

February 18th, 2022

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

RE: Proposed Resolution Planning Guidance

Dear Ms. Tam,

The Canadian Credit Union Association is the trade association for Ontario's credit unions and caisses populaires (CUs). We offer the following feedback to the proposed Resolution Planning Guidance.

While CCUA supports the underlying objectives of resolution planning to promote financial stability and confidence in the sector while reducing potential harm to stakeholders, this exercise will be a major undertaking for credit unions. Every effort should be made to ensure that FSRA's requirements are clear and targeted to maximize the benefit of the effort spent.

Our feedback focuses on key areas where we believe further clarity is required before credit unions can undertake resolution planning work. In addition, we have identified certain issues to consider for the next iteration of the Guidance, to ensure resolution plans are developed efficiently and with the best chance of meeting FSRA's objectives.

We also emphasize that the regulatory burden on the sector is already high. Adding resolution planning to initiatives already underway or planned is likely to negatively affect the quality of CUs' regulatory work overall. If all current and planned initiatives must continue along current timelines, then credit unions will require guidance about the relative priority of each initiative so that they can allocate resources accordingly.

Total Asset Threshold for Resolution Planning

CCUA would appreciate some background on how the \$1B total asset threshold for the resolution planning requirement was determined. The threshold does not appear to tie to any particular existing categorization of credit unions (e.g., existing size categories).

Roles of FSRA and Credit Unions in Resolution Planning



The respective roles of FSRA and credit unions in resolution planning will need to be clarified. While it is stated in the Interpretation section that a resolution plan “includes the development of a preferred resolution strategy and an operational plan”, the wording remains somewhat ambiguous as to who is meant to develop these, and when. This uncertainty is amplified in the Approach section, which states that while “it is not possible to prescribe in advance the precise course of action to be pursued in executing the resolution strategy, some consideration can be given ahead of time to enhance crisis preparedness through resolution planning”.

These are different positions. An open resolution strategy and an operational plan to execute it require a high degree of certainty about the specifics of the resolution strategy in advance. Without such specifics, it is hard to justify the operational changes (e.g., to enhance separability) necessary to make that potential resolution strategy feasible in crisis.

Conversely, if it is the case that it is impossible to prescribe in advance the precise course of action, then there is little justification for undertaking extensive advance planning and operational changes to make a potential course of action feasible.

The latter position, which CCUA wholeheartedly agrees with for the reasons we set out in the following section, seems to be borne out by the requirements of the Approach section. The Approach section does not call for a precise resolution strategy and does not mention an operational plan; instead, it focuses on the provision of mostly existing factual information.

Resolution Strategies Cannot Be Reliably Determined Ex Ante

If resolution planning will be limited to the provision of factual information by credit unions to FSRA to facilitate FSRA’s further planning efforts, then CCUA is supportive of this approach, for the following reason:

Our understanding from the guidance is that FSRA is looking for a viable alternative to liquidation and payout of insured deposits. This would be in circumstances where a failed firm either provides a critical function that must continue past the point of non-viability or, by virtue of its size, its failure is likely to result in material disruption to the sector. While this call for an open resolution option makes sense in theory; in practice, planning such a strategy in advance, where the available resolution tools are limited to forced sale or merger, presents serious challenges.

Given the current open resolution tools available, CCUA recommends that FSRA limit ex ante resolution planning requirements for credit unions to providing factual information, taking reasonable steps to remove impediments that would frustrate **any** resolution strategy and providing basic objectives for identified critical functions. Beyond this, the level of uncertainty around the potential causes, objectives and strategies necessary to effect the resolution of a firm in crisis is insurmountable.

For example, a credit union could work to identify and take reasonable steps to remove impediments to the continuity of identified critical functions that would frustrate any attempt at an open resolution (e.g., identification and removal of hard termination triggers in key supplier contracts for critical shared services). However, taking further steps to remove impediments to a particular resolution strategy (e.g., ensuring certain business lines are easily separable) would require knowledge of that strategy in advance. This is not reasonably practicable.



In order to devise an appropriate resolution strategy, credit unions would need to accurately predict, in advance:

- The cause of the failure and nature of the environment in which the failure occurred (e.g., systemic or idiosyncratic);
- The balance sheet and the state of its operations at the point of non-viability, including the impact of failed recovery actions;
- The identity and appetite of prospective buyers;
- FSRA's priorities in the above circumstances; and
- The fine details of the use of FSRA's resolution powers.

The odds of predicting all of the above with sufficient accuracy to justify the effort required to plan and operationalize them are miniscule. An attempt to create separate plans to address possible variations on the above is also not practicable given the number of material variables in play.

In any event, to the extent FSRA determines that an ex ante strategy is required, we believe the development of that strategy and the operational planning to support it should remain FSRA's responsibility. FSRA is best placed to estimate what its objectives and priorities are most likely to be in the event a failure and the regulator has the most knowledge about the technical exercise of its resolution powers. Credit unions would support this work through the provision of existing factual information, as discussed above.

Alternatively, if credit unions are to be responsible for devising a resolution strategy and operational plan, they would require a far more detailed understanding of the practical (i.e., operational, legal) aspects of the exercise of FSRA's powers and the relative ranking of its objectives and priorities in resolution. Credit unions would also need to understand FSRA's relevant methodologies for resolution and how it would manage the claims and concerns of creditors, members and other stakeholders.

Adopting a Phased In Approach

As a result of the foregoing, and in order to reduce confusion and ensure that the effort spent by all parties is worthwhile, we recommend a phased approach be adopted.

The sector is currently managing a high volume of regulatory work that is already stretching available resources – also attempting to undertake a full resolution planning exercise, in a single bound, is likely to increase confusion and the chances that credit unions will deliver plans that do not meet FSRA's expectations. Most importantly, planning requirements and objectives tend to evolve as participants in the process learn from the exercise. A phased approach would enable FSRA to learn from each stage of the process and adjust its requirements accordingly.

A phased approach should begin with a joint effort between FSRA and each firm to identify what, if any, critical functions are provided by each firm and before work on resolution planning begins. Ensuring the continuity of critical functions through resolution is a core objective of the exercise: clarity on this point is critical. Further, the complexity of a credit union's plan will stem in part from the number of critical functions identified. Achieving clarity on what constitutes a critical function will reduce confusion and materially reduce the risk of unnecessary work; for instance, where a firm incorrectly identifies functions as critical.



CCUA also recommends a more detailed definition of critical functions so that credit unions can devise preliminary lists of potential critical functions for FSRA's review. This definition should include objective measures to enhance accuracy. Where it is agreed that a credit union provides no critical functions, a corresponding reduction in the level of detail and work required by the firm to produce a resolution plan should be acceptable.

Once critical functions are confirmed, in CCUA's view, the remaining components of the resolution plan should be compiled in the order that ensures that the next component is best informed by those that preceded it. Based on the draft guidance, CCUA would recommend the following order:

1. Identification and confirmation of critical functions
2. Resolution Profile
3. External and Internal Dependencies for Operational Continuity
4. Funding Sources and Financial Exposures
5. Data Capabilities
6. Resolution Strategy (i.e., strategic objectives for key components of the CU)*
7. Divestitures*

Plans to Address Impediments would be a recurring section of the plan, which would detail steps to mitigate impediments identified either by the credit union, or FSRA in its feedback on previous submissions.

**Please note that CCUA's concerns about the ability to plan effectively in advance still apply. As such, we recommend that Resolution Strategy and Divestitures sections be the final areas of focus and remain FSRA's responsibility based on contribution of factual information from CUs provided in the previous sections.*

Our recommendation would be that each phase be given appropriate time for all parties to understand the requirements, discuss potential issues, circulate drafts and, most importantly, learn from the exercise in order to refine and adjust the next steps.

Plan Validation: Table-Top Exercises and Scenarios

CCUA would appreciate more information about FSRA's plans and expectations for any table-top exercises or simulation scenarios. As set out above, such exercises require information about FSRA's resolution tools, objectives and relative priorities that exceeds CUs' knowledge. The responsibility for undertaking this sort of exercise should lie with FSRA based on existing factual information provided by the sector. Where missing information is identified by FSRA through these exercises, FSRA could then request that firms update their plans to include the missing information in the subsequent planning round.

Recovery and Resolution Planning Form Part of a Continuum

CCUA also recommends that FSRA take every opportunity to reduce duplication of effort between this exercise and the recovery planning exercise, either by permitting a resolution addendum to the recovery planning document where an entity's specific profile merits such accommodation; or at minimum allowing sections that are very similar between recovery and resolution plans to count toward each.



This may require some reassessment of the timelines for recovery planning work to institute a phased approach in that workstream as well. We believe this would reduce the burden on both the sector and FSRA and result in a higher quality outcome overall.

Concluding Remarks

While several challenges were raised above, we believe resolution planning can be a valuable exercise. The key to unlocking the value of resolution planning lies in identifying what cannot be known in the present and adjusting the approach, expectations and requirements accordingly.

Once the issues articulated above are resolved, we believe this exercise could be of benefit to both FSRA and the sector.

We look forward to working with you to address these issues and advance resolution planning for Ontario's credit unions.

If you have any questions, please don't hesitate to reach out.

Sincerely,

Andrei Belik
Regional Director, Ontario Government Relations
Canadian Credit Union Association

