



OFFICE OF INSPECTOR GENERAL

Memorandum Report

2014-AE-C-001

Audit of the CFPB's Civil Penalty Fund

January 16, 2014

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

Report Contributors

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Abbreviations

CEFL Officer	CPF Consumer Education and Financial Literacy Officer
CFO	Chief Financial Officer
CFPB	Consumer Financial Protection Bureau
CPF	Civil Penalty Fund
CPF rule	Consumer Financial Civil Penalty Fund Final Rule
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FY	fiscal year
GAO	U.S. Government Accountability Office
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General

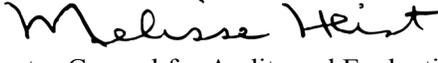


OFFICE OF INSPECTOR GENERAL
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CONSUMER FINANCIAL PROTECTION BUREAU

January 16, 2014

MEMORANDUM

TO: Stephen Agostini
Chief Financial Officer
Consumer Financial Protection Bureau

FROM: Melissa Heist 
Associate Inspector General for Audits and Evaluations

SUBJECT: OIG Report No. 2014-AE-C-001: *Audit of the CFPB's Civil Penalty Fund*

Executive Summary

The Office of Inspector General (OIG) has completed its audit of the Consumer Financial Protection Bureau's (CFPB) Consumer Financial Civil Penalty Fund (CPF). Overall, our audit determined that the CFPB has been implementing internal controls for the CPF since June 2012. For example, the CFPB developed the CPF rule and internal procedures. During our audit of the CPF, which was conducted from June 2013 to November 2013, we identified an opportunity to improve the controls developed to implement the CPF. Specifically, we determined that CFPB officials can clarify the *Procedures for Civil Penalty Fund Administration* to reflect the agency's current practices. During our audit, we also observed that information on the CPF was not consolidated in a single location on the CFPB's public website. We relayed this observation to CFPB officials, who took steps to consolidate the CPF information on the CFPB's public website. We could not conduct testing of the controls over making disbursements from the CPF because the CFPB did not start disbursing funds until the middle of November 2013, at the end of our fieldwork. The unallocated¹ CPF balance was approximately \$63.5 million as of November 29, 2013. The OIG will continue monitoring CPF activities and will consider conducting an audit that focuses on the controls over the distribution of CPF funds.

1. Allocation, for purposes of the CPF, means setting aside money from the CPF for payments to victims or for consumer education and financial literacy programs.

Objective, Scope, and Methodology

We conducted this audit of the CFPB's CPF to determine whether the CFPB has developed controls to implement the statutory provisions concerning the CPF. When we initiated this project in June 2013, the CFPB had published the Consumer Financial Civil Penalty Fund Final Rule (CPF rule),² was receiving comments, and had developed its internal CPF procedures. Prior to the start of our audit, the CFPB approved its first allocation of payments to victims and consumer education and financial literacy programs. As of November 30, 2013, the CFPB had approved its second allocation of payments to victims but had not yet implemented any consumer education and financial literacy programs.

We reviewed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section related to the CPF; relevant CFPB policies and procedures; decision memorandums; draft solicitations; the CPF rule and comments; and industry best practices, such as the U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*.³ We also interviewed CFPB officials involved with the CPF, including the Fund Administrator, officials in the Office of the Chief Financial Officer (OCFO), and officials on the Governance and Compliance Team and the Internal Controls Team, all of whom are located in the CFPB's Washington, DC, offices. We could not conduct testing of disbursements from the CPF because the CFPB did not start disbursing CPF funds until the middle of November 2013, at the end of our fieldwork.

We performed this audit from June 2013 to November 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objective.

Background

On July 21, 2010, the Dodd-Frank Act established the CFPB to regulate the offering and provision of consumer products or services under federal consumer financial law. The CFPB is authorized under the act to enforce federal consumer financial law through judicial actions and administrative adjudication proceedings. In those actions or proceedings, a court or the CFPB may require a defendant who has violated the law to pay a civil penalty or make payments directly to those harmed by a violation.

The Dodd-Frank Act required the CFPB to establish the CPF. The CFPB must deposit any civil penalty it obtains against any person⁴ in any judicial or administrative action under federal consumer financial law into this separate fund, which is maintained in an account at the Federal Reserve Bank of New York. The CFPB will use the money collected in the CPF to compensate consumers who were harmed by activities

2. 78 Fed. Reg. 26,489 (May 7, 2013).

3. U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1, November 1999, <http://www.gao.gov/special.pubs/ai00021p.pdf>.

4. Section 1002(19) of the Dodd-Frank Act defines the term "person" as meaning "an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity."

for which civil penalties have been imposed. To the extent that victims cannot be located or payment is not practicable, the CFPB may use the funds for consumer education and financial literacy programs. Please see attachment A for a timeline of events related to the CPF.

To implement the statutory provisions relating to the CPF, the CFPB established the Civil Penalty Fund Governance Board and developed the CPF rule. In addition, the CFPB developed the following internal documents:

- *Procedures for Civil Penalty Fund Administration*—To operationalize the processes and guidelines by which the OCFO manages the funds and activities related to the CPF
- *Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy Programs*—To provide procedures for developing focus areas for potential consumer education and financial literacy programs
- *Criteria for Use of Civil Penalty Fund Monies for Consumer Education and Financial Literacy Programs*—To provide criteria for the CFPB's awarding of contracts for consumer education and financial literacy programs

The CPF Governance Board

On July 17, 2012, the CFPB Director approved the original Governance Board Charter, which established the Governance Board as the executive advisory body responsible for ensuring that the CPF is administered in a manner consistent with the provisions of the Dodd-Frank Act. The charter, which was updated on August 8, 2013, states that the Governance Board should ensure that the disposition of CPF monies conforms to the Dodd-Frank Act; the CPF rule; and all other applicable laws, regulations, policies, and procedures. The charter also states that the Governance Board will meet on a quarterly basis, at a minimum, to review CPF activity with the Fund Administrator and will call meetings as necessary to advise or direct the Fund Administrator as indicated in the CPF rule. The Governance Board is responsible for the following:

- developing, establishing, and maintaining the guidelines by which the CPF will be administered
- advising the Fund Administrator regarding the interpretation of the CPF rule and its application to particular facts and circumstances
- reviewing consumer education and financial literacy concept proposals for consistency with the established program criteria, providing input and feedback on the proposed concepts, and having the option to participate in the Investment Review Board⁵ meeting regarding any program proposals

The Governance Board is composed of the following five senior CFPB employees:

- Chief of Staff (chair of the Governance Board)
- Associate Director, Supervision, Enforcement, Fair Lending & Equal Opportunity
- Associate Director, Consumer Education & Engagement

5. The Investment Review Board is the executive advisory body at the CFPB that ensures all capital investment decisions align with the CFPB's mission and strategic goals.

- Chief Operating Officer
- General Counsel

The CPF Rule

The CFPB issued the CPF rule pursuant to its authority under the Dodd-Frank Act, which authorizes the CFPB to prescribe rules as may be necessary to enable the agency to carry out the purposes and objectives of federal consumer financial law. Since the rule is in part interpretive and in part a rule relating to agency procedure and practice, the CFPB stated in the rule that the rule is not subject to the 30-day delayed effective date for substantive rules. The CFPB also stated in the rule that the agency had found good cause for the rule to take effect immediately, because the CPF rule does not impose any obligations or prohibitions on the public and immediate effectiveness allows the CFPB to begin the process of allocating funds to victims as soon as possible.

Thus, on May 7, 2013, the CPF rule was published in the *Federal Register* as an immediately effective final rule.⁶ On the same day, the CFPB published a notice of proposed rulemaking in the *Federal Register*, which asked for comments on the CPF rule.⁷ The comment period closed on July 8, 2013, and six comments were submitted. The Governance Board and the Fund Administrator reviewed the comments and jointly determined that the comments were not sufficiently material to warrant any changes to the rule at that time.

In developing the CPF rule, the CFPB considered potential benefits, costs, and impacts, and the agency reached out to other federal agencies regarding consistency with prudential market or systemic objectives that those agencies administer. The rule, among other things,

- establishes the position of Fund Administrator
- identifies the category of victims who may receive payments
- establishes procedures for allocating funds for payments to victims and for consumer education and financial literacy programs
- provides procedures for distributing payments to victims
- identifies circumstances in which payments to victims will be deemed not practicable
- requires the Fund Administrator to issue regular reports on the disposition of funds

Fund Administrator

The CPF rule establishes the position of Fund Administrator, which reports to the CFPB's Chief Financial Officer (CFO). The Fund Administrator takes direction from the CPF Governance Board and is required to follow any written directions that the Governance Board provides. The Fund Administrator establishes an allocation schedule; determines, based on information received from the Office of Enforcement, the amount of victims' compensable and uncompensated harm; determines practicability to pay victims based on the administrative costs required, among other things; and allocates funds to classes of victims with uncompensated harm. The Fund Administrator also approves the distribution plan submitted by the

6. 78 Fed. Reg. 26,489 (May 7, 2013).

7. 78 Fed. Reg. 26,545 (May 7, 2013).

payment administrator.⁸ Lastly, the Fund Administrator decides how much to allocate for consumer education and financial literacy programs but does not have the authority to allocate funds to any particular consumer education or financial literacy program or to select particular programs for which funds will be used.⁹

Category of Victims

The CPF rule states that a victim is eligible for payment from the CPF if a final order in a CFPB enforcement action imposed a civil penalty for the violations that harmed the victim. The CPF rule also states that CPF funds can be used to compensate only the victim's uncompensated harm. The rule defines uncompensated harm as the victim's compensable harm less any compensation the victim has received or is reasonably expected to receive for that harm.

Allocation of Funds

The CPF rule requires the Fund Administrator to establish a schedule for allocating funds in the CPF. Allocating funds, for purposes of the CPF, means setting aside money from the CPF for payments to a class of victims or for use on consumer education and financial literacy programs. The allocation schedule is divided into six-month periods identifying the start and end dates of those periods. The Fund Administrator will allocate funds within 60 days after the end of a six-month period. Table 1 shows the allocation schedule developed by the Fund Administrator.

Table 1: Allocation Schedule

Period	Start	End	Allocation date
1	07/21/2011	03/31/2013	05/30/2013
2	04/01/2013	09/30/2013	11/29/2013
3	10/01/2013	03/31/2014	05/30/2014
4	04/01/2014	09/30/2014	11/29/2014
5	10/01/2014	03/31/2015	05/30/2015

Source: CFPB Civil Penalty Fund Allocation Schedule, <http://www.consumerfinance.gov>.

The CFPB must deposit into the CPF any civil penalty it obtains against any person in any judicial or administrative action under federal consumer financial law. Tables 2 and 3 show the CPF monies received for periods 1 and 2.

8. The CFPB will procure contractors to assist with administrative aspects of distributing payments to victims.

9. The CFPB developed the *Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy Programs*, which governs how the CFPB will select particular consumer education and financial literacy programs. The policy states that the CFPB Director approves proposed concepts, which are then implemented by contractors selected through the federal procurement process.

Table 2: Period 1 Collection of CPF Monies

Quarter	Defendant name	Amount
FY12 Q4	Capital One Bank	\$25,000,000
FY12 Q4	Discover	7,000,000
FY13 Q1	American Express Centurion Bank	3,900,000
FY13 Q1	American Express Bank, FSB	1,200,000
FY13 Q1	American Express Travel	9,000,000
FY13 Q1	Payday Loan Debt Solution, Inc.	5,000
FY13 Q2	Abraham Pessar (Gordon, et al.)	1
Total Period 1 CPF collections		\$46,105,001

Source: CFPB's CFO update for the third quarter of fiscal year 2013, April 1–June 30, 2013, issued August 15, 2013, <http://www.consumerfinance.gov>.

Note: Only two of the seven cases that concluded as of March 31, 2013—Payday Loan Debt Solution, Inc., and Gordon, et al.—had classes of victims with uncompensated harm. In the other cases, defendants were ordered to pay redress to the victims.

Table 3: Period 2 Collection of CPF Monies

Quarter	Defendant name	Amount
FY12 Q3	United Guaranty	\$4,500,000
FY12 Q3	Genworth	4,500,000
FY13 Q3	Radian Guaranty	3,750,000
FY13 Q3	MGIC	2,650,000
FY13 Q4	American Debt Settlement Solutions, Inc.	15,000
FY13 Q4	National Legal Help Center ^a	0
FY13 Q4	JPMorgan Chase	20,000,000
Total Period 2 CPF collections		\$35,415,000

Source: CFPB Fund Administrator, via e-mail.

Note: Two of the seven cases —American Debt Settlement Solutions, Inc., and National Legal Help Center—had classes of victims with uncompensated harm. The Fund Administrator determined that for one case—JPMorgan Chase— there were no victims with uncompensated harm because the defendant was ordered to pay redress to the victims. For the four remaining cases, the Fund Administrator does not have sufficient information to determine whether victims have compensable harm or uncompensated harm. The Fund Administrator will revisit whether to make an allocation to classes of victims for these cases in the period 3 allocation.

^aFunds uncollectible.

Table 4 shows the civil penalty allocation summary for the period 1 schedule that started July 21, 2011, and ended March 31, 2013. Period 1 civil penalty funds were allocated on May 30, 2013, as established in the allocation schedule. Table 5 shows the civil penalty allocation summary for the period 2 schedule that started April 1, 2013, and ended September 30, 2013. Period 2 civil penalty funds were allocated on November 29, 2013, as established in the allocation schedule. The unallocated CPF balance is approximately \$63.5 million as of November 29, 2013, after allocations for period 2.

Table 4: Period 1 Allocation Summary

Victim compensation	\$10,488,815
Payday Loan Debt Solution, Inc., victim class allocation: \$488,815	
Gordon, et al., victim class allocation: \$10,000,000	
Consumer education and financial literacy programs	13,380,000
Total allocation	\$23,868,815

Source: CFPB's CFO update for the third quarter of fiscal year 2013, April 1–June 30, 2013, issued August 15, 2013, <http://www.consumerfinance.gov>.

Note: The CFPB set aside \$1.6 million for administrative costs during period 1 allocation.

Table 5: Period 2 Allocation Summary

Victim compensation	\$2,557,230.96
American Debt Settlement Solutions, Inc: \$499,247.96	
National Legal Help Center: \$2,057,983.00	
Consumer education and financial literacy programs	0
Total allocation	\$2,557,230.96

Source: CFPB allocation memorandum.

The bullets below provide a narrative of the process for the allocation of funds.

- Every six months, the Fund Administrator determines the amount of funds available for allocation and reviews enforcement actions administered through the Office of Enforcement to determine whether any classes of victims have uncompensated harm.
- If classes of victims have uncompensated harm and the CPF has sufficient funds to fully compensate all the classes of victims with uncompensated harm, the Fund Administrator allocates to each such class of victims enough money to fully compensate the victims in those classes for their uncompensated harm.
- If the CPF does not have sufficient funds to fully compensate each class of victims with uncompensated harm, the Fund Administrator first allocates money to classes of victims from the most recent six-month period.

- If funds remain after allocating to each class of victims from the most recent six-month period enough funds to fully compensate the victims in those classes for their uncompensated harm, the Fund Administrator allocates money to classes of victims that had uncompensated harm from the next-most-recent six-month period, and so forth to classes from previous periods, until no funds remain. If there are insufficient funds to fully compensate each class of victims from any single six-month period, the Fund Administrator allocates money among classes from that period on an equitable basis.

Distribution of Funds

After the Fund Administrator allocates funds to a class of victims, those funds will be distributed to the individual victims in that class. For cases involving distribution of funds to harmed victims, a distribution plan is to be developed and monitored under the direction of the Fund Administrator. Pursuant to the *Federal Acquisition Regulation*, the Fund Administrator will contract with payment administrators who will be responsible for distributing payments to the victims. The Fund Administrator must approve the distribution plan developed by the payment administrator prior to making any distributions of CPF monies. The plan may require the following elements:

- procedures for determining the amount each victim will receive
- procedures for locating and notifying victims eligible or potentially eligible for payment
- the payment methods by which victims will be compensated
- the method by which a potential eligible victim may contact the payment administrator

Once the Fund Administrator approves the distribution plan, the payment administrator will make payments to victims in accordance with the plan, subject to the Fund Administrator's supervision.

See attachment B for a flowchart of the allocation and distribution process.

When Payment to Victims Is Impracticable

In the preamble to the CPF rule, the CFPB states that for payments to be practicable, it must be feasible to carry out all the steps involved in making the payments efficiently and without excessive administrative costs. Although the statute does not specify any mechanism for making payments, the CFPB interprets section 1017(d)(2) of the Dodd-Frank Act as referring to payments that may be made through ordinary administrative mechanisms.¹⁰ Practicable, therefore, according to the CFPB's CPF rule, means capable of being carried out through such mechanisms. The text of the CPF rule provides the following six instances in which making a payment to an individual victim will be deemed impracticable:

1. if the payment to the victim would be of such a small amount that the victim would not be likely to redeem payment

10. Section 1017(d)(2) of the Dodd-Frank Act provides, "Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs."

2. if the payment to the victim is too small to justify the cost of locating the victim and making the payment
3. if the victim cannot be located with effort that is reasonable in light of the amount of the payment
4. if the victim does not timely submit information that a distribution plan requires to be submitted before a payment will be made
5. if the victim does not redeem the payment within a reasonable time
6. any other circumstances that make it unreasonable to make a payment to the victim, as determined by the Fund Administrator

The CPF rule also provides that payment to a class of victims will be deemed impracticable if the expected aggregate actual payment to the class is too small to justify the costs of locating the victims and making payments to them.

Reporting Requirements

The Fund Administrator must issue regular reports, on at least an annual basis, that describe how funds in the CPF have been allocated, the basis for those allocations, and how funds have been distributed to victims. The Fund Administrator must make these reports available on the CFPB's public website, located at www.consumerfinance.gov. Currently, CPF information is found by accessing the CFPB homepage, hovering over "Inside the CFPB" on the navigation bar, and selecting "Budget and performance."

Procedures for CPF Administration

The *Procedures for Civil Penalty Fund Administration* was developed to operationalize the procedures and guidelines set forth in the CPF rule. The procedures identify guidelines for data collection, civil monetary penalty collection, allocation process, funds distribution, and distribution tracking.

Data collection. The procedures state that the Fund Administrator should meet with the CFPB's Office of Enforcement as needed to collect case-related data and, on an ongoing basis, track information related to allocation eligibility, which can be used to facilitate payments to victims.

Civil Monetary Penalty Collection. The procedures state that the OCFO will coordinate with the Office of Enforcement to ensure that the defendant has accurate and up-to-date CPF deposit instructions and that the OCFO will track and confirm the amounts transferred into the CPF. The CPF is maintained at the Federal Reserve Bank of New York in a noninterest-bearing account.

Allocation Process. The procedures also provide detailed guidelines for the allocation of funds, such as establishing an allocation schedule, determining the compensation allocations and the availability of CPF funds, and allocating funds.

Funds distribution. The procedures indicate that the CFPB will contract with vendors to distribute funds under indefinite delivery/indefinite quantity contracts.¹¹ The CFPB will competitively bid or issue task orders to the vendors to carry out payments to eligible classes of victims. Once the CFPB selects a vendor to pay eligible victims, the procedure provides guidance for the transfer of funds to the vendor to be placed in a Federal Deposit Insurance Corporation–insured account. Further, the procedures state that the Fund Administrator will have direct access to account activity, will perform periodic reviews, and will hold regular status update meetings. The procedures also state that, at the conclusion of the distribution process, the vendor will provide a final accounting summary to the Fund Administrator and any remaining monies will be transferred back to the CPF maintained at the Federal Reserve Bank of New York.

Distribution tracking. Lastly, the procedures require vendors to report to the Fund Administrator information on vendors' efforts in locating harmed consumers, funds distributed, funds remaining in the contractors' account, and returned checks. The Fund Administrator reviews and compiles the data from the third-party payment vendor into a monthly internal report.

Policy for Selecting CPF Consumer Education and Financial Literacy Programs

The CFPB is authorized by the Dodd-Frank Act to use monies from the CPF to fund consumer education and financial literacy programs when victims cannot be located or when payments are otherwise not practicable. This provision aims to increase the effectiveness of financial education by helping and motivating consumers to make sound financial decisions that serve individual financial goals.

On August 8, 2013, the CFPB Director approved the *Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy Programs*. This internal policy includes procedures for the CPF Consumer Education and Financial Literacy Officer (CEFL Officer) to develop focus areas for potential education programs in consultation with other consumer education initiatives within the CFPB, to prepare program concepts, and to brief the Governance Board as well as the CFPB Director.

All proposals must be presented to the Investment Review Board for approval, and upon approval, the CEFL Officer may issue a request for proposal through the federal procurement process to procure vendors to implement the approved proposals. The CEFL Officer is responsible for monitoring programs and providing quarterly updates to the OCFO or the Fund Administrator.

The CFPB also established the *Criteria for Use of Civil Penalty Fund Monies for Consumer Education and Financial Literacy Programs* in June 2012 to identify criteria that will help the CFPB award contracts for consumer education and financial literacy programs. This document lists contractor requirements, such as a proven track record of direct service in consumer education or financial literacy, a demonstrated understanding of products and services available in the financial services marketplace, and expertise in providing technical services that can support consumer education or financial literacy programs. Further, the document sets forth specific program requirements, including promoting and enhancing economic security of consumers, improving financial literacy, presenting opportunities for savings, and facilitating the removal or dismantling of economic barriers for consumers to access financial products and services.

11. Indefinite delivery/indefinite quantity contracts provide for an indefinite quantity of services for a fixed time. They are used when agencies cannot determine the precise quantities of supplies or services required during the contract period. On July 9, 2013, the CFPB awarded indefinite delivery/indefinite quantity contracts to two third-party payment administrators.

On November 19, 2012, the CFPB Director approved two consumer education and financial literacy program concepts to be funded with CPF monies, if sufficient funds are allocated:

- Financial Coaching for Transitioning Veterans and Economically Vulnerable Consumers
- Financial Fitness for People with Disabilities

On August 28, 2013, the CFPB held a pre-solicitation conference with vendors for the Financial Coaching for Transitioning Veterans and Economically Vulnerable Consumers program and on November 22, 2013, a request for proposals was issued by the CFPB. To date, a contractor has not yet been selected for this program.

OIG Observations and Recommendation

Overall, our audit determined that the CFPB has been implementing internal controls for the CPF since June 2012. For example, the CFPB developed the CPF rule and internal procedures. We also found that the CFPB has made CPF information publicly available. We determined, however, that the CFPB officials can clarify the *Procedures for Civil Penalty Fund Administration*. Standards for internal control state that internal controls should be clearly documented. The current practice of the Fund Administrator is to obtain case-related information in writing; however, the CFPB's *Procedures for Civil Penalty Fund Administration* do not state that case-related information should be collected in writing. In addition, we found that the CFPB should consolidate the CPF's information at a single location on the CFPB's public website.

Observation 1: Internal Procedures Did Not Reflect the Current Practice With Respect to the Collection of Case-Related Information

The Fund Administrator collects case-related information in writing. The CFPB's *Procedures for Civil Penalty Fund Administration*, however, does not state that the Fund Administrator should collect case-related information from the Office of Enforcement "in writing." The procedures state, "The Fund Administrator will meet with the Office of Enforcement as needed to collect any case related data that will facilitate payments to victims," such as case status, specific orders, victim classes, harm amounts, and class victim data. The Fund Administrator stated that she frequently meets with the Office of Enforcement and obtains in writing preliminary, sensitive, case-related information, and after the case settlement, she collects data to facilitate payments to victims.

GAO's *Standards for Internal Control in the Federal Government* states that well-written policies and procedures ensure that management's directives are carried out. Moreover, according to GAO, all transactions, internal controls, and any other significant events should be clearly documented. Specifically, the documentation should be in paper or electronic form, be properly managed and maintained, and be readily available for review.

The CPF rule states that if the Fund Administrator is unavailable, the CFO will perform the functions and duties or has the authority to delegate the Fund Administrator's functions and duties to another CFPB employee. Therefore, documenting in the agency's procedures that case-related information should be collected in writing will ensure that there is a procedural history as well as clear instructions for the CFPB official assigned to perform the Fund Administrator's tasks in his or her absence.

CFPB officials explained that their understanding of the statement in the procedures—“collect any case related data that will facilitate payments to victims”—is that the data are to be collected in writing, given the nature of the information. However, if the procedures do not explicitly state that the data should be collected in writing and the current practice is discontinued, internal controls could be weakened, resulting in inconsistent decisionmaking, and transparency could be reduced, resulting in a decline of accountability.

Recommendation

We recommend that the CFO

1. In keeping with current practice, specify in the *Procedures for Civil Penalty Fund Administration* that the Fund Administrator must collect in writing any case-related data obtained after case settlement to facilitate payments to victims.

Management’s Response

In management’s response, included as attachment C, the CFO stated the following regarding recommendation 1:

Management concurs with this recommendation. The OIG observed that the words “in writing” were not included in an identified section of the OCFO’s *Procedures for Civil Penalty Fund Administration*. The identified section currently states, “On an ongoing basis, the Fund Administrator will collect and track . . . information as related to CPF allocation eligibility.” It is OCFO’s practice to collect and track information in writing, and consider “in writing” implicit in the above statement. However, in response to the OIG’s recommendation, the OCFO will add the words “in writing” to the identified section of the procedures document.

OIG Comment

The CFPB stated that it concurs with our recommendation and is taking action to add the words “in writing” to the identified section of the *Procedures for Civil Penalty Fund Administration*. In our opinion, the actions described by the CFO are responsive to our recommendation. Adding the words “in writing” to the identified section of the procedures will help to ensure that the current practice is not discontinued and that decisionmaking is consistent and transparent. We plan to follow up on the CFPB’s actions to ensure that the recommendation is fully addressed.

Observation 2: CPF Information Was Not Consolidated on the CFPB’s Website

During our audit, we found that the OCFO had not consolidated CPF information on the CFPB’s public website. The OCFO manages CPF funds and activities and maintains CPF information. General CPF information is located under the “Civil Penalty Fund” heading on “The CFPB budget” page, which is accessed from the homepage by hovering over “Inside the CFPB” on the navigation bar and selecting “Budget and performance.” However, reporting of key financial information required by the CPF rule,

such as how funds have been allocated and distributed, was not located under the “Civil Penalty Fund” heading.

Management Action Taken

We shared our experience with CFPB officials, who responded by implementing changes to address our observation. During a subsequent review of the CFPB’s website on November 25, 2013, we observed that CFPB officials added links and information to a subheading section under the “Civil Penalty Fund” heading. These links provide information related to victim compensation and direct the user to the CFO quarterly reports that contain information on funds collected and an allocation summary.

Closing

We appreciate the cooperation that we received from CFPB staff during our audit. This report will be added to our public website and will be summarized in our next *Semiannual Report to Congress*. Please contact me if you would like to discuss this report or any related issues.

Attachment A**Timeline of Events**

Date	Event
July 21, 2010	Dodd-Frank Act enacted
July 21, 2011	CFPB designated transfer date; CPF allocation period 1 began
June 11, 2012	<i>Criteria for Use of Civil Penalty Fund Monies for Consumer Education and Financial Literacy Programs</i> approved
July 17, 2012	Consumer Financial Civil Penalty Fund Governance Board Charter approved
July 18, 2012	Capital One deposited \$25 million into the CPF
September 28, 2012	Discover Credit Card Company deposited \$7 million into the CPF
October 1, 2012	American Express directed three subsidiaries to deposit a total of \$14.1 million into the CPF
November 15, 2012	FY 2012 CFPB Financial Report posted; the report describes the CPF and identifies FY 2012 CPF collections
November 19, 2012	CFPB Director approved two consumer education and financial literacy program concepts to be funded with CPF monies if sufficient funds are allocated
December 15, 2012	FY 2012 4th Quarter CFO Update posted; the report identifies FY 2012 Q4 CPF collections
December 28, 2012	Payday Loan Debt Solution deposited \$5,000 into the CPF
February 15, 2013	FY 2013 1st Quarter CFO Update posted; the report identifies FY 2013 Q1 CPF collections
February 26, 2013	Abraham Pessar (Gordon, et Al.), deposited \$1 into the CPF
March 31, 2013	CPF allocation period 1 ended
April 1, 2013	CPF allocation period 2 began
April 11, 2013	United Guaranty deposited \$4.5 million into the CPF
April 15, 2013	Genworth deposited \$4.5 million into the CPF
April 16, 2013	Mortgage Guaranty Inc., deposited \$2.65 million into the CPF
April 25, 2013	<i>Procedures for Civil Penalty Fund Administration</i> approved
April 26, 2013	CFPB posted the following on www.consumerfinance.gov : Civil Penalty Fund rule, CPF FAQs, CPF blog, and CPF press release
April 29, 2013	Radian Guaranty, Inc. deposited \$3.75 million into the CPF
May 7, 2013	CPF rule published in the Federal Register and entered into effect ^a
May 7, 2013	CFPB posted CPF allocation schedule ^a
May 15, 2013	FY 2013 2nd Quarter CFO Update posted; the report identifies FY 2013 Q1 & Q2 CPF collections
May 30, 2013	First CPF allocation made (see attachment B)
June 6, 2013	CFPB's "Frequently Asked Questions on the CPF" updated
June 12, 2013	American Debt Settlement Solutions, Inc., deposited \$15,000 into the CPF
July 8, 2013	Comments on the CPF rule due
July 9, 2013	CFPB awarded contracts to two third-party payment administrators
July 19, 2013	CFPB "Frequently Asked Questions on the CPF" ^a updated
August 8, 2013	Consumer Financial Civil Penalty Fund Governance Board Charter update approved

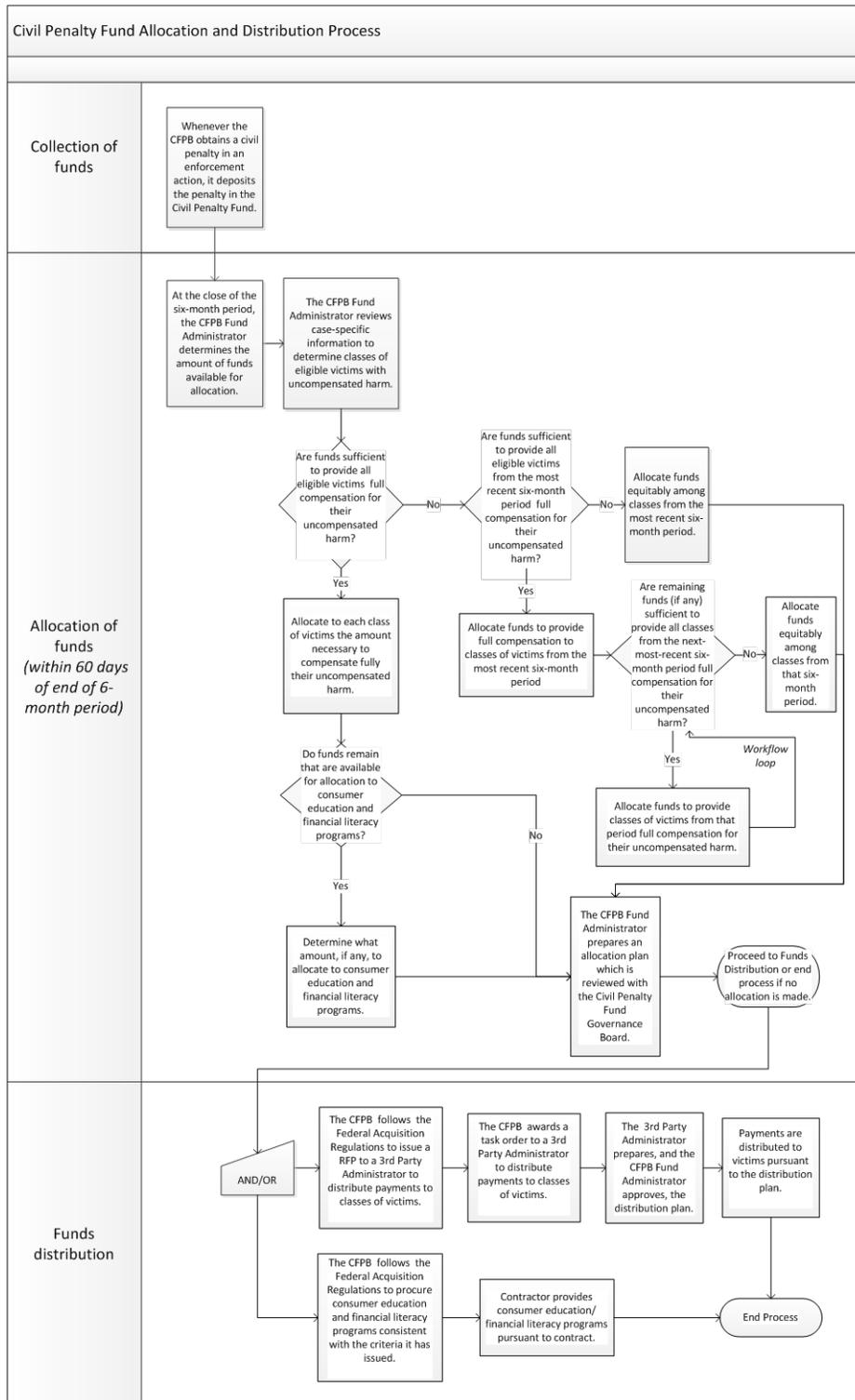
Date	Event
August 8, 2013	CFPB's <i>Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy (CEFL) Programs</i> issued
August 15, 2013	FY 2013 3rd Quarter CFO Update posted; the report identifies FY 2013 Q1, Q2, & Q3 CPF collections
August 28, 2013	CFPB's presolicitation conference for one of the CEFL programs held
September 19, 2013	JPMorgan Chase deposited \$20 million into the CPF
September 30, 2013	CPF allocation period 2 ended
October 1, 2013	CPF allocation period 3 began
October 11, 2013	Washington Federal deposited \$34,000 into the CPF
October 15, 2013	Mortgage Master deposited \$425,000 into the CPF
November 13, 2013	Castle & Cooke Mortgage deposited \$4 million into the CPF
November 22, 2013	Request for proposal issued for a CPF-funded CEFL released
November 25, 2013	Cash America deposited \$5 million into the CPF
November 26, 2013	Meracord deposited \$555,000 into the CPF
November 29, 2013	Second CPF allocation made

Source: OIG analysis and CFPB input.

^aInformation available on the CFPB's public website.

Attachment B

Civil Penalty Fund Allocation and Distribution Process



Source: OIG analysis and CFPB input.

Attachment C

Management's Response



1700 G Street, N.W., Washington, DC 20552

January 8, 2014

Mr. Mark Bialek
Inspector General
Board of Governors of the Federal Reserve System and
Consumer Financial Protection Bureau
20th and C Streets, NW
Washington, DC 20551

Dear Mr. Bialek,

Thank you for the opportunity to review and comment on the Office of Inspector General's draft report *Audit of the CFPB's Civil Penalty Fund*. We have reviewed the report and concur with the recommendations.

We are pleased that you agree that the Bureau has implemented internal controls for the Civil Penalty Fund. Over the last several years, the Bureau has worked to launch and implement the Civil Penalty Fund in a transparent and responsible manner, consistent with all applicable laws and requirements including the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Program milestones include the establishment of the Civil Penalty Fund Governance Board, the development and publication of the Civil Penalty Fund Rule, the development of key internal policies and procedures, and frequent public reporting on collections and allocations.

The information in this report covers policies, procedures and major activities from July of 2010 through November of 2013. Overall, we appreciate that your review has verified for us that the program has been built on a solid foundation.

As the Civil Penalty Fund program continues to develop and mature, we thank you for your review and look forward to additional opportunities for improvement.

Sincerely,

Stephen Agostini
Chief Financial Officer

Recommendation 1: We recommend that the CFO, in keeping with current practice, specify in the *Procedures for Civil Penalty Fund Administration* that the Fund Administrator must collect in writing any case-related data obtained after case settlement to facilitate payments to victims.

Management concurs with this recommendation. The OIG observed that the words “in writing” were not included in an identified section of the OCFO’s Procedures for Civil Penalty Fund Administration. The identified section currently states, “On an ongoing basis, the Fund Administrator will collect and track...information as related to CPF allocation eligibility.” It is OCFO’s practice to collect and track information in writing, and consider “in writing” implicit in the above statement. However, in response to the OIG’s recommendation, the OCFO will add the words “in writing” to the identified section of the procedures document.



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