

Bureau of Consumer Financial Protection

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# Independent Accountants' Report on the Bureau Civil Penalty Fund's 2017 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:** May 14, 2018

**TO:** Elizabeth Reilly  
Chief Financial Officer and Assistant Director, Office of the Chief Financial Officer  
Bureau of Consumer Financial Protection

**FROM:** Melissa Heist *Melissa Heist*  
Associate Inspector General for Audits and Evaluations

**SUBJECT:** Independent Accountants' Report on the Bureau Civil Penalty Fund's 2017 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 2017. 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 - Audit Report - Independent Accountants' Report on Compliance with the Improper Payments Information Act of 2002, as Amended*, dated May 14, 2018.

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 Acting Director of the Bureau
- the Committee on Homeland Security and Government Affairs, United States Senate
- the Committee on Oversight and Governmental Reform, U.S. House of Representatives
- the Comptroller General
- the Controller of the Office of Management and Budget

Elizabeth Reilly

May 14, 2018

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

Attachment

cc: Katherine Fulton, Acting Chief Operating Officer and Acting Associate Director, Operations Division  
Dana James, Deputy Chief Financial Officer, Office of the Chief Financial Officer  
Tonya Dunham, Director, Compliance and Internal Controls  
Rumana Ahmad, Director, Governance and Compliance



**Bureau of Consumer Financial Protection  
Civil Penalty Fund - Audit Report**

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

**Final Report**

**May 14, 2018**



TFC Consulting, Inc.  
9901 Belward Campus Dr., Suite 165  
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's Civil Penalty Fund

**Date:** May 14, 2018

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 May 14, 2018 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 19, 2018, 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’s Civil Penalty Fund - Audit Report**

**Independent Accountants’ Report on Compliance with  
Improper Payments Information Act of 2002, as Amended**

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TFC Consulting, Inc.  
9901 Belward Campus Dr., Suite 165  
Rockville, MD 20850

## **Bureau of Consumer Financial Protection's Civil Penalty Fund - 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), 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 the Improper Payments Information Act of 2002, 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.

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.

#### **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 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 Consumer Financial Protection Bureau, Fiscal Year 2017* 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 March 2018. 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 previous risk assessment was performed in 2015.

The Civil Penalty Fund disbursements significantly increased in size to \$57,110,511, in FY 2016. The Bureau determined, based on the reporting requirements of IPIA, the Civil Penalty Fund program would need to have an approximately 17.5% improper payment rate to be considered susceptible to significant improper payments. The Bureau contends that a 17.5% improper payment rate was unlikely given the following:

- The current internal control framework around the Civil Penalty Fund business 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, did not identify any erroneous payments in FY16; and
- The Bureau of Fiscal Service (BFS) conducted a risk assessment in FY17 based on FY16 disbursements and did not identify improper payments.<sup>1</sup>

### **The Bureau's Compliance with Applicable Requirements of IPIA**

We determined that the Bureau complied with the applicable requirements of IPIA for FY 2017 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**.

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<sup>1</sup> The 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 2017 risk assessment.

## 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 Consumer Financial Protection Bureau, Fiscal Year 2017* and accompanying materials required by the Office of Management and Budget, dated November 15, 2017, 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 the 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. The Bureau conducted a risk assessment of the Civil Penalty Fund in FY 2015 and determined that the risk of improper payments from the Civil Penalty Fund was low. As a result, the Bureau was not required to conduct a risk assessment in FYs 2016 and 2017.

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 the 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 the 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 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)?**

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 the 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**

May 14, 2018