

August 6<sup>th</sup>, 2024

Ms. Kirsten Fraser  
Director  
Financial Services Innovation  
Department of Finance Canada  
90 Elgin Street  
Ottawa, ON K1A 0G5

Delivered by email: [Kristen.fraser@fin.gc.ca](mailto:Kristen.fraser@fin.gc.ca).

Dear Ms. Fraser,

## **RE: Credit Union Sector Positions on Summer 2024 Consultations on Canada's Open Banking Framework**

### **Background**

CCUA is the national trade association that provides services to Canada's credit unions and caisses populaires, excluding the Desjardins Group. In aggregate, the credit union system holds \$309B in assets, is a leader in small business lending, and serves more than 6M Canadians through 1,632 branch locations.

All credit unions are regulated, co-operative financial institutions that are 100% owned and controlled by the people who bank with them: their members. Credit unions exist to improve the economic and social well-being of their member customers and their primary motivation is providing quality products and services to those members.

### **Comments**

Following the meetings between the Department of Finance and credit union stakeholders between June and July 2024, which aimed to help inform legislation we expect to be included in the *Budget Implementation Act, 2024, No. 2*, we would like to highlight several key credit union sector positions that arose out of those meetings:

#### *Clear Definitions*

It is critical that the legislation clearly defines terms such as small business and derived data to ensure clear adherence to the common rules of the Framework.

The June 14, 2024, Department of Finance discussion paper states that 'derived data' is data that "has been materially enhanced through a proprietary process to provide value to a consumer" and is scoped out of the Framework. We believe the definition would benefit from additional clarification, as different interpretations may exist of what "materially enhanced" means. This definition can greatly affect how financial institutions participate in the Framework.

For financial institutions, substantial costs go into the generation, collection, and verification of consumer data (e.g., data directly generated by the consumer, such as their raw transaction history). We



are therefore concerned that, without greater clarity, there may be a lopsided relationship between third-party providers and financial institutions as third-party providers may generally generate derived data and thereby be out of scope. Moreover, it is difficult for financial institutions and others to provide feedback on exceptions to derived data when the definition is not clear.

We also recommend that the term ‘small business’ be clearly defined in the legislation. To ensure the definition captures small businesses across the country, we recommend a definition that is inclusive of small businesses across the country.

### *Financial Inclusion and In-Branch Open Banking*

The June 19, 2024, stakeholder meeting focused on consumer protection and specifically asked if the Framework should include additional rules to strengthen financial inclusion. A long-standing credit union position is that the Framework’s rules must be sufficiently flexible to ensure that consumers can participate in the Framework via physical branches. This will help serve Canadians in remote and rural communities where there are challenges with broadband internet access, as well as with individuals who have limited digital/technology literacy. This will require the Framework to support alternative methods for obtaining consent, performing authentication, and other requirements to ensure that open banking products and services cannot be obtained solely on mobile or web applications.

We also recommend that if additional rules are introduced to improve financial inclusion, the term ‘financial inclusion’ be defined, as it can be broad and encompassing. Since there are existing initiatives from industry and regulation to promote financial inclusion in Canada’s financial services, we believe that rules critical to the Framework’s implementation should be prioritized.

### *Consent and Third Parties*

Clarity is required to ensure that credit unions will be able to collect and manage consents for sharing data held by third parties. Many credit unions partner with credit card issuers like Collabria, or wealth management partners like Aviso. As such third-party products often include the credit union’s logo, credit union members could be under the impression they are doing business with the credit union directly even when their contractual relationship is with the third party. We recommend that the process for such third-party consent be clarified in legislation.

### *Phasing In Account Data and Types*

CCUA supports the phasing of account data and types for the Framework. If all account data and types were introduced at the same time, it could be challenging for financial institutions to meet the stated deadlines, which could create potential security issues. A phased-in approach has been used in Australia and has proven successful, and we recommend such an approach in Canada.

It also appears that the rules proposed in the July 12, 2024, Privacy stakeholder meeting, such as how consent will be managed, are appropriate for the individual consumer but may be challenging with joint account holders. As such, we would welcome a phased-in approach or a grace period with account types where consumer accounts are first scoped in, followed by small businesses to allow additional time to determine how some rules may have to be adapted to be appropriate to joint account holders.

That said, we recommend that there not be a long gap between when consumer accounts and small business accounts are scoped in. In a consumer-driven banking framework, small businesses can automate financial management, make faster lending decisions, be more effective in accounting, and improve forecasting and cash flow. If small businesses are scoped into the Framework at a much later date, such opportunities will be missed.

### *A Clear Liability Framework*

Financial institutions are often seen as liable for the services and performances of their third-party service providers, even when the financial institution is not at fault. As such, we are pleased that, in the Canadian consumer-driven Framework, liability will flow with the party at fault.

However, we recommend that the legislation clearly define the exact point at which the data moves from the provider to the recipient, to ensure that liability is properly attributed to the party at fault. In practice, without such clarity, there could be confusion among participants regarding who is liable if an issue arises. While there were different approaches suggested by the credit union group in the June 21, 2024, stakeholder meeting as to how this point could be determined, the process should be clearly defined in legislation.

Moreover, financial institutions are often the first point of contact for consumers regarding potential consumer complaints. In an open banking ecosystem where consumer data will touch more than just the consumer's primary financial institution, consumer complaints could escalate. We, therefore, recommend that the Financial Consumer Agency of Canada (FCAC) include awareness in its consumer education campaign on how the complaints handling procedure under the Framework be implemented.

We would also support a singular external complaints body for the Framework and recommend that the Ombudsman for Banking Services and Investments (OBSI) be selected. Along with all investment firms and banks (effective November 2024), many credit unions in Canada are already members of OBSI, and the remainder of our sector will join over the next year. Moreover, since OBSI has been selected as the single ECB for federally regulated financial institutions, duplication would be avoided.

### **Conclusion**

It was often challenging to provide feedback on topics when high-level or limited information was presented. We understand that the credit union sector will be able to comment on a more complete Framework that weaves together the topics discussed since June 2024. We look forward to this additional opportunity for meaningful consultation to ensure that the Framework is a made-in-Canada solution suitable for a variety of participants and consumers.

We would like to thank you and the Department of Finance for the opportunity to consider the above positions and for consulting the credit union sector on additional elements of the Framework as look to *Budget Implementation Act, No.2* for the final iteration of the Framework's legislation.

Please don't hesitate to contact me should you have any questions about the items raised above or any other matters relating to the Consumer-Driven Banking Framework.

Best,

A handwritten signature in black ink, appearing to be 'Sander'.

Sabena Sandhu  
Manager of Policy  
Canadian Credit Union Association