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October 28, 2013

Mr. Jerry Williams  
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Dear Jerry:

**Re: IIAC Comments to FSCO on Ontario Financial Hardship Unlocking (“FHU”) Guide (the “Guide”)**

Thank you very much for both sending us a copy of the draft Guide and providing an opportunity to comment on it. As put by one member, the User Guide is thorough, logical and in good order. It also addresses our request for the inclusion of reasons for refusing an application. To help in your review, we have categorized our comments below into three sections: (1) our most important concerns, (2) technical comments on the Guide and related FHU forms, and (3) a few general questions pertaining to implementation. An attachment includes some minor formatting/readability issues for your consideration and a request for understanding of some matters. If you believe that any of these suggestions are better addressed outside the Guide, we hope we can arrange a meeting to discuss other ways to address the topics, such as through a teleconference.

**1. High Priority**

- i. **Pp. 3-4: Certification** –We strongly believe that the Guide should add a separately titled section referring to “Financial Institutions’ Right to Rely on Owner Certification” under the “Introduction and Overview” or “Main Features Common to all Applications” sections. Such an addition should include wording, which says unambiguously, that:
  - a. owners are required to certify that all the information in the application and in the accompanying documents is accurate and complete;
  - b. the financial institution is entitled to rely upon the information provided by the owner in the application with one exception; and

- c. the exception is if the financial institution is aware that information provided is not true or has reason to question the information's accuracy.

While the Guide includes wording relating to these points, the statement that "The financial institution is entitled to rely upon the information provided by the owner in the application" is in a section on, and is followed by a clause listing a single situation being, the owner's statement with respect to no other applications in the year. This situation is not identified as being only one example. For clarity and ease of reference, please include in this section:

- a. other examples of what the financial institution can rely on the owner's certification for, e.g., that expenses have not been submitted before (since expenses from past years' medical expenses can be submitted), that expenses do not include any for a residence that has not yet been built, that any estimates included are reasonable, etc.
  - b. that the financial institution can rely also on statements by the doctor or dentist (e.g., that they are licensed in Canada), spouse or ex-spouse, contractors providing estimates, additions of amounts in the attached documentation, etc.
  - c. what the implications are for a financial institution that does nothing when aware, or having reason to suspect, that information provided by the owner is not true.
- ii. **P. 4: Form Availability for Client Service Reasons** – There is considerable concern regarding the zero tolerance for accepting old forms. As there is no transition period when both old and new forms can be used, please update the FSCO website to:
- a. prominently note immediately, at the top of the relevant page (possibly, [http://www.fSCO.gov.on.ca/en/pensions/financial\\_hardship/Pages/unlockingforms.aspx](http://www.fSCO.gov.on.ca/en/pensions/financial_hardship/Pages/unlockingforms.aspx)), the absolute prohibition on using anything but the form for the year in which the request is actually submitted so that financial institutions can clearly point clients to the site to support the message that a new form must be completed
  - b. make the new forms available on the website a month *prior* to the launch date/each New Year with clear instructions in boldface print, such as "To avoid delays, be sure to use this form starting January 1, 201x".
- iii. **Add: Checklist** – The Guide would be materially improved by adding an appendix with a high-level decision tree (or provide it as a standalone document on the website), for example:

Requirement	If Yes...	If No...
1. Uses 2014 form?	Continue	Return to client and request correct version
2. Submitted by account owner?	Continue	Return to client and request correct version
3. Locked-in fund subject to Ontario legislation?	Continue	Reject (direct to correct province)

## 2. Technical Comments

- i. **P. 3: Application Limit** – The Guide says that an owner is limited to one application for financial hardship withdrawal, per category, per account, once in a calendar year.
  - a. Please clarify that the limit is to one *successful* application per category, etc.
  
- ii. **Pp. 5-7: Maximum Amount** – The Guide states that the owner cannot apply for an amount greater than the maximum to which he or she is entitled under the Regulation. The Guide provides that, should an owner apply for an amount greater than the maximum, the financial institution should advise the owner to amend the application and, if the amount still exceeds the maximum (or what is in an account), the application must be rejected.
  - a. For maximum efficiency and client service, please include in the Guide that a firm can pay the relevant maximum amount, to the maximum in the account, with owner and firm initialling the changes for the correct amount received by the owner, according to standard financial institution practice where changes are required.
  - b. Please specify that medical expenses and other amounts include applicable HST.
  - c. Please clarify explicitly in the example on page 7 how it could occur that the owner can withdraw enough to cover withholding taxes and fees, i.e., that 3.b.i and 3.b.ii may total \$15,000 that is lower than the YMPE; the owner wants \$10,000 net (as the owner may expect to receive some small amount of revenue from other sources); therefore, the client can take out \$13,000 to cover the expenses and HST he or she wants, plus withholding tax and fees.
  
- iii. **P. 6: Administrative Fees** – Please change the sample administrative fee from \$10 to \$200 – the minimum FSCO used to impose for financial hardship unlocking application.
  
- iv. **P. 7: Previous Application** – The last paragraph says that the financial institution must be aware of whether the owner has already applied during the year with respect to the account. Please clarify that this is done by ensuring the certification is signed and assuming that the advisor or registered plans department serving the client does not know or suspect otherwise.
  
- v. **Pp. 8-9: Breakdown of the Spousal Relationship** – One of the biggest risks our members see relates to the breakdown of the spousal relationship. It appears that additional procedures are permitted, however, the Guide is not clear to what extent a firm can do this, especially as the Regulations gives the Superintendent the right to determine what additional information may be needed. For example, can a financial institution require the spouse or ex-spouse to come in person or provide a notarized statement?

- vi. **Certification and No Expectation of Financial Institution Staff to Verify –**
- a. **P. 9:** In the second to last paragraph starting “The owner must certify ...”, the first clause of the sentence “On the date the owner signs the application, he or she must check only one of four boxes” is highlighted. The highlighting suggests some additional effort on the financial institution’s part with respect to verifying the boxes were checked and document was signed on the same day although this may be directed at the owner. As the owner certifies that all information is true, please remove the boldface print or clarify that nothing is expected of the financial institution.
  - b. **P. 12:** The third full paragraph says that medical expenses can “have been incurred in the past.” Please confirm that there is no need to exclude any past medical expenses or specify a limit on how much time previously is permissible.
  - c. **P. 13:** We believe that realistically it will be impossible to know if attached medical expenses are for the construction of a principal residence and not future expenses for a residence that has not yet been built. Please include this example as referenced in 1.i above or clarify that the financial institution should accept the information as certified by the owner’s signature on the form.
  - d. **P. 14:** Regarding physicians and dentists, please confirm (if not included as an example further to 1.i above) that the financial institutions need not seek to confirm that the individual is a qualifying doctor licensed in Canada.
  - e. **P. 14:** Please confirm that copies, scans, etc. are permitted as alternates to originals.
  - f. **P. 15:** The Guide states at the top of the page “... **and** the owner could face eviction if the debt remains unpaid.” The highlighting suggests that the written demand may *not* reference this and that in such a case the application should be refused. However, the following page, under Additional Documents, does not reference this. Please remove the boldface print or clarify what is expected: that the document must include the word “eviction”?
- vii. **P. 17: Additional Documents Required –** The Guide requests that a copy of the rental agreement be included although does not require it. Please clarify that a firm can make it mandatory, as this may be a case when the decision of a financial institution to rely on the owner’s information may appear unreasonable to an observer, however, may still be considered reasonable by the client.
- viii. **Throughout: Amounts of Less than \$500 Cannot be Withdrawn –** Please clarify if amounts below \$500 can be withdrawn if it is to close an account.
- ix. **Forms:**
- a. **Financial Hardship Unlocking (FHU) – Forms FHU 1-4**
    - Please add in each form, to the question “What is the maximum amount you may withdraw?”, reference to “including withholding tax and any fees”. This will avoid

confusion and the p. 7 requirement for the financial institution to advise the owner in advance that the amount approved will be reduced for withholding tax and fees, if any.

- Where it is noted that the witness should not be a spouse or dependant of the owner, please add a field beside the space for the witness's signature requiring the witness to identify how he or she is related to the annuitant so as to be clearer that the witness is NOT the spouse or dependant (e.g., co-worker, friend, etc.). This would be particularly helpful where a request is made by mail.
- Please clarify in the forms the purpose of the witness's signature: that he or she knows the person purported to be the owner, spouse or ex-spouse? Simply that they have seen the party sign?

**b. Form FHU 3, page 3**

- Question 2c – should be "enter the smaller of 2a and 2b", not of 3a and 3b
- Question 3 – second bullet, ... to withdraw (box 3c)", should be 2c

**c. Form FHU2, page 3**

- Question 2c: Should be "enter the smaller of 2a and 2b", not 3a and 3b
- Question 3: Second bullet, "to withdraw (box 3c)", should be 2c

Also, please correct Form FHU2 page numbering (page 1 says "Page 2 of 6", etc.).

### 3. Implementation Questions

- i. Will the guide be translated and, if so, when will this be available?
- ii. Could you provide available details for the informational webcasts or other information session that FSCO is contemplating?
- iii. Will FSCO have a team dedicated to supporting/helping financial institutions for the first year of this implementation and be able to circulate or share on the FSCO website generic questions received and answers provided? This would enable financial institutions to learn from each other and ensure the greater consistency of owner treatment that owners have under the current (pre-2014) system. Alternatively, who should be the point of contact for questions?
- iv. Please confirm that FSCO will host a session no less frequently than once a year for financial institutions and FSCO to discuss any issues of concern and ways to improve program efficiency.

If we can provide any clarification of our comments, please let us know. We hope to follow up shortly to discuss any areas that we may not have understood.

Yours truly,



## Attachment

**Suggested Formatting Changes/Nice-to-haves**

- i. **Throughout:** It would make the guide easier to read at a glance if examples could be formatted to stand out from the requirements themselves. Would it be possible to search for the phrase “for example” and convert the examples from plain text into indented text or text boxes?
- ii. **Pp. 1 and 4:** For clarity, it would be preferable to replace “operative” dates (if not a defined term) with “key” or “critical” dates.
- iii. **Pp. 2-3:** For clarity, it would be preferable to footnote what appear to be two explanatory paragraphs relating to verifying if the locked in plan is subject to Ontario legislation (i.e., those starting “It is important to verify ...” and “Second, the employment must not have been ...”) so as only to include the third paragraph with information on how the owner or financial institution would know this, i.e., through the record in the CRA form that accompanied the transfer-in to the locked-in account.
- iv. **P. 7:** Is there information that can be added in the Entitlement to Other Government Benefits section so that financial institutions may help refer the owner as needed?
- v. **Pp. 18-19:** There is some ambiguity in the mixing of total and expected income that can require Guide users to re-read this section. The preamble to the first set of bullets says: “The owner must include the following amounts, as applicable, in determining the amount of total income from all sources, before taxes, that the owner expects to receive for the next 12 months”. Mid-page there is reference to “Expected income”, which seems to be total income excluding certain payments that are part of one item from Total income. The top of page 19 refers to “expected total income from all sources, before taxes”, which combines reference to “total” and “expected” income. One alternative for greater clarity would be to state in the preamble to the first set of bullets on page 18 that “Expected Income” is “Total expected income from all sources, less cash payments under certain government programs (specified below), before taxes” (the second set of bullets being the exclusions). The phrase at the top of page 19 should then be “Expected income” or repeat “Total expected income from all sources, less cash payments under certain government programs, before taxes”.
- vi. There was no reference to the points below, with respect to which we submitted questions, in the Guide. We are assuming that this is an indication that there are no requirements or

negative outcomes with respect to the following, and so trust that you will advise whether any or all of the following are incorrect statements:

1. FSCO does not audit or examine financial institutions that must meet hardship unlocking requirements.
2. There is no action that FSCO will, or a client may, take as a result of a firm inadvertently accepting more than one application a year per each of the four permitted hardship criteria.
3. There are no penalties on financial institutions associated with the unlocking program.
4. FSCO does not prescribe in what format and for how much time supporting documentation must be held (a financial institution is expected to follow its internal guidelines for such matters).
5. There is no required reporting of financial institutions to FSCO regarding unlocking; FSCO will obtain any reporting it requires through the tax authorities.