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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1075

[Docket No.: CFPB-2013-0011]

RIN 3170-AA38

Consumer Financial Civil Penalty Fund Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) establishes a "Consumer Financial Civil Penalty Fund" (Civil Penalty Fund) into which the Consumer Financial Protection Bureau (Bureau) must deposit any civil penalty it obtains against any person in any judicial or administrative action under Federal consumer financial laws. Under the Act, funds in the Civil Penalty Fund may be used for payments to the victims of activities for which civil penalties have been imposed under Federal consumer financial laws. In addition, to the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use funds in the Civil Penalty Fund for the purpose of consumer education and financial literacy programs. This rule implements the relevant statutory provisions by articulating the Bureau's interpretation of what kinds of payments to victims are appropriate and by establishing procedures for allocating funds for such payments to victims and for consumer education and financial literacy programs.

DATES: This rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Kristin Bateman, Attorney-Advisor, Legal Division, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, at (202) 435-7821.

SUPPLEMENTARY INFORMATION:

I. Background

Title X of the Dodd-Frank Act established the Bureau with a mandate to regulate the offering and provision of consumer financial products and services under the Federal consumer financial laws. Public Law No. 111-203, § 1011(a) (2010), *codified at* 12 U.S.C. 5491(a). The Dodd-Frank Act authorizes the Bureau, among other things, to enforce Federal consumer financial law through judicial actions and administrative adjudication proceedings. 12 U.S.C. 5563, 5564. In those actions and proceedings, a court or the Bureau may require a party that has violated the law to pay a civil penalty. *See, e.g.*, 12 U.S.C. 5565.

Section 1017(d)(1) of the Dodd-Frank Act establishes a separate fund in the Federal Reserve, the "Consumer Financial Civil Penalty Fund" (Civil Penalty Fund), into which the Bureau must deposit civil penalties it collects from any person in any judicial or administrative action under Federal consumer financial laws. 12 U.S.C. 5497(d)(1). Under the Act, amounts in the Fund may be used "for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws." 12 U.S.C. 5497(d)(2). In addition, "[t]o the extent that such victims cannot be located or such payments are otherwise not practicable," the Bureau may use amounts in the Fund for consumer education and financial literacy programs. *Id.*

II. Summary of the Rule

This rule implements § 1017(d)(2) of the Dodd-Frank Act, 12 U.S.C. 5497(d)(2), by specifying the conditions under which victims will be eligible for payment from the Civil Penalty Fund and the amounts of the payments that the Bureau may make to them. In addition, the rule sets forth procedures the Bureau will follow for allocating and distributing funds from the Civil Penalty Fund.

First, the rule describes the roles of Bureau officials involved in managing the Civil Penalty Fund. It establishes the position of Civil Penalty Fund Administrator (Fund Administrator) and provides that the Fund Administrator will report to the Chief Financial Officer. In addition, the rule provides that the Civil Penalty Fund Governance Board—the body comprised of senior Bureau officials established by the Director to advise on matters relating to the Civil Penalty Fund—may advise or direct the Fund Administrator on the administration of the Civil Penalty Fund. The Fund Administrator must follow any written directions that the Civil Penalty Fund Governance Board provides.

Second, the rule identifies the category of victims who may receive payments from the Civil Penalty Fund and sets forth the amounts they may receive. Under the rule, 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. In addition, the rule effectuates the intent of section 1017(d)(2) of the Dodd-Frank Act to provide Civil Penalty Fund payments only to compensate victims for the harms they suffered from a violation for which penalties were imposed. In addition, as envisioned by section 1017(d)(2), the Bureau will make payments to victims from the Civil Penalty Fund only to the extent practicable. The rule identifies that part of victims' harm that the Bureau believes to be potentially practicable to calculate, and thus susceptible to compensation under section 1017(d)(2). The rule also

establishes procedures for determining that compensable harm. When possible, the amount of compensable harm that a victim suffered from a violation will be determined based on the objective terms of the order imposing a civil penalty for the violation. If the amount of harm cannot be determined based on the terms of the order alone, a victim's compensable harm is the victim's out-of-pocket loss that resulted from the violation, unless that amount would be impracticable to determine.

The rule further provides that the Bureau will use funds in the Civil Penalty Fund to compensate only victims' uncompensated harm. Under the rule, a victim's uncompensated harm is the victim's compensable harm, less any compensation for that harm that the victim has received or is reasonably expected to receive.

Third, the rule establishes a two-stage procedure for expending money in the Civil Penalty Fund. First, the Fund Administrator will *allocate* funds for payments to victims and, if appropriate, for consumer education and financial literacy programs. At the allocation stage, the Fund Administrator will assign amounts to *classes* of victims—that is, to groups of similarly situated victims who suffered the same or similar violations for which the Bureau obtained relief in an enforcement action. The Fund Administrator will allocate funds to a class only to the extent that payments to class members would be practicable. Second, the Fund Administrator will designate a payments administrator to *distribute* allocated funds to *individual* victims in the classes to which funds have been allocated. Again, a payments administrator will make payments to individual victims only to the extent practicable. The rule identifies specific ways in which payments to individual victims or to a class of victims might be impracticable.

For funds allocated to consumer education and financial literacy programs, the Bureau has adopted criteria[1]—not contained in this rule—for selecting the particular consumer education or financial literacy programs to be funded.

Under the rule, the Fund Administrator will allocate funds from the Civil Penalty Fund on a six-month schedule. The Fund Administrator is responsible for establishing the schedule of six-month periods. Following the end of any given six-month period, the funds available for allocation are those present in the Civil Penalty Fund as of the end of that period, minus funds already allocated and certain other funds. In general, the Fund Administrator may allocate the available funds to those classes of victims that had uncompensated harm as of the end of that six-month period, unless making payments to that class would be impracticable. If sufficient funds are available, the Fund Administrator will allocate to all such classes of victims enough money to provide full compensation to the victims in those classes to whom it is practicable to make payments. If funds remain, the Fund Administrator may allocate a portion of those remaining funds for consumer education and financial literacy programs.

The Bureau anticipates that at times the available funds in the Civil Penalty Fund may not be sufficient to provide full compensation to all classes of victims to which it is practicable to make payments. The Bureau has endeavored to establish equitable, transparent, and efficient procedures for allocating funds in those circumstances. Under the rule, classes of victims that first had uncompensated harm during the six-month period that most recently ended will receive priority in such "lean" periods. If funds remain after allocating sufficient funds to provide full compensation to all victims in those classes, classes of victims from the previous six-month period will receive second priority, and so forth until no funds remain. At times, there may not

[1] The criteria are available at: http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_criteria.pdf.

be sufficient funds to give full compensation to all classes of victims from a single six-month period. In those circumstances, the rule specifies that funds will be allocated in a way designed to ensure, to the degree possible, that victims in those classes will receive compensation—through redress and Civil Penalty Fund payments—for an equal percentage of their compensable harm.

In addition, to preserve flexibility in special circumstances, the rule authorizes the Fund Administrator, in her discretion, to depart from these procedures, including by declining to make, or altering the amount of, any allocation provided for by the rule. However, if the Fund Administrator exercises that discretion, funds that otherwise would have been allocated to a class of victims cannot instead be allocated to consumer education and financial literacy programs in that period. Rather, the Fund Administrator may allocate funds to consumer education and financial literacy programs during that six-month period only to the same extent she could have had she not exercised that discretion.

In addition to establishing procedures governing the allocation of funds from the Civil Penalty Fund, the rule also establishes procedures governing the distribution of allocated funds to eligible victims. In particular, the rule directs the Fund Administrator to designate a payments administrator to distribute payments to eligible victims in a class to which Civil Penalty Fund funds have been allocated. Under the rule, the Fund Administrator will instruct the payments administrator to propose a plan for distributing the payments. The Fund Administrator may require the plan to include procedures for determining payment amounts, for locating and notifying victims, for making payments, and for potentially eligible victims to contact the payments administrator. Upon the Fund Administrator's approval of a distribution plan, the payments administrator will distribute payments to victims in accordance with the plan to the

extent practicable. If funds remain after distributing payments to victims in a class, the payments administrator will distribute those remaining allocated funds, to the extent practicable, among eligible victims in that class up to the amount of their remaining uncompensated harm. Any remaining funds that cannot be distributed among victims in the class in that way will be returned to the Civil Penalty Fund for future allocation.

Fourth, the rule sets forth several circumstances in which it will be deemed impracticable to make payments to victims or to classes of victims.

Finally, the rule requires the Fund Administrator to issue regular reports on the disposition of funds in the Civil Penalty Fund. Those reports will be made available on www.consumerfinance.gov.

III. Legal Authority

The Bureau is issuing this rule pursuant to its authority under section 1022(b)(1) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, 12 U.S.C. 5512(b)(1); and under section 1017(d) of the Dodd-Frank Act, which establishes the Civil Penalty Fund and authorizes the Bureau to use amounts in that Fund for payments to victims and for consumer education and financial literacy programs.

This rule is in part an interpretative rule and in part a rule relating to agency procedure and practice. Accordingly, the rule is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Even if this requirement applied, the Bureau finds there is good cause for this rule to take effect immediately upon publication in the Federal Register. The principal purpose of delaying an effective date is to provide regulated persons an opportunity to prepare, such as by bringing their

operations into compliance with new requirements. But this rule does not impose any obligations or prohibitions on the public, and the public therefore needs no time to prepare for the rule's effective date. Meanwhile, making the rule immediately effective allows the Bureau to begin as soon as possible the process of allocating funds in the Civil Penalty Fund to victims.

IV. Section-by-Section Description

Section 1075.100 Scope and Purpose

This section describes the scope and purpose of the rule. It explains that the rule implements section 1017(d)(2) of the Dodd-Frank Act by describing the conditions under which victims will be eligible for payment from the Civil Penalty Fund and the amounts of the payments they may receive. This section further explains that this rule establishes procedures for allocating funds in the Civil Penalty Fund to classes of victims and to consumer education and financial literacy programs, and for distributing allocated funds to individual victims. The rule also requires the Fund Administrator to issue regular reports on the Civil Penalty Fund.

Section 1075.101 Definitions

This section defines terms used in the rule.

Bureau. The rule provides that the term "Bureau" means the Bureau of Consumer Financial Protection.

Bureau enforcement action. The rule provides that the term "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. The rule states that the term "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. The rule further states that, in the absence of a Chief

Financial Officer, 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. The rule provides that the term "Civil Penalty Fund" means the Consumer Financial Civil Penalty Fund established by 12 U.S.C. 5497(d).

Civil Penalty Fund Governance Board. The rule provides that the term "Civil Penalty Fund Governance Board" refers to the body, comprised of senior Bureau officials, established by the Bureau's Director to advise on matters relating to the Civil Penalty Fund.

Class of victims. The rule defines the term "class of victims" to mean 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. Under this definition, a single Bureau enforcement action could involve multiple classes of victims. For example, the Bureau might obtain relief for multiple different violations in a single action. The set of victims harmed by one violation might overlap with the set of victims harmed by another violation, but each set could constitute a distinct class for purposes of this rule.

Defendant. The rule states that the term "defendant" means a party in a Bureau enforcement action that is found or alleged to have committed a violation. This includes parties that generally are referred to as "respondents" in administrative enforcement actions.

Final order. The rule provides that the term "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. The rule makes clear that for purposes of this definition, "appeals" include petitions for reconsideration, review, rehearing, and certiorari.

This rule's definition of "final order" differs from the definition of that term in the Bureau's Rules of Practice for Adjudication Proceedings, which provide that an order may be considered "final" even if a petition for reconsideration or review is pending. For purposes of this rule, the Bureau has chosen to define "final order" as an order that is subject to no further review because the terms of an order in part determine whether victims may receive payments from the Civil Penalty Fund and, if so, in what amount. Thus, it is important that the terms of the final order not be subject to change. Otherwise, the Bureau would risk making Civil Penalty Fund payments that might turn out, as a result of appellate decisions, to have exceeded the amount victims may receive under the rule.

Person. The rule incorporates the definition of "person" set forth in section 1002(19) of the Dodd-Frank Act. Thus, the rule states that the term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Redress. The rule states that the term "redress" means any amounts that a final order requires a defendant to distribute, credit, or otherwise pay to those harmed by a violation, or to pay to the Bureau or another intermediary for distribution to those harmed by the defendant's violation. The rule makes clear that redress includes but is not limited to restitution, refunds, and damages. A case brought by a party other than the Bureau—such as another federal agency, a state's attorney general, or a private plaintiff—may result in "redress" as defined by the rule.

Victim. The rule defines "victim" to mean a person harmed as a result of a violation.

Violation. The rule provides that the term "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).

Section 1075.102 Fund Administrator

102(a) In General

Section 1075.102(a) establishes within the Bureau the position of Civil Penalty Fund Administrator (Fund Administrator) and provides that the Fund Administrator will report to the Chief Financial Officer and serve at that officer's pleasure. In addition, 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 before naming a successor Fund Administrator.

102(b) Powers and Duties

Section 1075.102(b) provides that the Fund Administrator will have the powers and duties assigned to that official by this rule.

102(c) Interpretation of these Regulations

Section 1075.102(c) provides that 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. The Governance Board may provide this advice or direction on its own initiative or at the Fund Administrator's request. The rule makes clear that if the Governance Board issues to the Fund Administrator written directions regarding the administration of the Civil Penalty Fund, the Fund Administrator must follow those directions.

102(d) Unavailability of the Fund Administrator

Section 1075.102(d) provides that if there is no Fund Administrator or if the Fund Administrator is otherwise unavailable, the Chief Financial Officer will perform the Fund Administrator's functions and duties. In accordance with § 1075.101, the Chief Financial

Officer may delegate to another Bureau employee the authority to perform the Fund Administrator's functions and duties in these circumstances.

Section 1075.103 Eligible Victims

Section 1075.103 provides that 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. This implements the Dodd-Frank Act, which authorizes Civil Penalty Fund payments to "the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws." 12 U.S.C. 5497(d)(2). The Act does not clearly specify whether the *particular* activities that affected a particular victim must have been found to be violations in an enforcement action before the victim may receive payments from the Civil Penalty Fund. However, the Bureau interprets section 1017(d)(2) of the Dodd-Frank Act as authorizing such payments only to the victims of particular violations for which civil penalties were imposed. If section 1017(d)(2) instead authorized the Bureau to make payments to victims of activities that are of the same *type* as activities for which civil penalties were imposed—even if no civil penalty was imposed for the *particular* activities that harmed the victim—it would be difficult to identify all such activities, assess whether those activities were sufficiently similar to activities that gave rise to a civil penalty, and identify the victims of those activities. By contrast, interpreting section 1017(d)(2) to authorize payments only to victims of particular violations for which civil penalties were imposed establishes a clear eligibility rule that is straightforward to apply.

A victim's eligibility for payment from the Civil Penalty Fund and, as discussed below, the amount of any such payment do not depend on the amount of the civil penalty imposed or paid for the violation that harmed the victim. Section 1017 of the Dodd-Frank Act instructs the

Bureau to deposit all amounts received as civil penalties into a single Civil Penalty Fund and authorizes payments from that Fund to the "victims" of "activities" for which "penalties" have been imposed. By creating a single Civil Penalty Fund, the statute enables the pooling of penalties from multiple actions. The Bureau therefore interprets section 1017 to make a victim's eligibility for payments from the Civil Penalty Fund depend only on whether a final order imposed a civil penalty for the violation that harmed the victim, and not on whether the defendant actually paid the penalty imposed or on how much the defendant paid. Thus, a victim is not limited to receiving some portion of the particular civil penalty paid for the violation that harmed the victim, but rather may receive payment from any funds in the Civil Penalty Fund.

Section 1075.104 Payments to Victims

104(a) In General

Section 1075.104(a) provides that the Bureau will use funds in the Civil Penalty Fund for payments to compensate eligible victims' uncompensated harm, as described in paragraph (b) of this section. This provision gives effect to the Bureau's interpretation of the Dodd-Frank Act as authorizing payments to victims only up to the amount necessary to compensate them for the harm they suffered as a result of a violation. The Bureau recognizes that section 1017(d)(2) authorizes payments to victims but does not specify what kinds of payments, in what amounts, or for what purposes. However, section 1017(d)(1)'s caption, "Establishment of Victims Relief Fund," suggests that Civil Penalty Fund payments should provide relief to victims for harm suffered. Compensation for harm is a common purpose for payments to victims, and laws ordinarily do not go beyond that purpose to give victims windfall recoveries that exceed the

harms they suffered.[2] To be sure, some laws do provide for payments to victims in excess of harms suffered, usually to provide additional incentives for private parties to enforce the law or to enhance the deterrent effect of such private enforcement.[3] Providing such payments here, however, would not further those goals: It would not incentivize victims to bring private enforcement actions, nor would it have any impact on deterrence because the size of the payments would not affect the size of the civil penalty that the defendant had to pay. Moreover, there is no indication in section 1017(d)'s text that the Civil Penalty Fund should provide victims payments beyond the extent of their harm.

The Bureau's interpretation also gives effect to the second sentence of section 1017(d)(2), which authorizes the Bureau to use funds in the Civil Penalty Fund for consumer education and financial literacy programs to the extent that payments to victims are not practicable. If the amount of individual victims' payments were not limited in some way, any one victim could receive the full amount in the Fund. Thus, so long as it was practicable to pay at least one victim—as it almost certainly always will be—funds would never become available for consumer education and financial literacy programs under section 1017(d)(2)'s second sentence. Therefore, for all the terms of section 1017(d)(2) to have effect, payments to victims must be subject to reasonable limitation. In light of the general principles discussed above, the

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[2] *See, e.g.*, *Prudential Ins. Co. of Am. v. S.S. Am. Lancer*, 870 F.2d 867, 871 (2d Cir. 1989); *Reilly v. United States*, 863 F.2d 149, 165 (1st Cir. 1988); *Westerman v. Sears, Roebuck & Co.*, 577 F.2d 873, 879 (5th Cir. 1978).

[3] *See, e.g.*, *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 241 (1987) (explaining that "the antitrust treble-damages provision gives private parties an incentive to bring civil suits that serve to advance the national interest in a competitive economy"); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266–67 (1981) ("Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct.").

Bureau believes that paying victims only to compensate them for harms suffered as a result of violations effectuates the statutory intent.

104(b) Victims' Uncompensated Harm

In general, a victim's uncompensated harm is the amount of the victim's compensable harm, as described in § 1075.104(c) and discussed below, minus any compensation for that harm that the victim has received or is reasonably expected to receive. To ensure that Civil Penalty Fund payments do not overcompensate victims, the Bureau will take account of compensation that victims have received from other sources. In addition, in some cases, some time may elapse between when an entity is directed to compensate victims, or when funds are allocated to compensate victims, and when the victims actually receive that compensation. The Bureau will take account of such compensation, even if victims have not yet received it. The Bureau understands section 1017(d)(2) to create a backstop that could provide compensation that victims otherwise would not receive. Thus, "payments to victims" should not include payments that would duplicate compensation that the victims are reasonably expected to receive in the future.

Section 1075.104(b)(2) describes three categories of compensation that a victim "has received or is reasonably expected to receive." First, paragraph (b)(2)(i) provides that a victim has received or is reasonably expected to receive 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.

Second, paragraph (b)(2)(ii) provides that a victim has received or is reasonably expected to receive 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. The Bureau expects that

defendants generally will pay the redress that they are ordered to pay in a Bureau enforcement action. Therefore, the Bureau generally considers it reasonable to anticipate that victims will receive any amount of compensation ordered in such an action. However, in some circumstances it will not be reasonable to expect a victim to receive some portion of the compensation ordered in a given action. In particular, victims will not likely receive a redress amount that the Bureau has suspended or waived. In addition, victims will not likely receive a redress amount that the Bureau has determined to be uncollectible in whole or in part.

Third, paragraph (b)(2)(iii) provides that a victim has received or is reasonably expected to receive any other redress that the Bureau knows 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 (1) such redress compensates the victim for the same harm as would be compensated by a Civil Penalty Fund payment, and (2) 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.

The "other redress" covered by this provision includes redress paid to victims as a result of private litigation or enforcement actions by other regulators. Such redress would be subtracted from a victim's compensable harm only if the Bureau knows that the defendant has paid the other redress. The Bureau would not, pursuant to the rule, actively investigate what other redress victims have been paid. However, to the extent the Bureau does learn of other redress, such redress should be counted as compensation that victims have received.[4]

[4] The Bureau anticipates it will learn of other redress as a matter of course in many cases. For example, the Bureau may require a defendant to notify the Bureau of any judgment or settlement involving violations related to the order.

In addition, under this provision, a victim is not "reasonably expected to receive" other redress that a party has been ordered to pay, but has not yet paid. While many defendants will actually pay the full amounts ordered, the Bureau recognizes that some may not. The Bureau has substantially less information about the likelihood that defendants will fully comply with the orders in actions brought by other parties than it does about compliance with orders in its own actions. The Bureau often will not know, for example, whether redress from such a non-Bureau action is uncollectible. And while the Bureau has the authority to seek enforcement of orders it obtains, the Bureau usually will not know what efforts other parties might undertake to enforce the orders obtained in their own actions. Given those uncertainties, the Bureau will not consider a victim to be reasonably likely to receive redress from other parties' actions until the defendant has actually paid that redress to an intermediary for distribution to the victims.

Finally, the Bureau recognizes that in some circumstances it may not be practicable to assess the uncompensated harm of individual victims. In such cases, § 1075.104(b)(3) provides that, for purposes of this rule, each individual victim's uncompensated harm will be the victim's share of the aggregate uncompensated harm of the victim's class.

104(c) Victims' Compensable Harm

Section 1075.104(c) describes the amount of victims' compensable harm for purposes of this rule. As noted above, the Bureau interprets section 1017(d)(2) of the Dodd-Frank Act to authorize payments to a victim only up to the amount of harm that the victim suffered from the violation for which the Bureau obtained a civil penalty and for which the victim has not received and is not reasonably likely to receive other compensation. The Bureau also interprets that provision as directing the Bureau to make payments to victims only to the extent practicable.

The Bureau believes that for payments to be "practicable," it must be feasible to carry out all the steps involved in making the payments, and to do so efficiently and without excessive administrative cost in the context of a system of making payments to many victims of many different activities.[5] The Dodd-Frank Act did not establish a tribunal or a formal procedure for distributing payments pursuant to section 1017(d)(2). Indeed, the statute does not specify any mechanism for making the payments. But, in light of section 1017(d)(2)'s placement within a statutory section that generally deals with the Bureau's administrative operations, the Bureau interprets that provision to refer to payments that may be made through ordinary administrative mechanisms. "Practicable," therefore, means capable of being carried out through such mechanisms.

Consistent with this interpretation, later sections of the rule, discussed below, direct the allocation and payment of funds only to the extent that payments to victims would be practicable. In addition, § 1075.109 identifies circumstances in which payment may not be practicable. For payments to be practicable, the Bureau must be able to take measures that are reasonable in the context of the Civil Penalty Fund to determine the amount of victims' harm, and thus the amount of the payments the victims may receive. Given the nature of the Civil Penalty Fund and the likely volume of payments, making complex individualized determinations or subjective judgments about the nature or extent of victims' harm would entail significant administrative burden and delay. Calculating harm based on such determinations or judgments therefore would

[5] *Cf.* 40 CFR § 230.10(a)(2) (regulation specifying that an alternative is "practicable" for purpose of the Clean Water Act if "it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes"); *Biodiversity Legal Found. v. Babbitt*, 146 F.3d 1249, 1255–56 (10th Cir. 1998) (statutory instruction to adhere to deadline to the degree "practicable" permitted agency to vary from deadline on the bases of what resources and funding were available and of how the agency assessed priorities).

not be practicable. Instead, in this context, harm is practicable to calculate only if the Fund Administrator can determine it by applying objective standards on a classwide basis. For these reasons, the Bureau defines "compensable harm" to include only those amounts of harm that the Bureau deems practicable to calculate, in the sense just described. Section 1075.104(c) describes amounts of harm that the Bureau believes will be practicable to calculate and establishes procedures that the Fund Administrator will follow to determine compensable harm in each of several categories of cases.

The measures of harm described in this section will not always correspond to the amount of harm for which the Bureau or injured victims could obtain compensation under the relevant laws and regulations and do not in any way reflect the Bureau's view on what kinds of harm are or should be compensable in litigation. Rather, these objective measures simply reflect what is practicable for the Fund Administrator to determine in the context of the Civil Penalty Fund.

To the extent possible, the amount of a victim's compensable harm will be based on the objective terms of a final order. Referring to the terms of a final order will be practicable, and following the terms of orders will enable the Fund Administrator to determine a victim's compensable harm quickly and efficiently in most circumstances. In addition, by relying on the terms of a final order, the Fund Administrator can avoid making potentially subjective judgments about the nature of the harm that a class of victims has suffered and how to quantify and calculate that harm.

There are several categories of cases in which the Fund Administrator will be able to rely on the terms of a final order. First, under paragraph (c)(1), if a final order in a Bureau enforcement action ordered redress for a class of victims, the compensable harm of each victim

in that class is equal to the victim's share of the total redress ordered, including any amounts that have been suspended or waived.

Second, under paragraph (c)(2)(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. A court or administrative tribunal's denial of a request for redress presumably reflects that body's conclusion that the Bureau has not proven that the victims' harm is legally compensable.

Third, under paragraph (c)(2)(ii), if the final order in a Bureau enforcement action neither ordered nor denied redress to victims but did specify the amount of their 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. This paragraph will apply in cases where the Bureau does not seek any redress for a class of victims. For example, if the Bureau believed a defendant had too few financial resources to provide any meaningful redress to its victims, the Bureau might choose not to seek such redress and instead to pursue injunctive relief. However, the final order in such a case might still describe amounts of harm that victims suffered from the violations at issue. Relying on such a description would be practicable to the same extent as relying on an order of redress. When possible, such victims' harm—like the harm of victims for whom redress is ordered—will be determined according to the objective terms of a final order. Only when that is not possible will the Bureau look to external factors to assess victims' harm.

Paragraph (c)(2)(iii) describes the amounts of harm that the Bureau believes could practicably be determined in those circumstances. Under this paragraph, 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.

The restriction to out-of-pocket losses effectuates the "practicable" standard for payments to victims because those losses are what would be "practicable" to determine in the context of disbursing funds from the Civil Penalty Fund. As discussed above, the Bureau believes that for payments to be "practicable" it should be possible for the Fund Administrator to calculate the appropriate payments on the basis of objective standards applicable on a classwide basis. In addition, the Fund Administrator should be able to obtain objective evidence of the harm with effort that is reasonable in this context. It follows that, when the Fund Administrator must assess harm on her own because no final order has specified an amount of harm, the Fund Administrator should assess only the amount of out-of-pocket loss. In general, the amounts that victims have spent out of pocket can be determined on the basis of documentary records that are straightforward to obtain. If, in exchange, victims have received some product or service of value, the objective value of that product or service should generally also be feasible to determine on a classwide basis. Measures of harm beyond out-of-pocket loss would tend to involve more individualized questions or more complex judgments than the Bureau practicably can make in administering the Civil Penalty Fund.[6]

The Bureau recognizes, however, that it may not always be practicable to make a complete determination of victims' out-of-pocket losses. For instance, at times there may be no objective standard for assessing the value of a good or service the buyer received. As another

[6] The Bureau does not regard out-of-pocket losses as a general limitation on what remedy might be available to plaintiffs, such as the Bureau, in a given action to enforce federal consumer financial law. Other measures of harm often will be appropriate, depending on the circumstances. Out-of-pocket losses simply represents the Bureau's judgment about what would be practicable to calculate in the specific context of the Civil Penalty Fund.

example, in some cases, there may be no centralized records of the amounts buyers paid, and it may be too costly given the amounts at stake to seek that evidence from the individual buyers. Thus, under the rule, out-of-pocket losses are compensable harm only to the extent that they are practicable to determine.[7]

The Bureau recognizes that many victims will have suffered harms in addition to those that the Civil Penalty Fund may compensate under this rule. For example, out-of-pocket loss may not be a complete measure of a particular victim's harm. But the Bureau does not understand the statute to guarantee complete compensation for victims. The Fund provides compensation only to the extent funds are available due to defendants' payment of civil penalties; and, pursuant to section 1017(d), the Fund provides compensation only to the degree "practicable." The Bureau believes the rule faithfully interprets section 1017(d), and the rule does not preclude victims from receiving compensation from other sources in amounts greater than the Civil Penalty Fund might provide.

Section 1075.105 Allocating Funds from the Civil Penalty Fund—In General

Section 1075.105 establishes basic procedures that the Fund Administrator will follow when allocating funds in the Civil Penalty Fund to classes of victims and to consumer education and financial literacy programs. In particular, this section describes the schedule for making allocations and specifies what funds will be available for the allocations made on that schedule.

105(a) In General

[7] If one aspect of out-of-pocket losses is impracticable to determine, the Fund Administrator need not necessarily conclude that no harm can practicably be determined for the class. For example, if the value of a good or service received is impracticable to determine, the Fund Administrator may under the rule treat the amounts paid as the compensable harm if doing so would be reasonable.

Section 1075.105(a) provides that the Fund Administrator will allocate the funds specified in § 1075.105(c) to classes of victims and, as appropriate, to consumer education and financial literacy programs according to the schedule described in § 1075.105(b) and the guidelines set forth in §§ 1075.106 and 1075.107.

105(b) Schedule for Making Allocations

Section 1075.105(b)(1) directs the Fund Administrator, within 60 days of this rule's effective date, to establish and publish on www.consumerfinance.gov a schedule for allocating funds in the Civil Penalty Fund. That schedule generally will establish six-month periods and identify the start and end dates of those periods, with each period's start date immediately following the end date of the previous period. The first two periods of this schedule, however, need not be six months long. Rather, they may be longer or shorter than six months so that future six-month periods may start and end on dates that better serve administrative efficiency. These first two periods are considered "six-month periods" under this rule regardless of their actual length. The start date of the first period will be July 21, 2011.

The Fund Administrator will allocate funds from the Civil Penalty Fund on the basis of this schedule. In addition, the amounts that will be available for allocation and the time when classes of victims may be considered for allocations will depend on the schedule.[8] Section 1075.105(b)(2) provides that, 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. Consistent with those provisions, the Fund Administrator will

[8] As explained in greater detail below, the schedule also in some cases governs which classes of victims will receive priority when there are insufficient funds available to compensate all victims fully.

allocate funds (1) to classes of victims that had uncompensated harm as of the last day of that six-month period and (2) to consumer education and financial literacy programs as appropriate.

Thus, the Fund Administrator will allocate funds from the Civil Penalty Fund only once every six months. The Bureau has chosen to make payments on a six-month schedule in part because it would be less fair to make payments on a continual basis, as funds are deposited and as classes of victims with uncompensated harm arise. If a class happened to have uncompensated harm for the first time on a day shortly after the Bureau had just allocated a substantial portion of the Civil Penalty Fund to some other class, victims in the new class would receive relatively small payments. Conversely, if a large amount were deposited into the Civil Penalty Fund, a class of victims that next had uncompensated harm would be relatively likely to receive full compensation for that harm. In both cases, the accidents of timing would dictate the results. The Bureau's method of allocating funds on a six-month schedule will give equal treatment to all classes from a given six-month period.[9]

The 60-day window for allocating funds after a six-month period gives the Fund Administrator time to collect and analyze available data in order to assess which classes of victims are eligible for Civil Penalty Fund payments and the amounts they may receive and to perform the calculations necessary to comply with §§ 1075.106 and 1075.107.

The classes to which funds may be allocated are only those classes that had uncompensated harm as of the last day of the six-month period that most recently concluded. Although other classes might have come to have uncompensated harm between that day and the

[9] The Bureau could, in principle, extend this principle of equal treatment by allocating funds less frequently than every six months. However, doing so would mean making payments to victims less frequently. The Bureau expects that a six-month schedule will eliminate the most significant effects of timing while still ensuring that victims receive payments reasonably quickly.

time when the Fund Administrator next makes allocations, it would be difficult, as a general rule, for the Fund Administrator to carry out the assessments and calculations necessary to quantify the uncompensated harm of such classes and to take that harm into account in determining how funds will be allocated. If the Fund Administrator continually had to account for new classes of victims with new amounts of uncompensated harm after the close of a six-month period, her calculations would continually change. Constantly making new calculations would waste resources and could make it difficult for the Fund Administrator to allocate funds within 60 days of the close of a six-month period. For these reasons, the Bureau concludes that it would be impracticable for the Fund Administrator to make payments for uncompensated harm that arose after the end of a six-month period. Accordingly, the Fund Administrator will consider a class for an allocation only after the end of the six-month period in which the class began to have uncompensated harm.

Section 1075.105(b)(3) authorizes the Civil Penalty Fund Governance Board to change the schedule of six-month periods if it determines that a new schedule would better serve administrative efficiency. Under this provision, the Civil Penalty Fund Governance Board may change the schedule by directing the Fund Administrator to publish a new schedule on www.consumerfinance.gov. Any new schedule must comply with paragraph (b)(1)(i) of this section by establishing six-month periods and their start and end dates, with the start date of one period immediately following the end date of the preceding period. The first period of a 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.

105(c) Funds Available for Allocation

Section 1075.105(c) provides that 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.

Just as additional classes may become eligible between the end of a six-month period and the time when the Fund Administrator allocates funds following the end of that period, additional funds may be deposited into the Civil Penalty Fund during that interval. For the same reasons that the Bureau does not intend to allocate funds to such classes until the succeeding allocation, the Bureau likewise will not allocate such newly deposited funds until the succeeding allocation. Allocating funds involves calculations and assessments, and it would be difficult for the Fund Administrator to make those calculations and assessments based on a fluctuating, uncertain amount available for allocation.

The provision does not permit re-allocation of funds that the Fund Administrator has already allocated. Although funds might remain on deposit in the Civil Penalty Fund for a period of time after they are allocated to a class of victims or to consumer education and financial literacy programs, such funds remain allocated and are not available for reallocation.

In addition, this provision makes unavailable for allocation any funds that the Fund Administrator determines are necessary for authorized administrative purposes. The Bureau interprets section 1017(d)(2) of the Dodd-Frank Act, 12 U.S.C. 5497(d)(2), to authorize the Bureau to use funds in the Civil Penalty Fund not only for the actual payments to victims themselves, but also for the administrative expenses incurred to make those payments. Nothing in section 1017 or any other provision of law bars the Bureau from using funds in the Civil

Penalty Fund for such administrative expenses, nor is there any indication that such expenditures are allowed only with express authorization. In addition, no other source of funding more specifically provides for those expenses. The Bureau may therefore use funds in the Civil Penalty Fund for administrative expenses that it determines are necessary or incident to making payments to victims.[10] To ensure that sufficient funds remain in the Civil Penalty Fund to pay such administrative expenses, the Bureau will exclude from the allocation process those funds that the Fund Administrator deems necessary for those expenses.

Finally, this provision also makes unavailable for allocation any funds that the Bureau collected pursuant to an order that has not yet become a final order. This ensures that the Bureau does not allocate or spend amounts that it could have to return to the payer. In particular, a defendant in a Bureau enforcement action could pay a civil penalty into the Civil Penalty Fund before the order imposing the civil penalty becomes a final order. In such a case, if the defendant appealed and a court reversed the imposition of the civil penalty, the Bureau would have to pay the amount of the civil penalty back to the defendant.

Section 1075.106 Allocating Funds to Classes of Victims

Section 1075.106 describes how funds will be allocated to classes of victims and establishes which victim classes will get priority and how much money the Fund Administrator will allocate to victim classes when there are not enough funds available to provide full compensation to all eligible victims who have uncompensated harm.

106(a) Allocations When There Are Sufficient Funds Available to Compensate All Uncompensated Harm

[10] *See* Government Accountability Office, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 4-20 (3d ed.) (quoting *Comptroller General McCarl to Maj. Gen. Anton Stephan, Commanding Officer, District of Columbia Militia*, 6 Comp. Gen. 619, 621 (1927)) (parenthetical explanation).

Section 1075.106(a) provides that, 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.

This provision contains two limitations on the extent to which the Fund Administrator will allocate funds to compensate fully all victims. First, the Fund Administrator will not allocate funds to compensate uncompensated harm that arose after the end of the most recent six-month period.[11] As explained above, it would be impracticable for the Fund Administrator to make timely allocations if she had to revise the calculations continually to take account of newly arising uncompensated harm.

Second, the Fund Administrator will allocate to each class only an amount sufficient to compensate the uncompensated harm of all victims in the class *to whom it is practicable to make payments*. As noted above, section 1017(d)(2) of the Dodd-Frank Act calls for payments to victims only to the degree that such payments are practicable. The Bureau recognizes that even if it is practicable to calculate the uncompensated harm of a class of victims, it may nonetheless be impracticable, in some circumstances, to make payments to particular victims in the class. Section 1075.109 describes a number of such circumstances, which will be discussed below in more detail. Pursuant to § 1075.106(a), the Fund Administrator is authorized to take account of

[11] A class's uncompensated harm could increase after the end of a six-month period if, for example, the Bureau waives or deems uncollectible an amount of redress that the class had been reasonably expected to receive. Under the rule, the Fund Administrator will take account of any increase in a class's uncompensated harm only after the six-month period in which that increase occurred.

such circumstances at the time of allocation by reducing the allocation to a class on the ground that payments to some victims in the class will be impracticable.[12]

106(b) Allocations When There Are Insufficient Funds Available to Compensate All Uncompensated Harm

Section 1075.106(b) establishes the procedures the Fund Administrator will follow when the funds available under § 1075.105(c) are not sufficient to provide full compensation as described by paragraph (a).

This section groups classes of victims according to the six-month period in which the victims first had uncompensated harm as described in § 1075.104(b). Paragraph (b)(1) specifies how classes of victims will receive priority according to their respective six-month periods. Paragraph (b)(2) explains how the Fund Administrator will identify the six-month period to which a class of victims belongs.

106(b)(1) Priority to Classes of Victims From the Most Recent Six-Month Period

Under § 1075.106(b)(1), when there are insufficient funds available to provide all victims full compensation as described in paragraph (a), the Fund Administrator will prioritize allocations to classes of victims from the most recent six-month period. 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

[12] In many instances, the Fund Administrator will not know at the time of allocation whether it is practicable to make payments to particular individual victims. Sometimes, however, the Fund Administrator may have concrete information indicating that it will not be practicable to pay particular victims. If, for example, the Bureau previously distributed payments to a class and, despite reasonable efforts, could not locate some victims, the Fund Administrator might reasonably conclude, when making a further allocation, that it is not practicable to make payments to those unlocatable victims.

victims from the preceding six-month period, and so forth until no funds remain. The Bureau has specified this tiered allocation process because it will be more administratively efficient to determine the appropriate allocations for classes from single six-month periods than to determine the appropriate allocations for all classes at once.

In addition, this process will result in lower administrative costs, both as an absolute matter and in terms of administrative cost per dollar distributed, than would a process requiring funds to be allocated among all classes. First, allocating the limited funds to a limited number of classes will mean that there will be fewer payments to make—and lower associated costs—than if the limited funds were allocated to more classes. Second, allocating the limited funds to a smaller number of classes generally will result in payments of greater amounts than if the Fund Administrator had instead allocated the limited funds more thinly among more classes. Making larger payments generally will be more cost-effective—in terms of administrative cost per dollar distributed—than making smaller payments.

106(b)(2) Assigning Classes of Victims to a Six-Month Period

As explained above, § 1075.106(b)(1) instructs the Fund Administrator to allocate funds among classes of victims from a single six-month period before allocating funds to classes of victims from an earlier six-month period. Paragraph (b)(2) explains that for purposes of paragraph (b), a class of victims is "from" the six-month period in which those victims first had uncompensated harm as described in § 1075.104(b).

This provision further specifies how the Fund Administrator will determine when a class of victims first had such uncompensated harm. First, 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, if it had any, on the date the suspension or waiver became

effective. Second, if redress was ordered for a class of victims in a Bureau enforcement action, but the Chief Financial Officer determined that redress to be uncollectible in whole or in part, the class of victims first had uncompensated harm, if it had any, on the date the Chief Financial Officer made that determination. Finally, if no redress was ordered for a class of victims in a Bureau enforcement action, the class of victims first had uncompensated harm, if any, on the date the order imposing a civil penalty became a final order.

This provision corresponds to § 1075.104(b), which defines a victim's uncompensated harm. As noted above, that section provides that a victim's uncompensated harm is the victim's compensable harm, minus any compensation for that harm that the victim has received or is reasonably expected to receive. In all cases, a class of victims will first have *compensable* harm under this rule, if any, as of the date an order in a Bureau enforcement action becomes final because, under § 1075.104(c), the terms of the final order determine the amount of victims' compensable harm or how that harm will be ascertained. In cases where no redress is ordered, victims also often will have *uncompensated* harm as of the date the order in the Bureau enforcement action becomes final because, at the time of the order, they will not be reasonably expected to receive redress for their compensable harm. In cases where redress is ordered, however, victims generally will have no uncompensated harm at the time of the order because at that time they generally will be reasonably expected to receive the redress ordered. Later events, however, could make it no longer reasonable to expect the victims to receive compensation. In particular, under § 1075.104(b), a victim will no longer be reasonably expected to receive redress amounts if the Bureau waives or suspends those amounts or deems them uncollectible. Thus, a victim may begin to have uncompensated harm when such an event occurs.

106(c) No Allocation to a Class of Victims If Making Payments Would Be Impracticable

Section 1075.106(c) provides that, 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. As noted above, the Bureau interprets the Dodd-Frank Act to direct payments from the Civil Penalty Fund to victims only to the extent that such payments are practicable. In some cases, it may be impracticable to make payments to an entire class of victims; the Fund Administrator will not allocate funds to such a class.

106(d) Fund Administrator's Discretion

106(d)(1)

Section 1075.106(d)(1) provides that, 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. This provision gives the Fund Administrator discretion to depart from the allocation procedures specified by § 1075.106; it is not intended to authorize the Fund Administrator otherwise to depart from the provisions in this part, for example by giving victims payments greater than their uncompensated harm. With this provision, the Bureau simply aims to give the Fund Administrator the flexibility to depart from the allocation procedures established by § 1075.106 when the circumstances warrant. For example, the Fund Administrator might choose to deviate from § 1075.106's allocation procedures if insufficient information is available, at the end of a given six-month period, to assess the total uncompensated harm for a class from that period. The Fund Administrator might choose to postpone allocating funds to that class until such time as the Fund Administrator has the necessary information. When the Fund Administrator does allocate funds to that class, she may, pursuant to this paragraph, prioritize the

class for receiving allocations even though, according to § 1075.106(b)(2), the class's uncompensated harm arose some time previously.

As another example, a class of victims might have had uncompensated harm in an earlier six-month period, but the amount of the class's uncompensated harm might increase in a later six-month period. For example, the Bureau might suspend some amount of redress on one date, at which point the class could have uncompensated harm equal to that suspended amount. Then, the Chief Financial Officer might later deem part of the non-suspended amount uncollectible, at which point the class could have additional uncompensated harm equal to that uncollectible amount. The Fund Administrator might prioritize the class with respect to the additional amount of uncompensated harm, even though pursuant to § 1075.106(b)(2) the class would be from the six-month period when it first had uncompensated harm.

Because the Bureau cannot anticipate all the situations in which it may be reasonable to deviate from § 1075.106's allocation procedures, it leaves the decision to deviate to the Fund Administrator's discretion. However, the Fund Administrator must provide the Civil Penalty Fund Governance Board a written explanation of the reason for departing from the ordinary allocation procedures.

106(d)(2)

Section 1075.106(d)(2) provides that, if the Fund Administrator, in allocating funds during a given time period described by § 1075.105(b)(2), 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. While the Fund Administrator may, exercising the discretion authorized by paragraph (d)(1), adjust the distribution of funds among various classes,

she cannot increase the amount available in a given time period for consumer education and financial literacy programs.[13]

The limitation on allocating funds to consumer education and financial literacy programs applies only to an allocation that occurs in the same time period described in § 1075.105(b)(2) in which the Fund Administrator exercises her discretion under § 1075.106(d)(1). This reflects the Bureau's interpretation of 12 U.S.C. 5497(d)(2) as authorizing it to use funds in the Civil Penalty Fund for consumer education and financial literacy programs whenever it is not currently practicable to use those funds for payments to victims instead. Under § 1017(d)(2), funds may be used for consumer education and financial literacy programs even if it would have been practicable at some time in the past to use those funds for payments to victims.

Section 1075.107 Allocating Funds to Consumer Education and Financial Literacy Programs
107(a)

Section 1075.107(a) implements the second sentence of section 1017(d)(2) of the Dodd-Frank Act, which authorizes the Bureau to use funds in the Civil Penalty Fund for the purpose of consumer education and financial literacy programs to the extent that victims cannot be located or payments to victims are otherwise not practicable. In particular, § 1075.107(a) provides that, if funds available under § 1075.105(c) remain after the Fund Administrator allocates funds as described in § 1075.106(a), she may allocate the remaining funds for consumer education and financial literacy programs. An allocation under § 1075.106(a) provides full compensation for the uncompensated harm of all victims to whom it is practicable to make payments. Thus, any funds remaining after such an allocation are available for allocation to consumer education and

[13] The Bureau notes that when the Fund Administrator determines that payments to some victims in a class or to an entire class would be impracticable, the Fund Administrator's decision to allocate fewer funds or no funds to the class is not an exercise of discretion under paragraph (d)(1). Consistent with section 1017(d)(2) of the Dodd-Frank Act, the Bureau will not make or attempt to make payments that would be impracticable.

financial literacy programs. 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.

In the future, the Bureau may limit the amount of funds that the Fund Administrator may allocate to consumer education and financial literacy programs under this provision. In a notice of proposed rulemaking published in today's Federal Register, the Bureau seeks comment on whether it should impose any limits and, if so, what those limits should be.

107(b)

Section 1075.107(b) clarifies that the Fund Administrator's authority to allocate funds for consumer education and financial literacy programs does not include 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. Instead, the Fund Administrator's authority is limited to determining the amount that is allocated for expenditure on those kinds of programs. The Bureau has developed, and posted at http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_criteria.pdf, its criteria for selecting these programs. These criteria are beyond the scope of this rule.

Section 1075.108 Distributing Payments to Victims

After the Fund Administrator allocates funds to a class of victims, those funds will be distributed to the individual victims in that class. Section 1075.108 describes the process for distributing payments to victims.

108(a) Designation of a Payments Administrator

Section 1075.108(a) provides that, upon allocating funds to a class of victims under § 1075.106, the Fund Administrator will designate a payments administrator who will be

responsible for distributing payments to the victims in that class. The payments administrator may be any person, including a Bureau employee or contractor.

108(b) Distribution Plan

Section 1075.108(b) requires a payments administrator to submit to the Fund Administrator a proposed plan for distributing the funds that have been allocated to a class of victims. The Fund Administrator will then 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.

108(c) Contents of Plan

Section 1075.108(c) indicates that the Fund Administrator will instruct the payments administrator to prepare a distribution plan and sets forth several elements that the Fund Administrator may require a distribution plan to include. Specifically, the Fund Administrator may require a distribution 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. The Bureau anticipates that a process for submitting and approving claims will not be required when it receives adequate data from a defendant to assess how much uncompensated harm each victim suffered.

2. Procedures for locating and notifying victims eligible or potentially eligible for payment. These procedures can include contacts by mail, telephone, electronic communications, or other means that may be practicable to employ.

3. The method or methods by which the payments will be made. Payment methods could include paper checks, electronic funds transfers, or other methods that may be practicable to employ.

4. The method or methods by which potentially eligible victims may contact the payments administrator. Such methods can include a telephone number, email address, or other methods.

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

108(d) Distribution of Payments

Section 1075.108(d) provides that 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.

108(e) Disposition of Funds Remaining After Attempted Distribution to a Class of Victims

Section 1075.108(e) addresses the circumstance in which some of the funds allocated to a class of victims remain undistributed after the payments administrator has made, or attempted to make, payments to the victims in that class. Funds might remain if the payments administrator cannot make payments to all victims in a class—because some victims cannot be located, because some victims do not redeem their payments, or because of other similar circumstances. To the extent practicable, the payments administrator will distribute the remaining funds to victims in that class up to the amount of their remaining uncompensated harm as described in § 1075.104(b). The Bureau believes that doing so will often be the most efficient use of remaining funds. The payments administrator will have recent and up-to-date information on the victims to whom it successfully made payments, and a second distribution to those victims

would likely also be successful. If funds remain after providing full compensation for the uncompensated harm of such victims, the remaining funds will be returned to the Civil Penalty Fund. Those funds will then be available for future allocation.

For example, assume a class is comprised of 100 victims who have suffered $200 in uncompensated harm each, for a total $20,000 uncompensated harm for the class. The following chart shows how remaining funds would be distributed under four different scenarios[14]:

[14] This chart is provided solely for explanatory purposes. The numbers are hypothetical and are not based on any actual class of victims that is or may be eligible for payment from the Civil Penalty Fund.

Amount allocated to the class	**Payment amount** (each victim's share of the allocated amount)	**Number of victims to whom payments success-fully made**	**Total funds distributed** (Payment amount x Number of victims to whom payments made)	**Allocated funds that remain** (Amount allocated – Total funds distributed)	**Disposition of remaining funds**
$10,000	$100	75	$7,500	$2,500	Distributed among the 75 victims in the class to whom payments can successfully be made. The additional payments will be $33.33 each, giving victims a total of $133.33 each.
$10,000	$100	96	$9,600	$400	Returned to the Civil Penalty Fund. If the remaining funds were distributed among the 96 victims in the class to whom payments could successfully be made, each payment would be only $4.17. Given the cost of making a payment, it is likely not practicable to distribute payments of that amount.
$20,000	$200	75	$15,000	$5,000	Returned to Civil Penalty Fund. The 75 victims to whom payments were successfully made have already received $200, which is full compensation for their uncompensated harm.
$16,000	$160	75	$12,000	$4,000	$3,000 is distributed among the 75 victims to whom payments can successfully be made. That gives each victim an additional $40, for a total of $200, full compensation. The remaining $1,000 will then be returned to the Civil Penalty Fund.

Section 1075.109 When Payments to Victims Are Impracticable

As noted above, section 1017(d)(2) of the Dodd-Frank Act authorizes the Bureau to use funds in the Civil Penalty Fund for consumer education and financial literacy programs to the extent that payments to victims are not "practicable." Accordingly, pursuant to §§ 1075.106 and 1075.108 of this rule, the Bureau will not make payments to individual victims when doing so

would be impracticable and will not allocate funds to a class of victims to the extent making payments to that class would be impracticable. This section identifies circumstances in which payments to victims will be deemed not practicable.

In identifying these circumstances, the Bureau has considered the ordinary meaning of "practicable": "reasonably capable of being accomplished; feasible." Black's Law Dictionary (9th ed. 2009). As a general matter, "practicability" is a flexible concept. What is practicable for an agency to accomplish depends, among other things, on the context and on the purpose the agency seeks to fulfill. As noted above, the Bureau will make Civil Penalty Fund payments to compensate many victims of many different activities for harm suffered from violations of law. Because, as discussed above, the Civil Penalty Fund pays for the administrative expenses incurred making payments to victims as well as for the payments themselves, administrative expenses should not be excessive. Therefore, the Bureau concludes that in assessing whether payments to victims are practicable in this context, one factor it should consider is the cost of administering the payments relative to the amounts of the payments.[15]

This section has two paragraphs that implement this understanding of practicability by identifying circumstances in which the costs of making payments would likely be so great, relative to the size of the payments, that making those payments would be impracticable. The first paragraph discusses payments to individual victims, and the second relates to payments to entire classes of victims.

109(a) Individual Payments

[15] *Cf. Consolidated Edison v. Bodman*, 477 F. Supp. 2d 198, 201–02 (D.D.C. 2007) (instruction to make payments "insofar as practicable" permitted agency to adjust payment schedule so that it would not be making small payments to a large number of claimants).

Section 1075.109(a) sets forth several circumstances in which payments to individual victims will be deemed impracticable. This section draws in part on class-action case law that examines when it is not practicable to locate class members or to make payments to them. Under this section, it will be deemed impracticable to make a payment to an individual victim 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. For example, if it will cost $10 to locate and make a payment to a victim, the Fund Administrator may deem it impracticable to make a $10 or $15 payment to that victim.

3. The victim cannot be located with effort that is reasonable in light of the amount of the payment. This provision acknowledges that there are different methods a payments administrator could employ to attempt to locate a victim, and that each additional effort will carry additional cost. At some point, the additional cost is not reasonable given the amount of the payment that the victim would receive. In these circumstances, it will not be practicable to make a payment to the victim.

4. The victim does not timely submit information that a distribution plan requires to be submitted before a payment will be made. For example, in some cases, the Bureau may not be able to get complete information from a defendant identifying the victims of a violation and the amounts of their harm. In those cases, a distribution plan may require that victims make claims for payment by submitting relevant information. If a victim fails to submit that information as required by the distribution plan, the payments administrator will not be able to determine whether the person is a victim and, if so, the amount of that person's uncompensated harm. In those circumstances, it will not be practicable to make a payment to that victim.

5. The victim does not redeem the payment within a reasonable time. For example, if payments are made by check, the check will indicate that it will be void after a certain amount of time. If a victim does not redeem the payment within that amount of time, it may not be practicable to make a payment to that victim.

6. The Fund Administrator determines that other circumstances make it unreasonable to make a payment to the victim. The Bureau acknowledges that there may be situations other than those specifically enumerated in which the costs of making a payment will not be reasonable in light of the benefits.

109(b) Payments to a Class of Victims

Section 1075.109(b) sets forth several circumstances in which making payments to a class of victims will be deemed impracticable. Under this section, it will be deemed impracticable to make payments to a class of victims 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. This could occur, for example, in some circumstances where the Fund Administrator expects to have limited success in distributing payments to a class. For instance, suppose that there are 1,000 victims in a class who each have $50 in uncompensated harm, and that it will cost $10 per victim to distribute payments. In addition, the Fund Administrator has information indicating she is likely to be able to locate only 100 victims, but she does not know which 100 victims. Thus, it would cost $10,000 to attempt to make payments to the class, and in the end victims would receive an aggregate payment of only $5,000 (100 victims x $50 each). In those circumstances, the costs of attempting to make payments to the class may be too great in light of the aggregate actual payment to the class.

2. It would be impracticable under paragraph (a) of this section to make a payment to any victim in the class. This situation could arise, for example, where each victim's payment would be $10 or less and it would cost $10 or more per victim to distribute payments.

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

Section 1075.110 Reporting Requirements

Section 1075.110 requires the Fund Administrator to issue regular reports, on at least an annual basis, that describe how funds in the 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. The section further provides that these reports will be made available to the public on www.consumerfinance.gov.

V. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts, and consulted or offered to consult with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by those agencies.[16]

[16] Section 1022(b)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 55212(b)(2), directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on insured depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or

The rule establishes the position of Fund Administrator and delegates to that official certain powers and responsibilities relating to the administration of the Civil Penalty Fund. The rule also describes the victims who are eligible for payments from the Civil Penalty Fund and the amounts of payments they may receive. In particular, the rule explains the Bureau's understanding of what payments would be "practicable," within the meaning of the word as used in section 1017(d)(2) of the Dodd-Frank Act. The rule sets forth the procedures by which the Fund Administrator will allocate funds to classes of victims and, when funds are available, to programs for consumer education and financial literacy and provides mechanisms for paying the allocated funds to victims. Finally, the rule requires the Fund Administrator to report periodically on disbursements from the Civil Penalty Fund.

B. Potential Benefits and Costs to Consumers and Covered Persons

The analysis considers the benefits, costs, and impacts of the rule against a statutory baseline. That is, the analysis evaluates the benefits, costs, and impacts of the rule as compared to the statute without an implementing rule.[17]

The rule does not impose any obligations on consumers or covered persons. The rule provides expeditious procedures for allocating funds from the Civil Penalty Fund to implement section 1017(d) of the Dodd-Frank Act. Although a rule is not necessary to implement this statutory provision, the rule establishes consistent procedures applicable with respect to all victims who might receive payments from the Civil Penalty Fund. By explaining how funds will

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systemic objectives that those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[17] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and the appropriate baseline.

be allocated and distributed, the rule provides clarity and predictability to those consumers who are victims of unlawful activity and might anticipate payments from the Fund.

Moreover, the efficiency of the rule's procedures should help keep the administrative costs of making payments relatively low. Because, as discussed above, the Bureau may pay such administrative expenses from the Civil Penalty Fund, reducing those costs will generally increase the amount of money available for payments to victims and, when appropriate, for consumer education and financial literacy programs. In addition, adopting a rule, instead of permitting the Fund Administrator to distribute payments to victims on an *ad hoc* basis, may have some distributional impacts. The Fund Administrator's case-by-case decisions might, by comparison to the results prescribed by the rule, lead to payments to different consumers of differing amounts, or could lead to greater or lesser amounts being available for consumer education and financial literacy programs.

C. Potential Specific Impacts of the Proposed Rule

The final rule does not have a unique impact on rural consumers or on insured depository institutions or insured credit unions with less than $10 billion in assets as described in section 1026(a) of the Dodd-Frank Act. Nor is the rule expected to reduce consumers' access to consumer financial products or services.

VI. Regulatory Requirements

This rule relates to benefits, namely payments that victims may receive from the Civil Penalty Fund. Pursuant to 5 U.S.C. 553(a)(2), this rule is therefore exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, this rule concerns matters of agency organization, procedure, and practice, and in part articulates the Bureau's interpretations of the Dodd-Frank Act. It is therefore also exempt from the APA's notice and comment rulemaking requirements pursuant to 5 U.S.C. 553(b).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

VII. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1075

Administrative practice and procedure, Authority delegations, Consumer Financial Civil Penalty Fund, Consumer protection, Organization and functions.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1075 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below:

PART 1075—CONSUMER FINANCIAL CIVIL PENALTY FUND RULE

Sec.

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

§ 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 programs. 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 (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 victims' 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 the effective date of this rule, 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 will be 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). 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 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.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED "CONSUMER FINANCIAL CIVIL PENALTY FUND RULE"]

Dated: April 26, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.