OFFICE OF INSPECTOR GENERAL

Audit Report 2016-FMIC-C-007

The CFPB's Civil Penalty Fund Is in Compliance With the Improper Payments Information Act of 2002, as Amended

May 2, 2016

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

Report Contributors

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Abbreviations

CFPB	Consumer Financial Protection Bureau
Civil Penalty Fund	Consumer Financial Civil Penalty Fund
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FY	fiscal year
IPIA	Improper Payments Information Act of 2002
OIG	Office of Inspector General

Executive Summary:

The CFPB's Civil Penalty Fund Is in Compliance With the Improper Payments Information Act of 2002, as Amended

2016-FMIC-C-007 **May 2, 2016**

Purpose

The Improper Payments Information Act of 2002 (IPIA), as amended, requires agency heads to periodically review and identify all programs and activities that may be susceptible to significant improper payments. The Consumer Financial Protection Bureau (CFPB) determined that the Consumer Financial Civil Penalty Fund (Civil Penalty Fund) is subject to IPIA. Our objective was to determine whether the CFPB is in compliance with the act.

Background

The Civil Penalty Fund contains money that the CFPB collects from judicial and administrative actions against people or companies that violate federal consumer financial law. Funds may be used to pay victims or for consumer education, financial literacy programs, and program administration costs. For fiscal year 2015, total disbursements from the Civil Penalty Fund for program activities were approximately $24 million.

According to IPIA statutory guidance, if an agency fails to meet any one of six requirements, that agency is not compliant with IPIA.

Results of Audit

We determined that the CFPB fully complied with the two applicable requirements of IPIA for fiscal year 2015 as they relate to the Civil Penalty Fund.

First, IPIA requires agencies to publish an annual financial statement for the most recent fiscal year and post that report on the agency's website. The CFPB complied with this requirement by publishing its *Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2015* on November 16, 2015.

Second, IPIA requires agencies to complete a program-specific risk assessment every three fiscal years to evaluate whether their programs may be susceptible to improper payments. The CFPB complied with this requirement by conducting a risk assessment of the Civil Penalty Fund in fiscal year 2014 and determined that the risk of improper payments of the Civil Penalty Fund was low.

We determined that the remaining four IPIA requirements were not applicable.

Summary of Recommendations, OIG Report 2016-FMIC-C-007

Recommendation number	Page	Recommendation	Responsible office
No recommendations			

Office of Inspector General

Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau

May 2, 2016

MEMORANDUM

TO: Stephen Agostini
Chief Financial Officer
Consumer Financial Protection Bureau

FROM: Melissa Heist
Associate Inspector General for Audits and Evaluations

SUBJECT: OIG Report 2016-FMIC-C-007: *The CFPB's Civil Penalty Fund Is in Compliance With the Improper Payments Information Act of 2002, as Amended*

The Office of Inspector General (OIG) has completed its report on the subject audit. We conducted this audit to determine whether the Consumer Financial Protection Bureau (CFPB) is in compliance with the Improper Payments Information Act of 2002 (IPIA), which has been amended by the Improper Payments Elimination and Recovery Act of 2010 and the Improper Payments Elimination and Recovery Improvement Act of 2012.[1] We determined the CFPB fully complied with the applicable requirements for fiscal year 2015 as they relate to the Consumer Financial Civil Penalty Fund.

We provided you with a draft of our report for review and comment. In your response, you concur with our audit result. We have included your response as appendix B in our report.

We appreciate the cooperation that we received from staff members in the Office of the Chief Financial Officer during our audit. This report will be distributed to the following individuals and organizations, as required by IPIA and Office of Management and Budget guidance:

- the Director of the CFPB
- the Committee on Homeland Security and Governmental Affairs, U.S. Senate
- the Committee on Oversight and Governmental Reform, U.S. House of Representatives

1. Although the OIG's compliance assessment and reporting process is a requirement of the Improper Payments Elimination and Recovery Act of 2010, the agency requirements appear in the Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 and the Improper Payments Elimination and Recovery Improvement Act of 2012. For simplicity, the use of *IPIA* throughout this report refers to the collective requirements of IPIA, the Improper Payments Elimination and Recovery Act of 2010, and the Improper Payments Elimination and Recovery Improvement Act of 2012.

- the Comptroller General
- the Controller of the Office of Management and Budget

Please contact me if you would like to discuss this report or any related issues.

cc: Sartaj Alag, Chief Operating Officer
Elizabeth Reilly, Deputy Chief Financial Officer
Alicia McDonald Martinovich, Counsel to Chief Financial Officer
Tonya Dunham, Audit, Internal Controls, and A-123 Manager
Rumana Ahmad, Compliance, Governance, and Civil Penalty Fund Manager
J. Anthony Ogden, Deputy Inspector General

Contents

Introduction 1

Objective 1
Background 1

The CFPB Fully Complied With Applicable Requirements of IPIA 3

Management's Response 4

Appendix A: Scope and Methodology 5

Appendix B: Management's Response 6

Introduction

Objective

The objective of the audit was to determine whether the Consumer Financial Protection Bureau (CFPB) is in compliance with the Improper Payments Information Act of 2002 (IPIA).

Background

IPIA requires agency heads to periodically review all programs and activities that the agency head administers and identify all programs and activities that may be susceptible to significant improper payments. Significant improper payments are defined as improper payments in the program or activity in the preceding fiscal year that may have exceeded (1) both $10 million of all program or activity payments made during that fiscal year, and 1.5 percent of program outlays or (2) $100 million. Further, *payment* is defined as any transfer or commitment for future transfer of federal funds, such as cash, securities, loans, loan guarantees, and insurance subsidies, to any nonfederal person or entity, or a federal employee, that is made by a federal agency, a federal contractor, a federal grantee, or a governmental or other organization administering a federal program or activity.

In addition, IPIA requires that each fiscal year, the Inspector General of each agency determine and report on whether the agency is in compliance with the act. Compliance is defined by the act to mean that the agency has done the following:

1. Published an annual financial statement for the most recent fiscal year and posted that report and any accompanying materials on the agency website.

2. Conducted a program-specific risk assessment for each program or activity that conforms with section 2(a) of IPIA (if required).

3. Published improper payment estimates for all programs and activities identified as susceptible to significant improper payments under section 2(c) of IPIA in the accompanying materials to the annual financial statement (if required).

4. Published programmatic corrective action plans under section 2(d) of IPIA that the agency may have in the accompanying materials to the annual financial statement (if required).

5. Published (and is meeting) improper payments reduction targets under section 2(d) of IPIA that the agency may have in the accompanying materials to the annual financial statement for each program assessed to be at risk (if required and applicable).

6. Reported an improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published under section 2(c) of IPIA.

Based on these statutory criteria, if an agency does not meet one or more of these requirements, it is not compliant with IPIA.

IPIA's Applicability to the CFPB

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established two funds related to the programs and operations of the CFPB: the Bureau Fund and the Consumer Financial Civil Penalty Fund (Civil Penalty Fund). The CFPB's operations are funded principally by transfers made by the Board of Governors of the Federal Reserve System from the combined earnings of the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. The funds that are transferred from the Federal Reserve System are deposited into the Bureau Fund. The Dodd-Frank Act provides that funds obtained by or transferred to the Bureau Fund are not to be construed as government funds or appropriated monies; therefore, the CFPB has determined that the Bureau Fund is not subject to IPIA.

The CFPB also maintains a separate fund, the Civil Penalty Fund, into which the CFPB deposits the civil penalties it collects in judicial and administrative actions for violations of federal consumer financial law. Funds in the Civil Penalty Fund may be used for payments to the victims of activities for which the civil penalties have been imposed. To the extent that such victims cannot be located or such payments are otherwise not practicable, the CFPB may use funds in the Civil Penalty Fund for the purpose of consumer education and financial literacy programs. According to the Civil Penalty Fund rule, funds in the Civil Penalty Fund may also be used for administrative costs associated with making payments to Civil Penalty Fund victims. Because the Dodd-Frank Act is silent on whether funds in the Civil Penalty Fund should be construed as government funds or appropriated monies, the CFPB has determined that the Civil Penalty Fund is subject to IPIA. For fiscal year (FY) 2015, total disbursements from the Civil Penalty Fund for program activities were approximately $24 million.

The CFPB Fully Complied With Applicable Requirements of IPIA

We determined that the CFPB fully complied with the applicable requirements of IPIA for FY 2015 as they relate to the Civil Penalty Fund. Specifically, we found that the CFPB met the first two IPIA requirements: (1) The CFPB published an annual financial statement for the most recent fiscal year and posted that report on the agency website, and (2) the CFPB conducted a program-specific risk assessment in conformance with section 2(a) of IPIA. The other four IPIA requirements are not applicable to the Civil Penalty Fund, as the CFPB has determined that the fund is not susceptible to significant improper payments. The results of our review, by requirement, are detailed below.

1. **Did the CFPB publish an annual financial statement for the most recent fiscal year and post that report and any accompanying materials required by the Office of Management and Budget on the agency website?**

   The CFPB complied with this requirement by publishing on the agency's website its *Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2015* and accompanying materials required by the Office of Management and Budget on November 16, 2015.

2. **Did the CFPB conduct a specific risk assessment for each program or activity that conformed with section 2(a) of the IPIA (if required)?**

   IPIA requires agencies to complete a program-specific risk assessment every three fiscal years to evaluate whether the programs may be susceptible to improper payments. The CFPB complied with this requirement by conducting a risk assessment of the Civil Penalty Fund in FY 2014 and determined that the risk of improper payments of the Civil Penalty Fund was low.

   The CFPB was not required to conduct a risk assessment of the Civil Penalty Fund program for FY 2015; however, during FY 2015, the CFPB updated the FY 2014 risk assessment to consider payments for consumer education and financial literacy programs and vendor administrative costs. The updated risk assessment showed that the risk of improper payments for the Civil Penalty Fund is still low. Based on the risk assessment, the CFPB determined that the Civil Penalty Fund is not susceptible to significant improper payments.

   In addition, our review of the risk assessment found that the CFPB considered all seven risk factors that may make the Civil Penalty Fund susceptible to significant improper payments. IPIA requires consideration of these risk factors to ensure that programs or activities are not susceptible to significant improper payments. The seven risk factors are

1. whether the program or activity is new to the agency
2. the complexity of the program or activity reviewed
3. the volume of payments made through the program or activity reviewed
4. whether payments or payment eligibility decisions are made outside of the agency, such as by a state or local government
5. recent major changes in program funding, authorities, practices, or procedures
6. the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate
7. significant deficiencies in the audit report of the agency or other relevant management findings that might hinder accurate payment certification

3. **Did the CFPB publish improper payment estimates for all programs and activities identified as susceptible to significant improper payments under section 2(c) of the IPIA in the accompanying materials to the annual financial statement (if required)?**

   This requirement is not applicable. The CFPB determined that the Civil Penalty Fund is not susceptible to significant improper payments.

4. **Did the CFPB publish programmatic corrective action plans under section 2(d) of the IPIA that the agency may have in the accompanying materials to the annual financial statement (if required)?**

   This requirement is not applicable. The CFPB determined that the Civil Penalty Fund is not susceptible to significant improper payments.

5. **Has the CFPB published (and is it meeting) improper payments reduction targets under section 2(d) of the IPIA that the agency may have, in the accompanying materials to the annual financial statement for each program, assessed to be at risk (if required and applicable)?**

   This requirement is not applicable. The CFPB determined that the Civil Penalty Fund is not susceptible to significant improper payments.

6. **Did the CFPB report an improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published under section 2(c) of the IPIA?**

   This requirement is not applicable. The CFPB determined that the Civil Penalty Fund is not susceptible to significant improper payments.

Management's Response

In his response to our draft report, the Chief Financial Officer concurs with our audit result and states that the CFPB is pleased that we found the CFPB to be in full compliance with the applicable requirements of IPIA as they relate to the Civil Penalty Fund program.

Appendix A
Scope and Methodology

To accomplish our objective, we reviewed the CFPB's *Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2015* and accompanying materials. In addition, we reviewed the CFPB's risk assessment of the Civil Penalty Fund and other pertinent documentation. We also interviewed CFPB officials responsible for the oversight of the Civil Penalty Fund and the IPIA reporting process within the Office of the Chief Financial Officer.

We conducted our fieldwork in March 2016. 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 findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B
Management's Response

Consumer Financial
Protection Bureau

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

April 28, 2016

Ms. Melissa Heist
Associate Inspector General for Audits and Evaluations
Board of Governors of the Federal Reserve System and
Consumer Financial Protection Bureau
20th and Constitution Avenue
Washington, DC 20551

Dear Ms. Heist,

We have reviewed your report entitled *The CPFB's Civil Penalty Fund is in Compliance with IPIA, as Amended*, and appreciate the opportunity to respond.

We are pleased that your evaluation found that the CFPB fully complied with the applicable requirements of the Improper Payments Elimination Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2012 (IPERA), in FY2015 in the administration of the Civil Penalty Fund program.

As the Civil Penalty Fund program continues to mature, we appreciate that your review has validated the steps taken to establish effective internal control and implement a program consistent with applicable laws and requirements.

Thank you for your review.

Sincerely,

Stephen J. Agostini

Stephen Agostini
Chief Financial Officer

consumerfinance.gov

OFFICE OF INSPECTOR GENERAL

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

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