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Report to the Chairwoman, Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, House of Representatives

June 2014

CONSUMER FINANCIAL PROTECTION BUREAU

Opportunity Exists to Improve Transparency of Civil Penalty Fund Activities

GAO-14-551

Highlights of GAO-14-551, a report to Chairwoman, Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, House of Representatives

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Why GAO Did This Study

The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes CFPB to, among other things, enforce federal consumer law through judicial and administrative actions which may result in the payment of civil penalties by parties that violate the law.

GAO was asked to review CFPB's Civil Penalty Fund. This report examines how CFPB's Civil Penalty Fund (1) is administered and what controls are in place to guide the management of the fund and (2) compares to other civil money penalty funds and activities administered by other federal agencies. GAO reviewed CFPB documentation, policies and procedures related to the Civil Penalty Fund, and the financial audit statements for the fund. GAO also reviewed civil penalty funds or activities at seven federal agencies. To identify other similar federal funds, GAO reviewed its prior work and other published research, interviewed CFPB officials on what other funds they considered, and interviewed other federal officials.

What GAO Recommends

GAO recommends that the Fund Administrator document the specific factors considered in determining the amount of funding, if any, allocated to consumer education and financial literacy programs. CFPB generally agreed with GAO's recommendation.

View GAO-14-551. For more information, contact A.Nicole Clowers at (202) 512-8678 or clowersa@gao.gov

What GAO Found

The Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (CFPB), has developed a process for administering the Consumer Financial Civil Penalty Fund (Civil Penalty Fund). CFPB deposits collected civil money penalties into the fund to compensate eligible victims and may also use the fund for the purpose of consumer education and financial literacy programs. CFPB has implemented a number of internal controls for managing the fund. For example, CFPB has segregated key duties and responsibilities among staff, which is consistent with internal controls for reducing the risk of management error or fraud. CFPB has also implemented controls for tracking the collection of penalty funds, determining the allocation amount to classes of eligible victims, and monitoring the third-party vendors that distribute the funds. For example, in CFPB's Civil Penalty Fund Rule, the agency outlines a 6-month allocation schedule, which establishes a timeline for funds to be pooled and distributed. In addition, CFPB has written policies that describe roles and the process related to making allocations to consumer education and financial literacy programs. However, according to officials, CFPB did not document the factors the Fund Administrator considered in determining the allocation of funds for consumer education and financial literacy programs for the first allocation period. Federal internal control standards state that it is important to document significant events clearly and completely and to promptly record transactions and other significant events. Documenting the specific factors the Fund Administrator considers each time funds are allocated would make such decisions more transparent and would help to ensure that future allocation decisions are made in a consistent manner.

GAO found similarities and differences among CFPB's Civil Penalty Fund and the civil money penalty funds and activities of other agencies. Of the seven agencies GAO reviewed, three—Centers for Medicare and Medicaid Services, Commodity Futures Trading Commission, and Securities and Exchange Commission—have established four funds into which civil money penalties are deposited, based on statutory authority. Comparing these funds to CFPB's Civil Penalty Fund, GAO found:

- CFPB's Civil Penalty Fund and one other fund have the primary purpose of compensating harmed consumers or investors.
- Similar to CFPB's Civil Penalty Fund, three of the four funds that GAO examined can also use collected penalties for more than one activity.
- With the exception of one fund, all of the funds, including CFPB's Civil Penalty Fund, are "pooled funds"—meaning that collected penalties are aggregated in the fund and can be used for multiple purposes.
- Unlike CFPB's Civil Penalty Fund, two funds have a balance limit, and only one fund has used collected penalties to establish new offices or hire personnel.

The remaining four agencies do not have the authority to establish a fund and therefore transfer collected penalties to the U.S. Treasury.

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Abbreviations

CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
CMS	Centers for Medicare and Medicaid Services
DOJ	Department of Justice
FDIC	Federal Deposit Insurance Corporation
FTC	Federal Trade Commission
OCC	Office of the Comptroller of the Currency
SEC	Securities and Exchange Commission

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

June 26, 2014

The Honorable Shelley Moore Capito
Chairwoman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
House of Representatives

Dear Madam Chairwoman:

The Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (CFPB), had collected civil penalties of over $139 million and allocated over $31 million to compensate eligible harmed victims as of May 2014. CFBP's primary focus is to protect and inform consumers and help promote transparency and fair competition within consumer financial product and service markets. As a part of its responsibility to protect consumers, CFPB seeks to ensure that banks and other financial service providers comply with federal consumer financial law. CFPB may assess civil penalties as part of its enforcement function.[1] Further, CFPB also works to promote financial education to help improve the financial literacy of consumers so they can make more informed financial decisions to meet their own goals. Civil penalties collected by CFPB are deposited into the Consumer Financial Civil Penalty Fund (Civil Penalty Fund). Money in the fund is then used to make payments to victims of activities for which civil penalties have been imposed. As allowed under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), CFPB may also use money in the Civil Penalty Fund for consumer education and financial literacy programs when victims cannot be located or payments to them are otherwise not practicable.[2]

In May 2013, CFPB published its Consumer Financial Civil Penalty Fund Rule (Civil Penalty Fund Rule), which governs the administration and use of the Civil Penalty Fund.[3] Among other things, the rule identifies the

[1]12 U.S.C. § 5565. Generally, a civil money penalty is one of several forms of monetary sanctions that an agency can impose on a violator as a punitive measure.

[2]Pub. L. No. 111-203, § 1017(d)(2), 124 Stat. 1376, 1979 (2010).

[3]12 C.F.R. pt. 1075; *Consumer Financial Civil Penalty Fund*, 78 Fed. Reg. 26489 (May 7, 2013).

classes of victims who may receive payments from the Civil Penalty Fund and establishes procedures for allocating funds for payments to victims.[4] The rule also establishes procedures for distributing payments to eligible victims and describes CFPB's authority, as provided in the Dodd-Frank Act, to use funds for consumer education and financial literacy programs, as appropriate, and outlines CFPB's reporting requirements.

You requested that we review CFPB's Civil Penalty Fund. This report examines CFPB's Civil Penalty Fund, including the purpose for which the funds have been used and the administration of the fund. More specifically, it examines how CFPB's Civil Penalty Fund (1) is administered and what controls are in place to guide the management of the fund and (2) compares to other civil money penalty funds and activities administered by federal agencies.

To describe how the Civil Penalty Fund is administered, we reviewed and analyzed relevant CFPB guidance and documentation on administering the fund. We also reviewed policies and procedures for collecting, allocating, and disbursing the funds and interviewed CFPB officials on steps they took to make those decisions. To determine what controls are in place to guide the management of the fund, we reviewed and analyzed CFPB documentation related to internal controls, relevant prior GAO reports such as GAO's financial audit of CFPB, and the Board of Governors of the Federal Reserve System Office of Inspector General's report on the management of the fund.[5] Further, we reviewed and assessed CFPB's policies, procedures, and activities for collection, allocation, and distribution of the fund against applicable federal standards for internal control and the requirements entailed in the Civil Penalty Fund Rule.[6] We interviewed CFPB officials regarding these activities. We also assessed the reliability of CFPB's collection and allocation data by interviewing CFPB officials knowledgeable about the

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[4]A class of victims is a group of similarly situated victims who suffered harm from the same or similar violations for which CFPB obtained relief in an enforcement action. 12 C.F.R. § 1075.101.

[5]See Board of Governors of the Federal Reserve System, Office of Inspector General, *Audit of the CFPB's Civil Penalty* Fund. 2014-AE-C-001 (Washington, D.C.: Jan. 16, 2014); and GAO, *Financial Audit: Bureau of Consumer Financial Protection's Fiscal Years 2013 and 2012 Financial Statement,* GAO-14-170R (Washington, D.C.: Dec.16, 2013).

[6]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

data regarding steps they take to ensure reliability of the data. We determined the data were sufficiently reliable for the purposes of our report.

To identify other funds that are similar to CFPB's fund, we reviewed prior GAO work on other funds and other published research, interviewed CFPB officials on what other funds were considered during the design of its fund, and interviewed other federal officials and an advocacy group. We identified funds or activities at the Centers for Medicare and Medicaid Services (CMS), a division within the Department of Health and Human Services; Commodity Futures Trading Commission (CFTC); Department of Justice (DOJ); Federal Deposit Insurance Corporation (FDIC); Federal Trade Commission (FTC); Office of the Comptroller of the Currency (OCC); and Securities and Exchange Commission (SEC). We interviewed officials from these agencies to understand the administration of each selected fund. Further, we reviewed and analyzed regulation and policies on the purposes for which monies were used and the administration for those agencies that have a fund.

We conducted this performance audit from December 2013 to June 2014 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Dodd-Frank Act established CFPB.[7] The act consolidated many of the consumer financial protection authorities previously shared by seven federal agencies into one and provided CFPB additional authority to conduct rulemaking, supervision, and enforcement with respect to federal consumer financial laws; handle consumer complaints and inquiries; promote financial education; research consumer behavior; and monitor financial markets for risks to consumers. CFPB's mission is to help consumer finance markets work by making rules more effective, consistently and fairly enforcing those rules, and empowering consumers

[7]Title X of the Dodd-Frank Act, also called the Consumer Financial Protection Act of 2010, created CFPB as a new executive agency to enforce certain federal consumer protection laws and promulgate rules regarding federal consumer financial laws, among other things.

to take more control over their economic lives. The Dodd-Frank Act authorizes CFPB to, among other things, enforce federal consumer financial law through judicial and administrative actions. In those actions, CFPB may require a party that has violated the law to pay a civil penalty.

The Dodd-Frank Act established the Civil Penalty Fund, into which civil money penalties obtained in judicial and administrative actions under federal consumer laws must be deposited.[8] The fund is maintained in an account at the Federal Reserve Bank of New York.[9] As prescribed in the Dodd-Frank Act and set forth in the Civil Penalty Fund Rule, funds in the Civil Penalty Fund may be allocated in a two-stage procedure. First, CFPB will use the money in the Civil Penalty Fund to provide compensation to consumers who were harmed by activities for which civil penalties have been imposed, particularly to those consumers who are not otherwise expected to be fully compensated for the harm they suffered as a result of a violation—that is, those victims who have uncompensated harm.[10] The amount of compensation CFPB provides will also depend in part on compensation the victims received, or are reasonably expected to receive, from other sources. For example, in some cases, the person or company may be ordered to pay redress directly to a class of victims.[11] Second, if funds remain after CFPB has provided full compensation to all eligible victims or if payments to victims are impracticable because victims cannot be located or it is otherwise not

[8]Pub. L. No. 111-203, § 1017(d), 124 Stat. 1376, 1978 (2010). (codified at 12 U.S.C. § 5497(d)(1)).

[9]The Dodd-Frank Act requires CFPB to establish and maintain at a Federal Reserve Bank the Consumer Financial Civil Penalty Fund. 12 U.S.C. § 5497(d)(1). CFPB's Office of the Chief Financial Officer established the fund account at the Federal Reserve Bank of New York.

[10]12 C.F.R. § 1075.104(a). All civil penalties are deposited into the Civil Penalty Fund, where they are pooled and can be used for payments to eligible victims.

[11]12 C.F.R. § 1075.104(b). In those instances, a victim's compensable harm is equal to that victim's share of the total redress ordered. 12 C.F.R. § 1075.104(c)(1). In instances in which redress is not ordered, the amount of victims' compensable harm may be specified in an order resulting from an enforcement action or may be equal to victims' out-of-pocket losses that resulted from the violation for which a civil penalty was imposed, except to the extent that such losses are impracticable to determine. 12 C.F.R. § 1075.104(c)(2).

practicable to pay victims, CFPB may use money in the fund for consumer education and financial literacy programs to help consumers.[12]

The Office of the Chief Financial Officer manages the collection and distribution of the money deposited into the Civil Penalty Fund. The Civil Penalty Fund Rule established the position of the Fund Administrator, who oversees the daily administration of the fund. The Fund Administrator reports to the Chief Financial Officer and allocates funds in the Civil Penalty Fund in accordance with the guidelines and a schedule established under the Civil Penalty Fund Rule.[13] An allocation schedule, which sets forth 6-month periods or cycles, was published and became effective in May 2013.[14] Allocations are made within 60 days of the end of each period. Through May 2014, CFPB had allocated funds for three periods. The fourth period began on April 1, 2014, and will end on September 30, 2014.

As of May 2014, through the first three periods, CFPB had collected civil penalties of over $119 million and allocated over $31 million to compensate seven classes of harmed victims (about 26% of the total amount).[15] Further, the Fund Administrator had made one allocation for consumer education and financial literacy programs. Funds in this allocation are being used for a program that provides financial coaching

[12]12 U.S.C. § 5497(d)(2).

[13]12 C.F.R. §§ 1075.102(a), 1075.105(a). The Fund Administrator first determines and allocates funds to classes of victims from the most recently concluded 6-month period in the amount necessary to compensate them fully for uncompensated harm. In the event that funds remain after the allocation to the classes of victims from the most recent period, the Fund Administrator will compensate victims in the next most recent 6-month period and so forth until no funds remain. 12 C.F.R. § 1075.106. If funds remain after allocating to all classes the amount necessary to provide, to the extent practicable, full compensation for victims' uncompensated harm, the Fund Administrator may allocate some or all of the remaining funds for consumer education and financial literacy programs. 12 C.F.R. § 1075.107(a).

[14]The first allocation period was longer than 6 months, which was permitted under the Civil Penalty Fund rule to allow for future 6-month periods to start and end on dates that better served administrative efficiency. 12 C.F.R. § 1075.105(b)(1)(ii). The 6-month allocation period determines when the Fund Administrator will allocate funds from the Civil Penalty Fund. It governs what funds are available for allocation and when classes of victims may be considered for allocations.

[15]As of May 30, 2014, CFPB had collected additional $20.5 million in civil penalties for the fourth period which will end on September 30, 2014. This brings the total civil penalties collected to over $139 million.

for transitioning veterans and economically vulnerable consumers. The unallocated amounts from each period remain in the fund and are carried over to the following allocation period. See table 1 for a summary of the collections and allocations over the first three periods and appendix II for detailed information on each period.

Table 1: Civil Penalty Fund Total Collections and Allocations over the First Three Periods, July 2011 through May 2014

	Period 1	Period 2	Period 3	Total
Collection	$46,105,001	$35,415,000	$37,851,000	$119,371,001
Allocation to classes of victims[a]	10,488,815	2,557,231	18,246,329[b]	31,292,375
Set-aside for administrative expenses to administer payments to victims[c]	1,573,322	0	0	1,573,322
Allocation to consumer education and financial literacy programs	13,380,000	0	0	13,380,000
Unallocated balance for each period	20,662,864	32,857,769	19,604,671	73,125,304
Total unallocated balance[d]	**$20,662,864**	**$53,520,633**	**$73,125,304**	**$73,125,304**

Source: GAO Financial Audit of CFPB, and CFPB data. | GAO-14-551

[a]A class of victims is a group similarly situated of victims who suffered from the same or similar violations for which CFPB obtained relief. The reason the allocation to classes of victims has been relatively low compared to the amount collected is because CFPB has not had to compensate all classes of victims. Under the Civil Penalty Fund Rule, CFFB allocates money to compensate classes of victims with uncompensated harm. 12 C.F.R. § 1075.104. The amount of compensation CFPB provides will also depend in part on compensation the classes of victims receive from other sources (i.e., redress). For example, even though CFPB collected penalties from seven cases in the first period, CFPB allocated funds to victims of two cases with uncompensated harm, while victims of the other five cases had no uncompensated harm.

[b]According to CFPB officials, victims of one case in period 3 are expected to receive full compensation for their harm pursuant to an order. CFPB officials also said that in light of the compensation that these victims likely will receive in the near future, the Fund Administrator exercised her discretion under 12 CFR § 1075.106(d)(1) and has not yet allocated funds to this class.

[c]According to CFPB officials, the amount set-aside for administrative expenses in the first period is still being used, and will continue being used into the future.

[d]The unallocated amount is carried over to the next period.

Limited Documentation Impacts Transparency of Funding for Consumer Education and Financial Literacy Programs

Process for Collecting and Allocating Funds Involves Multiple Offices

The Fund Administrator works with multiple offices within CFPB to administer the Civil Penalty Fund.

- *The Civil Penalty Fund Governance Board* is an executive advisory board that advises the Fund Administrator on many aspects of the fund to help ensure that it is administered in accordance with the provisions of the Dodd-Frank Act and the Civil Penalty Fund Rule.[16] For example, the board may advise or direct the Fund Administrator on matters such as changes to the allocation schedule and allocation decisions.

- *The Office of Enforcement* investigates potential violations of federal financial consumer laws and obtains relief for consumers through judicial and administrative actions. It also assists with the collection of civil money penalties.

- *The Division of Consumer Education and Engagement* addresses initiatives related to financial education, consumer engagement,

[16]On July 17, 2012, the CFPB Director approved the Civil Penalty Fund Governance Board Charter, which established the Civil Penalty Fund Governance Board. The Civil Penalty Governance Board Charter outlines the roles and responsibilities of the Governance Board, including policies and procedures to ensure that the Civil Penalty Fund is consistent with CFPB's mission and in compliance with the provisions in the Dodd-Frank Act. The Governance Board consists of five senior CFPB employees, including the Chief of Staff, two Associate Directors, the Chief Operating Officer, and General Counsel.

financial empowerment, and financial protection of servicemembers, older Americans, and students.[17] In particular, the Consumer Education and Financial Literacy (CEFL) Officer in the Division of Consumer Education and Engagement manages the development of concept proposals for consumer education and financial literacy programs.[18] According to officials, the CEFL Officer works under the Associate Director for the Division of Consumer Education and Engagement, who is also responsible for vetting program concepts.

- *The Investment Review Board* is an executive advisory body for determining the soundness of business cases for major investment decisions. It reviews and approves business cases of specific consumer education and financial literacy programs that can be supported by funds allocated from the Civil Penalty Fund for consumer education and financial literacy purposes.

More specifically, for each allocation period, the Fund Administrator determines the amount of funds available for allocation and coordinates with the Office of Enforcement to obtain case-related data and identify which classes of victims are eligible for compensation. With this information, the Fund Administrator allocates funds to classes of eligible victims from the most recent 6-month period. If funds remain after allocating funds sufficient to fully compensate these eligible victims, the Fund Administrator will then allocate funds to classes from each successive prior periods if applicable. The Fund Administrator will also set aside an amount, from the fund, for administrative expenses that will be incurred for distributing allocated funds to victims. According to CFPB officials, the administrative expenses do not include CFPB personnel costs, but rather the costs of contracting with a third-party vendor to administer the payments. CFPB selects third-party vendors as payment administrators using the federal procurement process for the purpose of

[17]The mission of the Division of Consumer Education and Engagement is to help consumers understand the costs, risks, and trade-offs of financial decisions; build trusted relationships that are interactive and informative to help consumers take control of their financial choices to meet their own goals; and raise effectiveness of those who provide financial education services to increase financial literacy.

[18]A concept, in the context of Civil Penalty funded consumer education and financial literacy programs, is an idea for a potential program within a list of proposed focus areas. Focus areas, according to CFPB documentation, may describe a group, service area, and/or topic addressed by a consumer education and financial literacy program, for example, at-risk populations.

distributing payments to victims, and the Fund Administrator monitors the distribution process.

If funds are available after allocating money to all classes of eligible victims, enough to fully compensate their uncompensated harm, and setting aside funds for administrative expenses, the Fund Administrator may allocate some or all the remaining funds for consumer education and financial literacy programs.[19] To identify potential new or existing program concepts, the CEFL Officer carries out an analysis on the needs, opportunity, and available infrastructure for particular potential consumer education and financial literacy-related services, while obtaining input from the Civil Penalty Fund Governance Board to help ensure the program concepts are consistent with CFPB criteria for the use of the funds. Also, throughout the process the CEFL Officer and Associate Director for the Division of Consumer Education and Engagement may obtain input from the CFPB Director and the Civil Penalty Fund Governance Board.

Program concepts go through multiple levels of vetting. According to officials, concepts must be approved by the Associate Director for Consumer Education and Engagement and the CFPB Director. Officials also stated that it is possible for the CFPB Director to approve more than one program concept at any given time. Approved concepts are passed back to the CEFL Officer, who drafts business cases on specific programs (i.e., the program proposals) to be reviewed and approved by CFPB's Investment Review Board to ensure the business cases align with CFPB's mission, vision, and strategic goals. Specifically, officials said, business cases describing specific programs are reviewed for approval by the Investment Review Board only if Civil Penalty funds allocated for the purpose of consumer education and financial literacy are available. After Investment Review Board approval, the CEFL Officer will work with the Office of Procurement to solicit and select vendors through the federal procurement process to implement the program(s). CFPB officials pointed out that when there are multiple Investment Review Board-approved business cases on specific programs (i.e., program proposals), the Associate Director for Consumer Education and Engagement will select and designate which specific program(s) to fund.

[19] 12 U.S.C. § 5497(d)(2); 12 C.F.R. § 1075.107(a).

When identifying consumer education and financial literacy program concepts, officials explained that they attempt to leverage and maximize outcomes for customers by seeking to augment existing infrastructure for program delivery. For example, CFPB identified an opportunity to leverage and enhance existing Department of Labor infrastructure used for delivering financial services to veterans. Specifically, the consumer education and financial literacy program concept is to provide one-on-one financial coaching to veterans at locations where they are already receiving Department of Labor services.

CFPB Has Put Controls in Place for Administering and Monitoring the Fund

CFPB has developed and implemented a number of control activities for administering and monitoring the Civil Penalty Fund.[20] First, CFPB has divided key duties and responsibilities for administering the fund among different positions, which is consistent with federal internal controls for segregation of duties to help reduce the risk of management error or fraud.[21] Decision-making authority for the fund's two purposes—compensating eligible victims and funding consumer education and financial literacy programs—is split between two officials. In particular, the Fund Administrator has the authority to identify classes of victims eligible for compensation, and the CEFL Officer is responsible for developing and overseeing consumer education and financial literacy programs. Each of those officials reports to a different CFPB executive. Having segregated duties helps to promote accountability for the use of government resources.

Second, CFPB has documented internal control activities for administering and monitoring the fund. CFPB officials told us that they regularly assess the policies and that they drafted revisions to some of their policies during our audit. In addition to publishing the Civil Penalty Fund Rule to guide the agency in carrying out the purposes and objectives of the fund, CFPB developed key internal policies and procedures related to the collection of civil money penalties, allocation, and distribution of the fund:

[20]Control activities are policies, procedures, techniques, and mechanisms designed to help ensure that management's directives are carried out.

[21]GAO/AIMD-00-21.3.1: and *Internal Control Management and Evaluation Tool,* GAO-01-1008G (Washington, D.C.: August 2001).

- *Civil Penalty Fund Rule*. The Civil Penalty Fund Rule became effective in May 2013. The Civil Penalty Fund Rule, for example, articulates what kinds of payments to victims are appropriate, establishes procedures for allocating funds for such payments and for consumer education and financial literacy programs, and describes circumstances in which making payments to victims will be deemed impracticable.

- *Procedures for Civil Penalty Fund Administration (Revised).* This guidance document sets forth the process and procedures related to the roles of the Fund Administrator and Office of the Chief Financial Officer in the administration of the fund. It indicates that the Fund Administrator is to track the cases and monitor the amount of civil money penalties ordered and collected. Further, it outlines the steps to be taken by the Fund Administrator to allocate and distribute funds to victims on a 6-month basis, and it outlines the use of third-party vendors to distribute these funds to victims. With respect to consumer education and financial literacy programs, the policy states that the Fund Administrator may allocate funds to support these programs if funds remain after allocating money to all classes of eligible victims, enough to fully compensate their uncompensated harm. According to CFPB officials, this guidance document was revised and finalized in May 2014.[22]

- *Policy for Facilitation and Administration of Victim Payments from CFPB*. With respect to the fund, this document describes the collaboration carried out by the Office of Chief Financial Officer and the Office of Enforcement to fulfill CFPB's responsibility of ensuring that defendants' comply with orders issued by the courts or CFPB and of administrating payments to victims.

- *Criteria for Use of Civil Penalty Fund Monies for Consumer Education and Financial Literacy Programs.* This set of criteria, stated in the Governance Board Charter, was adopted by the Governance Board to help it review potential consumer education and financial literacy program proposals. These criteria, for example, include requirements for contractors to have a proven track record with providing similar types of projects or have a demonstrated capacity to conduct the

[22]The original *Procedure for Civil Penalty Fund Administration* was finalized on April 25, 2013. CFPB officials began revising in early May 2014 and finalized the guidance on May 23, 2014.

program. Also, the criteria require that neither the organization nor any related entity have been found in violation of any federal consumer financial law in any CFPB enforcement action.

- *Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy Programs.* This policy outlines how CFPB is to select which consumer education and financial literacy program proposals may be eligible for funding. Specifically, it outlines the role to be played by the Division of Consumer Education and Engagement, primarily the CEFL Officer, in overseeing the development of program concepts, which are vetted by the Governance Board, Associate Director for the Division of Consumer Education and Engagement, CFPB Director, and Investment Review Board.[23]

- *Establishment and Accounting Treatment of the Consumer Financial Civil Penalty Fund*. This policy provides guidance on the accounting treatment of any civil money penalty received by CFPB as a result of any judicial or administrative action under the federal consumer financial laws.

Finally, CFPB has implemented control activities related to collection and allocation of funds and is in the process of implementing control activities for distribution. To monitor collections, the Fund Administrator maintains a spreadsheet that tracks information related to collections, including case names, court order dates, court order amounts, collected amounts, and status of collections. Further, officials said the Office of the Chief Financial Officer notifies the Federal Reserve Bank of New York when a collection is anticipated and monitors the funds received from defendants to confirm that the civil money penalty has been transferred.

The Fund Administrator has also implemented control activities for allocating funds to classes of eligible victims and for consumer education and financial literacy programs. For example, the Fund Administrator uses the 6-month allocation schedule as a control mechanism to help establish a timeline for funds to be pooled and distributed. At the close of each 6-month period, the Fund Administrator assesses the total amount of funds available in the Civil Penalty Fund and determines which classes

[23]In May 2014, CFPB officials stated that they were in the process of revising this policy document.

of victims are eligible for compensation. To identify classes of victims who may receive allocations from the fund, the Fund Administrator reviews case- and victim-specific data to determine the extent of uncompensated harm within each case. For example, in the first three allocation periods, CFPB identified that seven cases had uncompensated harm. In two cases, due to the defendants' inability to pay compensation to victims, the court suspended judgment that would have required the defendants to pay redress to victims but imposed a civil penalty, making victims in these cases eligible to receive compensation through the fund.[24]

CFPB has begun implementing distribution-related control activities for the payment of victims through third-party vendors that are consistent with CFPB policies and procedures. CFPB is in the process of carrying out its first distributions of funds, the first of which began in November 2013. CFPB has developed controls for distributing payments to victims, including issuing task orders, approving distribution plans, and monitoring distributions. CFPB awarded indefinite delivery/indefinite quantity contracts to two vendors.[25] Separate task orders are issued on a case-by-case basis for the distribution of allocated funds to each case's victims or classes of victims. Each indefinite delivery/indefinite quantity task order provides details about the distinct factors of each case, such as the amount of victim compensation awarded. CFPB officials told us that they have awarded four case-specific task orders to date for the distribution of payments from the Civil Penalty Fund to consumers with uncompensated harm. As of May 2014, the same vendor had won all four task orders for which CFPB had issued solicitations. Each task order for each case is competed per the indefinite delivery/indefinite quantity and is unique, given that the classes of victims and amounts awarded depend on the circumstances of each case. The task orders require third-party vendors to prepare and maintain a register to account for all checks printed for the

[24]In *Consumer Financial Protection Bureau v. Gordon*, No. CV12-6147 (C.D. Cal. 2013), the court ordered defendants to pay a total civil-money penalty of one dollar because of the defendants' demonstrated inability to pay a higher amount. The court also granted CFPB's request for equitable relief. In an administrative proceeding, *In the Matter of 3D Resorts-Bluegrass, LLC*, File No. 2013-CFPB-0002, the defendant is bankrupt, out of business, and has no assets that could be used to pay any civil money penalty. According to CFPB officials, civil money penalty of one dollar was imposed but has not been collected.

[25]Indefinite delivery/indefinite quantity contracts provide for an indefinite quantity with stated limits of supplies or services during a fixed period.

distinct class of victims being compensated. According to CFPB officials, this process helps CFPB to verify that victims received issued checks.

Furthermore, CFPB also requires third-party vendors to develop distribution plans specific to each case. These plans, for example, outline the methods of distribution, approach used to contact victims, and any instructions needed to calculate the amount of the payment each victim will receive. To further monitor the distribution process, CFPB requires access to all bank accounts from which funds are distributed to view account information. Officials told us that staff in the Office of the Chief Financial Officer use this access, in addition to the check registry provided and updated by the vendor, to verify that checks mailed to the approved victim list by the vendor are being cashed. CFPB officials, however, noted that they are at the early stages of the payout process, so they have not yet conducted a post-audit of issued checks.

CFPB expects to use its procurement processes for contract compliance as a mechanism for carrying out its distribution-related control activities for its consumer education and financial literacy programs. CFPB awarded its first contract in April 2014 and has issued the first task order under this contract. Officials said the distribution of funds for consumer education and financial literacy programs will be conducted in accordance with general CFPB procurement guidance.[26]

Documentation Related to Consumer Education and Financial Literacy Programs Is Limited

Documentation on the decision-making process for determining the amount to allocate to consumer education and financial literacy programs is limited. CFPB documentation that we reviewed at the time of our audit did not include the factors that the Fund Administrator considered in determining the amount allocated for consumer education and financial literacy programs in the first allocation period. CFPB has recently revised the *Procedures for Civil Penalty Fund Administration* to include the factors the Fund Administrator will consider when determining consumer education and financial literacy funding allocation, such as the amount of funds available for allocation, amounts previously allocated to consumer education and financial literacy programs, budget and cost estimates associated with consumer education and financial literacy concepts, and

[26]CFPB officials said that they follow the federal procurement process, and CFPB's procurement process requires the requesting program office to prepare an acquisition package consisting of an acquisition plan, independent government cost estimate, source selection plan, and other documents.

any other appropriate factors. However, at the time of our audit, the revised procedure did not include steps for the Fund Administrator to document the specific factors that were considered as part of an allocation. According to officials, CFPB did not formally document all of those factors in the first allocation period. CFPB did document the total amount that was permissible to allocate to those programs. CFPB officials told us that the first period allocation amount was calculated based on cost estimates made by the Division of Consumer Education and Engagement as part of the development of the program concept for financial coaching; but documentation CFPB provided did not include this information. Federal standards for internal control state that it is important to promptly record transactions and events appropriately so that they maintain their relevance, value, and usefulness to management in controlling operations and making decisions.[27]

Officials said that they have not documented all of the factors for determining the amount allocated in the first period because the decision was consistent with the Civil Penalty Fund Rule. Specifically, the rule states that in a given allocation period the Fund Administrator may allocate funds to consumer education and financial literacy up to the amount of remaining funds—in the first allocation period, $34 million remained—after making allocations to provide victims full compensation for their uncompensated harm. However, documenting all of the factors the Fund Administrator considered in allocating the funds would make such decisions more transparent. Without documenting the specific factors considered, it is not clear how the Fund Administrator chose a particular amount—in the first allocation period, $13.4 million was allocated—for the purpose of consumer education and financial literacy. Further, such information could be used to help ensure that future allocation decisions are made in a consistent manner going forward.

[27] GAO/AIMD-00-21.3.1 *and* GAO-01-1008G.

Similarities and Differences Exist between CFPB's Penalty Fund and Other Federal Agencies' Funds and Activities

Federal Agencies' Authority to Deposit Civil Money Penalties in a Fund Varies

We identified seven federal agencies that collect civil money penalties. Three agencies—CFTC, CMS, and SEC—have statutory authority to deposit these penalties into funds.

- *CFTC's Customer Protection Fund.* This fund makes payments to award eligible whistleblowers who voluntarily provide CFTC with original information that leads to a successful enforcement action, and it supports customer education initiatives designed to help customers protect themselves against fraud or other violations. This fund was created in 2010 through the Dodd-Frank Act.[28] Any monetary sanctions, including civil money penalties, collected by CFTC in certain judicial or administrative actions against individuals or firms that are not distributed to victims of a violation are deposited into CFTC's Customer Protection Fund.
- *CMS's Civil Money Penalties for Nursing Homes.* This program issues grants for activities related to improving the lives of nursing home residents rather than direct payments to victims of harm. This program was established in 2010 through the Patient Protection and Affordable Care Act (Affordable Care Act). The Affordable Care Act amended

[28]Pub. L. No. 111-203, § 748, 124 Stat. 1376, 1742 (2010) (codified at 7 U.S.C. § 26). Any judicial or administrative action brought by CFTC under the Commodity Exchange Act, 7 U.S.C. §§ 1-26, that results in monetary sanctions exceeding $1,000,000 is subject to the Customer Protection Fund. CFTC generally collects civil monetary sanctions and disgorgement amounts in civil actions or fines in any judicial or administrative action. A federal court or CFTC may award restitution to victims in civil and administrative actions, respectively, but CFTC neither records restitution as a receivable nor deposits restitution into the Customer Protection Fund.

sections of the Social Security Act to redefine the imposition and collection of civil money penalties when facilities do not meet Medicare and Medicaid participating requirements.[29] CMS has the authority to impose civil money penalties and deposit them into an account. Civil money penalty amounts collected are placed into an escrow account pending appeal by the facility; in the event that all appeals are unsuccessful, the funds may be used to support activities that benefit nursing facility residents.

- *SEC's Fair Funds*. SEC can establish Fair Funds in specific enforcement cases to make payments to compensate investors who were harmed by the violators against whom the enforcement action was brought. These funds are established pursuant to the Sarbanes-Oxley Act of 2002.[30] SEC's Fair Funds can combine civil money penalties with disgorgement funds for the benefit of investors harmed by the person ordered to pay the monetary sanction for violation of the securities laws.[31]

- *SEC's Investor Protection Fund.* This fund makes payments to award eligible whistleblowers who voluntarily provide SEC with original

[29]Pub. L. No. 111-148, § 6111, 124 Stat. 119, 713 (2010) (codified at 42 U.S.C. 1395i-3(h)(2)(B)(ii)). To assess compliance with federal participation requirements, surveyors conduct on-site inspections of facilities. Civil money penalties are among the statutory enforcement remedies available to the Secretary of Health and Human Services to address facility noncompliance. Civil money penalties may be imposed for each day or each instance of facility noncompliance. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(I).

[30]Pub. L. No. 107-204, § 308, 116 Stat. 745, 784 (codified at 15 U.S.C. § 7246(a)). SEC's Fair Funds include civil money penalties and disgorgements (the payment of wrongdoer's ill-gotten gains or losses avoided) that result from any judicial or administrative action brought by SEC under the securities laws. The Dodd-Frank Act amended § 308 of the Sarbanes-Oxley Act to permit SEC to add civil money penalties collected from securities laws violators to funds established to benefit victims of the violations without regard for whether SEC also obtained disgorgement from the violators, as was previously required. Pub. L. No. 111-203, § 929B, 124 Stat. 1376, 1852 (2010).

[31]While a civil money penalty is a punitive measure aimed at deterring future misconduct, disgorgement is an equitable remedy aimed at preventing a wrongdoer from unjustly enriching himself or herself from his or her wrongs. Specifically, it is a remedy designed to deprive defendants of their ill-gotten gains derived from their illegal activities. The Fair Funds may be created through either SEC administrative proceedings or litigation in federal court. The Fair Funds are not used for any other purpose than to compensate harmed investors, and only victims who were harmed by the violators against whom the action was brought may be compensated. SEC staff told us that money from the Fair Funds cannot be pooled to compensate other victims.

information that leads to a successful enforcement action. The fund can also be used to support SEC's Office of Inspector General's suggestion program. This fund was established in 2010 through the Dodd-Frank Act.[32] Any monetary sanction, including civil money penalties, collected by SEC that is not added to a Fair Fund is deposited into SEC's Investor Protection Fund, unless the balance of the Investor Protection Fund exceeds $300 million.[33]

The remaining four agencies—DOJ, FDIC, FTC, and OCC—have the authority to seek civil money penalties but do not have the statutory authority to deposit those penalties into a separate fund. Rather, the civil money penalties collected are transferred to the U.S. Treasury.[34]

[32]Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1844 (2010) (codified at 15 U.S.C. § 78u-6(g)(1)). The Dodd-Frank Act established a whistleblower program that requires SEC to pay an award to eligible whistleblowers who voluntarily provide the agency with original information about a violation of securities laws that leads to a successful enforcement or related action. The act also prohibits retaliation by employers against individuals who provide SEC with information about possible securities violations. *Id.* (codified at 15 U.S.C. § 78u-6(h)(1)(A)).

[33]Any judicial or administrative action brought by SEC under the securities laws that results in monetary sanctions, including penalties and disgorgement, that are not deposited into a disgorgement or other fund pursuant to section 308 of the Sarbanes-Oxley Act or are not otherwise distributed to victims of a violation of the securities laws or regulations are generally remitted to the Department of the Treasury. However, if the balance of the Investor Protection Fund should fall below $300 million, these funds will be deposited in the Investor Protection Fund until the balance in the fund again exceeds $300 million. 15 U.S.C. § 78u-6(g)(3)(A)(i). Under section 922 of the Dodd-Frank Act, monetary sanctions that are added to a Fair Fund but that are not distributed to the victims for whom the Fair Fund was established must be deposited into or credited to the Investor Protection Fund, unless the balance of the Fair Fund exceeds $200 million at the time the decision not to distribute the monetary sanction to such victims was made; additionally, income from investments made with monies in the Investor Protection Fund must be deposited into the fund. Pub. L. No. 111-203, § 922(a), 124 Stat. 1376, 1844 (2010) (codified at 15 U.S.C. § 78u-6(g)(3)(A)(ii)-(iii)).

[34]28 U.S.C. § 2041 (DOJ); 12 U.S.C. § 1818(i)(2)(J) (FDIC); 15 U.S.C. § 45(l) (FTC); 12 U.S.C. § 1818(i) and 12 C.F.R. § 109.103(b)(2) OCC). These civil money penalties are not restitution or redress; the collections, or a portion of the collections, generally are not paid to consumers. The miscellaneous receipts statute requires that "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." 31 U.S.C. § 3302(b).

CFPB's Civil Penalty Fund Is Similar to Other Federal Funds, but Purposes and Administration Vary

As shown in table 2, there are similarities and differences between CFPB's Civil Penalty Fund and the four other federal funds we identified. For example, the funds we examined differed as to whether their purposes were to compensate harmed consumers or investors. As previously discussed, CFPB uses its Civil Penalty Fund to make payments to eligible consumers who were harmed by a violation for which civil penalties were imposed, particularly to those who are not otherwise expected to receive full compensation for their compensable harm. Similar to CFPB's Civil Penalty Fund, the purpose of SEC's Fair Funds is to make payments to benefit victims. Under the Fair Funds provision of the Sarbanes-Oxley Act, as revised by the Dodd Frank Act, SEC may combine civil money penalties with disgorgement funds into a Fair Fund, from which it distributes the proceeds to harmed investors. The revised law enables SEC to distribute more money through the Fair Funds to compensate victims for their losses than SEC would otherwise have been able to when disgorgement was a prerequisite for victim compensation. In contrast, CFTC's Customer Protection Fund and SEC's Investor Protection Fund make payments to award eligible whistleblowers.

Table 2: Comparison of Key Characteristics of Consumer Financial Protection Bureau's Civil Penalty Fund and Other Similar Federal Funds, as of June 2014

			Consumer Financial Protection Bureau	Commodity Futures Trading Commission	Center for Medicare and Medicaid Services	Securities Exchange Commission	
			Civil Penalty Fund	*Customer Protection Fund*	*Civil Penalties for Nursing Homes*	*Fair Funds*	*Investor Protection Fund*
Year fund was established			2010	2010	2010	2002	2010
Purpose	Payment to harmed consumers or investors.		•			•	
Purpose	Funds can be used for more than one activity.		•	•	•		•
Purpose	Activities include	Consumer education	•	•			
Purpose	Activities include	Incentives and protection for whistleblowers		•			•

		Consumer Financial Protection Bureau	Commodity Futures Trading Commission	Center for Medicare and Medicaid Services	Securities Exchange Commission	
		Civil Penalty Fund	*Customer Protection Fund*	*Civil Penalties for Nursing Homes*	*Fair Funds*	*Investor Protection Fund*
Activities include	Other (e.g., expenses incurred in the process of relocating residents, nursing home facility improvement, Office of Inspector General's suggestion program)			•		•
Administration	Agency manages the collection and allocation of the fund.	•	•	•	•[a]	•
Administration	Third-party vendors distribute funds or implement projects.	•	•	•	•	
Administration	Civil monetary penalties collected are deposited into a pooled fund.	•	•	•		•
Administration	The balance of the fund is limited or restricted.		•			•
Administration	Funds used for establishing a new office and hiring personnel to carry out activities.		•[b]			

Source: CFPB, CFTC, CMS, and SEC documents. | GAO-14-551

[a]Upon motion by SEC, a court may order the establishment of a Fair Fund and appointment of an agent to distribute the Fair Fund.

[b]In *U.S. Commodity Futures Trading Commission—Availability of the Customer Protection Fund*, B-321788, August 8, 2011, GAO decided that CFTC may use the fund appropriation to establish an office and hire personnel to carry out its whistleblower incentive and customer education programs. Additionally, in *U.S. Commodity Futures Trading Commission—Customer Protection Fund*, B-324469, November 8, 2013, GAO decided that CFTC may use the fund appropriation to pay travel expenses incurred by personnel from CFTC's Whistleblower Office for speaking engagements and attending conferences, at which the public will be informed and educated about the Whistleblower Office and the whistleblower provisions.

Like the Civil Penalty Fund, most of the other funds we examined can be used for more than one activity. As described previously, in addition to compensating harmed victims, CFPB may use funds in the Civil Penalty Fund for consumer education and financial literacy programs if victims cannot be located or payments are otherwise not practicable. Similarly, CFTC's Customer Protection Fund, CMS's Civil Money Penalties for

Nursing Homes, and SEC's Investor Protection Fund are authorized to make payments for more than one activity. For example, CFTC's Customer Protection Fund may be used to award whistleblowers, and it may also be used to fund customer education initiatives. CMS's Civil Money Penalties for Nursing Homes allows the agency to use collected civil money penalty funds for a variety of activities that protect or improve the quality of care for nursing home residents, including expenses incurred in the process of relocating residents when a facility is closed, projects that support resident and family councils, and facility improvements. Finally, SEC's Investor Protection Fund may be used to provide awards to people who come forward with information that leads to an enforcement action resulting in sanctions of more than $1 million, as well as to finance SEC's Office of Inspector General's suggestion program. Of the funds we examined, with the exception of SEC's Fair Funds, all of the funds are authorized to be used for other activities.

There are also similarities and differences in the administration practices of the five funds we examined, including the following:

- *Agency manages collection and allocation*. For all the funds we examined, the agency manages the collection and allocation of the civil money penalty fund or program. As described earlier, in collaboration with other CFPB offices, the CFPB Fund Administrator collects and allocates money in the Civil Penalty Fund. Similarly, CFTC's Customer Protection Fund, CMS's Civil Money Penalties for Nursing Homes, and SEC's Fair Funds and Investor Protection Fund are managed by internal divisions or offices within the agency.

- *Third-party vendors distribute funds or implement projects*. Four of the five funds we examined solicit third-party vendors to implement activities. CFPB contracts with third-party vendors to distribute payments to victims as well as to administer fund-selected consumer education and financial literacy programs, such as financial coaching for recent veterans and economically vulnerable consumers. Similarly, CFTC's Customer Protection Fund, CMS's Civil Money Penalties for Nursing Homes, and SEC's Fair Funds also solicit third-party vendors to implement activities such as programmatic activities or payment distribution. For example, according to officials, CFTC chose to expend programmatic resources for customer education initiatives by procuring an integrated marketing firm to assist in message testing and campaign development. Only SEC's Investor Protection Fund is managed by agency personnel. According to a senior SEC official, the agency directly distributes the funds because decisions are made on a yearly basis and the Office of Financial Management handles the payout or disbursement of funds.

- *Collections are deposited into a pooled fund*. Four of the five funds have a “pooled fund,” meaning that civil penalties collected are aggregated in the fund and can then be used for multiple purposes. Like CFPB’s Civil Penalty fund, three other funds’ aggregate collected penalties are pooled —CFTC’s Customer Protection Fund, CMS’s Civil Money Penalties for Nursing Homes, and SEC’s Investor Protection Fund. In contrast, the civil money penalties deposited in an SEC Fair Fund are kept separate according to the specific enforcement action for which penalties were imposed. The funds are used only to compensate victims who were harmed by the violators against whom the specific enforcement action was brought.

- *Balance of fund is limited or restricted*. Two of the five funds have a balance restriction. In particular, CFTC deposits collected monetary penalties into the Customer Protection Fund up to a maximum balance of $100 million. Similarly, the maximum balance of SEC’s Investor Protection Fund is $300 million. No monetary sanctions are deposited into or credited into each fund if the balance of the fund exceeds the maximum balance at the time the monetary sanctions are collected.[35] In contrast, CFPB collects civil money penalties without fund limit.

- *Funds used for establishing a new office and personnel expenses*. Only one of the funds we examined—CFTC’s Customer Protection Fund—has been used to establish new offices and hire personnel to carry out programmatic efforts. According to CFTC officials, the fund has been used to cover administrative expenses related to establishing the Whistleblower Office and Office of Consumer Outreach. While CFPB sets aside a certain amount for administrative expenses, those expenses are not for the purposes of establishing an office or hiring personnel, but rather the costs of retaining third-party vendors for the distribution of funds.

[35]Any excess from CFTC’s Customer Protection Fund is transferred to the U.S. Treasury. Similarly, according to SEC officials, all non-disgorgement sanctions are deposited with the U.S. Treasury. SEC may request the Secretary of the Treasury to invest the portion of the Fund that is not, in SEC’s discretion, required to meet the current needs of the Fund. 15 U.S.C. § 78u-6(g)(4).

Conclusion

In its effort to help protect consumers against harm from federal consumer financial law violations and promote consumer education and financial literacy, CFPB has begun allocating funds from its Civil Penalty Fund. While most of the fund has been allocated to several classes of victims, CFPB has also funded consumer education and financial literacy programs, as allowed under the Dodd-Frank Act. Although CFPB has put controls in place to monitor the use of funds, CFPB did not document the Fund Administrator's assessment of all the factors leading to the decision to allocate $13.4 million to fund consumer education and financial literacy programs for the first allocation period. Federal internal control standards state that it is important to promptly record transactions and events clearly and completely so that they maintain their relevance, value, and usefulness to management in controlling operations and making decisions. Documenting the factors the Fund Administrator considered in allocating the funds would make such decisions more transparent. Further, such information could be used to help ensure that future allocation decisions are made in a consistent manner going forward.

Recommendations for Executive Action

To improve the transparency of CFPB's Civil Penalty Fund activities, we recommend that the CFPB Director ensure that the Fund Administrator documents the specific factors considered in determining the amount of funding, if any, allocated to consumer education and financial literacy programs.

Agency Comments and Our Evaluation

We provided a draft of this report to CFPB for review and comment. In its comment letter, which is reprinted in appendix III, CFPB agreed with our recommendation, but differed on the criteria of the finding that supports the recommendation. CFPB did not state the alternative criteria it considered. We continue to believe that we used appropriate criteria for our findings. Specifically, we found that CFPB had not documented all of the factors for determining the amount allocated to consumer education and financial literacy programs. As we stated in the report, federal standards for internal control state that it is important to promptly record transactions and events appropriately so that they maintain their relevance, value, and usefulness to management in controlling operations and making decisions. Documenting the factors considered in determining the amount allocated to consumer education and financial literacy would help CFPB more fully meet this standard. Such documentation would make these decisions more transparent and could help to ensure that future allocation decisions are made in a consistent manner going forward. CFPB stated that it has already taken steps to implement our recommendation. According to CFPB officials, CFPB has developed the *Civil Penalty Fund Allocation Checklist* to help ensure that factors considered for determining allocation of funds for consumer education and financial literacy purposes have been documented, among other activities. The allocation checklist has been appended to the revised *Procedures for Civil Penalty Fund Administration*. According to a CFPB official, the allocation checklist has been approved and incorporated as a standard operating procedure. CFPB also provided technical comments on the draft report, which we incorporated as appropriate.

We are sending copies of this report to CFPB, appropriate congressional committees, and interested parties. This report will also be available at no charge on our website at http://www.gao.gov.

Should you or your staff have questions concerning this report, please contact me at (202) 512-8678 or clowersa@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix IV.

Sincerely yours,

A. Nicole Clowers
Director
Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

The report examines the Consumer Financial Protection Bureau's (CFPB) Civil Penalty Fund, including the purposes for which the fund has been used and the administration of the fund. More specifically, it examines how CFPB's Civil Penalty Fund (1) is administered and what controls are in place to guide the management of the fund and (2) compares to other civil money penalty funds and activities administrated by federal agencies.

We reviewed GAO financial reports and other relevant CFPB documentation to identify how much of the Civil Penalty Fund has been collected and allocated since it was established. For information on the first and second allocation periods, we reviewed GAO's audits of CFPB's financial statements for fiscal years 2012 and 2013 to identify the amount that was collected in the Civil Penalty Fund and the amount that was allocated to classes of victims with uncompensated harm, to consumer education and financial literacy programs, and for other purposes, if any.[1] For the third allocation period, we reviewed CFPB documentation and its collection spreadsheet to identify similar information related to collection and allocation. We also assessed the reliability of CFPB's collection and allocation data by interviewing CFPB officials knowledgeable about the data on steps they take to ensure its reliability. We determined the data were sufficiently reliable for purposes of our report.

To address our first objective, we reviewed guidance documents such as the Civil Penalty Fund Rule,[2] which governs the fund, and the *Civil Penalty Fund Governance Board Charter*, which established the Governance Board as the executive advisory body responsible for ensuring that the Civil Penalty Fund is administered in a manner consistent with the relevant provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3] We also reviewed CFPB policies and procedures detailing steps for administering the collection, allocation, and distribution of payments to victims and the process for selecting consumer education and financial literacy programs. These documents include *Procedures for Civil Penalty Fund Administration, Criteria for Use of Civil Penalty Fund Monies for Consumer Education and Financial*

[1]GAO, *Financial Audit: Bureau of Consumer Financial Protection's Fiscal Years 2013 and 2012 Financial Statements*, GAO-14-170R (Washington, D.C.: Dec. 16, 2013).

[2]12 C.F.R. pt. 1075.

[3]Pub. L. No. 111-203, § 1017(d), 124 Stat. 1376, 1978-79 (2010).

Literacy Programs, Policy for Selecting Civil Penalty Fund Consumer Education and Financial Literacy Programs, and Establishment and Accounting Treatment of the Consumer Financial Civil Penalty Fund. We also reviewed prior GAO work on the effectiveness of CFPB's internal controls over financial reporting and interviewed CFPB officials on the process for collecting, allocating, and distributing Civil Penalty Fund money.[4] To determine what controls are in place to guide the management of the fund, we also reviewed the Board of Governors of the Federal Reserve System Office of Inspector General's report on the management of the fund.[5] Further, we reviewed CFPB's policies, procedures, and activities and assessed them against applicable federal standards for internal control and the requirements in the Civil Penalty Fund Rule.[6]

To address our second objective, we identified other funds or activities that are similar to CFPB's fund based on several factors, including our review of prior GAO work on other funds, other published research, interviews with CFPB officials on what other similar funds were considered during the design of CFPB's fund, and interviews with other federal officials and an advocacy group.[7] We identified funds or activities at the Centers for Medicare and Medicaid Services, a division within the Department of Health and Human Services (HHS); Commodity Futures

[4]GAO, *Management Report: Opportunities for Improvement in the Bureau of Consumer Financial Protection's Internal Controls and Accounting Procedures*, GAO-12-528R (Washington, D.C.: May 21, 2012).

[5]Board of Governors of the Federal Reserve System, Office of Inspector General, *Audit of the CFPB's Civil Penalty* Fund. 2014-AE-C-001 (Washington, D.C.: Jan. 16, 2014).

[6]GAO, *Standards for Internal Control in the Federal Government*, AIMD-00-21.3.1 (Washington, D.C.: November 1999).

[7]GAO, *Securities and Exchange Commission: Information on Fair Fund Collections and Distributions*, GAO-10-448R (Washington, D.C.: Apr. 22, 2010); *Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement,* GAO-09-358 (Washington, D.C.: March 31, 2009); *Securities and Exchange Commission: Additional Actions Needed to Ensure Planned Improvements Address Limitations in Enforcement Division Operations,* GAO-07-830 (Washington, D.C.: Aug. 15, 2007); *SEC and CFTC Penalties: Continued Progress Made in Collection Efforts, but Greater SEC Management Attention Is Needed,* GAO-05-670 (Washington, D.C.: Aug. 31, 2005); *SEC and CFTC Fines Follow-up: Collection Programs Are Improving, but Further Steps Are Warranted,* GAO-03-795 (Washington, D.C.: July 15, 2003); and *SEC Enforcement: More Actions Needed to Improve Oversight of Disgorgement Collections,* GAO-02-771 (Washington, D.C.: July 12, 2002).

Trading Commission (CFTC); Department of Justice; Federal Deposit Insurance Corporation; Federal Trade Commission; Office of the Comptroller of the Currency; and Securities and Exchange Commission (SEC). We interviewed officials from these agencies to understand the administration of each selected fund or activity. Of the three agencies—CFTC, HHS, and SEC—that are authorized to establish a fund into which civil money penalties are deposited, we reviewed and analyzed regulations and policies on fund amounts and the purpose for which monies were used for those agencies that have a fund.

We conducted this performance audit from December 2013 to June 2014 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: CFPB Civil Penalty Fund Collection and Allocation, July 2011 through May 2014

As of May 2014, CFPB had executed three allocation periods for the Civil Penalty Fund. The fourth period began on April 1, 2014, and will end on September 30, 2014. This appendix provides information on the first three allocation periods.

The first allocation period for the Civil Penalty Fund began on July 21, 2011, and ended on March 31, 2013. This period was longer than 6 months, which was permitted under the Civil Penalty Fund Rule to allow for future 6-month periods to start and end on dates that better served administrative efficiency.[1] During this period, civil penalties were ordered and collected in seven cases, resulting in a collection of about $46.1 million for the Civil Penalty Fund. On May 30, 2013, 60 days after the end of the period, the Fund Administrator made its first two-phase allocation. First, $500,000 was allocated to victims of Payday Loan Debt Solutions, Inc., and $10 million was allocated to victims of Chance Edward Gordon, Abraham Michael Pessar, and related companies that offered mortgage relief services to fully compensate each class's victims with uncompensated harm.[2] The victims in the other five cases had no uncompensated harm. After setting aside an additional $1.6 million for the administrative expenses associated with making payments to victims, about $34 million remained in the Civil Penalty Fund.[3] The Fund Administrator allocated about $13.4 million of these funds for consumer education and financial literacy program activities. Table 3 provides details on collections and allocations for the first period.

[1] 12 C.F.R. § 1075.105(b)(1)(ii).

[2] Of the seven cases, the Fund Administrator determined that only victims of Payday Loan Debt Solutions, Inc., and Chance Edward Gordon and related companies had compensable harm. In the former case, CFPB alleged that debt-relief company Payday Loan Debt Solutions regularly charged consumers a fee before it actually settled any of their payday loan debts in violation of the Federal Trade Commission's Telemarketing Sales Rule and certain provisions of the Dodd-Frank Act. *Consumer Financial Protection Bureau v. Payday Loan Debt Solution, Inc.*, No. 1:12-cv-24410 (S.D. Fla. 2012). In the latter case, CFPB alleged that Chance Edward Gordon, Abraham Michael Pessar and their companies falsely promised loan modifications and charged illegal upfront fees in violation of the Dodd-Frank Act's prohibition on unfair, deceptive, and abusive acts and practices and the Mortgage Assistance Relief Services Rule (Regulation O). *Consumer Financial Protection Bureau v. Gordon*, No. CV 12-6147 (C.D. Cal. 2013).

[3] According to CFPB officials, the amount set-aside for administrative expenses in the first period is still being used, and will continue being used into the future.

Table 3: Civil Penalty Fund First Period Collections and Allocations

	Defendant name	Civil money penalties collection	Allocation to classes of victims
Phase 1	Capital One Bank	$25,000,000	$0[a]
	Discover	7,000,000	0
	American Express Centurion Bank	3,900,000	0
	American Express, FSB	1,200,000	0
	American Express Travel	9,000,000	0
	Payday Loan Debt Solutions, Inc.	5,000	488,815
	Abraham M. Pessar (Gordon, et al.)	1	10,000,000
	Total	**$46,105,001**	**$10,488,815**
Set-aside administrative costs			$1,573,322
Remaining fund[b]			$34,042,864
Phase 2	Consumer education and financial literacy programs		$13,380,000
Unallocated balance from first period			$20,662,864

Source: GAO Financial Audit of CFPB in fiscal years 2013 and 2012. | GAO-14-551

[a]Allocation to a class of victims occurs when the classes of victims have uncompensated harm. Classes of victims that receive redress or other compensation may not have uncompensated harm. In those cases, CFPB did not allocate or make payments to those victims.

[b]If funds remain after CFPB has located all eligible victims or if payments to victims are impracticable because victims cannot be located or it is otherwise not practicable to pay victims, CFPB may use money in the fund for consumer education and financial literacy programs to help consumers. The Fund Administrator is not required to allocate such remaining funds to consumer education and financial literacy programs and instead may keep some or all funds in reserve for future allocation.

The second period began on April 1, 2013, and ended on September 30, 2013. During this period, civil penalties were ordered in seven cases, resulting in a collection of about $35.4 million for the Civil Penalty Fund.[4] The Fund Administrator allocated funds on November 29, 2013. Of those cases, the Fund Administrator allocated about $500,000 for victims of American Debt Settlement Solutions, Inc., and about $2.1 million to

[4]According to CFPB officials, the civil monetary penalty imposed in *CFPB v. National Legal Help Center* is uncollectable because the two defendants filed for bankruptcy. As a result, civil penalties were collected for only six of the seven cases.

victims of the National Legal Help Center.[5] No funds were allocated to consumer education and financial literacy programs because, according to CFPB officials, the Fund Administrator had not received all relevant data needed to determine whether there were additional classes with uncompensated harm and the amount of that harm.[6] Further, no additional set-aside administrative costs were needed because there was a surplus to expend from the set-aside amount for administrative expenses from the first period. Table 4 provides detail on collections and allocations for the second period.

Table 4: Civil Penalty Fund Second Period Collections and Allocations

	Defendant name	Civil money penalties collection	Allocation to classes of victims
Phase 1	United Guaranty Corporation	$4,500,000	$0[a]
	Genworth Mortgage Ins. Corp	4,500,000	0
	Mortgage Guaranty Ins. Corp	2,650,000	0
	Radian Guaranty Inc.	3,750,000	0
	American Debt Settlement Solutions, Inc.	15,000	499,248
	National Legal Help Center[b]	0	2,057,983
	JPMorgan Chase	20,000,000	0
	Total	**$35,415,000**	**$2,557,231**
Set-aside administrative costs[c]			$0

[5]CFPB accused American Debt Settlement Solutions, Inc., of routinely charging consumers upfront fees for falsely promised debt-relief services in violation of the Federal Trade Commission's Telemarketing Sales Rule and certain provisions of the Dodd-Frank Act prohibiting unfair, deceptive, and abusive acts or practices. *Consumer Financial Protection Bureau v. American Debt Settlement Solutions, Inc.*, No. 9:13-CV-80548 (S.D. Fla. 2013). With respect to the National Legal Help Center, CFPB alleged that defendants illegally charged upfront fees, falsely claimed that they could assist homeowners with obtaining a loan modification, and deceptively claimed to be affiliated with government-related programs, including the National Mortgage Settlement and the Independent Foreclosure Review. *Consumer Financial Protection Bureau v. Najia Jalan (d/b/a National Legal Help Center)*, No. 8:12-CV-02088 (C.D. Cal. 2012).

[6]The Fund Administrator had not received all relevant data for four of the seven cases during the second period and, as of June 2014, continues to work with the Office of Enforcement to obtain complete information. Under the Civil Penalty Fund Rule, the Fund Administrator has the flexibility to depart from the allocation procedures, such as postponing allocating funds to a class until necessary information is obtained.

Remaining fund[d]		$32,857,769
Phase 2	Consumer education and financial literacy programs	$0
Unallocated balance from second period		$32,857,769
Carry-over balance from previous period		$20,662,864
Available for next allocation		$53,520,633

Source: GAO Financial Audit of CFPB in fiscal years 2013 and 2012. | GAO-14-551

[a]Allocation to a class of victims occurs when the classes of victims have uncompensated harm. Classes of victims that receive redress or other compensation may not have uncompensated harm. In those cases, CFPB did not allocate or make payments to those victims.

[b]According to CFPB officials, funds were uncollectable because defendants filed for bankruptcy.

[c]According to officials, CFPB continued to draw money from the $1.6 million that was set aside for any administrative costs from the first period.

[d]If funds remain after CFPB has located all eligible victims or if payments to victims are impracticable because victims cannot be located or it is otherwise not practicable to pay victims, CFPB may use money in the fund for consumer education and financial literacy programs to help consumers. The Fund Administrator is not required to allocate such remaining funds to consumer education and financial literacy programs and instead may keep some or all funds in reserve for future allocation.

The third period began on October 1, 2013, and ended on March 31, 2014. During this period, civil penalties were ordered in 13 cases, resulting in a collection of about $37.9 million in the Civil Penalty Fund. The Fund Administrator allocated funds on May 30, 2014. Of those cases, The Fund Administrator allocated about $11.5 million for victims of Meracord LLC and about $6.7 million to victims of 3D Resorts-Bluegrass, LLC.[7] No funds were allocated to consumer education and financial literacy programs because the Fund Administrator had not received all relevant data needed.[8] Further, CFPB officials told us that no additional set-aside administrative costs were needed because there was a surplus to expend from the set-aside amount for administrative expenses from the first period. Table 5 provides detail on collection and allocation for the third period.

[7]According to CFPB officials, victims of a third case with uncompensated harm are expected to receive full compensation for their harm pursuant to an order by the FDIC. CFPB officials also said that in light of the compensation that these victims likely will receive in the near future, the Fund Administrator exercised her discretion under 12 CFR § 1075.106(d)(1) and has not yet allocated any funds to this class.

[8]The Fund Administrator reported that she does not have sufficient information to determine whether classes of victims in one case in period 3, along with four cases from period 2, have compensable harm or uncompensated harm as defined in the Civil Penalty Fund Rule.

Table 5: Civil Penalty Fund Third Period Collection and Allocation

	Defendant name	Civil money penalties collection	Allocation to classes of victims
Phase 1	Washington Federal	$34,000	$0[a]
	Mortgage Master, Inc.	425,000	0
	Castle & Cooke Mortgage, LLC	4,000,000	0
	Meracord, LLC	555,000	11,542,229
	Cash America International, Inc.	5,000,000	0
	Republic Mortgage Insurance Company	100,000	0
	3D Resorts-Bluegrass, LLC	0	6,704,100
	American Express Bank, FSB	2,000,000	0
	American Express Centurion Bank	3,600,000	0
	American Express Travel	4,000,000	0
	Ally	18,000,000	0
	Fidelity Mortgage Corporation	54,000	0
	1st Alliance Lending, LLC	83,000	0
	Total[b]	**$37,851,000**	**$18,246,329**
Set-aside administrative costs[c]			$0
Remaining fund[d]			$19,604,671
Phase 2	Consumer education and financial literacy programs		$0
Unallocated balance from third period			$19,604,671
Carry-over balance from previous period			$53,520,633
Available for next allocation			$73,125,304

Source: GAO analysis of CFPB data. | GAO-14-551

[a]Allocation to a class of victims occurs when the classes of victims have uncompensated harm. Classes of victims that receive redress or other compensation may not have uncompensated harm. In those cases, CFPB did not allocate or make payments to those victims.

[b]According to CFPB officials, victims of one case are expected to receive full compensation for their harm pursuant to an order by the FDIC. CFPB officials also said that in light of the compensation that these victims likely will receive in the near future, the Fund Administrator exercised her discretion under 12 CFR § 1075.106(d)(1) and has not yet allocated funds to this class.

[c]According to officials, CFPB continued to draw money from the $1.6 million that was set aside for any administrative costs from the first period.

[d]If funds remain after CFPB has located all eligible victims or if payments to victims are impracticable because victims cannot be located or it is otherwise not practicable to pay victims, CFPB may use money in the fund for consumer education and financial literacy programs to help consumers. The Fund Administrator is not required to allocate such remaining funds to consumer education and financial literacy programs and instead may keep some or all funds in reserve for future allocation.

Appendix III: Comments from the Consumer Financial Protection Bureau

cfpb Consumer Financial Protection Bureau

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

Ms. Nicole Clowers
Director,
Financial Markets and Community Investment
441 G Street, NW
Washington, DC 20548

Dear Ms. Clowers,

Thank you for the opportunity to review and comment on the Government Office of Accountability's draft report *Opportunity Exists to Improve Transparency of Civil Penalty Fund Activities.*

This report examines how CFPB's Civil Penalty Fund is administered and what controls are in place to guide the management of the fund. We are pleased that you agree that the Bureau has put in place and documented controls surrounding the administration and monitoring of the Civil Penalty Fund. Over the last several years, the Bureau has worked to establish 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.

This report includes one recommendation and although we differ on the criteria of the finding, we concur with the recommendation and have already taken steps to implement the recommendation.

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,

Eli Rielly for

Stephen Agostini
Chief Financial Officer

consumerfinance.gov

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

A. Nicole Clowers, (202) 512-8678 or clowersa@gao.gov

Staff Acknowledgments

In addition to the contact named above, Andrew Pauline (Assistant Director), Chir-Jen Huang (Analyst in Charge), Bethany Benitez, Aku Pappoe, Jennifer Schwartz, Jena Sinkfield, and Andrew Stavisky made key contributions to this report.

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