

Non-Compliant Filings Administrative Penalty Guideline (Pensions)

**ADMINISTRATORS OF BC REGISTERED
PENSION PLANS**

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Financial
Institutions
Commission

INTRODUCTION

This guideline sets out the process the Office of the Superintendent of Pensions (the Superintendent) uses when considering whether to administer penalties for late or non-compliant statutory filings or returns – the Non-Compliant Filings Administrative Penalty (NFAP) Guideline.

The NFAP Guideline was developed to provide guidance on the process used in ordering administer penalties for contraventions of provisions that require the administrator of a pension plan to make a statutory filing or file a return. The Superintendent is not bound to follow the guideline when making decisions on penalties. However, the NFAP Guideline does provide an approach to what would, in the normal course, be considered when decisions are made to order a penalty.

BACKGROUND

Section 116 of the *Pension Benefits Standards Act* (PBSA) permits the Superintendent to order an administrative penalty for contraventions of prescribed provisions of the legislation. The PBSA sets out who can be liable for a penalty. The Pension Benefits Standards Regulation (PBSR) Section 136 and Schedule 4 Table 3 set out which provisions are subject to penalty, and the maximum amount of penalty that can be ordered.

Under section 38 (1) of the PBSA and sections 44, 46, 47 of the PBSR the administrator of a pension plan must:

1. File an annual information return for the pension plan within 180 days after the end of each fiscal year of the plan.
2. File an actuarial report and cost certificate within 270 days after the review date if the plan text document of the plan contains a benefit formula provision.
3. File audited financial statements for the pension plan within 180 days after the end of the plan's fiscal year if
 - a. The plan text document of the plan contains a benefit formula provision and the market value of the benefit formula component's assets is at least \$10 million as at the plan's fiscal year end, or
 - b. The plan is a collectively bargained multi-employer plan.

For more information about the statutory filings or returns required to be filed, please refer to PBSA section 38 (1) of PBSA. For related filing instructions, please go to the [Superintendent's website](#).

EXPECTATIONS AND COMPLIANCE

The Superintendent expects registered administrators of pension plans to have appropriate processes in place to ensure that any statutory filing or return is submitted in the form and manner prescribed in the relevant filing instructions and by the required due date.

The Superintendent uses a risk-based supervisory framework to ensure sound business practices of pension plan administrators and, if necessary, to determine whether intervention is necessary. As part of its regulatory oversight and supervisory work, the Superintendent uses information contained in statutory filings and returns to make regulatory decisions. Therefore, the Superintendent expects these filings and returns to not only be submitted on time, but also to be complete and error free. Ordering an administrative penalty is one way for the Superintendent to promote compliance with the filing requirements.

NFAP GUIDELINES

One purpose of administrative penalties is to encourage timely filing, compliance and provision of accurate information. Penalties may be assessed based on the number of days a filing or return is overdue. The following table outlines what staff will normally recommend for certain contraventions.

Type of Return	Overdue 30 to 60 days	Overdue 61 to 90 days	Overdue 90+ days
Annual Pension Return	\$500	\$1,000	\$50,000
Audited Financial Statements	\$500	\$1,000	\$50,000
Actuarial report and cost certificate	\$5,000	\$10,000	\$50,000

ADMINISTRATIVE PENALTIES

If, in the opinion of the Superintendent, a contravention has occurred, the Superintendent will then decide whether to order an administrative penalty. Assuming the result is to order an administrative penalty, the amount of the penalty to be applied is at the discretion of the Superintendent subject to the limits set out in the legislation.

In applying discretion, the Superintendent may consider the following factors: a review of previous enforcement actions for contraventions of a similar nature; the gravity and magnitude of the contravention; the extent of the harm to others resulting from the contravention; whether the contravention was repeated or continuous; whether the contravention was preventable; and the extent to which the plan administrator attempts to correct the cause of contravention. There may be extenuating circumstances which do not allow for timely filing. The Superintendent may forego assessing penalties where there are extenuating circumstances. Notification should be made as soon as possible in advance of the deadline. Plan administrators should contact the office of the Superintendent directly with requests.

If the Superintendent considers that there are extenuating reasons, the Superintendent may, under section 5 of the PBSA, upon request from the administrator of a pension plan, extend a period of time imposed under the PBSA within which or by which some act must be done. The

request of extend time limits needs to be submitted in writing along with reasons the Superintendent should take into consideration.

Extenuating circumstances include circumstances that are exceptional or unforeseen and are outside the control of the plan administrator or individual.

Some examples of extenuating circumstances are:

- significant disruption to the computer system due to virus attacks, fire, or flood; and
- business disruption caused by an industrial action, natural disaster, state of emergency.

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

- staff changes or absences;
- extraordinary work being undertaken by the external auditor or appointed actuary;
- minor computer problems, partial system disruption, lack of system backup or contingency plan; and
- office closure due to statutory holidays.

Direction for Compliance Letter

When the Office of the Superintendent identifies that a filing or return is late or incomplete, the plan administrator may be issued a direction for compliance letter (direction). The direction is not a notice of penalty. A Notice of Administrative penalty can be served up to three years after the date¹ that the infraction first comes to the attention of the Superintendent. The purpose of the direction letter is to bring the matter to the attention of the filer so that appropriate remedial action can be taken and is a separate enforcement power from ordering penalties. Typically the decision on whether to order an administrative penalty will be made after a complete filing is received.

Notice of Penalty

If an administrative penalty is ordered, the party subject to the penalty will receive a written notice 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 penalty; and
- the process and deadlines for the party to dispute the penalty and/or amount of penalty.

¹ The time limit of 3 years is set out in the legislation. Under PBSA section 116(5), “The superintendent must not serve a notice of administrative penalty under subsection (1) or (2) more than 3 years after the date on which the superintendent first had knowledge of the facts on which the notice is based”.

Upon receipt of a Notice of Penalty, the party receiving the notice has 30 days to either pay the penalty or deliver a written notice to the Superintendent stating that they are disputing the penalty and/or the amount of penalty.

DISPUTE PROCESS

Every party subject to an administrative penalty has the right to dispute the penalty and/or amount of penalty as set out in section 126 (1) of the PBSA. The Notice of Penalty will clearly state the dispute process available.

Notice of Objection

If a party wishes to dispute the penalty and/or amount of penalty, they must provide the Superintendent with a written Notice of Objection within 30 days of receipt of the Notice of Penalty. This Notice of Objection must stipulate the reasons for the objection and set out all relevant facts.

The complete submission must be received by the Superintendent no later than 30 days after receipt of the Notice of Penalty. The written submission must clearly articulate the reason for the dispute and the facts that the Superintendent should take into consideration as part of its review of the decision including any extenuating circumstances that prevented compliance from occurring. The submission must be made by the plan administrator's authorized representative.

Requests received after the 30 days deadline will normally not be considered. Before the submission is considered, staff may seek clarification from the affected party on any points raised in the submission. Parties may provide evidence for consideration of the Superintendent and it may be in the form of a statutory declaration.

Decision on Dispute

Upon receipt of the Notice of Objection, the Superintendent will reconsider the decision. The Superintendent may under section 126 (2) of the PBSA:

- rescind the decision – order no penalty;
- vary the decision – order a reduced penalty; or
- confirm the decision – confirm the penalty specified in the Notice of Penalty.

A written notice of that reconsideration will be served to the person who provided the Notice of Objection.

If, upon reconsideration the Superintendent determines to rescind the decision, then the notice of reconsideration will be provided that no penalty is ordered.

If the Superintendent determines to vary or confirm the decision, then the notice of reconsideration will set out the:

- reconsideration decision;
- reasons for the decision;
- amount of the administrative penalty;
- penalty payment due date; and
- right to appeal

If any penalty is ordered, then the party may, within 30 days after receiving the notice of reconsideration, file a Notice of Appeal.

The notice of reconsideration may be published by the Superintendent.

APPEAL PROCESS

If, after considering a dispute regarding an administrative penalty, the Superintendent under section 126 (2) of the PBSA, confirms the contravention and determines to either vary or confirm the original decision, then the party subject to the penalty has the right to appeal the reconsideration decision.

Appeals can only be initiated after the penalty is disputed and a Notice of Reconsideration has been issued. Any appeal must be made to the Financial Services Tribunal (FST). The person who appeals a reconsideration decision must provide a copy of the notice to appeal to the Superintendent.

The appeal processes are set out in sections 242.1 (7), 242.2 and 242.3 of the *Financial Institutions Act* (FIA). For further information about appealing a decision to the FST, refer to section 242.2 of the FIA and the [FST website](#).



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