



Safeguarding of end-user funds: At a glance

This supplementary material is intended to provide an overview of the [Safeguarding end-user funds](#) guideline (guideline) and summarizes a payment service provider's (PSP) requirements for safeguarding end-user funds. It also includes scope considerations and a list of questions to help PSPs assess and achieve these requirements.

This supplementary material does not substitute or modify the guideline. It should be read together with the:

- [Safeguarding end-user funds](#) guideline
- [Criteria for registering payment service providers](#)
- [Retail Payment Activities Act](#) (RPAA)
- [Retail Payment Activities Regulations](#) (RPAR)

This material is intended to help PSPs comply with the safeguarding end-user funds requirements in the RPAA and RPAR. While this material is primarily directed to PSPs in the early stages of establishing and implementing their safeguarding measures, other PSPs may also find it useful to review.

The considerations outlined in this material are not exhaustive, nor do they cover all regulatory requirements under the RPAA and the RPAR. All PSPs should read and adhere to the RPAA, the RPAR and the guideline.

Application of requirements for safeguarding end-user funds

This section highlights who must safeguard end-user funds and when to safeguard end-user funds in the context of the RPAA.

A PSP that performs the payment function of “the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity” must safeguard those end-user funds.¹ For PSPs that perform the payment function of holding funds, the requirements for safeguarding end-user funds apply only to funds that are considered held.

¹ The RPAA defines an end user as “an individual or an entity that uses a payment service as a payer or a payee.”

Holding funds

The payment function of holding funds is described in the [criteria for registering payment service providers](#). Some key concepts are repeated in the box below for ease of reference. You should also consult the holding funds [case scenarios](#) for practical examples.

Selected key holding funds concepts

- You are holding funds on behalf of an end user if you keep funds of a payer or payee at rest and available for future withdrawal or transfer, and you are indebted to the end user with respect to those funds.
- End-user funds are at rest if you do not have an instruction for their immediate transfer. Funds are in transit from the point you receive an instruction to immediately transfer or withdraw the funds until the transfer or withdrawal is complete.
- If an end user places funds with you to be transferred or withdrawn later, you are holding a payer's funds. If you maintain funds transferred to your end user until they are transferred or withdrawn later, you are holding a payee's funds.
- You begin holding funds once you are in receipt of an end user's funds in an account that you own. You stop holding funds (i) upon receipt of an instruction for immediate withdrawal or transfer of the funds; or (ii) in the case of a future-dated transfer, the arrival of the transfer date.
- When you receive end-user funds with concurrent instructions for them to be immediately transferred, those funds are not considered to be at rest and, as such, are not held.

Key questions and considerations

- Have you identified end-user funds that are considered "held," according to the Bank of Canada's retail payment supervision policies and guidelines, and therefore need to be safeguarded?

For the remainder of this document, funds considered "held" are referred to as "end-user funds."

Objectives of safeguarding end-user funds

The requirements for safeguarding end-user funds are intended to achieve two objectives:

- to ensure end users have reliable access without delay to their funds held by a PSP
- to protect end-user funds against financial loss in the event of a PSP's insolvency

Safeguarding requirements

To achieve the safeguarding requirements under the RPAA, you must do the following:

- Segregate end-user funds from all other funds—including your own funds—by placing the end-user funds in a safeguarding account not used for any other purpose.
- Safeguard funds by holding them in trust in a trust account or by using insurance or a guarantee. These means of safeguarding are set out in subsection 20(1) of the RPAA.
- Establish, implement and maintain a framework to meet the objectives of safeguarding end-user funds.
- Take measures to identify and investigate any instance where you are not safeguarding the correct amount of end-user funds.
- At least once every three years, conduct an independent review of your compliance with the requirements for safeguarding end-user funds.

Segregating end-user funds

You must segregate end-user funds from all other funds in an account not used for any other purpose. The Bank of Canada (the Bank) refers to this account as the safeguarding account. Refer to **Section 2. Means of safeguarding end-user funds** in the guideline for more information.

Safeguarding account

The safeguarding account must be provided by a Canadian financial institution referred to in paragraphs 9(a) to (d) or 9(f) to (h) of the RPAA, or by a foreign institution that is prudentially regulated by a regulatory regime that imposes standards comparable to those that apply to Canadian financial institutions.

Key questions and considerations

- Do you hold end-user funds in a safeguarding account?
- Is the account provided by an entity as specified by the RPAR?
- If the account is provided by a foreign financial institution:
 - Is the financial institution regulated by prudential standards (on liquidity, capital adequacy, governance, supervision and risk management) that are comparable to the standards applied to entities regulated in Canada?
 - Are you able to demonstrate how the standards compare to those that apply to entities regulated in Canada, using publicly available information?
- Do you have a written acknowledgement from the account provider that “the account provider must not have interest in, recourse to or right against funds in your safeguarding account for any sum owed to it by you or any other third party”?

Time frame for segregation

The Bank expects you to segregate end-user funds from all other funds, including your own funds, by placing them in a safeguarding account on receipt. Where you face processing constraints that cannot be avoided despite your best efforts and it is not feasible to place end-user funds in a safeguarding account on receipt, the Bank expects you to place end-user funds into a safeguarding account, at the latest, on the business day following the day of receipt.

Key questions and considerations

- How do you ensure end-user funds are segregated upon receipt? In other words, do you have systems, policies, processes, procedures, controls or other means to ensure these funds are placed in or transferred to the safeguarding account as soon as you receive the funds?
- Do you face any processing constraints, which cannot be avoided despite your best efforts, that make it infeasible for you to place end-user funds in a safeguarding account on receipt? If so:
 - Do you ensure that funds that are yet to be placed in the safeguarding account are not used for any other purpose, and do you treat them in accordance with the guideline?
 - Can you demonstrate to the Bank the reason(s) why end-user funds are not placed in the safeguarding account on receipt?
 - Do you place the funds in the safeguarding account by the end of the business day following receipt, at the latest?
 - Do you describe and disclose to end users all situations where the funds may not be immediately transferred to (and protected in) the safeguarding account on receipt?
 - How do you identify and track the funds that are not yet placed in the safeguarding account?

Means of safeguarding end-user funds

The RPAA sets out the means a PSP can use to safeguard end-user funds. A PSP may:

- hold the end-user funds in trust in a trust account that is not used for any other purpose
- hold the end-user funds in an account that is not used for any other purpose and hold insurance or a guarantee on the funds. The insurance or guarantee amount must be equal to or greater than the amount held in the safeguarding account.

You may choose a combination of means to safeguard end-user funds by:

- safeguarding a portion of end-user funds in trust in a trust account and protect the other portion of the funds using insurance or a guarantee
- safeguarding end-user funds with multiple account providers or insurance and guarantee providers

Refer to **Section 2. Means of safeguarding end-user funds** in the guideline for more information.

In trust in a trust account

If you safeguard end-user funds in trust in a trust account, the Bank expects you to seek legal advice to ensure that a valid express trust arrangement has been established.

Key questions and considerations

If you safeguard end-user funds in trust in a trust account:

- Have you sought legal advice to ensure that a valid express trust arrangement has been established?
- For trust arrangements established in jurisdictions other than Quebec, does the trust arrangement satisfy the following three certainties of trust?
 - certainty of intention: the PSP's intention is to create a trust and the end users' intention is that their funds will be held in trust
 - certainty of subject matter: that end-user funds held in trust are known
 - certainty of objects: that end users and their interest in the trust are clear
- For trust arrangements established in Quebec, does the arrangement qualify as a formal trust under the *Civil Code of Quebec* or clearly establish that you hold and administer end-user funds as the administrator of the property of the end users under the simple administration regime?
- Is there a legal agreement between you and your account provider(s), stating that the funds are held in trust for (or, in the context of a simple administration under Quebec laws, for the benefit of) your end users?
- If you hold end-user funds as a trustee, what internal controls are in place to ensure that trust funds are available in the event of insolvency?
- Will any administrative expenses be paid out of the trust account? If yes, have you sought legal advice to confirm what qualifies as an administrative expense that can be paid out of the trust account?

Insurance or guarantee

If you safeguard end-user funds using insurance or guarantee, the insurance or guarantee must be provided by an entity prescribed by the RPAA and must be a legal agreement that includes terms demonstrating that the insurance or the guarantee meets the conditions set out in paragraphs 14(2)(a) to (d) of the RPAA.

Key questions and considerations:

- How do you determine the amount of insurance, or guarantee coverage, for funds that are safeguarded? For example, do you consider daily end-user funds safeguarded from previous year(s), any trends, peaks or growth projections?
- How do you ensure that the coverage never falls below the amount of end-user funds that are designated as safeguarded through that insurance or guarantee?

- Is the insurance or guarantee provider an entity prescribed in the RPAR? Is the provider not “affiliated” with you, within the meaning of section 3(1) of the RPAA?
- Does the insurance or guarantee contract include terms to ensure that, in the event of insolvency:
 - the proceeds will not form part of your estate
 - the proceeds will be payable to the end users as soon as feasible
 - the insurance or guarantee will survive your insolvency, and will not be deemed as an asset available to your creditors
- Do you have a process to notify the Bank, at least 30 days before any insurance or guarantee contract is cancelled or terminated?

Safeguarding-of-funds framework

If you hold end-user funds, you must establish, implement and maintain a written safeguarding-of-funds framework. At a minimum, this framework must include the elements described below. Refer to **Section 3. Safeguarding-of-funds framework** in the guideline for more information.

Ledger of end-user funds

You must keep a ledger that serves as an accurate record of the amount of funds you hold on behalf of each end user. The ledger must set out the name and contact information of each end user whose funds are held, track the amount of funds belonging to each of those end users, and record whether such funds are held in the safeguarding account or in another account (to the extent permitted under the guideline).

Key questions and considerations

- What policies and processes do you have in place for keeping a ledger that accurately records the amount of funds held on behalf of each end user?
 - For the funds held, does the ledger accurately record, for each end user, a breakdown of funds held in a safeguarding account and funds yet to be placed in a safeguarding account?
 - Does the ledger record the total amount of end-user funds held, end-user funds safeguarded and end-user funds to be safeguarded?
 - Do you update the ledger each day with the amount of each end-user funds you hold?
- Does the ledger contain the name and contact information of each end user whose funds are held? Are there processes in place to update this information?
- Is the ledger classified as an asset, as part of your operational risk management and incident response framework?

Liquidity arrangement

You must set out your approach for meeting liquidity demands generated by end users’ requests for withdrawals and transfers of funds.

Key questions and considerations

If some end-user funds are held in secure and liquid assets other than cash:

- Are the funds held in assets that are considered “secure and liquid” by the Bank, i.e., in assets that can easily be converted into cash with little or no loss of value? For more information on secure and liquid assets, refer to **Section 3. Safeguarding-of-funds framework** in the guideline.
- What are your policies and procedures for converting the assets to cash in a timely manner to ensure end users’ demands for their funds can be met?
- What forecasting approaches and measures are in place to ensure you can meet liquidity demands generated by end users’ requests for withdrawals and transfers?

Procedures for returning end-user funds in the event of a PSP's insolvency

You must document how the end-user funds held would be returned to each end user in the event of your insolvency.

Key questions and considerations

- Would a person appointed to carry out insolvency proceedings (or the insurance or guarantee provider, as applicable), using the procedures for returning funds to end users, be able to:
 - access relevant records (including the ledger and legal agreements) in relation to end-user funds
 - contact end users as soon as feasible based on the procedures for returning end-user funds
 - identify any errors or deficiencies in the ledger of end-user funds and address any shortfalls in the funds to be returned to each end-user?
- Do the procedures include processes for a final reconciliation of your accounts, and do they identify who would complete this reconciliation? How do the processes help ensure any shortfalls can be identified and addressed by the person appointed to carry out insolvency proceedings?
- If applicable, will agents, mandataries or third-party service providers play any role in returning funds to end users, and are their roles documented?

Legal and operational risk analysis

You must identify legal and operational risks that could hinder your ability to meet the framework objectives and also identify means for mitigating those legal and operational risks.

Key questions and considerations

- What legal and operational risks could hinder you from meeting the framework's objectives? What approaches have you identified to mitigate those risks?
- Have you considered risks that could arise as a result of:
 - the jurisdictions in which you are located, and those of your end users, your account providers in which end-user funds are held, and if applicable, those of your insurance or guarantee providers
 - the identity of your account providers and, if applicable, insurance and guarantee providers
 - the terms of your trust arrangements with end users, if applicable
 - the terms of your insurance policies or guarantees, if applicable?
- What mechanisms are in place to mitigate those risks?
- Are these risks and mitigants documented as part of the framework?

Review and approval of the framework

The safeguarding-of-funds framework must be reviewed and approved at least once a year, after any change to the means of safeguarding funds, or after any change that could reasonably be expected to have a material impact on the way end-user funds are safeguarded.

Key questions and considerations

- Do you keep a record of the date, scope, methodology and findings of each review conducted?
- Have you identified a senior officer to oversee your safeguarding practices and ensure compliance with the regulations?
 - Do they review and approve the findings of your review of the framework?
 - Do they approve the framework at least annually and after every material change is made to the framework?
- If you have a board of directors, does your board also approve the framework annually?

Evaluation of insolvency protection

You must take ongoing measures to:

- identify any instance of **shortfalls**, i.e., where the sum of the amount of end-user funds placed in a trust account and/or, if applicable, covered by the insurance or guarantee in accordance with end-user fund safeguarding requirements, is less than the amount of end-user funds held
- prevent similar instances of shortfalls from recurring.

Refer to **Section 4. Evaluation of insolvency protection** in the guideline for more information.

Key questions and considerations

- What are your measures to ensure that you identify any instances of shortfalls?
- What is your process for immediately investigating the root cause of shortfalls after they are identified?
- How do you address identified causes of shortfalls? Do you implement any measures to prevent their recurrence? Are the measures implemented as soon as feasible?

Independent review

At least every three years, you must ensure that an independent review is conducted to assess whether you comply with the end-user funds safeguarding requirements. Refer to **Section 5. Independent review** in the guideline for more information.

Key questions and considerations

- Do you conduct an independent review of your framework at least once every three years?
- Is the review carried out by a sufficiently skilled individual, internal or external to you, who has had no role in:
 - establishing, implementing or maintaining the framework
 - taking measures to identify shortfalls
 - identifying shortfalls?
- Does the review assess your compliance with subsection 20(1) of the RPAA and sections 13 to 16 of the RPAR?
- What records do you obtain as part of the independent review?
- How do you address findings from independent reviews?
- Do you report gaps and vulnerabilities identified by the review, as well as measures taken to address them, to the senior officer, if applicable?

Indirect arrangements

The Bank expects you to obtain a direct relationship with a safeguarding account provider described in section 13 of the RPAR.

If you rely on another unaffiliated PSP (an intermediary) to provide access to an account at a financial institution, the Bank considers you to be engaged in an indirect arrangement. However, using indirect arrangements for safeguarding purposes may not comply with the RPAA or other applicable laws due to significant regulatory barriers and operational challenges. These barriers and challenges include the following:

- The intermediary PSP is not a registered trust corporation and may not have obtained the appropriate authorizations or exemptions to undertake activities as a trustee and comply with applicable trust laws.
- Delegating safeguarding functions to an intermediary PSP may violate certain provisions under the Civil Code of Québec applicable to the relevant trust arrangement.

- Returning funds to end users, should either the client PSP or intermediary PSP become insolvent, would be complex and operationally challenging because multiple PSPs are involved. It would also create a greater risk that end users' access to their funds would be impeded.

The Bank will not accept indirect arrangements as compliant with the RPAA's requirements for safeguarding, unless, at a minimum, you can demonstrate that the regulatory barriers and operational challenges listed above are addressed.

Refer to **Section 6. Indirect arrangements** in the guideline for more information

Key questions and considerations

If you use indirect arrangements for safeguarding purposes:

- How do you and the intermediary PSP ensure compliance with the safeguarding requirements, including the requirements for segregating end-user funds and keeping a ledger?
- Have you and the intermediary PSP sought legal advice to ensure that you both meet safeguarding objectives and requirements under the RPAA and RPAR?
- Can you demonstrate that you have addressed each of the regulatory barriers and operational challenges listed above, including that the intermediary PSP has obtained the appropriate authorizations or exemptions to undertake activities as a trustee in compliance with applicable trust laws, and that any challenges or impediments with respect to the return of funds to end users have been addressed?