Guideline

Non-Compliant Filings Administrative Penalty

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INTRODUCTION

The Non-Compliant Filings Administrative Penalty Guideline (Guideline) sets out the framework that BC Financial Services Authority (BCFSA) uses to assess or recommend an administrative penalty for B.C. authorized financial institutions and extraprovincial corporations, and related individuals that file late or non-compliant required returns or other records (also known as statutory filings or returns).

The Guideline does not limit BCFSA's or the Superintendent of Financial Institutions' (Superintendent) discretion in applying an administrative penalty. The Guideline does not require BCFSA or the Superintendent to enforce any requirement through an administrative penalty, as other enforcement tools may be used. The Guideline is not meant to cover all requirements that may apply to any person, or that may attract an administrative penalty. It applies to filings required in the credit union, insurance, and trust sectors. The Guideline may not be exhaustive of all required filings or filers.

This Guideline replaces the Non-Compliant Filings Administrative Penalty Guideline implemented in 2015 and will come into effect January 1, 2026.

BACKGROUND INFORMATION

Section 253.1 of the *Financial Institutions Act* (FIA) permits the Superintendent to order an administrative penalty for contraventions of prescribed provisions of the FIA, regulation, and more. The Administrative Penalties Regulation (APR) sets out:

- which provisions of the FIA and regulation are subject to penalty;
- who can be liable for a penalty[1]; and
- the maximum amount that can be ordered[2].

Section 253.1 of the FIA applies to an extraprovincial corporation, as set out in section 158 of the FIA. Section 253.1(16) of the FIA provides that if a corporation commits a contravention referred to in section 253.1(1), the Superintendent may impose an administrative penalty on an officer, director, or agent of the corporation who authorized, permitted, or acquiesced in the contravention, even though the corporation is liable for or pays an administrative penalty.

Additional contraventions of the FIA, such as failing to provide the information required of directors and senior officers under section 105 of the FIA, may also attract an administrative penalty that is applied to an individual.

For more information about the statutory filings or returns required to be filed and related filing instructions, please refer to the filing requirements for credit unions, insurance companies, and trust companies.

EXPECTATIONS AND COMPLIANCE

BCFSA expects authorized financial institutions to have appropriate practices and procedures to ensure that any statutory filing or return is:

- received by BCFSA by the specified due date;
- complete;
- error free; and
- where applicable, in the form established and submitted in the manner provided in BCFSA's

[1] Financial institutions and individuals can be liable for a penalty.
[2] The amounts set out in the APR are maximum amounts. The actual amount of penalty ordered will depend on the scope, nature, and severity of the contraventions.

Regulatory Statements.

Administrative penalties for late or non-compliant filings promote compliance with the filing requirements.

Although section 217 of the FIA permits an extension of time to make a required filing, the section does not permit waiving a required filing. Financial institutions holding a business authorization from BCFSA are, among others, responsible for complying with the Acts that BCFSA administers.

Penalties – Amounts and Related Information

The daily amount of administrative penalties is scaled based on the asset size of the B.C. authorized financial institution. For repeat contraventions, the daily penalty may be increased.

Financial Institution Total Assets	Daily Penalty
Greater than $1 billion	$350
Greater than $300 million but less than or equal to $1 billion	$200
Less than or equal to $300 million	$125

Individual	Daily Penalty
No scaling	$50

Administrative penalties for late filings are calculated using the number of days overdue and the daily penalty amount. Administrative penalties for incomplete and erroneous filings will be based on the number of days it takes to rectify the non-compliance.

Notice of Administrative Penalty

If an administrative penalty is required, the person subject to the penalty will receive a written Notice of Administrative Penalty (NOAP) setting out:

- the contravention and any evidence supporting the finding of the contravention;
- the amount of the administrative penalty;
- the date by which the party must pay the administrative penalty; and
- the process and deadlines for the party to dispute the administrative penalty or amount of administrative penalty.

If an administrative penalty is ordered against a financial institution, BCFSA may also impose an administrative penalty on any officer, director, or agent who authorized, permitted, or acquiesced in the contravention.

Upon receipt of an NOAP, the person receiving the notice has 14 days to either pay the penalty or deliver a written notice to the Superintendent to dispute the administrative penalty and/or the amount of administrative penalty.

Publication

The Superintendent will generally publish all administrative penalties (whether imposed by NOAP or confirmed by order made pursuant to section 253.1 of the FIA) on BCFSA's website in perpetuity.

Please refer to BCFSA's [Administrative Process: Publication of Regulatory Actions] for more information.

Discretion in Assessing Administrative Penalties

A person who commits a contravention that is subject to an administrative penalty is liable to pay an administrative penalty not exceeding the monetary penalty provided in the APR.

When determining an administrative penalty, the following factors are considered:

- **Enforcement history**: previous administrative penalties or enforcement actions;
- **Severity of the violation**: the gravity and magnitude of the contravention;
- **Impact on others**: the extent of the harm to others resulting from the contravention;
- **Repetition of the violation**: whether the contravention was repeated or continuous;
- **Preventability**: whether the contravention was preventable;
- **Corrective measures**: actions taken by the financial institution or individual to rectify or prevent the cause of the contravention; and
- **Public confidence:** the effect on public confidence in the financial system, including the disciplinary process.

Definitions

Late

BCFSA considers a filing or return to be late if not received by BCFSA before or on the due date (unless an extension has been granted by BCFSA or the Superintendent).

The due dates for most filings and returns are prescribed by statute or set out in instructions and Regulatory Statements published on BCFSA's website. Due dates can take two forms: a specific date such as December 31, or a set number of days (e.g., 90 days after fiscal year end, or 30 days before an event).

BCFSA relies on the following criteria to determine whether a filing is late:

- Unless instructions are provided to the contrary, a reference to days means calendar days, not business days. All due dates are calculated in accordance with section 25 of the *Interpretation Act*; and
- Where the prescribed due date for any filing or return falls on a Saturday, Sunday, or statutory holiday, the due date (for NFAP purposes) is the following business day.

For returns filed electronically, the date the return is received is the date recorded by the Integrated Regulatory Information System (IRIS). IRIS sends an email confirming receipt date. A return with status "Validation Complete" in IRIS must be submitted before a confirmation receipt is sent.

Some filings or returns may consist of more than one part, each potentially having different due dates for parts of the filing. These are treated as one filing. Failure to complete all the required filing by any of the applicable due dates may attract an administrative penalty, even where part of the return is filed in a timely way. See the APR for additional information. For example, part of the annual filing for foreign branch insurers is due within 60 days after the calendar year end and part is due May 31. This filing will be deemed to be late if either deadline is not met, but the filing will only attract one assessment of penalty, as set out in the APR.

Incomplete

BCFSA considers a filing or return to be incomplete if it:

- is not made in the form prescribed, does not contain the required content, or is not submitted in the manner provided in the relevant filing instructions; or
- fails to satisfy all the applicable validation rules (see below); or
- does not include all the required pages, schedules, or documents.

Erroneous

BCFSA will consider a filing or return to be erroneous if it:

- is not error free; or
- fails validation in IRIS and other software.

Validation and Review

BCFSA uses two processes to determine if there is non-compliance: validation and review.
Validation is the application of mathematical rules that test the data.

- Software Validation: Some software packages used for financial returns contain internal validation features which generate error and warning messages if the validation rules are not met. Where these features exist, financial institutions must use those built in validation procedures and ensure that all errors and warning messages are addressed before the filing or return is submitted to BCFSA. BCFSA's own validation rules for credit unions and trust companies and corporations are posted on BCFSA's website.
- Filings and returns are also subject to review by BCFSA. This process includes analytical review, trend analysis, and reasonability tests.

Notification

Financial institutions are responsible for ensuring that any filing or return submitted is on-time, complete, error free, and filed in the form and manner prescribed. Upon identification of non-compliance, BCFSA will advise the financial institution. This notice is not an NOAP. NOAPs will be provided only after a decision to levy an administrative penalty has been made.

Request for Extension

There may be extenuating circumstances which do not allow for timely filing. BCFSA is willing to forego assessing penalties where there are extenuating circumstances. Notification should be made as soon as possible in advance of the deadline. Contact BCFSA directly with requests or applications under section 217 of the FIA.

Extenuating circumstances are circumstances that are exceptional or unforeseen and are outside the control of the financial institution or individual.

Examples of extenuating circumstances include:

- significant disruption to computer systems due to virus attacks, fire, or flood;
- extraordinary work being undertaken by the external auditor or appointed actuary; and

- business disruption caused by an industrial action, natural disaster, or state of emergency.

Situations that will not normally be considered as extenuating circumstances include:

- employee changes or absences;
- minor computer problems, partial system disruption, lack of system backup or contingency plan; and
- office closure due to statutory holidays.

In the case of an individual, examples of extenuating circumstances include:

- significant illness, accident or injury requiring unplanned hospitalization;
- absence caused by jury duty; and
- natural disaster or state of emergency.

Situations that will not normally be considered as extenuating circumstances include:

- personal or domestic events, such as moving house or attending a wedding;
- holiday or travel arrangements; and
- minor illnesses like cough and cold.

APPENDIX 1

FIA SECTIONS SUBJECT TO NFAP AND MAXIMUM PENALTIES

Individual	FIA Section Contraventions Subject to NFAP	Maximum Penalty per Contravention
Directors or senior officers of B.C. financial institutions	105	$1,000
Directors of B.C. financial institutions	108 (2)	$10,000
Directors of B.C. financial institutions	121 (a)	$25,000

Authorized Financial Institution	Filing Requirements Subject to NFAP	Maximum Penalty per Contravention
B.C. Credit Unions	Credit Union Filing Requirements	Refer to the Administrative Penalties Regulation for further information
B.C. and Extraprovincial Insurance Corporations	Insurance Filing Requirements	Refer to the Administrative Penalties Regulation for further information
B.C. and Extraprovincial Trust Corporations	Trust Filing Requirements	Refer to the Administrative Penalties Regulation for further information

APPENDIX 2

DISPUTE PROCESS

The FIA provides a dispute process for administrative penalties. This section of the Guideline provides information about the dispute process, as a starting point for a person's own enquiries. If a person requires legal advice, they should retain a lawyer of their choosing, at their own expense.

A person may dispute an administrative penalty, including the amount of penalty, by delivering a written notice of dispute to BCFSA within 14 days of receipt of the NOAP. If the administrative penalty under this NOAP is $5,000 or more in the case of a corporation (e.g., a financial institution or extraprovincial corporation), or $2,000 or more in the case of an individual, a person may request an oral hearing or written submissions. The notice of dispute should indicate whether the person requests to proceed by written submission or oral hearing. If the administrative penalty is less than those amounts, then the matter will proceed by written submissions.

Written Submissions

For disputes proceeding by written submission, the submission, including any documents, must be delivered to the Superintendent within 30 days of receiving the NOAP. The written submission should explain the reason for the dispute, set out the facts and include any supporting documents for the Superintendent to review. This should cover the reasons for the contravention, including any due diligence efforts to prevent it and/or any extenuating circumstances.

Oral Hearing

If an oral hearing is available and is requested, the Superintendent will hold an oral hearing within a reasonable time of receiving the notice of dispute. BCFSA staff will contact the person requesting the hearing to schedule the oral hearing. If that person fails to appear at the time and place scheduled for the hearing, the Superintendent may make an order in their absence.

Decision on Dispute

All disputes (written or oral) are considered by the Superintendent or their delegate. If the Superintendent confirms that a contravention has occurred, then the Superintendent may under section 253.1(8) of the FIA:

- confirm the penalty specified in the NOAP;
- order a lesser penalty; or
- order no penalty.

The Superintendent cannot increase the amount of the penalty.

If an order is issued under section 253.1(8) (Order), it will set out the:

- contravention;
- amount of the administrative penalty (if applicable);
- payment due date (if any); and
- right to appeal.

Written confirmation will be provided if it is determined that no contravention occurred or if no penalty is ordered.

If an order includes an administrative penalty then the party must, within 30 days after receiving the order:

- pay the penalty; or
- file a Notice of Appeal.

Orders may be published by BCFSA, as set out in BCFSA's Administrative Process for Publication of Regulatory Actions.

APPEAL PROCESS

A person subject to the order has the right to appeal, as set out in section 253.1(13) of the FIA. An appeal of an order operates as a stay of that order, as set out in section 253.1(14) of the FIA. A person directly affected by an order made by the Superintendent under section 253.1 of the FIA, may appeal to the Financial Services Tribunal (FST), as set out in section 242 of the FIA. For further information about appealing a decision to the FST, refer to section 242.2 of the FIA and to the FST website.