

Bureau of Consumer Financial Protection

Independent Accountants' Report on the Bureau Civil Penalty Fund's 2019 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 20, 2020

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

FROM: Michael VanHuysen 
Assistant Inspector General for Audits and Evaluations

SUBJECT: OIG Report 2020-FMIC-C-013: *Independent Accountants' Report on the Bureau Civil Penalty Fund's 2019 Compliance With the Improper Payments Information Act of 2002, as Amended*

This memorandum transmits the subject audit report, prepared by Brown & Company CPAs and Management Consultants, PLLC. We contracted with Brown & Company to audit the Bureau of Consumer Financial Protection Civil Penalty Fund's compliance with the Improper Payments Information Act of 2002, as amended (IPIA), for fiscal year 2019. 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. On March 2, 2020, the president signed into law the Payment Integrity Information Act of 2019. This act replaces the various requirements under IPIA with a consolidated framework and contains additional requirements for the Bureau that will be considered during the 2020 IPIA audit. The 2019 audit followed the law in place at the beginning of the audit work.

The contract requires the audit to be performed in accordance with the auditing standards applicable to performance audits contained in *Government Auditing Standards*, issued by the comptroller general of the United States. We reviewed and monitored the work of Brown & Company to ensure compliance with the contract and *Government Auditing Standards*. Brown & Company 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 20, 2020.

We appreciate the cooperation that Brown & Company 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

Elizabeth Reilly

April 20, 2020

- the Committee on Oversight and Reform, U.S. House of Representatives
- the Committee on Homeland Security and Government Affairs, United States Senate
- the Office of Management and Budget
- the comptroller general of the United States

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

Attachment

cc: Kirsten Sutton
Kate Fulton
Dana James
Tonya Dunham
Rumana Ahmad
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 20, 2020

**Prepared By
Brown & Company CPAs and
Management Consultants, PLLC**

NOTICE – THIS REPORT IS FOR RESTRICTED OFFICIAL USE



BROWN & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS, PLLC

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

From: Brown & Company CPAs and Management Consultants, PLLC

Subject: Memo to Transmit the Independent Accountant's Report of the Audit of the Bureau of
Consumer Financial Protection's Compliance with the Improper Payments Information
Act of 2002 as Amended Submission Requirements, for Fiscal Year 2019

Date: April 20, 2020

Brown & Company CPAs and Management Consultants, PLLC (Brown & Company) was engaged to perform a performance audit of the Bureau of Consumer Financial Protection's (Bureau) compliance with the Improper Payments Information Act of 2002 as Amended (IPIA Act), for Fiscal Year 2019 as required by the Act. This memo serves as the transmittal memo to the Office of Inspector General for the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection.

It was a pleasure working with the various individuals within the Office of Inspector General as well as the individuals at the Bureau who provided the information included in the 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

Table of Contents

Purpose	1
Objective	1
Background	1
Scope and Methodology	2
IPIA’s Applicability to the Bureau.....	2
The Bureau’s Compliance with Applicable Requirements of IPIA	3
Summary of Results.....	3
Exit Conference.....	5



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

Purpose

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

On March 2, 2020, the President signed into law the Payment Integrity Information Act of 2019, Pub. L. No. 116-117. This act largely reorganizes the various requirements that previously were found in the Improper Payments Information Act of 2002, the Improper Payments Elimination and Recovery Act of 2010, and the Improper Payments Elimination and Recovery Improvement Act of 2012. The new law repeals all three of these laws and replaces them with a consolidated framework found at 31 U.S.C. §§ 3351-58¹. The new law contains additional requirements for the agency that will be taken under consideration during the 2020 IPIA audit.

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)². We conducted our audit work from December 2019 through March 2020 following the existing law in place at the beginning of our audit.

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

¹ Chapter 33 of title 31, United States Code, is amended by adding "Subchapter IV—Improper Payments," and repealing the Improper Payments Information Act of 2002, Improper Payments Elimination and Recovery Act of 2010, and Improper Payments Elimination and Recovery Improvement Act of 2012.

² 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 the Improper Payments Information Act of 2002, the Improper Payments Elimination and Recovery Act of 2010, and the Improper Payments Elimination and Recovery Improvement Act of 2012.

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, as required, 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 2019* 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 responsible for the oversight of the Civil Penalty Fund and the IPIA reporting process.

We conducted our fieldwork from January 8, 2020 through March 20, 2020. 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 Bureau reported \$1,022,298 in distributions of Civil Penalty Fund monies to harmed consumers for fiscal year 2019 in its *Financial Report of the Bureau of Consumer Financial Protection, Fiscal Year 2019*.

The Bureau's Compliance with Applicable Requirements of IPIA

We determined that the Bureau complied with the applicable requirements of IPIA for FY 2019 as they relate to the Civil Penalty Fund. Specifically, we found that the Bureau met the first two requirements by (1) publishing an annual financial statement for the most recent fiscal year and posting that report and any accompanying materials on the agency website and (2) conducting a program-specific risk assessment for the Civil Penalty Fund. The other four 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 2019* and accompanying materials required by the Office of Management and Budget, dated November 15, 2019, 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 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. The Bureau conducted an improper payments risk assessment of the Bureau's disbursement program related to the Civil Penalty Fund for FY 2018.

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 FY 19 based on FY 18 disbursements and did not identify improper payments.³

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.

³ 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. The BFS makes disbursements of funds on behalf of the Bureau and as a result conducts their own risk assessment annually. The BFS did not identify any erroneous or improper payments made from the Civil Penalty Fund during FY 2018 risk assessment.

- 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)?**

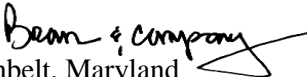
This requirement is not applicable. The Bureau determined that the Civil Penalty Fund is not susceptible to significant improper payments.

- 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.

Exit Conference

Brown & Company provided the Bureau's management with a draft of this report for review and comment. The exit conference was held on April 9, 2020. The Bureau's management stated that they concur with the content of the report.


Greenbelt, Maryland
April 20, 2020