



INSTRUCTION GUIDE

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

Date: February 2013

I. Background

OSFI requires all federally regulated financial institutions (FRFIs)¹ 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. FRFIs are expected to have appropriate policies and procedures in place to ensure that all regulatory returns are received by OSFI within specified timeframes and are error free.

However, prior to the implementation of the Late and Erroneous Filing Penalty (LEFP) Framework in 2002, many FRFIs were not filing returns within the required timeframes (which required OSFI to devote significant resources for follow-up) and a large number of returns were erroneous (also requiring follow-up). To address this situation, the LEFP Framework was developed to encourage accurate and on-time filing of regulatory returns.

This guide is intended to provide an overview of the LEFP Framework in order to assist FRFIs with their responsibilities for providing timely and accurate information to OSFI.

¹ 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.

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II. Overview of the LEFP Framework

The LEFP framework is solely designed to encourage FRFIs to file accurate information with OSFI on a timely basis. While the Framework incorporates a system of monetary penalties, it does not generate any revenues for OSFI. All funds collected under the Framework are applied to the Consolidated Revenue Fund (i.e., the Receiver General for Canada) and are not available to reduce the amounts assessed to the industry in respect of covering OSFI's operating costs.

General Principles

The LEFP Framework operates under the guiding principles of simplicity, transparency, consistency and fairness. However, the variety and complexity of OSFI's filing requirements requires flexibility in adhering to these principles.

Simplicity in 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. The Framework has been designed as much as possible to have a consistent impact, both within and across sectors. The Framework also attempts to recognize the interplay between accuracy and timeliness of information. Fairness is an element in both the structure and application of the Framework.

Statutory Authority

Under the *Office of the Superintendent of Financial Institutions Act* (the Act) and the *Administrative Monetary Penalties (OSFI) Regulations* (the Regulations), 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 levels of penalty (based on assets and explained below) as well as the legislative provisions to which the penalties apply (set out in more detail in the Schedule to the Regulations).

Scope of Application

The LEFP Framework applies to most of the regulatory returns required by OSFI. The Appendix lists the returns² subject to the Framework, the related due dates, and whether a return is subject to penalty for being late, erroneous or both. In general, 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.

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 or its order to insure in Canada risks). 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

² References in this Guide to "returns" include regulatory returns and related documents.

authority to waive returns required by statute. FRFIs should therefore ensure that all regulatory returns, as listed in the Appendix, continue to be filed unless notified to the contrary.

The LEFP Framework applies only to regulatory returns required by OSFI and not to those filings required by other federal agencies, such as the Bank of Canada and Statistics Canada.

Penalties – Amounts and Related Information

A late return attracts a penalty at the prescribed *per diem* rate. The table below outlines the penalty structure as established in section 5 of the Regulations, which is designed to establish penalties that act as a meaningful deterrent but that also recognize the significant differences in the size of FRFIs. As such, the penalties that may be levied are tiered according to a FRFI's total assets. The penalties are *per diem* charges that are assessed in respect of individual returns that are not received by OSFI in an error free state by the applicable due date.

FRFI Total Assets³	Per Diem Penalty⁴
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

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

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,
- complete,
- error free, and
- received by OSFI by the required due date.

As such, where a FRFI does not meet all of the above criteria in regard to any particular return or filing, it may be subject to a per diem penalty for each day beyond the required due date.

³ As at December 31 of the preceding year.

⁴ Pursuant to section 35 of the *OSFI Act* - Per violation, for each day the violation continues.

The due dates for some returns are prescribed by statute, while 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.

In general, the prescribed due date is the date used for determining whether a return is late. As such, the Framework does not provide for a 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 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;
- When a return 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;
- 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; all returns must be received directly by the Regulatory Information Division, 255 Albert Street, 12th floor, Ottawa, ON K1A 0H2 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;
- 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

Compliance with Filing Requirements and Method of Delivery

FRFIs are reminded that it is their responsibility to provide OSFI with the returns 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 to OSFI. OSFI does not require any particular method of delivery for returns that must be filed in hard copy. As noted above, OSFI's date stamp is the date received in the case of returns that must be filed in hard copy.

FRFIs are requested to review OSFI Guideline E-13 [Legislative Compliance Management](#) for an outline of OSFI's compliance management expectations.

Erroneous Returns

A return or filing is considered erroneous if it is not made in the form and manner prescribed in the relevant filing instructions, if it is incomplete, or if it contains errors.

Erroneous returns are not in and of themselves subject to a penalty. Penalties are incurred when returns are received by OSFI **after** their applicable due dates, whether they contain errors or not. In the case of the former, i.e., returns containing errors, OSFI calculates penalties based on the number of days after the due date until OSFI receives an error free return. The penalty is unaffected by the fact that a FRFI may have submitted a return prior to the due date (assuming the return contained errors). As such, there is no “doubling up” of penalties for returns that are both late and determined to be erroneous when they are received - they are assessed a single *per diem* until such time as OSFI receives an error-free version.

For further clarification, in cases where a return is filed on or before the due date and OSFI determines it to be erroneous, a penalty will not be applied if an error-free corrected return is received by OSFI before the end of the day on which the return is due.

OSFI requires that FRFIs submit two broad categories of returns: 1) financial returns and 2) corporate returns. A summary of guidance with respect to each type follows:

Erroneous Financial Returns

Most 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 errors would result in Violations in respect of each affected return. However, these errors should be avoidable because they are the result of a 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 such 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.

Canadian life companies - http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=677;

Foreign life companies - http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=679

Canadian P&C companies - http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=671

Foreign P&C companies - http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=675.

The following guidance applies to erroneous financial returns for the purpose of applying the LEFP Framework:

- An erroneous return filed after the due date is assessed a *per diem* penalty, regardless of the number of errors in the return;
- OSFI notifies (by telephone or e-mail) FRFIs of 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: tdsinfo@bank-banque-canada.ca);
- A *per diem* penalty for an erroneous return 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 its validation process cannot identify all errors 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 an 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 erroneous;
- In the case of cross-return errors (a validation between two returns fails), only the return that identifies the error (in general, the second one to be filed of the returns affected) is subject to penalty, regardless of the number of returns affected. As such, any penalty will be calculated based on the number of days a corrected version of the return in question is received after the due date.

Erroneous Corporate Returns

The following guidance applies to erroneous corporate returns for the purpose of applying the LEFP Framework:

- A return filed on an out-of-date or incorrect form is considered erroneous;
- Corporate returns contain features designed to reduce the possibility of entering information that is contrary to regulatory requirements.

OSFI Discretion in Applying Penalties

Given that the *per diem* amount of each penalty is prescribed in the Regulations, OSFI has no authority to waive or reduce the *per diem* amount of a penalty once it has been incurred. OSFI may exercise discretion as to whether a penalty should be imposed. However, OSFI exercises this discretion judiciously so as not to undermine the integrity of the Framework. As such, few penalties are dealt with in this manner⁵. Please refer to the Administrative Review Process outlined below for further information.

Monitoring, Notices of Violation, Notices of Decision and Invoicing

Because of the important role these returns play in OSFI's supervisory and regulatory responsibilities, OSFI normally follows up, where possible⁶, 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.

FRFIs have sole responsibility for ensuring that returns reach OSFI on time and error free. Further, OSFI has not committed to issue 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 FRFI's responsibility to file on time and error free.

Where a FRFI has sent an error free return or filing that would otherwise meet the due date, but does not meet it due to an issue with OSFI's ability to record it as "received," or where OSFI makes an error that affects the correct recording of the filing date, any penalty that the LEFP system would automatically assess will either not be imposed (i.e., a Notice of Violation will not be issued), or corrected accordingly if a Notice of Violation was issued in error.

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 returns 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 are issued 40 days after the date on the applicable Notice of Violation, unless a FRFI has requested an administrative review of the penalty. When the administrative review is complete, a Notice of Decision will be issued, and subsequently an invoice will be issued if the review concludes that imposing the penalty, or some portion thereof, proposed in the Notice of Violation is appropriate. (Please refer to "Administrative Review Process" below for further information).

⁵ For purposes of administrative efficiency, a penalty will usually not be imposed for a violation if the total amount of the penalty would be less than \$200.

⁶ As an example, OSFI cannot issue reminders in the case of some returns such as a change in corporate information, which is not based on the occurrence of a recurring or periodic event.

Additional Information

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

III. Administrative Review Process

A FRFI that has a **compelling** reason(s) for objecting to a penalty (penalties) set forth in a Notice of Violation may make representations to OSFI. A “compelling” reason for making representations 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 to OSFI on time and error free. (Examples of situations that will **not be considered compelling** by OSFI 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 good filing record/first time offence; and similar situations within the control of the FRFI.)

Representations must be made in writing and must be received by OSFI **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 clearly articulate why the review is being requested and the facts OSFI should take into consideration as part of its review. 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, respectively).

Representations received after the above deadline will normally not be considered.

After receiving representations from the FRFI, OSFI will review the representations and consult with the Relationship Manager of the FRFI and any other appropriate stakeholders. OSFI will normally issue a Notice of Decision to the FRFI within 30 days of receiving the representations. The Notice of Decision will indicate either that 1) the proposed penalty is withdrawn, 2) the penalty is reduced, or 3) the original penalty is upheld. In the latter two cases, an invoice will be issued to the FRFI.

IV. 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 2012

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	K4	30	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
Allowance for Impairment	C3	45	L&E
Quarterly Supplementary Return for Foreign Bank Branches	K3	30	L&E
Charge for Impairment	C1	45	L&E
Basel 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
Annual Return (Credit Union Centrals only)	OSFI-68		
- Annual		60	L&E
- Quarterly		30	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 – Capital Metric - Annual	LIFE-1 OSFI-87 OSFI-588	60 60 60	L&E L&E
Canadian Life & Fraternal* – Quarterly* – MCCSR - Quarterly – Capital Metric - Quarterly	LIFE-1 OSFI-87 OSFI-588	45 45 45	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	625	60	L
Auditor's Report to Superintendent - Foreign Life & Fraternal	625	May 31	L
Actuary's Report - Annual Return	605	60	L
Actuary's Report – DCAT	610	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	630	90	L
Auditor's Report on TAAM - Foreign Life	635	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	625	60	L
Auditor's Report to Superintendent - Foreign P&C	625	May 31	L
Auditor's Report for the Minimum Capital Test (MCT)	650	60	L
Auditor's Report for the Branch Adequacy of Assets Test (BAAT)	655	May 31	L
Actuary's Report - Annual Return	605	60	L
Actuary's Report – DCAT	610	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?Detail

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&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)	565	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)	599	Within 30 days of the effective date of change	L
Report of the Conduct Review Committee (Canadian entities only)	598	Within 90 days after the end of financial year	L