



INSTRUCTION GUIDE

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

Date: **April 2011**

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 FRFI's filing performance is tracked on a calendar quarter basis. Please refer to the Monitoring, Notices of Violation, Notices of Decision and Invoicing section of the Instruction Guide for further details.

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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 *Office of the Superintendent of Financial Institutions Act* (the “Act”) and the *Administrative Monetary Penalties (OSFI) Regulations* (the “Regulations”) that were made under that Act and that came into force on August 31, 2005, the Superintendent has authority to impose penalties against financial institutions or natural persons in respect of the violations set forth in the Regulations. Section 5 of the Regulations sets out the penalties applicable to the minor violations covered by the LEFP Framework.

General Principles

In administering the LEFP framework, OSFI is guided by the principles of simplicity, transparency, consistency and fairness. The variety and complexity of OSFI’s filing requirements nonetheless require flexibility in adhering to these principles.

Simplicity in structure and administration 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, life insurance companies, fraternal benefit societies, property and casualty insurance companies, co-operative credit associations, cooperative retail associations and all authorized foreign banks, foreign insurance companies and foreign fraternal benefit societies operating in Canada. Federally regulated pension plans are not currently subject to the framework.

The returns¹ that are subject to the framework, and related due dates, are listed in the Appendix.

The Appendix also indicates whether a return is subject to penalty for being late, erroneous or both. 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) is subject to the framework.

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 monitors 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 year preceding the date of the Notice of Violation. The penalties are *per diem* charges that are assessed in respect of individual returns that are late and/or erroneous. For purposes of administrative efficiency, invoices will not be issued for violations where the penalty is \$200 or less.

FRFI Total Assets ²	Per Diem Penalty ³
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

¹ References in this Guide to “returns” and/or “filings” include regulatory returns and related documents.

² As at December 31 of the preceding year.

³ Per violation, for each day the violation continues.

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 table above, are prescribed by the Regulations.

The Regulations specify that 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 correction.

Definition of “Late”

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

The due dates for some returns are prescribed by statute, whereas the due dates for others are prescribed in various reporting manuals and memoranda. In most cases, a due date is defined in 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 prescribed due dates for each return that is subject to the LEFP framework. Where there is any doubt, however, the relevant statute (as applicable), filing instruction, reporting manual, or OSFI memorandum is the final authority and should be consulted.

In general, the due date for determining whether a return is late 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:

- Where the prescribed due date for any return falls on a federal holiday or on a Saturday, the due date (for LEFP purposes) is the first business day following the federal holiday (Sundays are defined as holidays under the *Interpretation Act*). Note, however, that in the case of DTI returns that must be filed electronically (i.e., via ADT) in accordance with OSFI’s filing instructions, where a prescribed due date falls on a federal holiday or on a Saturday, the due date (for LEFP purposes) is the prescribed due date;
- In the case of any return that is not received by the end of the day on which it is due, federal holidays and Saturdays are included in the number of days the return is late;

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- The date the return is received is the date recorded by OSFI's systems in the case of returns that must be filed electronically;
 - **The date the return is received is OSFI's date stamp 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, 12th 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 or validation rules, is considered "not filed" until OSFI receives all necessary elements of the return; and
 - 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".

Compliance with Filing Requirements and Method of Delivery

FRFIs are reminded that it is their responsibility to provide OSFI with the returns and filings listed in the Appendix. This includes taking reasonable measures to ensure they reach OSFI by the prescribed due date, and not merely that they are mailed or otherwise dispatched by the prescribed due date. Therefore, FRFIs must take into account and allow for the necessary time to deliver returns and filings to OSFI. 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.

Erroneous Returns

The LEFP Framework imposes penalties for returns (original and any subsequent submission) that contain errors. Although the focus 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.

OSFI classifies errors as follows:

- Type I errors: those that can be identified by OSFI's validation processes; and
- Type II errors: those that cannot be identified by OSFI's validation processes but which subsequently are brought to OSFI's attention by the FRFI or in some other way.

Financial 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 in a single return, or in two or more returns, and these (Type I) errors would result in Violations in respect of all the returns affected. However, Type I errors should be avoidable because they are the result of failure to comply with the validation rules. In addition, every FRFI has the ability to run OSFI's validation rules against the information reported in its financial returns to identify Type I errors. OSFI posts all the validation 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.

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

- A FRFI that files an erroneous return is assessed a *per diem* penalty regardless of the number of errors in the return;
- 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. Send changes to: RID@osfi-bsif.gc.ca)
- A *per diem* penalty for error is calculated from the due date to the date of resolution (in the case of an erroneous return that is filed on or before the due date), Returns uncorrected by the due date will continue to attract a *per diem* penalty at the prescribed rate until such time as OSFI receives an error-free corrected return;
- OSFI acknowledges that Type II errors can and do occur occasionally and does not want to discourage FRFIs from correcting errors that the validation process does not detect. A FRFI may file corrections to previously submitted returns (that had passed validation rules) without penalty.
- A revision containing a Type I error (i.e. fails a validation rule) continues to attract a *per diem* penalty at the prescribed rate until such time as OSFI receives an error-free corrected return;
- 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 Type I errors, only the originating error (in general, the first 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.

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

- A return filed on an out-of-date or incorrect form is a Type I error;
- Corporate returns contain features designed to reduce the possibility of entering information that is contrary to regulatory requirements. Information that contravenes regulatory requirements will be treated as a Type I error. Errors in other information will be treated as Type II errors. Please note that all Types I and II errors will be subject to a revision fee.

OSFI Discretion in Applying Penalties

The *per diem* amount of each penalty is prescribed as noted above – OSFI has no authority to waive or reduce the *per diem* amount of a penalty once it has been incurred. OSFI may, however, exercise discretion as to whether a penalty should be imposed. OSFI exercises this discretion judiciously so as not to undermine the integrity of the LEFP Framework. The number of penalties dealt with in this way is low. Please refer to the Administrative Review Process outlined below for further information.

The returns and filings listed in the Appendix are either statutory in nature or required by the Superintendent. FRFIs in “run off” continue to be responsible for all filings and returns until such time as they cease to be FRFIs (e.g. until the issuance of Letters Patent of Dissolution or, in the case of a foreign branch, until the revocation of its order to commence and carry on business). Returns required by the Superintendent may be waived by the FRFI’s Relationship Manager or other responsible authority within OSFI. However, OSFI does not have authority to waive returns required by statute. FRFIs should therefore ensure that all returns and filings, as listed in the Appendix, continue to be filed unless notified to the contrary.

Monitoring, Notices of Violation, Notices of Decision and Invoicing

Because of the important role these filings play in OSFI’s supervisory and regulatory responsibilities, OSFI normally follows up, where possible, with FRFIs to ensure that we collect the correct information we are legally obliged to receive and process. **However, OSFI does not guarantee that a reminder will be issued for all or for any particular return or filing. Responsibility for ensuring that filings reach OSFI on time and error free is that of the FRFI. Further, OSFI is not committed to issuing reminders within any specified time period. A decision to impose a penalty will be unrelated to whether OSFI issued a reminder, as it is the institution’s responsibility to file on time and error free.**

If a return cannot be filed on time because OSFI is not able to receive it due to an event outside the control of OSFI, or if OSFI makes an error that affects the correct recording of the filing date, any penalty assessed will either not be imposed, or corrected accordingly.

OSFI will provide each FRFI that files returns late or with errors (in a particular calendar quarter) with a Notice of Violation setting out late and/or erroneous filings recorded in that quarter. Notices of Violation are issued and mailed on or about the middle of the month following each calendar quarter, and are addressed to the Chief Compliance Officer. **Note that Notices of Violation only list returns that were received by OSFI during the period and do not list returns that were due and not received during such period.**

A Notice of Decision and invoice is issued 40 days after the date on the applicable Notice of Violation, unless an administrative review of the penalty has been requested. When the administrative review is complete, a letter will be issued, and subsequently an invoice will be issued if the review is unsuccessful or partly successful. (Please refer to “Administrative Review Process” below for detailed information).

Additional Information

For additional information or explanation, please call the Regulatory Information Division (613) 990-1889.

ADMINISTRATIVE REVIEW PROCESS

A FRFI that has a compelling reason(s) to object to a penalty (penalties) set forth in a Notice of Violation may request an administrative review. **Representations made in support of a request for administrative review must be made in writing and must be received by OSFI at the latest no later than 35 days after the date of the Notice of Violation.** Requests must be addressed to:

OSFI
Attn: Senior Director
Legislation and Approvals Division
255 Albert Street, 15th floor
Ottawa, ON K1A 0H2

The request must state the compelling reason(s) for the review. See below for a discussion about what OSFI considers “compelling”. The letter must 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 authorized foreign banks). **Requests for review received after the above deadline will normally not be considered.**

A “compelling” reason for an administrative review is something over which the FRFI had little or no control. Examples could include a major systems failure, a major power outage, an emergency office closure, or a similar situation or business interruption that prevented the FRFI from producing or delivering the return or filing to OSFI on time and error free. **Examples of situations that will not be considered by OSFI as compelling include: the failure of Canada Post or a courier firm to deliver materials if they are otherwise available and operating; breakdowns in internal controls, staff shortages and vacations; the FRFI’s previous filing record; and similar situations within the control of the FRFI.** FRFIs are expected to have appropriate procedures in place to ensure that all returns and filings reach OSFI on time and error free. FRFIs are requested to review OSFI Guideline E-13 for an outline of OSFI’s compliance management expectations.

OSFI will normally respond in writing to a request for an administrative review within 30 days. If, after consulting with the Relationship Manager of the FRFI, the decision is made not to impose a penalty, the FRFI will be advised in writing. If the decision is to withdraw the penalty, no Notice of Decision is issued.

If a FRFI is not satisfied with the response, it may ask that the matter be reviewed by the Assistant Superintendent, Regulation Sector. The decision of the Assistant Superintendent is final and will be incorporated into the Notice of Decision to be issued to the FRFI.

OSFI’S DISCLOSURE OF FINANCIAL INFORMATION

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

APPENDIX
Returns and Related Documents subject to LEFP for the year 2010

**Note: all items must be filed directly with the Regulatory Information Division, 255 Albert Street,
12th floor, OTTAWA, ON K1A 0H2**

I. Financial Returns: Deposit-Taking Institutions and Bank Holding Companies

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late & Erroneous (L&E) Late (L)
Consolidated Balance Sheet	M4	30	L&E
Consolidated Statement of Income	P3	30	L&E
Non-Mortgage Loans Assets Classified by Institutional Sector	A2	45	L&E
Mortgage Loans Report	E2	45	L&E
Deposit Liabilities Classified by Institutional Sector	C2	45	L&E
Pledging Report & REPOS	U3	45	L&E
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
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
Basel II Capital Adequacy Reporting	BA	30	L&E
IRB Wholesale Portfolio Credit Data – Part 1	BB	30	L&E
IRB Wholesale Portfolio Credit Data – Part 2	BC	30	L&E
IRB Retail Portfolio Credit Data – Part 1	BD	30	L&E
IRB Retail Portfolio Credit Data – Part 2	BE	30	L&E
Standardized Institutions Credit Monitoring Data Call	BH	30	L&E
Market Risk Monthly Data Call	BK	12	L&E
Market Risk Quarterly Data Call	BL	12	L&E
Market Risk Quarterly Supplemental Data	BM	12	L&E
Credit Union Centrals only	OSFI-68		
- Annual		60	L&E
- Quarterly		45	L&E

II. Financial Returns: Life Insurance Companies, Insurance Holding Companies, Non-operating Life 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 & Fraternal – Annual – MCCSR - Annual	LIFE-1 OSFI-87	60 60	L&E L&E
Canadian Life & Fraternal* – Quarterly – MCCSR - Quarterly - Capital Metric - Quarterly	LIFE-1 OSFI-87 OSFI-588	45 45 45 (60 for 4 th Quarter)	L&E L&E L&E
Foreign Life & Fraternal – Annual – TAAM - Annual	LIFE-2 OSFI-86	60 60	L&E L&E
Foreign Life & Fraternal* – Quarterly – TAAM - Quarterly	LIFE-2 OSFI-86	45 45	L&E L&E
Auditor's Report to Superintendent - Canadian Life & Fraternal	--	60	L
Auditor's Report to Superintendent - Foreign Life & Fraternal	--	May 31	L
Actuary's Report - Annual Return	--	60	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	L
Auditor's Report on TAAM - Foreign Life	--	May 31	L

* Quarterly submission for Fraternal effective Q1 2012

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	L&E
Canadian P&C – Quarterly	P&C-1	45	L&E
Foreign P&C – Annual	P&C-2	60	L&E
Foreign P&C – Quarterly	P&C-2	45	L&E
Auditor's Report to Superintendent - Canadian P&C	--	60	L
Auditor's Report to Superintendent - Foreign P&C	--	May 31	L
Actuary's Report - Annual Return	--	60	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, including retail associations, as applicable.

For Filing Instructions applicable to Corporate Returns, please refer to OSFI's website at:
http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=341

NAME OF RETURN	RETURN CODE	# OF DAYS TO FILE / DUE DATES	SUBJECT TO
			Late & Erroneous (L&E) 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&E
Notice of Change of Corporate Information (Canadian entities)	OSFI-57A	Within 15 days of effective date of change	L&E
Return of Officers, Auditor and Appointed Actuary (Foreign entities)	OSFI-513	Within 60 days of end of financial year	L&E
Notice of Change in Officers, Auditor or Appointed Actuary (Foreign entities)	OSFI-513A	Within 15 days of effective date of change	L&E
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 submission only.