Audit Report
2019-FMIC-C-006
April 29, 2019

Bureau of Consumer Financial Protection

Independent Accountants' Report on the Bureau Civil Penalty Fund's 2018 Compliance With the Improper Payments Information Act of 2002, as Amended

Office of Inspector General
Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection

Office of Inspector General
Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection

MEMORANDUM

DATE: April 29, 2019

TO: Elizabeth Reilly
Chief Financial Officer
Bureau of Consumer Financial Protection

FROM: Cynthia Gray Cynthia Gray
Acting Associate Inspector General for Audits and Evaluations
Office of Audits and Evaluations

SUBJECT: Independent Accountants' Report on the Bureau Civil Penalty Fund's 2018 Compliance With the Improper Payments Information Act of 2002, as Amended

This memorandum transmits the subject audit report, prepared by TFC Consulting, Inc. We contracted with TFC to audit the Bureau of Consumer Financial Protection (Bureau) Civil Penalty Fund's compliance with the Improper Payments Information Act of 2002, as amended (IPIA), for fiscal year 2018. IPIA has been amended by the Improper Payments Elimination and Recovery Act of 2010 and the Improper Payments Elimination and Recovery Improvement Act of 2012.

The contract requires the audit to be performed in accordance with the auditing standards applicable to performance audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States. We reviewed and monitored the work of TFC to ensure compliance with the contract and *Government Auditing Standards*. TFC is responsible for the accompanying report, *Bureau of Consumer Financial Protection Civil Penalty Fund's – Audit Report: Independent Accountants' Report on Compliance With the Improper Payments Information Act of 2002, as Amended*, dated April 26, 2019.

We appreciate the cooperation that TFC received from Bureau personnel during the audit. The 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 Bureau
- the Committee on Homeland Security and Government Affairs, United States Senate
- the Committee on Oversight and Reform, U.S. House of Representatives

- 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.

Attachment
cc: Katherine Fulton
Dana James
Tonya Dunham
Rumana Ahmad
Lauren Hassouni
Carlos Villa

Bureau of Consumer Financial Protection Civil Penalty Fund's - Audit Report

Independent Accountants' Report on Compliance with the Improper Payments Information Act of 2002, as Amended

Final Report

April 26, 2019

TFC Consulting, Inc.
9200 Corporate Blvd., Suite 260
Rockville, MD 20850

To: Office of Inspector General
Board of Governors of the Federal Reserve System and
Bureau of Consumer Financial Protection

From: TFC Consulting, Inc. JST

Subject: Memo of Transmittal for the Performance Audit of the Bureau of Consumer Financial Protection Civil Penalty Fund's Compliance with the Improper Payments Information Act of 2002, as Amended

Date: April 26, 2019

TFC Consulting, Inc. (TFC) was engaged to perform a performance audit of the Bureau of Consumer Financial Protection (Bureau) Civil Penalty Fund's compliance with the requirements of the Improper Payments Information Act of 2002, as amended (IPIA). This memo serves as the transmittal memo to the Office of Inspector General (OIG), Board of Governors of the Federal Reserve System and Bureau of Consumer Financial Protection. The Audit Report was released in final form on April 26, 2019 by Jitanshu Trivedi, President and CEO of TFC.

TFC provided the Bureau's management with a draft of this report for review and comment. At the exit conference held on April 10, 2019, the Bureau's management stated that they concur with the content of the report. Because we are not making formal recommendations, a written management response to this report was not required.

It was a pleasure working with the various individuals within the OIG's office as well as the individuals at the Bureau who provided the information included in the performance audit report.

Bureau of Consumer Financial Protection Civil Penalty Fund's - Audit Report

Independent Accountants' Report on Compliance with the Improper Payments Information Act of 2002, as Amended

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9200 Corporate Blvd., Suite 260
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Independent Accountants' Report on Compliance with the Improper Payments Information Act of 2002, as Amended

Purpose

The Improper Payments Information Act of 2002, as amended (IPIA), requires agency heads to periodically review and identify all programs and activities that may be susceptible to significant improper payments.

Objective

The objective of this audit was to determine whether the Bureau of Consumer Financial Protection (Bureau) is in compliance with IPIA, which has been amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA).

Although the Office of Inspector General's (OIG) compliance assessment and reporting process is a requirement of IPERA, the agency requirements appear in IPIA, as amended by IPERA and IPERIA. For simplicity, the use of IPIA throughout this report refers to the collective requirements of IPIA, IPERA, and IPERIA.

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 1.5 percent of program outlays and $10 million of all program or activity payments made during that fiscal year 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 IPIA. Compliance is defined by IPIA 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).

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.

Scope and Methodology

To accomplish our objective, we reviewed the Bureau's *Financial Report of the Bureau of Consumer Financial Protection, Fiscal Year 2018* and accompanying materials. In addition, we reviewed the Bureau's risk assessment of the Civil Penalty Fund and other pertinent documentation. We also interviewed Bureau officials in the Office of the Chief Financial Officer responsible for the oversight of the Civil Penalty Fund and the IPIA reporting process.

We conducted our fieldwork in January through March 2019. 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 and 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.

IPIA's Applicability to the Bureau

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established two funds related to the programs and operations of the Bureau: The Bureau Fund and the Consumer Financial Civil Penalty Fund (Civil Penalty Fund). The Bureau's operations are funded principally by transfers made by the Board of Governors of the Federal Reserve System (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 Bureau has determined that the Bureau Fund is not subject to IPIA.

The Bureau also maintains a separate fund, the Civil Penalty Fund, into which the Bureau 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 Bureau 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 Bureau has determined that the Civil Penalty Fund is subject to IPIA. Therefore, the Bureau is required to conduct a periodic risk assessment of the fund at least once every three fiscal years. The Civil Penalty Fund reported disbursements of $262,080,969 in FY 2017.

The Bureau's Compliance with Applicable Requirements of IPIA

We determined that the Bureau complied with the applicable requirements of IPIA for FY 2018 as they relate to the Civil Penalty Fund. Specifically, we found that the Bureau met the first two IPIA requirements by (1) publishing an annual financial statement for the most recent fiscal year and posting that report on the agency website and (2) conducting 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 Bureau has determined that the fund is not susceptible to significant improper payments. The results of our review, by requirement, are detailed below in our **Summary of Results**.

Summary of Results

1. **Did the Bureau 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 Bureau complied with this requirement by publishing on the agency's website its *Financial Report of the Bureau of Consumer Financial Protection, Fiscal Year 2018* and accompanying materials required by the Office of Management and Budget, dated November 15, 2018, as required by IPIA.

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

   The Bureau complied with this requirement by conducting a program-specific risk assessment for the Civil Penalty Fund. IPIA's periodic review requirement mandates that agencies complete a program-specific risk assessment at least once every 3 fiscal years to evaluate whether the programs may be susceptible to improper payments. In addition, our review of the risk assessment found that the Bureau considered all seven risk factors that may make a program or activity susceptible to significant improper payments as required by IPIA to ensure that the Civil Penalty Fund is not susceptible to significant improper payments. The seven risk factors include:

   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

   The Bureau determined that the risk of improper payments is low based on the risk assessment and given the following:

   - The current internal control framework around the Civil Penalty Fund, which is reviewed by the Bureau's Internal Control Team annually.
   - The Civil Penalty Fund post-payment audit reviews, which are conducted by the Contracting Officer's Representative and Fund Administrator within a quarter after distributions are made.
   - The Bureau of the Fiscal Service conducted a risk assessment in FY18 based on FY17 disbursements and did not identify improper payments.[1]

[1] The Bureau of the Fiscal Service (BFS) is a federal government agency which assists other U.S. Government Agencies including the Bureau of Consumer Financial Protection with accounting, financing, collections, payments, and other shared services. BFS makes disbursements of funds on behalf of the Bureau and as a result conducts their own risk assessment annually. BFS did not identify any erroneous or improper payments made from the Civil Penalty Fund during FY 2018 risk assessment.

3. **Did the Bureau publish 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)?**

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

4. **Did the Bureau publish 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)?**

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

5. **Has the Bureau 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)?**

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

6. **Did the Bureau 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 IPIA?**

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

TFC Consulting, Inc.

Certified Public Accountants
April 26, 2019