Guide to Administrative Monetary Penalties

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Legislative authorities

- *Office of the Superintendent of Financial Institutions Act* (OSFI Act), sections 24 to 37.01
- *Administrative Monetary Penalties (OSFI) Regulations* (AMP Regulations)

Introduction

This guide provides an overview of select provisions of the legislative framework for the administrative monetary penalties (AMPs) set out in sections 24 to 37.01 of the *OSFI Act*, and information on the AMP assessment process.

The intended audience is federally regulated financial institutions and their senior management.

The Superintendent has statutory authority to impose a penalty where a person commits a violation of a provision of the *Bank Act*, *Trust and Loan Companies Act*, or *Insurance Companies Act* (the FI statutes) listed in the schedule to the AMP Regulations. This authority facilitates the deterrence of breaches of select provisions of the FI statutes. Violations are classified as minor, serious or very serious as described in the schedule to the AMP Regulations.

Persons who may be subject to an AMP include entities (for example, a federally regulated financial institution, or a foreign bank that has a representative office), or natural persons (for example, a director or officer).

The category of AMPs outlined in section 5 of the AMP Regulations is beyond the scope of this guide. More information about this category, involving late and erroneous filing penalties (LEFPs), can be found in OSFI's Administrative Procedures for the Late and Erroneous Filing Penalty (LEFP) Framework.

Overview of AMP procedures

Notice of violation. The Superintendent may issue a Notice of Violation when there are reasonable grounds to believe that a person has breached a provision of the FI statutes listed in the AMP Regulations. The Notice of Violation identifies the violation, the person who is believed to have committed the violation, any proposed penalty, and the person's right to make representations to the Superintendent within 30 days of receiving the notice.

Payment of the proposed penalty in Notice of Violation. If a person pays a proposed penalty in a Notice of Violation, they are deemed to have committed the violation, and the proceedings end.

Making representations. If a person chooses to make representations, the Superintendent considers them and decides whether, on a balance of probabilities, the person committed the violation. If the Superintendent determines a violation was committed, they will decide whether to impose the penalty proposed in the Notice of Violation, a lesser penalty, or no penalty.

No payment or representations. If a person neither pays a penalty nor makes representations, they are deemed to have committed the violation. The Superintendent may impose the penalty proposed in the Notice of Violation, a lesser penalty, or no penalty.

Notice of Decision and right to appeal. If following representations or a failure to pay a person is found to have committed a violation, the Superintendent will issue and serve a final Notice of Decision together with a notice of the right of appeal. For a Notice of Decision of a serious or very serious violation, the person may appeal the decision to the Federal Court within 30 days of being served with a Notice of Decision.

Determining the penalty amount

The maximum penalties for violations are based on (a) the classification of the violation as minor, serious or very serious, and (b) whether it was committed by an entity or a natural person.[1]

Following are the statutory criteria to be considered when determining a penalty:[2]

- the degree of intention or negligence on the part of the person who committed the violation;
- the harm done by the violation; and
- the history of the person who committed the violation with respect to any prior violation or conviction under the FI statutes within the five-year period immediately before the violation.

OSFI's approach to assessing the statutory penalty criteria[3]

OSFI's approach to assessing the statutory penalty criteria reflects our proactive supervisory stance and commitment to early intervention where appropriate. In assessing the statutory penalty criteria, the Superintendent will consider a variety of factors depending upon the nature and circumstances of a particular breach. Listed below are examples of factors OSFI may consider. This is not an exhaustive list, and the specific factors to be considered will be based on the unique circumstances of the violation in question.

Intention or negligence

Factors considered may include:

- knowingly committing and/or concealing the breach
- any steps taken to comply with the breached provision prior to the breach
- failing to develop or adhere to appropriate compliance policies or procedures

- failing to conduct compliance assessments or obtain legal advice, where appropriate
- failing to promptly uncover the breach
- failing to cease non-compliant activity promptly once detected
- failing to promptly notify OSFI of the breach
- the complexity of the breached provision
- the level of understanding the financial institution is expected to have about the breached provision
- failing to consider any relevant instrument issued by OSFI prior to the date of breach

Harm

Factors considered may include:

- the degree of harm to the safety and soundness of the financial institution
- the impact of the breach on the financial institution's reputation
- the number of impacted stakeholders
- the duration of the breach
- whether the breach was promptly remediated

History of prior violations

Factors considered may include:

- the number of violations under the FI statutes within the five-year period immediately before the violation

Additional instructions and information

Reporting a compliance issue

The Lead Supervisor continues to be the main point of contact for compliance matters including:

- reporting breaches
- submitting preliminary representations
- submitting proposed remediation plans if applicable

Financial institutions should promptly report potential compliance issues to their Lead Supervisor.

When reporting a potential compliance issue to OSFI, we encourage financial institutions to provide a clear, factual description of the circumstances, including details such as:

- the nature of the breach
- the duration of the breach

Additional details and documentation may be provided subsequently, as necessary.

Preliminary representations

A financial institution may choose to submit preliminary views or representations to OSFI, before the Superintendent decides whether to issue a Notice of Violation. This can include views about:

- whether there has been a breach
- the penalty criteria (e.g., harm arising from the breach)
- any due diligence[4] taken by the financial institution in respect of the provision that was breached
- any factors contributing to the breach
- a timeline of events (before, during, and after the breach)
- any information about the impact upon the financial institution or its stakeholders
- corrective measures taken or planned, to address the breach

These can be sent to the attention of the financial institution's Lead Supervisor by regular mail or email.

When OSFI receives preliminary representations from a financial institution, that information may assist in clarifying issues related to the breach. If after receiving preliminary representations, the Superintendent decides to issue a Notice of Violation, the content of the notice may be more succinct and reflective of facts already acknowledged by the financial institution.

Providing preliminary representations does not impact a financial institution's statutory right to make representations within 30 days of being served with a Notice of Violation. Formal representations in response to a Notice of Violation may be submitted in accordance with instructions contained in the Notice of Violation.

Payment of penalty

Payment of a penalty must be made:

1. by cheque payable to The Receiver General for Canada, and mailed to Office of the Superintendent of Financial Institutions

   Attention: Finance

   255 Albert Street

   12th floor

   Ottawa, ON K1A 0H2
2. by wire transfer, according to the wire transfer instructions in the notice you received from OSFI
3. through the financial institution's Canadian online banking services, including the alphanumeric customer number.

Financial institutions that pay a penalty must inform the OSFI staff according to the details included in the Notice of Violation or the Notice of Decision.

Footnotes

1 *OSFI Act*, s.25(2).

2 *OSFI Act*, s 26.

3 OSFI's revised approach for assessing AMPs is effective for violations that occur after September 11, 2025, except as specified below.

Contraventions that occurred on or before September 11, 2025, and that are identified on or before December 31, 2026, will be captured by the pre-September 11, 2025, approach.

4 Section 34 of the *OSFI Act* provides that due diligence is a defence in a proceeding in relation to a violation and every rule and principle of the common law that renders a circumstance a justification or an excuse in relation to a charge for an offence under a financial institutions Act applies in respect of a violation to the extent that it is not inconsistent with this Act.