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Consumer Financial Protection Bureau

ALERT

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CFPB Issues Rules Governing Use of Civil Penalty Funds

One of the most intriguing aspects of the new Consumer Financial Protection Bureau is the agency's novel power not only to assess civil penalties against those entities that violate its rules and federal consumer laws, but also to keep these monetary penalties and put them directly into its own war chest for use in future campaigns against other prospective violators. To date, the CFPB has collected nearly $58 million in civil penalties from respondents in eight different administrative enforcement actions.

Unlike the Federal Trade Commission and other regulators, which are bound either to distribute funds obtained from violators to harmed consumers or deliver those funds into state or federal coffers when consumers cannot reasonably be reimbursed, the CFPB is permitted to keep and use the civil penalties it takes from violators.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 provided that civil penalties obtained from violators of federal consumer financial laws be deposited into a Civil Penalty Fund, and that those funds "shall be available" to the CFPB "to compensate the victims of activities for which civil penalties have been imposed under the [f]ederal consumer financial laws." If the CFPB cannot locate victims, or determines that victim payments "are otherwise not practicable," Dodd-Frank authorizes the Bureau to use the funds for consumer education and financial literacy programs. Since the CFPB is statutorily obligated to provide consumer education and financial literacy programs, however, the net effect of allowing the agency to keep the civil penalties it recovers is to increase the amount of funding available for all of the agency's activities, including supervision and enforcement.

For some, this brings to mind the image of a state-financed pirate ship, plundering the seas of commerce in search of "booty" that could be used to finance wider-sweeping forays against its opponents.

The CFPB recently took steps to allay these concerns, however, issuing an initial set of rules that will govern the distribution of the Civil Penalty Fund. Under the new rules, the Bureau clarified that its top priority in distributing the Civil Penalty Fund will be to compensate consumers who otherwise have not received full remuneration for their losses. Every six months, a Civil Penalty Fund administrator will evaluate the uncompensated harm suffered by victims of federal consumer financial violations, subtracting out the amount of any previous payments received by the victims. The Bureau will use the Civil Penalty Fund to compensate eligible victims up to the full amount of their losses, based either on the terms of a court or administrative order or on the amount of the victims' out-of-pocket losses caused by the violations.

Victims whose claims are based on orders entered within the most recent six months will be compensated first. If sufficient funds remain, the administrator will continue to allocate payments to victim classes from preceding six-month periods.

Finally, only if additional funds remain after all of the eligible victims' claims have been fully paid, funds will be allocated for the CFPB's consumer education and financial literacy programs.

If any such allocations are made for the CFPB's programs, the new rules require that they go to programs that "further the Bureau's mission and strategic goals, promote or enhance financial literacy and consumers' economic security; and includes specific outcome targets to ensure the program's effectiveness."

In a set of Frequently Asked Questions that accompanied the release of the new rules, the CFPB stated that the Civil Penalty Fund allocation rules ensure that "the first priority will always be to allocate funds for payments to victims."

Under the CFPB's enhanced rulemaking powers, the new Civil Penalty Fund rules took effect immediately upon publication, although the agency also issued a notice of proposed rulemaking, seeking public comment on the new rules. The CFPB will review any comments received during the 60-day comment period and consider whether any revisions should be made to the new rules.

For more information about the content of this alert, please contact Michael Mallow or Michael Thurman.

Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force

Our Task Force is composed of experienced litigators and trial attorneys who defend investigations and enforcement actions alleging violations of consumer protection and unfair competition laws, including consumer financial laws. Our goal is to provide clients with efficient, cost-effective representation in complex consumer-related litigation encompassing a diverse range of legal areas. We strive to keep our clients "off the radar" by training them to prepare for and defend claims and investigations before they arise. For those clients who engage us after litigation has already been filed, we focus on the economics of litigation and endeavor to develop defense strategies that maximize business objectives while capturing and implementing the valuable lessons that can be derived from every litigation or investigation. For more information, please click here.

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