



INSTRUCTION GUIDE

**Subject: Administrative Procedures for the
Late and Erroneous Filing Penalty (LEFP) Framework**

Date: December 2004

BACKGROUND

OSFI requires all federally regulated financial institutions (FRFIs) to file a variety of financial and corporate information required by statute or that OSFI deems necessary to carry out its legislative mandate. Much of this information is required in accordance with a pre-determined schedule and is subjected to review for accuracy and completeness when received.

The Late and Erroneous Filing Penalty Framework (LEFP) became fully operational on April 1, 2002. Each institution's filing performance is tracked on a calendar quarter basis. Quarterly reports indicating the type and amount of penalties are issued to institutions that have incurred a penalty in any of the first three quarters; all institutions receive a report, including a year-to-date summary, at the end of the fourth quarter.

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OVERVIEW OF THE LEFP FRAMEWORK

The LEFP framework does not generate revenues for OSFI. Any amounts collected under this framework are applied to the Consolidated Revenue Fund and are not available to reduce the amount that OSFI assesses the industry in respect of its operating costs.

Statutory Authority

Under the *Filing Penalties (Office of the Superintendent of Financial Institutions) Regulations* (the “Regulations”) made under the *Office Of The Superintendent Of Financial Institutions Act*, the Superintendent has authority to assess penalties against financial institutions or the administrator of a pension plan where that financial institution or administrator fails:

(a) To file a return or other information required by the Act of Parliament that governs the financial institution or the *Pension Benefits Standards Act, 1985*, as the case may be, at the interval set out in, or within the time required by, that Act; or

(b) To provide complete and accurate information with respect to the return or other information required by the Act of Parliament that governs the financial institution or the *Pension Benefits Standards Act, 1985*, as the case may be.

The *Financial Consumer Agency of Canada Act* (Bill C-8), which became effective in October 2001, broadened the Superintendent’s authority to assess monetary penalties. Under these provisions, the present authority to assess penalties under the LEFP framework will be included in a broader regulation, the *Administrative Monetary Penalties Regulations*. These regulations are likely to be effective some time in 2005.

General Principles

In developing the framework, OSFI was guided by the principles of simplicity, transparency, consistency and fairness. The variety and complexity of OSFI’s filing requirements have nonetheless required compromises in one or more of these principles in certain aspects of the framework.

Simplicity in the structure and administration of the framework is essential to its effectiveness for both FRFIs and OSFI. The principle of transparency speaks to the extent to which the details of the framework are communicated with and understood by all stakeholders. Consistency of the framework’s impact, both within and across sectors, has been a challenging issue to resolve, as has the objective of creating a framework that recognizes the potential interplay between accuracy and timeliness of information. Fairness is an element in both the structure and application of the framework.

Scope of Application

The LEFP framework applies to all FRFIs, including banks, federally-regulated trust and loan companies, co-operative credit associations, life insurance companies, fraternal benefit societies, property and casualty insurance companies and all branches of foreign banks, foreign insurance companies and foreign fraternal benefit societies operating in Canada. Federally regulated pension plans are not currently subject to the framework.

At the end of each calendar year, OSFI distributes to all FRFIs an updated list, if required, of all returns that are subject to the framework in the ensuing calendar year. [**Note: a reference in this Guide to “returns” includes “regulatory returns and related documents”.**] The returns that are subject to the framework are included in the Appendix. The Appendix also includes the due dates for individual returns, and whether a return is subject to penalty for being late and erroneous or only for being late. Generally speaking, information that is collected by OSFI in standardized form and/or content and in accordance with a defined schedule or subject to the occurrence of a specific event (i.e., information that is collected via returns) are subject to the framework. Some returns are subject to a penalty for being late or erroneous and some only for being late.

Filings that are required by other federal agencies, such as the Bank of Canada and Statistics Canada, are not subject to the LEFP framework. However, the Bank of Canada is monitoring deposit-taking institutions for compliance with its filing requirements, and may decide to take similar steps in the future, depending on its experience.

Penalties – Amounts and Related Information

The table below outlines the penalty structure. In the interest of establishing penalties that act as meaningful deterrents but that also recognize the significant differences in the size of FRFIs, the penalties that may be levied are tiered according to a FRFI's total assets as at December 31 of the preceding year. The penalties are *per diem* charges that are assessed in respect of individual returns (defined above) that are late and/or erroneous. For purposes of administrative efficiency, invoices are not issued for violations where the penalty is \$200 or less.

It is important to note that the Superintendent does not have authority to reduce or increase the amount of a *per diem* penalty set under the LEFP Framework, because the *per diem* rates, as set out in the following table, are set in the Regulations:

FRFI Total Assets ¹	Per Diem Penalty ²
Greater than \$10 billion	\$500
Greater than \$250 million but less than or equal to \$10 billion	\$250
Less than or equal to \$250 million	\$100

In accordance with the Regulations, the maximum penalty that may be imposed against a FRFI in respect of a specific violation is \$25,000.

A late return attracts a penalty at the prescribed *per diem* rate. An erroneous return is considered late, in effect, and attracts the same *per diem* penalty until such time as it is re-submitted and determined by OSFI to be error-free. If a return that is filed on or before the due date is determined by OSFI to be erroneous, a penalty is not applicable if an error-free correction is received by OSFI before the end of the day on which the return is due.

There is no “doubling up” of penalties. That is, a return that is both late and determined to be erroneous when it is received is assessed a single *per diem* until such time as OSFI receives an error-free revision.

No penalty is charged if a return cannot be filed on time because OSFI is not able to receive the return due to an event outside the control of OSFI or the FRFI, such as a major systems failure, power outage, etc. which prevents the FRFI from producing or delivering the return or filing to OSFI. An “event outside the control of OSFI or the FRFI” does not include the failure of Canada Post or a courier firm to deliver materials if they are otherwise available and operating.

Definition of “Late”

As a general rule, a return or filing that is subject to the LEFP Framework must be made in the form and manner prescribed in the relevant instructions, and it must be complete. If it fails to meet any of these requirements, it is be subject to penalty.

The due dates for some returns are prescribed by statute, whereas the due dates for others are outlined in various reporting manuals and memoranda. In most cases, a due date is defined in

¹ As at December 31 of the preceding year.

² Per violation, for each day the violation continues.

terms of a specified number of days following a given date, such as the last day of a fiscal or calendar quarter, or a specified number of days after the occurrence of a specific event. The Appendix summarizes the relevant due dates for returns that are subject to the LEFP framework. Where there is any doubt, however, the relevant statute (as applicable), reporting manual, or OSFI memorandum is the final authority and should be consulted.

In general, the due date for determining whether a return is on time is the due date as prescribed, and there is no grace period. For example, an error-free return that is received before the end of the first day following the due date is considered one day late.

The following guidelines apply for the purpose of calculating the number of days a return is late:

- The due dates for specific returns and filings are as set out in the Appendix. Where the prescribed due date for any return falls on a federal holiday, the due date (for LEFP purposes) in that instance is the first business day following the federal holiday;
- In the case of returns that must be filed electronically in accordance with OSFI's filing instructions, where a prescribed due date falls on a weekend day, the due date (for LEFP purposes) is the prescribed due date;
- In the case of returns that must be filed in hard copy or on diskette in accordance with OSFI's filing instructions, where a prescribed due date falls on a weekend day, the due date (for LEFP purposes) in that instance is the first business day following the weekend;
- In the case of any return that is not received by the end of the day on which it is due, weekend days and holidays (except where the due date falls on a federal holiday) are included in the number of days the return is late;
- The date received is the date recorded by OSFI's systems in the case of returns that must be filed electronically;
- **OSFI's date stamp is the date received in the case of returns that must be filed in hard copy or diskette; all returns must be received directly by the Regulatory Information Division, 255 Albert Street, 13th floor, Ottawa, ON K1A0H2 on or before the due date, to be considered filed on time;**
- A day ends at midnight in the case of returns that must be filed electronically, or at the close of business in the case of returns that must be filed in hard copy or on diskette;
- An incomplete return, where completeness is determined in relation to the requirements of the relevant instructions, is considered "not filed" until OSFI receives all necessary elements of the return.
- If a diskette is received at OSFI but data cannot be loaded onto OSFI systems due to improper file name, header record, file format, etc., the applicable return(s) is(are) considered "not filed".

Method of Delivery

OSFI does not require any particular method of delivery for returns and filings that must be filed in hard copy or on diskette. The use of Canada Post, private courier services or other methods of delivery is entirely at the discretion and risk of the FRFI. As noted above, OSFI's date stamp is the date received in the case of returns that must be filed in hard copy or diskette.

Definition of "Erroneous"

The LEFP Framework imposes penalties for returns (original and any subsequent submission) that contain errors. Although the focus in this regard is on financial returns (primarily because errors may be more readily identified in financial information than in corporate information), OSFI does review certain corporate returns to identify and resolve errors in their completion.

Errors can take several forms: those that can be identified by OSFI's validation processes ("Type I" errors); those that cannot be identified by OSFI's validation processes but which subsequently are brought to OSFI's attention by the FRFI ("Type II" errors); and those that are identified through other means.

Financial returns, and certain corporate returns, are subjected to a variety of validation rules when they are received by OSFI. Most of OSFI's validation rules are mathematical rules that test the data for internal consistency, with very narrow tolerance levels.

The validation process may identify errors within an individual financial return or across two or more returns, and these (Type I) errors are subject to penalty. Type I errors should be avoidable, however, because they are the result of failure to comply with validation rules. In addition, every FRFI has the ability to run the same validation rules against the information reported in its financial returns that OSFI uses to identify Type I errors. OSFI posts all the rules used by deposit-taking institutions in the process of validating data in financial returns on the Automated Data Transfers (ADT) website. Validation rules applicable to financial returns filed by federally regulated insurance companies and fraternal benefit societies are posted on OSFI's website, and have been known by these institutions for a number of years. Errors identified in corporate returns will be treated as "Type II" errors and one *per diem* penalty will be applied.

"Freebies"

It is vital that the regulatory information filed by FRFIs is not only timely but also consistently accurate, as the occurrence of errors may significantly impede OSFI's ability to carry out its mandate effectively. OSFI acknowledges, however, that errors can and do occur occasionally in the information reported in returns, and does not want to discourage FRFIs from coming forward with revised information to correct errors that the validation process does not detect (Type II errors). As a result, the LEFP Framework includes the concept of "freebies" in respect of

financial returns (this concept does not apply to corporate returns listed in section V of the Appendix) whereby a FRFI can file revisions to original returns up to an annual limit before those revisions attract a penalty. Some validation rules test for “reasonableness”. These reasonableness rules highlight data that may be correct but that warrant investigation because, for example, the data is inconsistent with historical trends. If the application of a reasonableness rule results in an error-free revision, a freebie is used, if available; if not, a revision fee applies.

For greater certainty, please note that “freebies” apply to revisions only (i.e. Type II errors) to financial returns; freebies do not apply to late financial returns, to financial returns with Type I errors, or to any corporate returns. Errors identified in corporate returns will be treated as “Type II” errors and one *per diem* penalty will be applied.

The number of “freebies” varies by type of FRFI as follows:

Institution Group	Number of “Freebies” per year
Deposit-Taking Institutions (excluding subsidiaries)	20
- Banks, Trust & Loan Companies that are subsidiaries of either Banks or Trust & Loan Companies	9
Canadian Life Insurers	6
Canadian Life Reinsurers	6
Canadian Fraternal Benefit Societies	6
Foreign Life Insurers	6
Foreign Life Reinsurers	6
Foreign Fraternal Benefit Societies	6
Canadian P&C Insurers	6
Canadian P&C Reinsurers	6
Foreign P&C Insurers	6
Foreign P&C Reinsurers	6
Credit Cooperative Societies	6

Erroneous Returns

The following guidelines apply for the purpose of applying the LEFP Framework to erroneous returns:

- A FRFI that files an erroneous return is assessed a *per diem* penalty regardless of the number of errors in the return;

- An erroneous return that is filed late continues to attract a *per diem* penalty at the prescribed rate until such time as OSFI receives an error-free corrected return (corrections of Type I errors in erroneous returns are not part of the “freebies” concept outlined above);
- OSFI notifies (by telephone or e-mail) FRFIs of Type I errors as they are identified. (Note: DTIs filing financial returns must inform OSFI of any changes to the TDS e-mail contact to ensure correct error notification.)
- Regardless of the date of notification, the penalty is calculated from the due date in the case of an erroneous return that is filed on or before the due date and not corrected before the end of the day on which it is due, and in the case of an erroneous return that is filed late;
- A FRFI that files a financial return containing Type II errors (those volunteered by a FRFI or identified by OSFI as a result of, for example, investigating the triggering of a reasonableness rule) and requiring a revision are subject to a “revision fee” of an amount equal to one *per diem* penalty, but only when that FRFI has used up its allocation of “freebies”. Corporate returns containing Type II errors and requiring a revision are subject to one *per diem* penalty.
- A revision containing a Type I error (i.e. fails a validation rule) generates a *per diem* penalty until an error-free correction is received;
- “Revision fees” generally do not apply to historic revisions. In the LEFP framework a “historic revision” refers to a revision that corrects a Type II error across multiple time periods, and is considered as one revision, provided that the institution contacts OSFI when the revision is submitted. If other returns are affected by the revision, corrections to these returns may be included in the original revision fee;
- A return filed on an out-of-date or incorrect form is considered to be a Type I error;
- In the case of cross-return errors, only the return that triggers the error (in general, the last one to be filed of the returns affected) is subject to penalty, regardless of the number of returns affected. The date that return is received by OSFI is the starting date for the purpose of calculating the amount of the penalty;

Exceptions

The circumstances under which a penalty is to be assessed and the amount of the penalty are prescribed by regulation – OSFI has no discretion in either of these areas. OSFI is, however, able to exercise discretion as to whether a penalty is assessed when the circumstances outlined in the regulation have been met. OSFI exercises this discretion judiciously so as not to undermine the integrity of the framework. The number of exceptions is low.

Monitoring, Reporting and Invoicing

Because of the important role these filings play in OSFI's supervisory and regulatory responsibilities, OSFI normally follows up, where possible, with every FRFI to resolve each instance of late filing or apparent errors within the filing. Note, however, that OSFI is not committed to following up within any specified time period.

OSFI provides each FRFI that files returns late or with errors (in a particular calendar quarter) with a quarterly report of its filing record for that quarter (including its calendar year-to-date filing record); also, each FRFI receives a fourth quarter report showing its filing record for the preceding calendar year (whether or not the FRFI incurred penalties in the preceding calendar year).

The quarterly reports are issued and mailed on or about the middle of the month following each calendar quarter, and are addressed to the Chief Compliance Officer.

Invoices are issued quarterly,

Additional Information

For additional information or explanation, please call the Regulatory Information Division (613) 990-1889 (for information related to returns), or the Compliance Division (416) 954-6466 for information relating to penalties).

APPEALS PROCESS

Upon receipt of an invoice from OSFI, a FRFI that has good reason(s) to object to a penalty (penalties), may appeal by writing a letter, **within 30 days of the date that the invoice was received**, to

OSFI
Attn: Senior Director
Compliance Division
121 King Street West, 22nd floor
Toronto, ON M5H 3T9

The letter should state the reason(s) for the appeal and should be signed by an appropriate senior officer of the FRFI, such as the Chief Compliance Officer, the Corporate Secretary, the Chief Accountant (DTIs), the Chief Financial Officer (Insurers), or the Chief Agent or Principal Officer (Branches of foreign companies and foreign bank branches).

The Compliance Division will respond in writing within 30 days. If, after consulting with the Relationship Manager of the FRFI, the decision is made not to impose a penalty, the amount(s) in question are adjusted accordingly. If the decision is to proceed with the penalty, the FRFI may request that the decision be reviewed, by writing within 30 days to the Assistant Superintendent, *Regulation Sector*. The decision of the Assistant Superintendent is final.

OSFI'S DISCLOSURE OF FINANCIAL INFORMATION

Neither the timing nor content of OSFI's disclosure of financial regulatory information, pursuant to the various financial institution statutes, influences the operation of the LEFP framework, or vice versa.

APPENDIX
Returns and Related Documents Subject to LEFP for the year 2005

Note: all items must be filed directly with the Regulatory Information Division, 255 Albert Street, 13th floor, OTTAWA, ON K1A 0H2

I. Financial Returns - Deposit-Taking Institutions

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late & Erroneous (L&E) Late (L)
Consolidated Balance Sheet	M4	28	L&E
Consolidated Statement of Income	P3	45 (60 days for Q4)	L&E
Non-Mortgage Loans Assets Classified by Institutional Sector	A2	45	L&E
Mortgage Loans Report	E2	45	L&E
Securities Report	B2	45	L&E
Regional Distribution of Assets And Liabilities	R2	60	L&E
Deposit Liabilities Classified by Institutional Sector	C2	45	L&E
Pledging Report	U3	45	L&E
Return of Non-Mortgage and Mortgage Loans in Arrears	N3	45	L&E
Return of Impaired Assets	E3	45	L&E
Interest Rate Risk and Maturities Matching Return	I3	45	L&E
Capital Adequacy Return	G3	45	L&E
Capital Adequacy Return – Market Risk	M3	45	L&E
Allowance for Impairment	C3	45	L&E
Quarterly Supplementary Return for Foreign Bank Branches	K3	45	L&E
Charge for Impairment	C1	45	L&E
Unclaimed Balances Report	--	60	L
Annual Return of Authorized Foreign Bank (Foreign Bank Branches)	OSFI-520	Within 60 days of end of financial year	L
Annual Return (Credit Union Centrals only)	OSFI-68	60	L&E

II. Life Insurance Companies and Fraternal Benefit Societies

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late & Erroneous (L&E) Late (L)
Canadian Life – Annual *	OSFI-54	60 (105 for Reinsurers)	L&E
– MCCSR *	OSFI-87	60 (105 for Reinsurers)	L&E
– Seg. Funds *	OSFI-85	60	L&E
Canadian Life – Quarterly **	OSFI-54	45	L&E
– MCCSR **	OSFI-87	45	L&E
Foreign Life – Annual *	OSFI-55	60 (105 for Reinsurers)	L&E
– TAAM *	OSFI-86	60 (105 for Reinsurers)	L&E
– Seg. Funds *	OSFI-85	60	L&E
Foreign Life – Quarterly **	OSFI-55	45	L&E
– TAAM **	OSFI-86	45	L&E
Canadian Fraternal – Annual *	OSFI-56	60	L&E
– MCCSR *	OSFI-87	60	L&E
– Seg. Funds *	OSFI-85	60	L&E
Foreign Fraternal – Annual *	OSFI-77	60	L&E
– TAAM *	OSFI-86	60	L&E
– Seg. Funds *	OSFI-85	60	L&E
Auditor's Report to Superintendent - Canadian Life	--	60 (105 for Reinsurers)	L
Auditor's Report to Superintendent - Foreign Life	--	May 31	L
Auditor's Report to Superintendent - Canadian Fraternal	--	60	L
Auditor's Report to Superintendent - Foreign Fraternal	--	May 31	L
Actuary's Report - Annual Return	--	60 (105 for Reinsurers)	L
Actuary's Report – DCAT	--	Earlier of: 30 days after presentation to Board of Directors/Chief Agent, and one year after fiscal year-end	L
Auditor's Report on MCCSR - Canadian Life	--	90 (135 for Reinsurers)	L
Auditor's Report on TAAM - Foreign Life	--	May 31	L

* Hard copy and diskette. Note: please ensure that the checklist (attached to the diskette validation report) is filled in before filing

** Diskette only

III. Financial Returns - Property and Casualty Insurance Companies

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late & Erroneous (L&E) Late (L)
Canadian P&C – Annual *	P&C-1	60 (105 for Reinsurers)	L&E
Canadian P&C – Quarterly **	P&C-1	45	L&E
Foreign P&C – Annual *	P&C-2	60 (105 for Reinsurers)	L&E
Foreign P&C – Quarterly **	P&C-2	45	L&E
Auditor's Report to Superintendent - Canadian P&C	--	60 (105 for Reinsurers)	L
Auditor's Report to Superintendent - Foreign P&C	--	May 31	L
Actuary's Report - Annual Return	--	60 (105 for Reinsurers)	L
Actuary's Report – DCAT	--	Earlier of: 30 days after presentation to Board of Directors/Chief Agent, and one year after fiscal year-end	L

IV. Corporate Returns

This list applies to Canadian and foreign entities, including banks, trust and loan companies, life insurance companies, property and casualty insurance companies, fraternal benefit societies and co-operative credit associations, as applicable.

For Filing Instructions applicable to Corporate Returns, please refer to the letter issued by Mr. Jeff Bee of the Regulatory Information Division dated December 2004.

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late (L)
Return of Corporate Information (Canadian entities)	OSFI-57*	Within 30 days of Annual Meeting or resolution in Writing in lieu of Annual Meeting	L
Notice of Change of Corporate Information (Canadian entities)	OSFI-57A*	Within 15 days of effective date of change	L
Return of Officers, Auditor and Appointed Actuary (Foreign entities)	OSFI-513*	Within 60 days of end of financial year	L
Notice of Change in Officers, Auditor or Appointed Actuary (Foreign entities)	OSFI-513A*	Within 15 days of effective date of change	L
Notice of Annual or Special Meeting of Shareholders, Proxy Circular/ Dissidents' Proxy Circular, Form of Proxy (Canadian entities)	--	Must be received by OSFI no later than 15 days prior to Annual Meeting.	L
Copy of Power of Attorney for Appointment of Principal Officer (Foreign Bank Branches)	OSFI-512	Within 15 days of effective date of appointment	L
Copy of Power of Attorney for appointment of Chief Agent and change of address (Foreign Insurance Companies)	OSFI-25	Within 15 days of effective date of appointment	L
By-Laws (Canadian entities only)	--	Within 30 days of the effective date of change	L
Report of the Conduct Review Committee (Canadian entities only)	--	Within 90 days after the end of financial year	L

* Hard copy and diskette