

PAYMENTS CANADA HITS REFRESH ON PRE-AUTHORIZED DEBIT FRAMEWORK WITH UPDATES TO RULE H1

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Payments Canada recently authorized changes to Rule H1 for Pre-Authorized Debit (PAD) agreements.^[1] The changes, effective October 3, 2022 (and to be incorporated by December 31, 2023), implement the eight proposals from Payment Canada's 2021 consultation paper,^[2] which we [previously reviewed](#).

Proposal 1: Clarify the definition of "Commercially Reasonable".

The updated definition of Commercially Reasonable Methods allows a Payee to use any procedure(s) for verifying a Payor's identity that are "reasonable and appropriate, having regard to the methods of verifying identity in general use for similar types of business and payment applications, and other commercial circumstances of the Payor and Payee."

Factors that can influence the meaning of "Commercially Reasonable Methods" include the nature of the particular business, the amount of the transactions and the sophistication of the parties.

Specific examples of "Commercially Reasonable Methods" have been removed in favour of the general guidance described above, to address any misconception that the examples were an exhaustive list.

The standard Payee Letter of Undertaking – Mandatory Elements (Appendix I), now includes a requirement for the Payee to (a) confirm that it understands the definition of "Commercially Reasonable Methods" and has the required verification methods, and (b) agree to use Commercially Reasonable Methods for verification.

The definition of "authorization" has also been simplified to mean consent or agreement in accordance with applicable laws by a Payor whose identity has been verified by "Commercially Reasonable Methods".

Proposal 2: Remove the distinction between Paper and Electronic Agreements.

The distinction between electronic and paper PAD agreements has been removed, creating a uniform onboarding process for all PAD agreements, regardless of the medium. Payments Canada hopes this change will reduce onboarding time, improve customer experience, and facilitate contract management.

It also means that the following will apply equally to all PAD agreements, regardless of whether they are in

paper or electronic form:

- Payees must provide the date of the first debit and written confirmation of the agreement 10 days before the first debit. A Payor can waive or reduce this 10 day requirement. If the period is reduced, the Payee must provide the Payor written confirmation of their waiver within 5 days following the first payment.
- The Payee must provide the Payor with a written confirmation containing the details of the PAD agreement. This may take the form of a written copy of the agreement or a summary of the key terms of the agreement in the form of Appendix IV (Mandatory Elements of a Confirmation).
- The time to notify the Payor of a change in the fixed amount or due date of a PAD is now 10-days for all Personal and Business PAD agreements.

Proposal 3: Automatically terminate the Payor PAD Agreement when the associated goods and services contract is cancelled.

Rule H1 now allows the cancellation of any agreement, including a PAD agreement, between the Payee and Payor, where the goods and services contract sets out a cancellation period that does not exceed 30 days.^[3] Such cancellation becomes effective at the end of the cancellation period.

Proposal 4: Define “One-Time” PADs and prohibit additional transactions under one-time agreements.

Rule H1 now defines “One-Time” payments as occurring “once on a set date” and allows for one-time PAD agreements for a single transaction. In a one-time PAD, the agreement will terminate once the designated payment is complete. Any subsequent PAD transaction will require a new agreement.

Proposal 5: Clarify information requirements when outsourcing PAD processing to Payment Service Providers.

The amendments clarify that where a Payee is collecting payments on behalf of an entity providing the Payor with goods or services, the PAD agreement must have a statement describing the arrangements between the Payee and the entity providing such goods or services.

Proposal 6: Modify Rule H1, Appendix II to address the jurisdiction of Payor PAD Agreements and Funds Transfer PADs from a joint bank account.

Appendix II has been modified to permit PAD agreements to include an optional Governing Law and Choice of Forum clause for all PAD agreements.

Proposal 7: Add requirements for Payee-initiated cancellation of a PAD Agreement.

Rule H1 now allows Payees to terminate a Payor’s PAD Agreement in accordance with the terms of the PAD

agreement. If the PAD agreement does not address termination by the Payee, the agreement can be cancelled on 30 days' written notice.

Proposal 8: Allow Recorded Submissions of Business PAD reimbursement claims.

The amendments remove the limitations on Business PAD Recorded Reimbursement Claims and harmonize the process for Personal, Funds Transfer, and Business PADs. Payees may now obtain from the Payor making the claim a duly completed Recorded Reimbursement Claim for business PADs.

Takeaways for Businesses

Businesses that operate using PADs should be aware of the changes to Rule H1 and review their PAD agreements to ensure compliance. Although the changes to Rule H1 are effective October 3, 2022, businesses will have until December 31, 2023 to comply with the revisions.

[1][ps2id id='1' target=''] Canadian Payments Association, "Rule H1: Pre-Authorized Debits (PADS)" (2022) at 7, online (pdf): [Payments Canada](#).

[2][ps2id id='2' target=''] "Amendments to rule H1 facilitate Pre-Authorized Debit (PAD) user experience" (October 3, 2022), online: [Payments Canada](#).

[3][ps2id id='3' target=''] Canadian Payments Association, "Rule H1: Pre-Authorized Debits (PADS)" (2022) at 20, online (pdf): [Payments Canada](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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