

# Guidance

Interpretation

Approach

Information

Decision



**Effective date:** [TBC]

**Identifier:** No. CU0091INT

## Proposed Guidance: Credit unions - Unclaimed deposits

### Purpose

This Guidance outlines the Financial Services Regulatory Authority of Ontario’s (“**FSRA**” or “**Authority**”) interpretation of requirements under Authority Rule 2024-001 – Unclaimed Deposits (“**UD Rule**”) and s.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 (“**CUs**”), credit union members 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, establishes FSRA's unclaimed deposits regime requiring CUs to transfer unclaimed deposits to FSRA after ten years of account inactivity in accordance with the UD Rule. Paragraph 45 of subsection 285(1) of the *CUCPA 2020* provides 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 both the UD Rule and the unclaimed deposit regime set out in the *CUCPA 2020*.

In supervising and regulating the credit union sector, FSRA is guided by its statutory objects under section 3(2) 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
- to foster a strong, sustainable financial services sector

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

- **Efficient:** 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 focused:** 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.
- **Consistent:** 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 in Ontario 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 both credit unions and their ability to comply with the UD Rule.

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.

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.

FSRA interprets the definition of “deposit” in the *CUCPA 2020* to include:

- chequing account balances
- savings account balances
- Guaranteed Investment Certificates (GICs)
- term deposits
- official cheques/drafts
- non-negotiated certified cheques
- 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 member's safety deposit box, securities, membership shares and/or other shares issued by a CU or mutual funds. If a CU is unsure if an instrument is a "deposit", the CU is encouraged to contact FSRA to determine if the amount is required to be transferred under FSRA's unclaimed deposits regime.

## 2. Membership and account

Section 2(1) of the UD Rule states the following:

**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 **membership** 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**.

Having regard to the text, context and purpose of the UD Rule, FSRA interprets the term “account” in section 2(1) of the UD Rule to include any investment or deposit vehicle offered by a credit union that holds a member’s “deposit”, including but not limited to:

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

For clarity, if the “account” in section 2(1) of the UD Rule is a trust account, it is deemed inactive based on the inactivity of the trustee.

Further, the term “member’s profile” in section 2(1) of the UD Rule is interpreted to include the entirety of a member’s portfolio, that may include several distinct accounts and/or investment vehicles. For an account to be considered inactive, the entire member’s profile, including any other connected party associated with the profile (e.g., the member is listed as an owner or otherwise can undertake transactions under the profile) must be inactive. For greater clarity, an account will not be considered inactive if only one account out of several of the member’s accounts is inactive. For example, if a member has an inactive savings account but has regular activity on their chequing account, then the savings account is not considered inactive under section 2(1) of the UD Rule.

### 3. Contacting members 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 members. The use of electronic communication must, however, be balanced with the need to protect the rights and interests of consumers and their deposits.

Section 2(2) of the UD Rule requires CUs to contact members “in writing”:

- 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 membership(s) have become inactive in accordance with subsection 2(1) of this Rule.

The *Electronic Commerce Act, 2000* applies both to the *CUCPA 2020* and the UD Rule, meaning that the term “in writing” in section 2(2) of the UD Rule includes both written and electronic communication (e.g., mailed notices, e-mails, web-portal alerts etc.). How a CU notifies members should align with the member’s communication preferences, for example, as set out in an electronic communication agreement between the CU and its member. In other words, to comply with the UD Rule, a credit union is permitted to notify members either through written means like mailed notices, or through electronic means such as emails or web-portal alerts.

### 4. Reasonable steps to locate and notify members

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

- 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 membership(s)) have been inactive for five and nine years, respectively.

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

1. **Used means of notifying members that align with the member’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 member.
2. **Made further attempts to locate and notify members proportionate to the amount of the deposit:** A member 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 member as governed by the terms and conditions of the deposit agreement between the CU and its member. 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 member through alternative contact information:** Based on the information a CU may hold about a member, it may be reasonable for a CU to attempt to locate and notify a member through alternative contact information, including but not limited to:
  - a. contacting an emergency contact
  - b. contacting a next of kin contact
  - c. contacting another member associated with the account
  - d. contacting the member at updated address (obtained through a new credit report)

4. **Maintained documentation of all attempts to locate and notify members:** A CU that is able to document all attempts made to locate and notify members 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 members about their unclaimed deposit
  - b. copy of member’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 members
  - f. cost-effectiveness of the prior attempts of locating or notifying members
  - g. knowledge of next of kin in a certain geographic location
  - h. obituary/death certificate
  
5. **Escalated efforts at locating and notifying members:** The reasonable steps taken by a CU to notify/locate a member should be progressive with greater expectations at the nine (9) year mark than at earlier intervals. It may not be reasonable, for example, for a CU to attempt the same method of locating and notifying members by only sending a notification by registered mail to an unresponsive address or PO Box at every interval required by the UD Rule.

## 5. Material information

Section 2(7) of the UD Rule requires CUs to submit all “material information” related to the unclaimed deposit when transferring the amount to FSRA:

- 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

“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. The more likely that information provided by a CU can support these outcomes, the more likely that a CU will be in compliance with section 2(7) of the UD Rule. The “material information” required under section 2(7) of the UD Rule may include but is not limited to the information outlined in [Appendix A](#) of this Guidance.

## 6. Satisfactory evidence

Section 3(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.

- 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.

When considering an application from a person claiming entitlement, FSRA interprets “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 credit union, the more likely that FSRA will be able to conclude in accordance with section 3(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 section 3(4) of the UD Rule (see

[Appendix A](#) for a list of material information to be provided by CUs to FSRA when transferring an unclaimed deposit).

## 7. Reconsideration on a reasonable basis

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 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 reconsideration to include a “reasonable basis” for the Authority to reconsider its original decision:

- 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.

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. 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” that would warrant confirmation or reversal of FSRA’s original decision, as is required under subsection 4(5) of the UD Rule.

## 8. Attestation

Section 2(8) of the UD Rule requires an officer of the CU to attest that all material information submitted to FSRA is accurate, complete, and up to date.

- 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.**

To satisfy this requirement, pursuant to s. 286 of the *CUCPA 2020*, FSRA will require CUs to use a FSRA approved form, a sample of which is provided in [Appendix B](#) of this Guidance.

# 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. Receiving unclaimed deposits

FSRA will receive payment of unclaimed deposits by means of electronic fund transfers only after CUs have submitted all material information as required by section 2(7) of the UD Rule. FSRA will confirm in writing within thirty (30) days of receiving the material information whether the requirement of submitting material information has been fulfilled by the CU pursuant to subsections 2(7) and 2(8) of the UD Rule. Only after the CU receives this confirmation will FSRA accept the payment of unclaimed deposits during the submission period required by section 2(5) (ii) of the UD Rule.

For greater clarity, if a CU member attempts to access any account under their membership before a CU is required to transfer the unclaimed deposit in accordance with subsection 2(5) of the UD Rule, then the amount is not an unclaimed deposit and does not need to be transferred to FSRA.

## 2. Electronic portals

FSRA will receive all material information submitted by CUs about the unclaimed deposits through the Electronic Data Collection portal.

FSRA will receive claims and supporting evidence from claimants and provide status updates through the Unclaimed Deposits electronic portal.

### 3. 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) that 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 development of, the original decision. When deciding on 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 to reconsider a claim. CUs will either make the records accessible to FSRA at their storage site or transfer them to FSRA as requested.

### 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](#). As Interpretation Guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations, and rules) so that non-compliance can lead to enforcement or supervisory action. While as Approach Guidance, it describes FSRA's internal principles, processes, and practices for the operationalization of the UD Rule.

## Appendices and reference

### Appendix A: Material information fields

- i. Personal information of any account holders relating to the unclaimed deposit, including but not limited to:
  - a. legal or given name
  - b. primary address
  - c. date of birth
  - d. secondary mailing address, if applicable
  - e. social insurance number
  - f. email address on file
  - g. next of kin information
  - h. emergency contact information
  - i. copies of any official government identifications on file
  - j. recent credit report (not older than 6 months from when the unclaimed deposit is transferred to the Authority)
- ii. Account information related to the unclaimed deposit, including but not limited to:
  - a. account number
  - b. date account was opened
  - c. type of account

- d. date of last transaction performed by member
  - e. balance amount
  - f. signature cards or membership agreements
- iii. Credit union information associated with the unclaimed deposit, including but not limited to:
- a. name and institution number of the credit union
  - b. transit and branch number of the credit union
  - c. internal Institution Cross Reference Data code
  - d. branch address
- iv. If the account is a business account information including but not limited to:
- a. full name of the business
  - b. any other names the company may be carrying business under
  - c. personal contact information relating to any principal holders of the business
  - d. all names the company is carrying business under if a numbered account
  - e. business registration number
  - f. business account agreement

- v. If the account is a trust account or owned by an estate, information including but not limited to:
  - a. the account type
  - b. name of the person the account is in trust for
  - c. the name of the trustee
  - d. any applicable information about the beneficiaries or trustees associated with the account

## Appendix B: Attestation by Officer

### Attestation:

By signing this attestation, you confirm that the information provided related to the accompanying unclaimed deposit is accurate, complete, and up to date. Providing inaccurate, incomplete, or outdated information is a contravention under Authority Rule 2024 – 001 “Credit Unions - Unclaimed Deposits” (Rule 2024 – 001) in accordance with section 147 of the *Credit Unions and Caisses Populaires Act, 2020 (CUCPA 2020)* and may result in enforcement action (prosecution or administrative penalties) taken against [NAME OF CREDIT UNION].

I, the undersigned, do hereby attest that:

- The information provided related to the accompanying unclaimed deposit is accurate, complete, and up to date.
- The statements, declarations, and answers to the questions in this declaration are true, correct, and complete.
- I understand that providing inaccurate, incomplete, or outdated information is a contravention under Rule 2024 – 001 in accordance with section 147 of the *CUCPA 2020* and may result in enforcement action (prosecution or administrative penalties) taken against [NAME OF CREDIT UNION].

- I am familiar with Rule 2024 – 001 and the *CUCPA 2020* and promise to abide by its laws and regulations.
- I understand The Financial Services Regulatory Authority of Ontario will be using the information in this attestation and the information provided related to the accompanying unclaimed deposit to determine if FSRA will accept payment of the accompanying unclaimed deposit, in accordance with Rule 2024 – 001.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Title, Name of Credit Union: \_\_\_\_\_

Unclaimed Deposit Identifying Information: \_\_\_\_\_

Account Number: \_\_\_\_\_

**Effective date:** [TBC]