited Changes

Emergency Relief Rate Filings suspend provisions of auto insurance rates and risk classification systems otherwise in force and can be used to make the following permitted changes to insurers' rates and risk classification systems, but are not permitted to make the following prohibited changes:

Permitted Changes	Prohibited Changes
<ul style="list-style-type: none"><li>• Decrease base rates</li><li>• Decrease differentials</li><li>• Add and/or delete rating variables that result in lower rates for affected customers</li><li>• Change, add and/or delete rating rules that result in lower rates for affected customers</li><li>• Modify a UBI program to increase discount levels</li><li>• Increase or add discounts</li><li>• Decrease or remove surcharges</li><li>• Decrease or remove fees</li><li>• Decrease or remove interest charges on instalment payments</li><li>• Decrease Optional Accident Benefit rates</li><li>• Make changes to algorithms to support changes</li><li>• Add or amend capping to a lower level</li></ul>	<ul style="list-style-type: none"><li>• Change territorial definitions</li><li>• Introduce new rating models</li><li>• Changes that will lead to a premium increase to any customer</li><li>• Off-balancing of permitted changes</li></ul>



Emergency Relief Rate Filings shall continue for the period of the emergency and any reasonable period defined by the insurer in its filing to FSRA. FSRA may require an insurer to cease use of an Emergency Relief Rate Filing at any time after an Emergency Relief Rate Filing if FSRA determines the circumstances created by the emergency have ceased to exist and such filing is no longer being used for appropriate reasons. After the Emergency Relief Rate Filing ceases, and subject to any conditions or requirements established by FSRA, the insurer shall resume application of the rates, which were suspended by the Emergency Relief Rate Filing.

## Submitting a Request for Review

Insurers currently using FSRA's filing applications may submit applications through FSRA's [Automated Rates and Classification Technical Information Communication System \(ARCTICS\)](#). When entering a filing in ARCTICS, insurers must first indicate that the filing is an Emergency Relief Rate Filing. For changes to PPA, please select a Standard rate filing; for changes to Non-PPA rates, please select a Non-PPA Minor rate filing. Please contact your Rate Analyst if you have any questions on the filing process in ARCTICS.

Insurers not currently using ARCTICS may submit an application by email outlining the information required to [RatesOperations@fsrao.ca](mailto:RatesOperations@fsrao.ca) with subject line: *Emergency Relief Rate Filing*.

## Use and File Approval Process

In administering the use and file process for reviewing and approving Emergency Relief Rate Filings, FSRA will follow the service standards set out below.

Item	Service Standard
<b>Filing Submitted</b>	FSRA will send an acknowledgement when an insurer has successfully submitted a filing.
<b>Notice of Decision</b>	FSRA will notify the insurer of its decision, including any approval conditions, within 5 business days of submission.

FSRA may also place conditions on the approval which may include, but are not limited to:

- Information and reporting requirements during the conditional approval period;
- Revisiting the decision for any exemption granted at any time; and
- Any amendments to policy forms and applications required to ensure transparency and appropriate disclosure for consumers.

FSRA will publish a summary of its filing approvals and the relief efforts provided under these filings.

If FSRA determines that an Emergency Relief Rate Filing does not meet the criteria set out in this guidance or is otherwise not just and reasonable, it will advise the insurer and work with the insurer to address the issue. If the issue is unresolved, FSRA may require the insurer to cease use of the Emergency Relief Rate Filing.



## Information – Existing Tools for Insurers

FSRA reminds auto insurers that many actions can be taken immediately that provide financial relief to consumers without any need for FSRA to review or approve those actions. Please see Appendix 2 for examples of actions insurers should consider to assist customers during and after an Emergency. FSRA encourages insurers to consider all available measures and to maintain records of all actions taken.

FSRA may ask insurers to report on actions taken during or as a result of the Emergency, and the customer impact of such actions, including actions contemplated by the Information portion of this Guidance.

FSRA may, as part of its conduct supervision of insurers, assess whether insurers have acted appropriately during the Emergency to fulfill their contractual and statutory obligations and to otherwise treat their consumers fairly.

## Effective Date and Future Review

This guidance is effective on April 15, 2020 and remains in effect until withdrawn by FSRA.

## Appendices and Reference

### Appendices

- **Appendix 1:** Rebating Undertaking
- **Appendix 2:** Relief Actions Not Requiring FSRA Review/Approval

### References

- [ARCTICS](#)

## Appendix 1:

### Premium Rebating Program Undertaking

TO: Financial Services Regulatory Authority of Ontario (“FSRA”)

REGARDING the *Insurance Act*, R.S.O. 1990, Chapter I.8, as amended (the “Insurance Act”), in particular, sections 439 and 447, and Regulation 7/00 *Unfair or Deceptive Acts or Practices* (“UDAP”), in particular, sections 2(1)1., 2(1)2., and 2(1)3.;

AND REGARDING the undersigned insurance company or companies (collectively or individually “the Insurer”).

#### UNDERTAKING

##### Background

WHEREAS the Insurer is licensed under the Insurance Act to carry on the business of insurance within the Province of Ontario, including for the class of automobile insurance (“Auto”);

AND WHEREAS sections 2(1)1., 2(1)2. and 2(1)3. of UDAP prohibit, amongst other things, insurers from the unfair or deceptive act or practice of rebating all or a portion of premium in Ontario;

AND WHEREAS the Government of Ontario has amended UDAP to allow an insurer to respond to a state of emergency declared under the *Emergency Management and Civil Protection Act* (the “EMCPA”) by rebating all or any portion of the premium on account of the change in risk for Auto (the “Rebates”) resulting from compliance with various emergency government orders issued by the Government of Ontario under the EMCPA, provided that the insurer submits an undertaking (the “Undertaking”) to the Chief Executive Officer (the “CEO”) of the Financial Services Regulatory Authority of Ontario (“FSRA”);

AND WHEREAS the Insurer is aware of and has read FSRA’s Guidance dated April 15, 2020 concerning premium repayment programs and seeks to avail itself of the safe harbour created by section 2(1)3 of UDAP by submitting this Undertaking;

AND WHEREAS this Undertaking applies to the Insurer's emergency premium rebating program for responding to the COVID-19 state of emergency declared on March 17, 2020 (the "**State of Emergency**") as disclosed by the Insurer to FSRA by correspondence dated [\*];

NOW THEREFORE, the Insurer undertakes, for the purposes of utilizing Section 2(3)(c) of UDAP, the following to the CEO:

- (1) The Insurer will offer and administer Rebates to its customers in a consistent and fair manner by providing them equally to all similar risks/classes of policyholders, not discriminating between classes of policyholders or otherwise providing Rebates in an arbitrary manner.
- (2) The Insurer will clearly and publicly communicate its Rebating program to its policyholders through a variety of means (website, social media, press release) and identify how they can participate.
- (3) The Insurer will not use the availability, offering or past issuance of any Rebates to promote any part of its, or any of its affiliates', business and will not use the Rebates as an inducement or incentive for consumers to purchase or renew any product or service.
- (4) The Insurer will not use the offering or payment of Rebates for any anti-competitive or improper purpose, including but not limited to, tied selling.
- (5) The Insurer will not directly or indirectly charge back the cost of the Rebates or any costs associated therewith, to its policyholders. For greater certainty, the Insurer agrees that such costs are not an expense to be used for the purposes of calculating its Auto rate level adequacy or for seeking future rate approvals which result in an increase in its Auto rates.
- (6) Any Rebates issued by the Insurer will only apply from the day the State of Emergency was declared under the EMCPA to the day that is one year after the day on which the State of Emergency is terminated under that Act.

The Insurer agrees to be bound by this Undertaking, the breach of which shall be deemed to be an offense under section 447 of the Insurance Act and shall void the safe harbour provided by the section 2(3) of UDAP. The Undertaking is effective upon the date it is approved by FSRA.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020, at the City of \_\_\_\_\_, Ontario

**COMPANY**

**COMPANY**

Per: \_\_\_\_\_  
(Authorized Signature)

Per: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Please Print)

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**FINANCIAL SERVICES REGULATORY AUTHORITY**

**Approved:** \_\_\_\_\_

**By:** \_\_\_\_\_  
Under delegated authority from the Chief Executive Officer

**Date:** \_\_\_\_\_

## Appendix 2: Relief Actions Not Requiring FSRA Review/Approval

There are many things that insurers can do to support and provide relief to customers during an Emergency that do not require FSRA prior review or approval, including but not limited to:

1. Re-rate policies based on changes in risk profile due to a declared emergency, e.g. changes in annual/daily mileage.
2. Demonstrating flexibility in payment plans and deferral of payments.
3. Demonstrating flexibility in the application of underwriting rules and allowing exceptions for customers experiencing financial difficulty (e.g. deferring decisions to non-renew customers who might otherwise be lawfully non-renewed in accordance with approved rules).
4. Demonstrating flexibility in the processing of suspensions of coverage and cancellations, providing for pro-rata rather than short-rate credits.
5. Redirecting corporate resources to call centers and underwriting.
6. Extending coverages where appropriate (e.g. providing free coverage to non-owned vehicles or extending coverage to loss of use, waiving the minimum 45 days required to use the OPCF 16 to suspend coverages).
7. Waiving standard policy exclusions during the emergency period, such as allowing consumers to use their personal vehicles for the purposes of delivering food and other products.
8. Where appropriate, modifying or temporarily suspending the effective dates of filings to defer the implementation of rate changes in the market.