Implementing Protection of Rewards Points Against Expiry

The Consumer Protection Act, 2002 (CPA) has been amended by Bill 47, the Protecting Rewards Points Act (Consumer Protection Amendment), 2016, to prohibit the expiry of rewards points due to the passage of time alone.

Before the amendments come into force, supporting regulations must be developed. Amendments are proposed to the general regulation under the CPA to support implementation of this new rule.

We welcome your views and input on proposed regulatory amendments to:

* help us define “rewards points”;
* clarify what is “time-alone expiry”;
* prevent suppliers from using contract termination and renewal simply as a disguised means to expire points; and
* address any issues that may arise during transition to the new rules.

# How to Respond

Your input is important. We welcome your answers to the consultation questions and any added input or suggestions you may wish to offer.

Please provide concrete examples or evidence to support your suggestions where possible.

This consultation document asks questions where you can respond by checking boxes to express your views, and also by providing explanations or alternative options in free-form spaces.

You may download this paper and then submit your completed responses by mail or email. You also may submit any feedback to us without using the consultation questionnaire package.

You may respond by email to consumerpolicy@ontario.ca or by mail to:

Rewards Points Consultation

Ministry of Government and Consumer Services

Policy, Planning and Oversight Division

56 Wellesley Street West, 6th Floor

Toronto, ON, M7A 1C1

When responding, please provide your name and contact information such as an email or mailing address.

Name/Organization

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Please also check a box to indicate whether you comment primarily as a:

[ ] Business

[ ] Business Association

[ ] Consumer

[ ] Consumer Association

[ ] Academic

[ ] Other – You may enter your answer here

Thank you for taking the time to review these proposals. If you have any questions about this consultation, please email consumerpolicy@ontario.ca.

## Privacy Statement

Please note that unless agreed otherwise by the Ministry of Government and Consumer Services, all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed, and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve disclosing any response received to other interested parties. An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered to be public information. Responses from individuals may be used and disclosed by the ministry to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should it use, disclose, or publish individual responses, any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual’s prior consent unless required by law.  Contact information you provide may also be used to follow up with you to clarify your response.

If you have any questions about the collection of this information, please contact by email - consumerpolicy@ontario.ca.

# Scope of Application of the CPA Rewards Point Rules

When the amendments to the CPA come into force, they will protect Ontario consumers who enter into a wide variety of rewards point plans including:

* retailer-specific rewards programs
* multi-retailer programs
* rewards programs associated with credit cards.

# What Are Rewards Points?

The concept of “rewards points” covers any partial progress a consumer makes as a result of their transactions with a supplier towards a future entitlement to money, goods or services yet to be chosen.

When this partial progress is capable of being accumulated across transactions, it becomes a rewards point. Some programs may only apply to transactions with one supplier and others may apply to a variety of participating suppliers. The rewards point approach differs from other benefits earned immediately such as a “buy two get one free” offer because it depends on partial progress towards a benefit through what can be numerous transactions.

Rewards points earned under agreements with consumers are to be covered regardless of the form they take, as long as they are assigned on the basis of spending or transactions.

“Rewards points” would cover any way of expressing partial progress that must be accumulated to reach the point where a benefit can be accessed. For example, this progress could be measured as dollars spent, points, ‘Acme Dollars’, stars or using some other term. Partial progress may be based on dollar spending or through each transaction.

For example, the offer of a "get a $5 coupon for every $400 spent over time" can also be expressed as "every dollar spent earns a point and every 400 points earns a $5 coupon". Both approaches would be considered a rewards points offer.

Where there is a rewards points program under which a supplier will allow consumers to convert or exchange points earned from another supplier, those exchanged points would also be covered.

## Proposed regulation text:

 “For the purpose of the definition of ‘rewards points’ in section 1 of the Act, ‘rewards points’ means any way of expressing partial progress that must be accumulated before a benefit is accessible, whether earned across multiple transactions or through spending a certain amount and whether described as points, dollars spent, stars, or using any similar term, provided that such progress is capable of being accumulated across transactions.”

Note that Section 1 of the CPA allows for rewards points to be further defined by regulation.

**Question** #**1:** Do you agree with the proposed approach to define rewards points?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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# What Should Not Be Considered Rewards Points?

Not all benefits that are earned by accumulating partial entitlement across transactions or through spending a certain amount of money are rewards points. Examples of things that are not rewards points include tickets, coupons or vouchers for goods or services or price reductions in the future that represent a right already purchased or granted in full.

For example, a discount printed on a receipt that gives the customer $10 off their next purchase if it is used during the next week is not a “rewards point” nor is a coupon for 20 percent off the next purchase when the consumer spent at least $100 in a single transaction. These discounts would not be captured by the rewards points rules because they are a right granted in full, they do not express partial progress towards a future benefit and they are not capable of being accumulated across multiple transactions.

Some partial progress rewards are proposed to be excluded because they deal with specific goods or services. It would be unreasonable to require a business to keep a particular good or service in stock forever. A parallel can be drawn with the gift card expiry rules under the CPA: the gift card expiry limit does not apply to a voucher that is redeemable for one specific good or service such as a specific set of services at a spa.

Many of these programs are also simple punch or stamp card incentives offered by small retailers. A regulatory regime on such offers may be unduly burdensome to business.

Accordingly, it is proposed to exclude from these rules frequent customer rewards offers that provide “every x number of transactions for a certain product earns a free transaction for the same product” and are redeemable for specific goods or services that are identified at the outset. For example, this would exclude offers such as coffee cards which offer every tenth regular size drink free or a bakery punch card giving every seventh loaf of bread (any type) free.

## Proposed regulation text:

“For greater certainty, rewards offers that:

(1) propose to provide a consumer with one specific good or service after a certain amount of partial progress occurs; and

(2) where the good or service is identified at the outset of the offer

are not ‘rewards points’.”

**Question #2:** Do you agree with the proposed definition of rewards points?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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# Clarification of time-alone expiry

The amendments do not prevent rewards points from expiring if there is another reason for expiry in addition to the passage of time. This additional reason must be a substantive factor and not simply a disguised means of expiry for time-alone.

For example, a business may state that if a consumer doesn’t engage in transactions for a certain period of time then their points will expire. The purpose of loyalty programs is to encourage frequent spending with a particular business. It is reasonable that a business expects repeated spending to take place as part of the “bargain” it makes when issuing rewards points to a consumer.

However, rewards points expiry of this sort cannot be dependent on the consumer merely failing to ask for their points to not expire. Expiry should be based on something substantive, such as not earning or redeeming points for a period of time.

The credit back provision in 47.1(5) needs an exception to clarify that it only applies to points expired in the relevant time period due to the passage of time-alone – it should have the same scope as the rule in 47.1(1). See the Appendix for the text of these amendments to the CPA.

## Proposed regulation text:

“Time-alone expiry means the expiry of points based solely on reaching a certain point in time or based solely on when a certain amount of time has elapsed.”

and

“For greater certainty with respect to the interpretation of s. 47.1(1) of the Act, a consumer agreement under which rewards points are provided that states rewards points expire due to the passage of time unless a consumer actively requests the points to not expire or the points be reinstated after that period of time contravenes s. 47.1(1).”

and

“For greater certainty, the credit back obligation in section 47.1(5) of the Act applies only to rewards points that were expired in the relevant time period due to the passage of time alone.”

**Question #3:** Do you agree with the proposed approach to time-alone expiry?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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# Rewards Plan Termination Permitted Subject to Limit to Prevent Abuse

The CPA amendment is not intended to force any business to operate a rewards points plan forever.

Businesses have decided in the past, and may decide in the future, to wind up specific rewards plans for any number of appropriate business reasons. A rewards plan may prove unsuccessful or not be cost-effective.

However, if a business operates an ongoing series of rewards plans that it terminates and then starts anew, this approach appears to be simply another way of implementing time-alone expiry. The proposed regulation would require that in such cases points be carried over.

This proposed rule is not designed to prevent a business from offering season tickets or passes that have associated rewards programs that last only for the same season as the ticket or pass. Each future season could have a new rewards program created and not carry over points unless the business wished to offer that option. This approach would be considered fair because it would not be simply a time-limited rewards program. The rewards agreement would also be tied to an underlying purchase that itself provides goods or services over a limited time. The consumer would have the option to purchase further seasons or not. The business would not be operating a succession of rewards plans; rather it would be offering consumers new seasons with their own associated rewards plans. The rewards plan would simply be an incentive for more consumer interaction during the season.

The rule is also not intended to require a business to terminate its entire relationship with a consumer in order to terminate a rewards plan. For example, a wireless services provider could decide it had to wind up a rewards plan without cancelling all ongoing agreements for wireless services.

## Proposed regulation text:

“If within 12 months, a supplier terminates a consumer agreement under which rewards points are provided and then:

(a) reinstates that agreement or a previous agreement; or

(b) otherwise creates a new agreement that is substantially similar to any prior terminated consumer agreement under which rewards points are provided,

then under any such reinstated or new agreement, the supplier shall credit back the consumer with the same number of points the consumer had upon the termination of the most recent agreement described above.”

and

“Despite [the above provision], a supplier may terminate a consumer agreement under which rewards points are provided and expire the rewards points provided under that agreement upon such termination if:

1. the term of the consumer agreement is not more than 275 days;
2. the rewards points are associated only with one seasonal consumer agreement and cannot be acquired from other suppliers; and
3. at least 90 days would elapse between the termination of one such agreement and the entering into of any next such agreement.”

and

“For the purposes of section 47.1 of the Act, termination of a consumer agreement under which rewards points are provided occurs when:

1. a supplier terminates the portions of a consumer agreement that relate to rewards points without terminating the portions of a consumer agreement that do not relate to rewards points; or
2. a supplier terminates the entire consumer agreement.”

**Question #4:** Do you agree with the proposed rule for termination and reinstatement of plans?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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# Clarifying the Application of Rules

To avoid confusion when applying the rules, the regulation could make certain clarifications.

Clarification #1 - There are services offered by some suppliers that provide retailers with card and system infrastructure. Such services allow retailers to establish their own individual rewards programs in which they determine how points are rewarded and redeemed, although the consumer may have a card issued by the facilitating supplier. The proposed regulation would clarify that it is the retailer who is responsible for the rewards program, not the system supplier.

Clarification #2 - If a rewards points program was already winding up, having declared this wind-up before the new amendments received Royal Assent on December 8, 2016, but set the end date for collecting and redeeming points between October 1, 2016, and the date the new law comes into force, it is proposed that the new rules would not apply to that program. To avoid confusion and complicating matters for such a supplier, which may not have planned for this law, such a wind-up is proposed to be allowed to continue without being governed by the provisions of the new law.

## Proposed regulation text:

“Section 47.1 of the Act does not apply to a supplier who solely facilitates the provision of rewards points by another supplier by providing enabling infrastructure and is not involved, other than solely by way of such facilitation, in the issuance or redemption of the rewards points provided.”

and

“Subsection 47.1(5) and (6) of the Act do not apply to a rewards points program where a supplier gave notice of the wind-up of the entire rewards points program to each consumer participating in the program before December 8, 2016.”

**Question #5:** Do you agree with the proposed approaches to facilitating and winding up rewards points programs?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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# Phase-In Period to Implement Rules and Credit Back Expired Points

Once the proposed regulation is finalized and approved, it will be published before the law is proclaimed. Businesses will know what they must do to comply.

A key consideration for any business that was expiring points for the reason of the passage of time alone on or after October 1, 2016, is to be prepared and ready to credit those points back to Ontario consumers.

As the business community has known that this obligation would come into force for some time, the Government of Ontario proposes that 45 days from the time the final regulation is published is an adequate time for businesses to comply.

**Question #6:** Do you agree with the proposed time period of 45 days for business to come into compliance with the new rules?

[ ]  Yes

[ ]  No

[ ]  Other – Please Explain Below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

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**Question #7:** Thank you for participating in our consultation and providing your views on this paper. Please share any additional comments or suggestions you may have here:

You may enter any explanation and additional comments here

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# APPENDIX

# Unproclaimed Amendment to the Consumer Protection Act, 2002

“consumer agreement” means an agreement between a supplier and a consumer in which,

(a) the supplier agrees to supply goods or services for payment, or

(b) the supplier agrees to provide rewards points to the consumer, on the supplier’s own behalf or on behalf of another supplier, when the consumer purchases goods or services or otherwise acts in a manner specified in the agreement; (“convention de consommation”)

“rewards points” means, subject to the regulations, points provided to a consumer under a consumer agreement that can be exchanged for money, goods or services; (“points de récompense”)

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, including the supply of rewards points, and includes an agent of the supplier and a person who holds themself out to be a supplier or an agent of the supplier; (“fournisseur”)

**Rewards Points**

**No expiry of rewards points**

*47.1 (1)*Subject to the other provisions of this section, no supplier shall enter into or amend a consumer agreement under which rewards points are provided to provide for the expiry of rewards points due to the passage of time alone.

**Application and transition**

*(2)*This section applies to all consumer agreements under which rewards points are provided,

(a) that existed on October 1, 2016;

(b) that were entered into after October 1, 2016, but before the day this section came into force; or

(c) that are entered into on or after the date this section comes into force.

**Effect of termination**

*(3)*Subject to any prescribed exceptions, on and after the day this section comes into force, and upon providing notice to the other party, the supplier or the consumer may terminate the consumer agreement under which rewards points are provided, and if the consumer agreement so provided, the consumer’s accumulated rewards points may expire.

**Term of consumer agreement not enforceable**

*(4)*Any provision or part of a provision of a consumer agreement that contravenes this section or that fails to comply with the regulations with respect to rewards points is not enforceable, but such unenforceability shall not invalidate the remaining provisions in the consumer agreement.

**Retroactive effect on expiry of rewards points**

*(5)*Subject to any prescribed exceptions, within 15 days of this section coming into force, a supplier shall credit back to a consumer any rewards points that expired on or after October 1, 2016 and before the day this section comes into force.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (5) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))

**Transition: crediting back, supplier termination of consumer agreement**

*(6)*If a supplier terminated a consumer agreement under which rewards points were provided on or after October 1, 2016, and before the date this section came into force, the previously terminated agreement shall be deemed to not have been terminated and the supplier shall, within 15 days of this section coming into force, credit back to the consumer all rewards points that expired upon that termination.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (6) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))

**No cause of action for retroactivity**

*(7)*No cause of action arises against the Crown as a direct or indirect result of the retroactive application of this section or any regulations respecting rewards points, and no costs, compensation or damages are owing or payable by the Crown to any supplier, consumer or person as a result of such retroactive application.

**Evidence**

*(8)*In any proceeding under this Act about the crediting back of rewards points mentioned in subsection (5) or (6), despite any contractual provision to the contrary, a court or tribunal may consider records presented by the consumer, determine those records’ admissibility and may give those records whatever weight it sees fit.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (8) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))

**Other expiry allowed**

*(9)*Consumer agreements under which rewards points are provided may provide for expiry due to reasons other than the passage of time alone, subject to any limits that may be prescribed.

**No retroactive offences**

*(10)*Nothing in this section creates a retroactive offence.