

Consumer Financial Protection Bureau

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to achieve a supervisory objective most effectively and with the least burden on institutions.

- The Bureau will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

- The Bureau will continue efforts to make the role of supervisory guidance clear in communications to examiners and to supervised financial institutions and encourages supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

[86 FR 9268, Feb. 12, 2021]

PART 1075—CONSUMER FINANCIAL CIVIL PENALTY FUND RULE

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AUTHORITY: 12 U.S.C. 5512(b)(1), 5497(d).

SOURCE: 78 FR 26501, May 7, 2013, unless otherwise noted.

§ 1075.100 Scope and purpose.

Section 1017(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 124 Stat. 1978 (12 U.S.C. 5497(d)) (Dodd-Frank Act) establishes the “Consumer Financial Civil Penalty Fund.” This part describes the conditions under which victims will be eligible for payments from the Consumer Financial Civil Penalty Fund and the amounts of the payments they may receive. This part also establishes procedures and guidelines for allocating funds from the Consumer Financial Civil Penalty Fund to classes of victims and distributing such funds to individual victims, and for allocating funds to consumer education and financial literacy pro-

grams. This part also establishes reporting requirements.

§ 1075.101 Definitions.

For the purposes of this part, the following definitions apply:

Bureau means the Bureau of Consumer Financial Protection.

Bureau enforcement action means any judicial or administrative action or proceeding in which the Bureau has obtained relief with respect to a violation.

Chief Financial Officer means the Chief Financial Officer of the Bureau or any Bureau employee to whom that officer has delegated authority to act under this part. In the absence of a Chief Financial Officer of the Bureau, the Director shall designate an alternative official of the Bureau to perform the functions of the Chief Financial Officer under this part.

Civil Penalty Fund means the Consumer Financial Civil Penalty Fund established by 12 U.S.C. 5497(d).

Civil Penalty Fund Governance Board means the body, comprised of senior Bureau officials, established by the Director of the Bureau to advise on matters relating to the Civil Penalty Fund.

Class of victims means a group of similarly situated victims who suffered harm from the same or similar violations for which the Bureau obtained relief in a Bureau enforcement action.

Defendant means a party in a Bureau enforcement action that is found or alleged to have committed a violation.

Final order means a consent order or settlement issued by a court or by the Bureau, or an appealable order issued by a court or by the Bureau as to which the time for filing an appeal has expired and no appeals are pending. For purposes of this definition, “appeals” include petitions for reconsideration, review, rehearing, and certiorari.

Person means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Redress means any amounts—including but not limited to restitution, refunds, and damages—that a final order requires a defendant:

(1) To distribute, credit, or otherwise pay to those harmed by a violation; or

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(2) To pay to the Bureau or another intermediary for distribution to those harmed by the violation.

Victim means a person harmed as a result of a violation.

Violation means any act or omission that constitutes a violation of law for which the Bureau is authorized to obtain relief pursuant to 12 U.S.C. 5565(a).

§ 1075.102 Fund administrator.

(a) *In general.* There is established the position of Civil Penalty Fund Administrator (Fund Administrator). The Fund Administrator will report to the Chief Financial Officer. The Chief Financial Officer may, to the extent permitted by applicable law, relieve the Fund Administrator of the duties of that position without notice, without cause, and prior to the naming of a successor Fund Administrator.

(b) *Powers and duties.* The Fund Administrator will have the powers and duties assigned to that official in this part.

(c) *Interpretation of these regulations.*

(1) On its own initiative or at the Fund Administrator's request, the Civil Penalty Fund Governance Board may advise or direct the Fund Administrator on the administration of the Civil Penalty Fund, including regarding the interpretation of this part and its application to particular facts and circumstances.

(2) The Fund Administrator must follow any written directions that the Civil Penalty Fund Governance Board provides pursuant to paragraph (c)(1) of this section.

(d) *Unavailability of the Fund Administrator.* If there is no Fund Administrator or if the Fund Administrator is otherwise unavailable, the Chief Financial Officer will perform the functions and duties of the Fund Administrator.

§ 1075.103 Eligible victims.

A victim is eligible for payment from the Civil Penalty Fund if a final order in a Bureau enforcement action imposed a civil penalty for the violation or violations that harmed the victim.

§ 1075.104 Payments to victims.

(a) *In general.* The Bureau will use funds in the Civil Penalty Fund for payments to compensate eligible vic-

tims' uncompensated harm, as described in to paragraph (b) of this section.

(b) *Victims' uncompensated harm.* (1) A victim's uncompensated harm is the victim's compensable harm, as described in paragraph (c) of this section, minus any compensation for that harm that the victim has received or is reasonably expected to receive.

(2) For purposes of paragraph (b)(1) of this section, a victim has received or is reasonably expected to receive compensation in the amount of:

(i) Any Civil Penalty Fund payment that the victim has previously received or will receive as a result of a previous allocation from the Civil Penalty Fund to the victim's class;

(ii) Any redress that a final order in a Bureau enforcement action orders to be distributed, credited, or otherwise paid to the victim, and that has not been suspended or waived and that the Chief Financial Officer has not determined to be uncollectible; and

(iii) Any other redress that the Bureau knows that has been distributed, credited, or otherwise paid to the victim, or has been paid to an intermediary for distribution to the victim, to the extent that:

(A) That redress compensates the victim for the same harm as would be compensated by a Civil Penalty Fund payment; and

(B) It is not unduly burdensome, in light of the amounts at stake, to determine the amount of that redress or the extent to which it compensates the victim for the same harm as would be compensated by a Civil Penalty Fund payment.

(3) If the Fund Administrator deems it impracticable to assess the uncompensated harm of individual victims in a class, each individual victim's uncompensated harm will be the victim's share of the aggregate uncompensated harm of the victim's class.

(c) *Victims' compensable harm.* Victims' compensable harm for purposes of this part is as follows:

(1) If a final order in a Bureau enforcement action ordered redress for a class of victims, the compensable harm of each victim in the class is equal to that victim's share of the total redress

ordered, including any amounts that are suspended or waived.

(2) If a final order in a Bureau enforcement action does not order redress for a class of victims, those victims' compensable harm is as follows:

(i) If the Bureau sought redress for a class of victims but a court or administrative tribunal denied that request for redress in the final order, the victims in that class have no compensable harm.

(ii) Except as provided in paragraph (c)(2)(i) of this section, if the final order in the Bureau enforcement action specifies the amount of the victims' harm, including by prescribing a formula for calculating that harm, each victim's compensable harm is equal to that victim's share of the amount specified.

(iii) Except as provided in paragraph (c)(2)(i) of this section, if the final order in the Bureau enforcement action does not specify the amount of the victims' harm, each victim's compensable harm is equal to the victim's out-of-pocket losses that resulted from the violation or violations for which a civil penalty was imposed, except to the extent such losses are impracticable to determine.

§ 1075.105 Allocating funds from the Civil Penalty Fund—in general.

(a) *In general.* The Fund Administrator will allocate Civil Penalty Fund funds specified in paragraph (c) of this section to classes of victims and to consumer education and financial literacy programs as appropriate according to the schedule established in paragraph (b) of this section and the guidelines established in §§ 1075.106 and 1075.107.

(b) *Schedule for making allocations.* (1) Within 60 days of May 7, 2013, the Fund Administrator will establish, and publish on www.consumerfinance.gov, a schedule for allocating funds in the Civil Penalty Fund, in accordance with the following:

(i) The schedule will establish six-month periods and identify the start and end dates of those periods. The start date of one period will be the day immediately after the end date of the preceding period.

(ii) Notwithstanding paragraph (b)(1)(i) of this section, the first and second periods may be longer or shorter than six months to allow future six-month periods to start and end on dates that better serve administrative efficiency. The first and second periods will constitute "six-month periods" under this part regardless of their actual length.

(iii) The start date of the first period is July 21, 2011.

(2) Within 60 days after the end of a six-month period, the Fund Administrator will allocate available funds in the Civil Penalty Fund in accordance with §§ 1075.106 and 1075.107.

(3) If the Civil Penalty Fund Governance Board determines that the schedule established under paragraph (b)(1) of this section should be changed to better serve administrative efficiency, it may change that schedule by directing the Fund Administrator to publish the new schedule on www.consumerfinance.gov. Any new schedule must comply with paragraph (b)(1)(i) of this section. The first period of any new schedule may be shorter or longer than six months. That first period will constitute a "six-month period" under this part regardless of its actual length.

(c) *Funds available for allocation.* The funds available for allocation following the end of a six-month period are those funds that were in the Civil Penalty Fund on the end date of that six-month period, minus:

- (1) Any funds already allocated,
- (2) Any funds that the Fund Administrator determines are necessary for authorized administrative expenses, and
- (3) Any funds collected pursuant to an order that has not yet become a final order.

§ 1075.106 Allocating funds to classes of victims.

(a) *Allocations when there are sufficient funds available to compensate all uncompensated harm.* If the funds available under § 1075.105(c) are sufficient, the Fund Administrator will allocate to each class of victims the amount necessary to compensate fully the uncompensated harm, determined under § 1075.104(b) as of the last day of the

most recently concluded six-month period, of all victims in that class to whom it is practicable to make payments.

(b) *Allocations when there are insufficient funds available to compensate all uncompensated harm.* If the funds available under §1075.105(c) are not sufficient to make the allocations described in paragraph (a) of this section, the Fund Administrator will allocate the available funds to classes of victims as follows:

(1) *Priority to classes of victims from the most recent six-month period.* The Fund Administrator will first allocate funds to classes of victims from the most recently concluded six-month period, as determined under paragraph (b)(2) of this section. If funds remain after allocating to each class of victims from that six-month period the amount necessary to compensate fully the uncompensated harm, determined under §1075.104(b) as of the last day of the most recently concluded six-month period, of all victims in that class to whom it is practicable to make payments, the Fund Administrator next will allocate funds to classes of victims from the preceding six-month period, and so forth until no funds remain.

(2) *Assigning classes of victims to a six-month period.* For purposes of this paragraph (b), the Fund Administrator will assign each class of victims to the six-month period in which the victims first had uncompensated harm as described in §1075.104(b). When a class of victims first had uncompensated harm as described in §1075.104(b) will be determined as follows:

(i) If redress was ordered for a class of victims in a Bureau enforcement action but suspended or waived in whole or in part, the class of victims first had uncompensated harm as described in §1075.104(b) on the date the suspension or waiver became effective.

(ii) If redress was ordered for a class of victims in a Bureau enforcement action but determined by the Chief Financial Officer to be uncollectible in whole or in part, the class of victims first had uncompensated harm as described in §1075.104(b) on the date the Chief Financial Officer made that determination.

(iii) If no redress was ordered for a class of victims in a Bureau enforcement action, the class of victims first had uncompensated harm as described in §1075.104(b) on the date the order imposing a civil penalty became a final order.

(c) *No allocation to a class of victims if making payments would be impracticable.* Notwithstanding any other provision in this section, the Fund Administrator will not allocate funds available under §1075.105(c) to a class of victims if she determines that making payments to that class of victims would be impracticable.

(d) *Fund Administrator's discretion.* (1) Notwithstanding any provision in this part, the Fund Administrator, in her discretion, may depart from the procedures specified by this section, including by declining to make, or altering the amount of, any allocation provided for by this section. Whenever the Fund Administrator exercises this discretion, she will provide the Civil Penalty Fund Governance Board a written explanation of the reason for departing from the procedures specified by this section.

(2) If, in allocating funds during a given time period described in §1075.105(b)(2), the Fund Administrator exercises her discretion under paragraph (d)(1) of this section, she may allocate funds to consumer education and financial literacy programs under 1075.107 during that time period only to the same extent she could have absent that exercise of discretion.

§1075.107 Allocating funds to consumer education and financial literacy programs.

(a) If funds available under §1075.105(c) remain after the Fund Administrator allocates funds as described in §1075.106(a), the Fund Administrator may allocate those remaining funds for consumer education and financial literacy programs.

(b) The Fund Administrator shall not have the authority to allocate funds to particular consumer education or financial literacy programs or otherwise to select the particular consumer education or financial literacy programs for which allocated funds will be used.

§ 1075.108 Distributing payments to victims.

(a) *Designation of a payments administrator.* Upon allocating Civil Penalty Fund funds to a class of victims pursuant to § 1075.106, the Fund Administrator will designate a payments administrator who will be responsible for distributing payments to the victims in that class. A payments administrator may be any person, including a Bureau employee or contractor.

(b) *Distribution plan.* The payments administrator must submit to the Fund Administrator a proposed plan for the distribution of funds allocated to a class of victims. The Fund Administrator will approve, approve with modifications, or disapprove the proposed distribution plan. If the Fund Administrator disapproves a proposed plan, the payments administrator must submit a new proposed plan.

(c) *Contents of plan.* The Fund Administrator will instruct the payments administrator to prepare a distribution plan and may require that plan to include:

(1) Procedures for determining the amount each victim will receive. Such procedures may, but need not, include a process for submitting and approving claims.

(2) Procedures for locating and notifying victims eligible or potentially eligible for payment.

(3) The method or methods by which the payments will be made.

(4) The method or methods by which potentially eligible victims may contact the payments administrator.

(5) Any other provisions that the Fund Administrator deems appropriate.

(d) *Distribution of payments.* The payments administrator will make payments to victims in a class, except to the extent such payments are impracticable, in accordance with the distribution plan approved under paragraph (b) of this section and subject to the Fund Administrator's supervision.

(e) *Disposition of funds remaining after attempted distribution to a class of victims.* If funds allocated to a class of victims remain after a payments administrator distributes payments to that class, the payments administrator will

distribute those remaining funds as follows:

(1) To the extent practicable, the payments administrator will distribute those remaining funds to victims in that class up to the amount of their remaining uncompensated harm as described in § 1075.104(b).

(2) Any remaining funds that cannot be distributed pursuant to paragraph (e)(1) of this section will be returned to the Civil Penalty Fund.

§ 1075.109 When payments to victims are impracticable.

(a) *Individual payments.* Making a payment to an individual victim will be deemed impracticable if:

(1) The payment to the victim would be of such a small amount that the victim would not be likely to redeem the payment;

(2) The payment to the victim is too small to justify the cost of locating the victim and making the payment;

(3) The victim cannot be located with effort that is reasonable in light of the amount of the payment;

(4) The victim does not timely submit information that a distribution plan requires to be submitted before a payment will be made;

(5) The victim does not redeem the payment within a reasonable time; or

(6) The Fund Administrator determines that other circumstances make it unreasonable to make a payment to the victim.

(b) *Payments to a class of victims.* Making payments to a class of victims will be deemed impracticable if:

(1) The expected aggregate actual payment to the class of victims is too small to justify the costs of locating the victims in the class and making payments to them;

(2) It would be impracticable under paragraph (a) of this section to make a payment to any victim in the class; or

(3) The Fund Administrator determines that other circumstances make it unreasonable to make payments to the class.

§ 1075.110 Reporting requirements.

The Fund Administrator must issue regular reports, on at least an annual basis, that describe how funds in the

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Civil Penalty Fund have been allocated, the basis for those allocations, and how funds that have been allocated to classes of victims have been distributed. These reports will be made available on *www.consumerfinance.gov*.

PART 1076—CLAIMS AGAINST THE UNITED STATES

AUTHORITY: 12 U.S.C. 5492(a)(1), (11); 28 U.S.C. 2672; 28 CFR 14.11.

SOURCE: 78 FR 47153, Aug. 5, 2013, unless otherwise noted.

§ 1076.101 Claims against a Bureau employee based on negligence, wrongful act or omission.

(a) *Procedure for filing claims.* A claimant, or the claimant’s duly authorized agent or legal representative may present a claim against a Bureau employee based on negligence, or wrongful act or omission, as specified in 28 CFR 14.3. Claimant or claimant’s duly authorized agent or legal representative must file with the General Counsel of the Bureau a completed Claim for Damage or Injury (*Standard Form 95*), together with appropriate evidence and information, as specified in 28 CFR 14.4. Standard Form 95 may be obtained at <http://www.justice.gov/civil/docs/forms/SF-95.pdf>, or from the CFPB. Claimants also may submit a claim in the form of a letter or any other writing, a written statement, an audio file, a Braille or electronic document, and/or a video, as long as the submission contains all of the requirements of an administrative claim specified in 28 CFR part 14. Claims should be mailed or delivered to the General Counsel, Legal Division, CFPB, 1700 G Street NW., Washington, DC 20552, or emailed to CFPB_tortclaims@cfpb.gov.

(b) *Determination of claims—(1) Delegation of authority to determine claims.* The General Counsel, and such employees of the Legal Division as the General Counsel may designate are authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, as amended, and the regulations contained in 28 CFR part 14 and in this section.

(2) *Disallowance of claims.* If the General Counsel, or the General Counsel’s

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designee, denies a claim, the General Counsel or designee shall notify the claimant, or the claimant’s duly authorized agent or legal representative.

PART 1080—RULES RELATING TO INVESTIGATIONS

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AUTHORITY: Pub. L. 111–203, title X, 12 U.S.C. 5481 *et seq.*

SOURCE: 77 FR 39108, June 29, 2012, unless otherwise noted.

§ 1080.1 Scope.

The rules of this part apply to Bureau investigations conducted pursuant to section 1052 of the Dodd-Frank Act, 12 U.S.C. 5562.

§ 1080.2 Definitions.

For the purposes of this part, unless explicitly stated to the contrary:

Bureau means the Bureau of Consumer Financial Protection.

Bureau investigation means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation.

Bureau investigator means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

Custodian means the custodian or any deputy custodian designated by the Bureau for the purpose of maintaining custody of information produced pursuant to this part.