

U.S. House of Representatives
Committee on Oversight and Government Reform
Jason Chaffetz (UT-3), Chairman



**Restoring the Power of the Purse:
Shining Light on Federal Agencies Billion Dollar Fines
Collections**

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Executive Summary

The U.S. Government takes in billions of dollars per year through the assessment of fines and penalties, collecting over \$83 billion between 2010 and 2015.¹ Earlier this year the United States Department of Justice (DOJ) agreed to a settlement with Goldman Sachs for \$5.06 billion related to the sale of mortgage-backed securities,² following similar arrangements with Morgan Stanley (\$2.6 billion),³ Citigroup (\$7 billion),⁴ JP Morgan Chase (\$13 billion),⁵ and Bank of America (\$16.65 billion).⁶

While the DOJ handles the bulk of enforcement activities, several other less well-known enforcement agencies are assessing substantial fines and penalties and negotiating settlements through administrative proceedings. In just the past year alone there has been a \$158 million settlement between the Federal Communications Commission (FCC) with Verizon and Sprint for billing customers for unauthorized third-party premium text messaging;⁷ a \$100 million settlement between LifeLock and the Federal Trade Commission (FTC) for failing to protect consumers' sensitive personal information;⁸ and a \$1.6 million fine imposed by the Department of Transportation (DOT) on Southwest Airlines for tarmac delays.⁹

In pursuing these collections, the Administration serves as the judge, jury, and regulator. The DOJ routinely enters into multi-million and billion-dollar settlements on agencies' behalf for a variety of legal, regulatory, and administrative violations, which include civil monetary

¹ According to data provided to the Committee by queried agencies.

² Press Release, DOJ, Goldman Sachs Agrees to Pay More than \$5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities (Apr. 11, 2016), *available at* <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>.

³ Press Release, DOJ, Morgan Stanley Agrees to Pay \$2.6 Billion Penalty in Connection with Its Sale of Residential Mortgage Backed Securities (Feb. 11, 2016), *available at* <https://www.justice.gov/opa/pr/morgan-stanley-agrees-pay-26-billion-penalty-connection-its-sale-residential-mortgage-backed>.

⁴ Press Release, DOJ, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors about Securities Containing Toxic Mortgages (July 14, 2014), *available at* <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>.

⁵ Press Release, DOJ, Justice Department, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors about Securities Containing Toxic Mortgages (Nov. 19, 2013), *available at* <https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement>.

⁶ Press Release, DOJ, Bank of America to Pay \$16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis (Aug. 21, 2014), *available at* <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>.

⁷ Press Release, FCC, Verizon & Sprint to Pay \$158 million to Settle Mobile Cramming Investigations (May 12, 2015), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-333427A1.pdf.

⁸ Press Release, FTC, LifeLock to Pay \$100 Million to Consumers to Settle FTC Charges it Violated 2010 Order (Dec. 17, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/12/lifelock-pay-100-million-consumers-settle-ftc-charges-it-violated>.

⁹ Press Release, DOT, U.S. Department of Transportation Fines Southwest \$1.6 Million for Violating Tarmac Delay Rule (Jan. 15, 2015) (noting additional fines of \$1.1 million and \$900,000 for other tarmac delays), *available at* <https://www.transportation.gov/briefing-room/us-department-transportation-fines-southwest-16-million-violating-tarmac-delay-rule>.

penalties, consumer relief and restitution, and relief to states and other enforcement authorities.¹⁰ What is less understood, however, is what happens after the Government obtains the money.

In 2015, the U.S. Government Accountability Office (GAO) released a report examining the DOJ's use of fines and penalties.¹¹ The report found that in Fiscal Year (FY) 2013 approximately 15 percent of DOJ's budget came from seven alternative sources of funding such as fines, fees, and penalties.¹² Further, some of this funding is not necessarily reviewed as part of the appropriations process, and as a result, "may not be subject to the same scrutiny" as other programs.¹³ GAO found the DOJ could improve management and transparency of these sources.¹⁴

In light of GAO's findings and increasingly voluminous settlements entered into on the Government's behalf, the Committee examined the amount, use, and accountability of such funds taken in by the U.S. Government. Between March and June of 2015, the Committee sent requests to 34 federal agencies,¹⁵ including all cabinet level agencies, seeking information regarding their assessment and collection of fines and penalties. Committee staff worked with each agency to evaluate amounts collected and how the fines are accounted. Agencies generally reported three streams. First, agencies reported sending the vast bulk of these funds to the General Fund of the U.S. Department of the Treasury in accordance with federal law where the funds are subject to Congress's general appropriations power. Second, agencies reported retaining funds pursuant to specific exemptions or exclusions under law. Third, agencies reported re-routing funds collected to other agencies pursuant to specific statutory authorities.

¹⁰ Press Release, DOJ, Justice Department Collects More Than \$23 Billion in Civil and Criminal Cases in Fiscal Year 2015 (Dec. 3, 2015), *available at* <https://www.justice.gov/opa/pr/justice-department-collects-more-23-billion-civil-and-criminal-cases-fiscal-year-2015> (providing details on various settlements, fines, and penalties collected and/or retained by DOJ during FY 2015).

¹¹ GAO, DEPARTMENT OF JUSTICE: ALTERNATIVE SOURCES OF FUNDING ARE A KEY SOURCE OF BUDGETARY RESOURCES AND COULD BE BETTER MANAGED 1 (2015) (GAO-15-48), *available at* <http://gao.gov/assets/670/668928.pdf>.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.* at 16 and 23.

¹⁵ These agencies are: the United States Coast Guard; Commodities Futures Trading Commission; Consumer Financial Protection Bureau; Consumer Product Safety Commission; Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Homeland Security; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; Department of the Treasury; Department of Veterans Affairs; Environmental Protection Agency; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Energy Regulatory Commission; Federal Housing Financing Agency; Federal Maritime Commission; Federal Reserve System; Federal Trade Commission; National Transportation Safety Board; Nuclear Regulatory Commission; Pension Benefit Guaranty Corporation; Securities Exchange Commission; Small Business Administration; Social Security Administration; and U.S. Agency for International Development.

Findings

- Between 2010 and 2015, agencies report collecting over \$83 billion in civil, criminal, and regulatory fines and penalties.¹⁶
- During the same time, agencies report retaining or depositing into specified funds over \$31 billion from civil, criminal, and regulatory fines and penalties.¹⁷
- Agencies do not use a standardized method of accounting for those funds collected and retained.
- 12 of the 34 agencies send collected funds directly to the U.S. Treasury. 22 agencies reported retention or transfer of collections to a special fund created through an explicit statutory carve out.¹⁸
- The following agencies reported collecting over one billion dollars between 2010-2015:

The Billion Dollar Club	
Department of Justice	\$63.71 Billion
Commodities Futures Trading Commission	\$4.46 Billion
Federal Reserve Bank	\$3.74 Billion
Securities and Exchange Commission	\$3.21 Billion
Department of the Treasury	\$2.83 Billion ¹⁹
Department of Labor	\$1.35 Billion
Department of Homeland Security	\$1.26 Billion

- The following represents the total collections between 2010-2015 reported to the Committee:

¹⁶ Each agency has a slightly different mechanism for retaining and reporting the information. Given this, the denoted number is based on agency reports and it generally includes FY2010 through FY2014; however, some agencies provided information for part of FY2015. Some agencies provided both civil and criminal penalties whereas others only provided civil. Given this, all data provided is based on the information provided to Committee staff through briefings or the official responses to the Committee Chairman

¹⁷ *Id.*

¹⁸ The United States Coast Guard (USCG) was sent a separate letter and asked to respond separately; however, as it operates under the Department of Homeland Security (DHS) for purposes of this report it is included as a subset of DHS within the body of the report but noted as a separate agency with the calculation of the total agencies.

¹⁹ Treasury as of Nov. 21, 2016, had not provided the Committee with answers regarding the total amount collected. However based on an incomplete response received on Sept. 2, 2016, which contained amounts for two bureaus; Treasury through the Office of the Comptroller of Currency (OCC) and the Office of Foreign Assets Control (OFAC) collected at least \$2,830,593,425. See Email Attachment OFAC Response from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov't Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee); see also Email Attachment OCC Fines and Penalties from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov't Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee).

Department / Independent Agencies	Total collected²⁰
Department of Justice (DOJ)	\$63,709,312,360
Commodity Futures Trading Commission (CFTC)	\$4,466,733,521
Federal Reserve Board (FRB)	\$3,739,783,660
Securities and Exchange Commission (SEC)	\$3,214,941,240
Department of the Treasury (Treasury)	\$2,830,593,425 ²¹
Department of Labor (DOL)	\$1,346,163,431
Department of Homeland Security (DHS)	\$1,258,471,275
United States Coast Guard (USCG) ²²	\$809,619,865
Department of Transportation (DOT)	\$638,594,712
Environmental Protection Agency (EPA)	\$607,666,247
Federal Energy Regulatory Commission (FERC)	\$485,486,154
Department of Health and Human Services (HHS)	\$221,758,000
Federal Communications Commission (FCC)	\$179,253,000
Department of Defense (DOD)	\$177,480,000
Consumer Financial Protection Bureau (CFPB)	\$159,022,002
Department of State (State)	\$157,171,567
Department of Commerce (Commerce)	\$131,776,148
Federal Trade Commission (FTC)	\$96,754,228
Department of Interior (Interior)	\$79,380,815
United States Department of Agriculture (USDA)	\$65,029,369
Social Security Administration (SSA)	\$61,550,000
Federal Deposit Insurance Corporation (FDIC)	\$47,472,954
Consumer Product Safety Commission (CPSC)	\$38,961,500
Department of Energy (DOE)	\$25,633,028
Department of Housing and Urban Development (HUD)	\$22,539,750
Pension Benefit Guaranty Corporation (PBGC)	\$16,766,425
Federal Maritime Commission (FMC)	\$10,937,250
Department of Education (ED)	\$4,864,387
Small Business Administration (SBA)	\$2,591,000
Nuclear Regulatory Commission (NRC)	\$1,558,036
U.S. Agency for International Development (USAID)	\$1,118,375
Department of Veterans Affairs (VA)	\$1,800
National Transportation Safety Board (NTSB)	\$0
Federal Housing Finance Agency (FHFA)	\$0

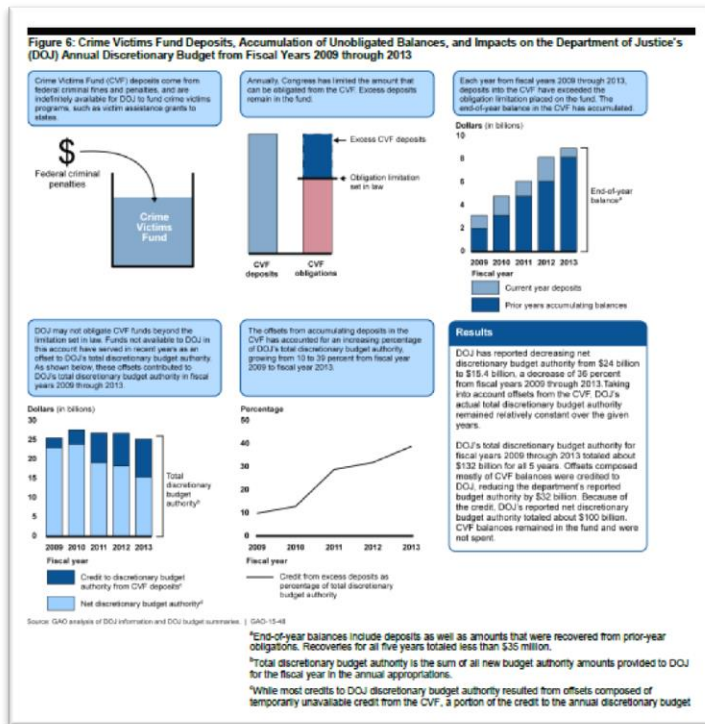
²⁰ All amounts noted where rounded to the nearest whole dollar.

²¹ Treasury as of Nov. 21, 2016, had not provided the Committee with answers regarding the total amount collected. However based on an incomplete response received on Sept. 2, 2016, which contained amounts for two bureaus; Treasury through the Office of the Comptroller of Currency (OCC) and the Office of Foreign Assets Control (OFAC) collected at least \$2,830,593,425. *See* Email Attachment OFAC Response from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov't Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee); *see also* Email Attachment OCC Fines and Penalties from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov't Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee).

²² USCG was issued a separate letter; but given that USCG is a part of DHS, DHS therefore reported USCG fines and penalties in its response and total amount as well. For clarity, the total number collected is shown here and is encompassed within DHS' reported numbers. The actual calculation of the total amount of funds retained subtracts USCG total from DHS' which is what the Committee did in calculating the actual total of funds collected.

Background

Article I of the United States Constitution provides Congress with the “power of the purse,”²³ and the authority “to tax and spend public money for the national government.”²⁴ Under this authority, Congress – rather than the executive branch – is meant to direct agency spending. In certain instances, Congress has provided in statutes limited and delegated authority to agencies in order to assess, collect, and in some instances retain fines and penalties.



In recent years, a trend has emerged whereby regulatory agencies with these specific authorities are circumventing Congressional appropriations authority and instead are utilizing settlements from the fines and penalties authority to fund their own operations.²⁵ This chart included from a 2015 U.S. Government Accountability Office (GAO) report illustrates the concern.²⁶

For example, a recent *Wall Street Journal* article discusses the Department of Justice's (DOJ's) recent use of settlements for violations of financial laws.²⁷ The article discusses the DOJ's discretion to allow the banks as part of their settlement agreement to provide donations to an approved list of non-profits which is considered “double

credit” against the penalty amount the bank owes.²⁸ In these instances, the executive branch is acting as the judge, jury, and regulator; determining what fines and penalties to assess, how much the penalty is worth, and then how to distribute the funds.

²³ U.S. CONST. art. I, § 7, cl. 1 (granting the U.S. House of Representatives power to originate revenue raising bills) and U.S. CONST. art. I, § 9, cl. 7 (providing for appropriations and public accounting of receipts and expenditures). See e.g. U.S. House of Representatives, *Origins & Development: From Constitution to Modern House, Power of the Purse*, available at <http://history.house.gov/Institution/Origins-Development/Power-of-the-Purse/> (last visited Nov. 21, 2016).

²⁴ U.S. House of Representatives, *Origins & Development: From Constitution to Modern House, Power of the Purse*, available at <http://history.house.gov/Institution/Origins-Development/Power-of-the-Purse/> (last visited Nov. 21, 2016).

²⁵ CHRISTOPHER DEMUTH SR. & MICHAEL S. GREVE, DISCUSSION DRAFT: AGENCY FINANCE IN THE AGE OF EXECUTIVE GOVERNMENT 3 (Mar. 2016), available at <http://administrativestate.gmu.edu/wp-content/uploads/2016/03/DeMuth-Greve-For-Profit-Govt-final.pdf>.

²⁶ GAO, *supra* note 11, at 36.

²⁷ Kimberly A. Strassel, *Justice's Liberal Slush Fund*, WALL ST. J., Dec. 3, 2015, available at <http://www.wsj.com/articles/justices-liberal-slush-fund-1449188273> (last visited Nov. 21, 2016).

²⁸ *Id.*

In 2015, the GAO released a report examining the DOJ's use of fines and penalties.²⁹ The report found that in Fiscal Year (FY) 2013 approximately 15 percent of DOJ's budget came from seven alternative sources of funding such as fines, fees, and penalties.³⁰ Further, some of this funding is not necessarily reviewed as part of the appropriations process, and as a result, "may not be subject to the same scrutiny" as other programs.³¹ GAO found the DOJ could improve management and transparency of these sources.³²

The DOJ's use of funds collected as fines and penalties has drawn interest from other Congressional Committees as well.³³ The U.S. House of Representatives Committee on Judiciary as well as the House Committee on Financial Services conducted investigations which found the DOJ utilized mandatory donations from settlements to direct potentially \$880 million dollars to specific groups.³⁴ Within the U.S. Senate concerns regarding the use of settlement funds led to the passage of S. 1109, Truth in Settlements Act of 2015, on September 21, 2015.³⁵ This legislation "requires federal agencies to make public non-confidential information about settlement agreements to ensure transparency in settlement agreements entered into by the federal government."³⁶ On June 9, 2016, this bill was reported out of the Committee on Oversight and Government Reform.³⁷

While the DOJ handles the bulk of enforcement activities, several other less well-known enforcement agencies are assessing substantial fines and penalties and negotiating settlements through administrative proceedings. In just the past year alone there has been a \$158 million settlement between the Federal Communications Commission (FCC) with Verizon and Sprint for billing customers for unauthorized third-party premium text messaging;³⁸ a \$100 million settlement between LifeLock and the Federal Trade Commission (FTC) for failing to protect consumers sensitive personal information;³⁹ and a \$1.6 million fine imposed by the Department of Transportation (DOT) on Southwest Airlines for tarmac delays.⁴⁰

²⁹ GAO, *supra* note 11, at 1.

³⁰ *Id.*

³¹ *Id.* at 2.

³² *Id.* at 16 and 23.

³³ *Settling the Question: Did Bank Settlement Agreements Subvert Congressional Appropriations Powers?: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Financial Services*, 114th Cong. (May 19, 2016) (examining whether DOJ overstepped its legal authority in crafting mortgage settlements); *H.R. 5063, the "Stop Settlements Slush Funds Act of 2016": Hearing Before the Subcomm. on Regulatory Reforms, Commercial and Antitrust Law, of the H. Comm. on the Judiciary*, 114th Cong. (Apr. 28, 2016) (discussing potential legislation to reduce DOJ's settlement discretion); *Consumers Shortchanged? Oversight of the Justice Department's Mortgage Lending Settlements: Hearing Before the Subcomm. on Regulatory Reforms, Commercial and Antitrust Law, of the H. Comm. on the Judiciary*, 114th Cong. (Feb. 12, 2015) (examining DOJ's disbursement of fines obtained in settlements with financial institutions related to mortgage lending).

³⁴ Hearing Announcement *H.R. 5063, the "Stop Settlements Slush Funds Act of 2016" Hearing Before the Subcomm. on Regulatory Reforms, Commercial and Antitrust Law, of the H. Comm. on the Judiciary*, 114th Cong. (Apr. 28, 2016), available at https://judiciary.house.gov/hearing/h-r-___-stop-settlement-slush-funds-act-2016/ (last visited Nov. 21, 2016); see also Jessica Karmasek, *House Republicans Say Justice Department Handing out 'Slush Funds'*, FORBES, Apr. 28, 2016, available at <http://www.forbes.com/sites/legalnewsline/2016/04/28/house-republicans-say-justice-department-handing-out-slush-funds/#214b643f5883> (last visited Nov. 21, 2016).

³⁵ H.R. REP. NO. 114-613, at 4 (2016).

³⁶ *Id.* at 2.

³⁷ *Id.* at 5.

³⁸ FCC Press Release, *supra* note 7.

³⁹ FTC Press Release, *supra* note 8.

⁴⁰ DOT Press Release, *supra* note 9.

Agency Compliance with the Miscellaneous Receipts Act⁴¹

The imposition of fines and settlements which appear to operate outside Congressional oversight led the Committee to conduct this review. Congress mandated the collection of monies by the Government be controlled by the Miscellaneous Receipts Act. The statute is clear⁴² and provides in relevant part, “an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.”⁴³ The Miscellaneous Receipts Act contains a carve-out, and the statute does not apply when another law provides a different destination for collected funds.⁴⁴

Failure to comply with the Miscellaneous Receipts Act can subject the violator to removal from office or becoming personally liable for the funds.⁴⁵ However, there are exceptions to this general rule which include refunds, explicit statutory exceptions, and payments that are not for the Government.⁴⁶ In these instances, exempted funds are deposited into another account as permitted or directed under law. Agencies reported compliance and do not use fines and penalties to fund their operations unless expressly authorized.

The Committee reviewed agencies’ compliance with the Miscellaneous Receipts Act to ensure any funds collected were, in fact, sent for deposit into the General Fund of the Treasury or were instead properly deposited into another statutorily exempted account.

⁴¹ 31 U.S.C. § 3302(b).

⁴² See, e.g., Office of General Counsel, U.S. Gen. Acct’g Office, *Principles of Federal Appropriations Law* at 6-167 (3d ed. 2004) (citing 10 Comp. Gen. 382, 384 (1931) (“It is difficult to see... how a legislative prohibition could be more clearly expressed.”)).

⁴³ 31 U.S.C. § 3302(b).

⁴⁴ *Id.* § 3302(a).

⁴⁵ *Id.* § 3302(d); see also OFFICE OF GENERAL COUNSEL, GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 6-166 (3d ed. 2004) [citing 20 Op. Att’y Gen. 24 (1891) (liability would attach where funds, which disbursing agent had placed in bank which was not an authorized depository, were lost due to bank failure)], available at <http://www.gao.gov/special.pubs/d06382sp.pdf>.

⁴⁶ David H. Carpenter, Memorandum, *Legal Principles Associated with Monetary Relief Provided as Part of Financial-Related Legal Settlements & Enforcement Actions*, 4-6, Congressional Research Serv. (Feb. 9, 2015).

Agency Responsiveness and Accounting

Based on the varying agency responses, agencies do not utilize a standard accounting for fines and penalties – regardless of if those funds are retained, transferred, or remitted. A complete response by an agency ultimately took many forms despite agencies being sent identical letters and asked to comply with the same request. In certain instances, some agencies were unable to provide an accounting of all funds and instead provided the Committee with the funds retained.⁴⁷ On average agencies compliance with the Committee’s request took 50 days.⁴⁸ There were outliers on both ends; such as the Department of Housing and Urban Development (HUD) which took 149 days to provide a complete response or the Consumer Product Safety Commission (CPSC), which took 12 days to respond.

Despite differences in agency structures; such as larger agencies which oversee various components with more statutory authorities versus smaller Commissions which may have fewer fines and penalties authority that could result in varied response time, the overarching issue did not seem to correlate with the amount of penalties retained or size of the agency. The Securities and Exchange Commission (SEC) which collects the fourth highest amount and retains the second highest amount took only 16 days to provide the Committee with a complete response; whereas the Department of Veterans Affairs (VA) which collects a mere \$1800 took 75 days. Even in instances where all funds were being remitted to the Treasury’s General Fund in accordance with the Miscellaneous Receipts Act, the timing and quality of the response provided ranged substantially.

Based on the varying agency responses, the U.S. Government’s accounting system to monitor and track the funds collected appears inadequate. This granular data as it relates to agency’s accounting was especially startling when it came to the Department of the Treasury (Treasury) who, by virtue of its Departmental mission,⁴⁹ appears best positioned to produce detailed answers and instead sent an initial response noting although Bureaus, such as the Internal Revenue Service (IRS), collect fines and penalties, it did not think it fell within the purview of the Committee’s review.⁵⁰ Treasury was informed its initial response was

⁴⁷ For example, Interior was only able to provide the funds retained.

⁴⁸ For this the calculation date is based on when the Committee felt it had received a response which was complete enough to provide information in line with the request. The 50 days number is based on 33 responses because as of Nov. 21, 2016, Treasury still did not provide the requested information.

⁴⁹ Part of the Treasury’s mission as noted in both their strategic plan and FY 2017 Congressional budget justification is to “manage the U.S. Government’s finances and resources effectively.” DEPARTMENT OF THE TREASURY, FY2014-2017 STRATEGIC PLAN 3 (2013), *available at* https://www.treasury.gov/about/budget-performance/strategic-plan/Documents/2014-2017_US_TreasuryStrategicPlan.pdf; *see e.g.*, DEPARTMENT OF THE TREASURY, FY 2017 CONGRESSIONAL BUDGET JUSTIFICATION EXECUTIVE Summary - 1 (Feb. 2016) *available at* <https://www.treasury.gov/about/budget-performance/CJ17/FY%202017%20CJ.pdf%20-%20Combined%20FINAL.PDF>.

⁵⁰ Letter from Randall DeValk, Acting Asst. Sec’y for Legislative Affairs, Treasury, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (May 15, 2015) (on file with the Committee). Treasury was informed its initial response did not provide a sufficient response and as of Nov. 21, 2016, has failed to provide the Committee with this information. Treasury on September 2, 2016, did provide figures for two of its agencies, the Office of the Comptroller of Currency (OCC) and the Office of Foreign Assets Control (OFAC). The OCC reported collecting \$2,531,593,425 between FY 2010 and FY 2015 of which \$2,529,623,873 was sent to the Treasury’s general fund and \$1,969,552 was remitted to FEMA. Email Attachment OCC Fines and Penalties from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov’t Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee). The OFAC reported assessing \$3,380,795,378 in civil monetary penalties from January 1, 2010 to September 2, 2016; but

insufficient and Treasury as of November 21, 2016, has failed to provide the Committee with this information.

Agencies That Retain Funds

The vast majority of agencies that retain collections are broken into two categories: those that retain funds to support their own operations and those that must provide the collections to special funds. Generally, it is a blending of the two as the collections must go into a certain account or fund within the agency itself and then the agency may use the specialized account for its statutorily authorized purpose.

I. Department of Justice

The GAO's study on the DOJ's use of alternative sources reinforced the need for agencies to be held accountable for the funds being received and retained due to fines, fees, and penalties. In response to the Committee's inquiry, DOJ reportedly collected \$63,709,312,359.63 between FY 2010 and FY 2014, and retained \$27,368,420,000.00 or nearly 43% of the total amount.⁵¹ DOJ has three specialized funds into which fines and penalties flow and are retained by DOJ under specific statutory authorities.⁵²

1. Crime Victims Fund:

The Crime Victims Fund (CVF)⁵³ is administered by DOJ's Office of Justice Programs (OJPs), Office for Victims of Crime. Funds from the CVF support grants for certain services for crime victims, including victim assistance personnel in the Federal Bureau of Investigation (FBI) and the U.S. Attorneys' Offices as well as OJP management and administration needs.⁵⁴

In accordance with statutory authorities, DOJ collected and placed into the CVF \$12,237,181,000.00 from FY 2010 through FY 2014.⁵⁵

2. Three Percent Fund:

The Attorney General is authorized to deposit up to three percent of amounts collected pursuant to DOJ's civil debt collection litigation activities into the Three Percent Fund.⁵⁶ The

disposing all but \$332,029,072 and of that had collected at least \$299,000,000. Email Attachment OFAC Response from Staff, Treasury, to Staff, H. Comm. on Oversight & Gov't Reform (Sept. 2, 2016, 15:53 EST) (on file with the Committee). As these very preliminary figures, which do not include the IRS, demonstrate Treasury easily falls into billion dollar club even without a complete response.

⁵¹ Letter from Peter J. Kadzik, Asst. Atty. Gen., DOJ, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (Aug. 13, 2015) (on file with the Committee); *see also* Email Attachment FY 2009 through FY 2015 Collections Chart from Staff, DOJ, to Staff, H. Comm. on Oversight & Gov't Reform (Oct. 9, 2015, 17:35 EST) (on file with the Committee).

⁵² Letter from Peter J. Kadzik, Asst. Atty. Gen., DOJ, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (Aug. 13, 2015) (on file with the Committee).

⁵³ Established by the *Victims of Crime Act of 1984*, as amended (Pub. L. No. 98-473), 42 U.S.C. § 10601.

⁵⁴ Kadzik, *supra* note 51, at 1-2.

⁵⁵ *Id.* at 2.

⁵⁶ Established by Pub. L. No. 103-121 but repealed and replaced by Pub. L. No. 107-273 § 11013(a) in 2002; *see also* Kadzik, *supra* note 51, at 3.

funds under this account may be used to support a range of activities relating to civil and criminal debt-collection litigation, including financial systems, personnel, administrative, and litigation expenses.⁵⁷ The DOJ's Collection Resources Allocation Board reviews requests from DOJ components supporting civil and criminal debt collection functions for funding from the Three Percent Fund and administers the fund.⁵⁸

In accordance with statutory authorities, DOJ collected and placed into the Three Percent Fund \$1,065,996,000.00 from FY 2010 through FY 2014.⁵⁹

3. *Asset Forfeiture Fund:*

The Asset Forfeiture Fund (AFF) is a "special fund within the Treasury administered by the [DOJ] to receive the proceeds of asset forfeiture actions undertaken by the [DOJ]."⁶⁰ The AFF receives proceeds of asset forfeiture actions, including forfeited funds, proceeds from the sale of forfeited property, the DOJ's share of forfeitures carried out in conjunction with the Department of the Treasury, and interest earned on the investment of AFF balances in Government securities.⁶¹ Additionally, forfeitures resulting from other federal agencies⁶² are deposited into the AFF.⁶³ These agencies annually apply for AFF funds to carry out federal law enforcement programs.⁶⁴

The AFF compensates victims harmed in cases where assets have been forfeited, but the AFF may also be used for finance expenses associated with the execution of asset forfeiture functions and certain general investigative costs.⁶⁵ Through the Equitable Sharing Program, remaining funds may be shared with state and local law enforcement who directly participate in the law enforcement effort leading to the seizure and forfeiture of the property.⁶⁶ A portion of the AFF supports joint law enforcement operations with state and local law enforcement agencies for overtime and equipment expenses incurred in the course of federally-led task forces.⁶⁷

In accordance with statutory authorities, DOJ collected and placed into the AFF \$14,065,243,000.00 from FY 2010 through FY 2014.⁶⁸

⁵⁷ Kadzik, *supra* note 51, at 3.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Kadzik, *supra* note 51, at 4. AFF was established by the *Comprehensive Crime Control Act of 1984* (Pub. L. No. 98-473), 28 U.S.C. § 524(c).

⁶¹ *Id.*

⁶² Participating agencies include the Food and Drug Administration, the Department of Agriculture Office of Inspector General, the Department of State Bureau of Diplomatic Security, and the Defense Criminal Investigative Service. Kadzik, *supra* note 51, at 5 n.11.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.*

⁶⁷ *Id.* at 5.

⁶⁸ *Id.*

II. Securities and Exchange Commission

According to the Securities and Exchange Commission's (SEC's) response, "the SEC has statutory authority to seek monetary penalties only in enforcement actions initiated against those that the Commission believes have violated federal securities law."⁶⁹ The SEC reported collecting \$3,214,941,240.00 and retaining \$2,299,477,465.00 from FY 2010 through March 2015.⁷⁰

The SEC has three funds into which fines and penalties flow which are maintained by the SEC for specific uses which help with their own operations.⁷¹

1. Federal Account for Investor Restitution Funds:

Federal Account for Investor Restitution (Fair) Funds are used to compensate harmed investors and the distributions are governed by the Commission's rules on Fair Fund and Disgorgement plans.⁷² These funds include civil penalties funded by an administrative proceeding or court order.⁷³

2. Investor Protection Fund:

The Investor Protection Fund (IPF) was established in 2010 and provides funding for payments to whistleblowers who meet certain criteria set out in statute and regulations.⁷⁴ The fund is "required to be used to finance the operations of the suggestion program of the SEC's Office of Inspector General."⁷⁵ The SEC has directed approximately \$301 million collected in penalties into the fund and the SEC has made 15 awards to whistleblowers, totaling nearly \$50 million, from this fund.⁷⁶

3. Violations of Municipal Securities Rulemaking Board:

The Municipal Securities Rulemaking Board (MSRB)⁷⁷ proposes and adopts "rules for transactions in municipal securities by brokers, dealers, and municipal securities dealers."⁷⁸ For those who willfully violate the MSRB rules, the SEC may impose a penalty and those collected penalties are split between the SEC and the MSRB.⁷⁹ The SEC's portion, however, is either directed into the aforementioned IPF, distributed as Fair Funds, or remitted to the Treasury.⁸⁰

⁶⁹ Letter from Mary Jo White, Chair, SEC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 2 (Apr. 10, 2015) (on file with the Committee).

⁷⁰ *Id.* at 4-5. The SEC did not specifically provide the exact amount put into each fund within their response and therefore this is not included in the report.

⁷¹ *Id.* at 3.

⁷² Section 308 of Sarbanes-Oxley, 15 U.S.C. § 7246 established Fair Funds. *See* 17 C.F.R. § 201.110-1106.

⁷³ White, *supra* note 69, at 3.

⁷⁴ Section 922 of the Dodd-Frank Act, 15 U.S.C. § 78u-6(g); *see also* White, *supra* note 69, at 3.

⁷⁵ *Id.*

⁷⁶ *Id.* at 3-4.

⁷⁷ Section 15B of the Exchange Act, 15 U.S.C. § 78o-4(b).

⁷⁸ White, *supra* note 69, at 4.

⁷⁹ *Id.*

⁸⁰ *Id.*

III. Bureau of Consumer Financial Protection

The Bureau of Consumer Financial Protection (CFPB) may assess civil money penalties (CMPs) under five separate authorities.⁸¹ “The CFPB Director maintains responsibility for authorizing all settlements that impose a CMP and for approving the initiation of all proceedings that result in judgments where a CMP is assessed.”⁸² From January 1, 2010, through the end of FY 2014, the CFPB collected \$159,022,002.00.⁸³ Specifically the CFPB has the authority to retain and use fines and penalties assessed under federal consumer financial law in two instances.

1. *Civil Penalty Fund:*

Under the law, the CFPB maintains and deposits civil penalties from any judicial or administrative action under federal consumer financial laws into the Civil Penalty Fund (CPF);⁸⁴ this means the entirety of funds collected by CFPB has been retained and deposited into this fund for CFPB’s use.⁸⁵ The CFPB may use funds in the CPF “for payments to the victims of activities for which civil penalties have been imposed under the federal consumer financial laws or, to the extent that such victims cannot be located or payments to them are otherwise not practicable, for consumer education and financial literacy programs.”⁸⁶

In accordance with this statutory mandate, recipients of monies from the CPF include: (1) “victims compensated from the [CPF] in accordance with the [CPF] rule”; (2) “third-party contractors that administer payments and distribute funds to individual victims”; and (3) “third parties with whom the CFPB contracts to administer, on the CFPB’s behalf, consumer education and financial literacy programs that are funded by the [CPF].”⁸⁷

From January 1, 2010, through FY 2014, the CFPB allocated \$31,292,375.00 to eligible classes of victims for the purpose of victim compensation; \$1,573,322.00 for authorized administrative expenses; and \$13,380,000.00 for consumer education and financial literacy programs.⁸⁸

2. *Interstate Land Sales Full Disclosure Act Fund:*

⁸¹ Letter from Richard Cordray, Dir., CFPB, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1-2 (Apr. 22, 2015) (on file with the Committee). The five separate authorities are: (1) the Real Estate Settlement Procedures Act (12 U.S.C. § 2609(d)); (2) the Secure and Fair Enforcement of Mortgage Licensing Act (12 U.S.C. § 5113(d)); (3) the Truth in Lending Act (15 U.S.C. § 1639e(k)); (4) the Interstate Land Sales Full Disclosure Act (15 U.S.C. § 1717a(a)); and (5) Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (12 U.S.C. § 5565).

⁸² *Id.*

⁸³ *Id.* at 3.

⁸⁴ The CPF is authorized by Section 1017(d) of the Dodd-Frank Act, 12 U.S.C. § 5497(d), and implemented by rule (*see* 12 C.F.R. part 1075, outlining the criteria for allocating and distributing CPF monies).

⁸⁵ Cordray, *supra* note 81, at 2. Specifically, this means if the CFPB imposes a CMP under any of its separate authorities those CMPs are retained and deposited into the CPF under the Section 1017(d) Dodd-Frank retention authority. In regards to ISLA, CFPB believes those penalties could into either the CPF or the ISLA Fund. Email from Staff, CFPB, to Staff, H. Comm. on Oversight & Gov’t Reform (Apr. 14, 2016, 14:58 EST) (on file with Committee).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 3.

The second civil penalties fund CFPB maintains is for knowing and willful violations of the Interstate Land Sales Full Disclosure Act (ILSA).⁸⁹ “ILSA provides that any civil money penalties collected under that statute... may be used by the Bureau, upon approval in an appropriation Act, to cover all or part of the cost of rendering services under ILSA.”⁹⁰ Through April 14, 2016, the CFPB has not imposed any CMPs under ILSA.⁹¹

IV. Commodities Futures Trading Commission

The Commodities Futures Trading Commission (CFTC) collects funds for violations of the Commodity Exchange Act (CEA).⁹² The CFTC can assess civil penalties and disgorgement, both of which are submitted to the United States Department of the Treasury, except as required to fund the CFTC’s Consumer Protection Fund.⁹³ The CFTC is among the highest-collecting agencies, collecting \$4,466,733,521.00 between January 1, 2010, and April 27, 2015.⁹⁴

1. Consumer Protection Fund:

Congress created the Consumer Protection Fund in Section 748 of the Dodd-Frank Act, which amended the CEA.⁹⁵ The CFTC’s Consumer Protection Fund provides funds to whistleblowers “who voluntarily provide the Commission with original information about violations of the CEA that lead to the successful enforcement of a covered judicial or administrative action, or a related action.”⁹⁶ The Consumer Protection Fund is designed to fund CFTC’s whistleblower office, provide consumers financial education, and pay awards to whistleblowers.⁹⁷ Specifically, “money sanctions collected by the Commission in any covered judicial or administrative action that are not otherwise distributed to victims shall be deposited in the Customer Protection Fund unless the balance in the fund exceeds \$100 million.”⁹⁸

Consumer Protection Fund “collections may be used only for the payment of awards to whistleblowers and the funding of customer education initiatives.”⁹⁹ Currently, the fund has a several hundred million dollar balance, and CFTC does not expect additional funds to be added

⁸⁹ 15 U.S.C. § 1717a(a). *See* Cordray, *supra* note 81, at 2.

⁹⁰ Cordray, *supra* note 81, at 2. *See* 15 U.S.C. § 1717a(h).

⁹¹ Email from Staff, CFPB, to Staff, H. Comm. on Oversight & Gov’t Reform (Apr. 14, 2016, 14:58 EST) (on file with Committee).

⁹² 7 U.S.C. §§ 1-27.

⁹³ Letter from Timothy Massad, Chairman, CFTC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1-2 (May 22, 2015) (on file with the Committee).

⁹⁴ *Id.* at 3.

⁹⁵ Sec. 23(g) of the Commodity Exchange Act. *See e.g.*, CFTC, PRESIDENT’S BUDGET AND PERFORMANCE PLAN, FISCAL YEAR 2014 79 (2013), *available at*

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcbudget2014.pdf>.

⁹⁶ *Id.*

⁹⁷ Briefing by CFTC to H. Comm. on Oversight & Gov’t Reform Staff on Fines and Penalties (Apr. 13, 2015) (hereinafter CFTC OGR Briefing).

⁹⁸ Massad, *supra* note 93, at 2. As noted here the fund is only provided income when it falls below \$100 million, but if the fund balance drops below the threshold the next matter resolved is collected and placed into the fund; regardless of the total amount and even if the amount then increased the fund to over \$100 million. This means if the fund was at \$95 million and the CFTC resolves a matter for \$200 million, the fund’s balance would be \$295 million; *see also* CFTC OGR Briefing, *supra* note 97.

⁹⁹ *Id.*

for several years.¹⁰⁰ Given this, until the fund's balance falls below \$100 million (from spending on the items listed above), all CFTC recoveries will go to the Treasury's General Fund.¹⁰¹

V. Department of Labor

The Department of Labor (DOL) collects fines and penalties pursuant to statutory authorities within the Employee Benefits Security Administration, Mine Safety and Health Administration, Occupational Safety and Health Administration (OSHA), the Wage and Hour Division (WHD), and the Office of Workers' Compensation Programs (OWCP).¹⁰² The Department of Labor collected \$1,346,163,431.00 between January 1, 2010, through the end of FY 2014; all of these fines and penalties are submitted to the Treasury, except in three instances which are discussed below.¹⁰³

1. Wage and Hour Division:

Pursuant to statutory authority, the Wage and Hour Division (WHD)¹⁰⁴ is the only division within the DOL that retains some funds which are "applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties."¹⁰⁵ From FY 2010 through FY 2014, under this authority DOL "collected and retained approximately \$12,880,000 in civil penalties" for violations of the overtime and minimum wage pay provisions.¹⁰⁶

2. Office of Workers' Compensation Programs' Black Lung Disability Trust Fund:

Pursuant to statutory authority in the Office of Workers' Compensation Programs' (OWCP's) Black Lung Benefits Act,¹⁰⁷ DOL through OWCP, may "assess civil penalties for violations related to the administration of statutory payments and benefits, such as: transferring or concealing property to avoid paying benefits; making false statements to obtain benefits; and deducting the cost of insurance or benefits from a miner's wages."¹⁰⁸

The Black Lung Fund "may only expend funds 'as provided by appropriation Acts' for specified purposes, such as the payment of benefits and expenses related to the administration of the program."¹⁰⁹ For FY 2010 through FY 2014, no funds were collected under this authority.¹¹⁰

¹⁰⁰ CFTC OGR Briefing, *supra* note 97.

¹⁰¹ *Id.*

¹⁰² Letter from Adri Jayaratne, Acting Asst. Sec'y, Office of Congressional and InterGovernmental Affairs, U.S. Dep't of Labor, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1-3 (June 23, 2015) (on file with the Committee).

¹⁰³ *Id.*; see also Email from Staff, DOL, to Staff, H. Comm. on Oversight & Gov't Reform (Aug. 21, 2015, 16:45 EST) (on file with the Committee).

¹⁰⁴ The penalties retained by DOL's WHD are authorized in 29 U.S.C. § 216(e)(2) and 29 U.S.C. § 216(e)(5).

¹⁰⁵ Jayaratne, *supra* note 102, at 3 (quoting 29 U.S.C. § 216(e)(5)).

¹⁰⁶ *Id.*

¹⁰⁷ 30 U.S.C. § 901 et seq., and 26 U.S.C. § 9501(b)(2)(B).

¹⁰⁸ Jayaratne, *supra* note 102, at 3.

¹⁰⁹ *Id.*

¹¹⁰ Email from Staff, DOL, to Staff, H. Comm. on Oversight & Gov't Reform (Aug. 21, 2015, 16:45 EST) (on file with the Committee).

3. *Office of Workers' Compensation Programs' Longshore Special Fund:*

Pursuant to statutory authority under the Longshore and Harbor Workers' Compensation Act (LHWCA),¹¹¹ DOL through OWCP, may "assess civil penalties for statutory violations"¹¹² and those "funds collected are deposited into the Longshore Special Fund."¹¹³ These funds are "held in trust in the Treasury and its assets are not money or property of the United States."¹¹⁴

For FY 2010 through FY 2014, DOL collected \$2,115,556.00 and placed it in the Longshore Special Fund under this authority.¹¹⁵

VI. Department of the Interior

The Department of the Interior (Interior) collects and retains fines and penalties pursuant to statutory authorities within the U.S. Fish and Wildlife Service (FWS), the Office of Surface Mining Reclamation, and for the Central Hazardous Waste Fund (CHMF).¹¹⁶ Interior collected and retained for agency use \$79,380,815.00 between January 1, 2010, and June 3, 2015.¹¹⁷

1. *U.S. Fish and Wildlife Service:*

U.S. Fish and Wildlife Service (FWS) assess and retain fines and penalties under a number of statutes which direct the funds to particular accounts.¹¹⁸ Between January 1, 2010, and June 3, 2015, FWS collected approximately \$72 million in civil and criminal fines and penalties.

The bulk of FWS's collections over this period were a result of the Deepwater Horizon spill. Specifically BP Oil paid approximately \$62.2 million for violations of the Migratory Bird Treaty Act.¹¹⁹ FWS collected an additional \$1.8 million for violations of the Migratory Bird Treaty Act arising out of the Deepwater Horizon spill "by parties other than BP Oil and deposited into the North American Wetlands Conservation Fund Account."¹²⁰

Of the remaining, non-Deepwater Horizon funds collected over this time period, "about \$2.1 million was collected for civil and criminal violations of the ESA and about \$5.7 million

¹¹¹ 33 U.S.C. § 901 *et seq.*, and 33 U.S.C. § 944(c)(3).

¹¹² Jayaratne, *supra* note 102, at 3.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Email from Staff, DOL, *supra* note 110.

¹¹⁶ Letter from Olivia Barton Ferriter, Deputy Asst. Sec'y; Budget, Finance, Performance, and Acquisition; Interior, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (June 3, 2015) (on file with the Committee).

¹¹⁷ *Id.* at 1-3.

¹¹⁸ *Id.* at 1-2. These statutes and funds include: (1) African Elephant Conservation Act (16 U.S.C. §§ 4201-4246) flow to the African Elephant Conservation Fund Account; (2) Endangered Species Act (ESA) (16 U.S.C. §§ 1531-1544), the Lacey Act (16 U.S.C. §§ 3371-3378), and the Rhinoceros and Tiger Conservation Act of 1998 (16 U.S.C. §§ 5301-5306) flow to the Lacey Act Reward Account; (3) Marine Mammal Protection Act (16 U.S.C. §§ 1361-1407) flow to Marine Mammal Protection Act Account; (4) Migratory Bird Treaty Act (16 U.S.C. §§ 703-715) flow to the North American Wetlands Conservation; and (5) Wild Bird Conservation Act (16 U.S.C. §§ 4901-4916) flow to the Exotic Bird Conservation Fund Account.

¹¹⁹ *Id.* at 2.

¹²⁰ *Id.*

was collected for civil and criminal violations of the Lacey Act,” and all of these collections “were deposited into the Lacey Act Reward Account.”¹²¹ FWS collected \$80,815.00 in fines and penalties “resulting from violations of the Marine Mammal Protection Act,” and “FWS is authorized to use those funds for expenses related to administering marine mammal protection activities.”¹²²

2. *Office of Surface Mining Reclamation and Enforcement:*

The Office of Surface Mining Reclamation and Enforcement collects penalties under the Surface Mining Control and Reclamation Act of 1977.¹²³ The Omnibus Appropriations Act of 2009¹²⁴ permits “collections in fiscal year 2009 and thereafter to be used directly by the Department or through grants to states for reclamation projects on lands adversely affected by coal mining practices.”¹²⁵

From January 1, 2010, through June 3, 2015, Interior collected approximately \$3.9 million in penalties under these provisions.¹²⁶

3. *Central Hazardous Waste Fund:*

Interior is authorized to retain and deposit into the Central Hazardous Waste Fund (CHMF),¹²⁷ “any fines and penalties collected from parties responsible for the cleanup of Department-managed lands contaminated by hazardous substances.”¹²⁸ These funds “are used to support remedial investigations, feasibility studies, and cleanups for which the Department is responsible.”¹²⁹

From January 1, 2010, through June 3, 2015, Interior collected and placed into the CHMF \$3.6 million.¹³⁰

VII. Department of Transportation

The Department of Transportation (DOT) has the authority to collect fines and penalties in relation to nine operating administrations and components.¹³¹ All of these fines and penalties

¹²¹ *Id.* For these violations, any amount in the Lacey Act Reward Account over \$500,000 must be transferred into the Cooperative Endangered Species Conservation Fund. According to Interior’s response, Congress may appropriate monies from this fund to a grant program “that provides financial assistance to states for voluntary species and habitat conservation projects on non-federal lands.” *Id.*

¹²² *Id.*

¹²³ 30 U.S.C. §§ 1201-1328; *see also* 30 U.S.C. § 1268 (penalty provision); *see also* Barton Ferriter, *supra* note 116, at 2.

¹²⁴ Pub. L. No. 111-8, 123 Stat. 524 (2009).

¹²⁵ Barton Ferriter, *supra* note 116, at 2; *see also* Pub. L. No. 111-8, div. E, title I, 123 Stat. 712 (codified at 30 U.S.C. § 1308a).

¹²⁶ Barton Ferriter, *supra* note 116, at 2.

¹²⁷ Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88.

¹²⁸ Barton Ferriter, *supra* note 116, at 2.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Letter from Anthony R. Foxx, Sec’y, DOT, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (May 14, 2015) (on file with the Committee); *see also* Email from Staff, DOT, to Staff, H. Comm. on Oversight & Gov’t Reform (Sept. 24, 2015 10:46 EST) (on file with the Committee). Specifically, these agencies

are submitted to the Treasury, except for the two instances where funds are retained which are discussed below.¹³²

DOT reported collecting \$638,584,712.00 and retaining \$93,906,312.00 from January 1, 2015, through March 2015.¹³³

1. Saint Lawrence Seaway Development Corporation:

The Saint Lawrence Seaway Development Corporation (SLSDC)¹³⁴ is a “wholly-owned Government corporation and is currently a DOT operating administration.”¹³⁵ Pursuant to statutory authority, “all SLSDC non-appropriated revenues, including fines and penalties, are deposited into SLSDC’s no-year revolving fund, which finances emergencies and extraordinary capital outlays.”¹³⁶

Between January 1, 2010, and May 14, 2015, “the SLSDC assessed a total of approximately \$27,000 in civil fines and penalties.”¹³⁷

2. Highway Account of the Highway Trust Fund:

Pursuant to statutory authority,¹³⁸ “DOT penalties assessed for non-compliance with certain reporting, record keeping and safety requirements imposed on rail and motor carriers are directed... to be deposited in the Highway Account of the Highway Trust Fund (HTF).”¹³⁹ These funds “are not segregated from other HTF funding streams and are disbursed pursuant to U.S. Department of the Treasury oversight and management and other statutory requirements that apply to the trust fund as a whole.”¹⁴⁰

From January 1, 2010, through March 2015, the total civil penalties deposited into the HTF were \$93,879,312.00.¹⁴¹

include the Federal Railroad Administration, the Pipeline and Hazardous Materials Safety Administration, the National Highway Traffic Safety Administration, the Aviation Consumer Protection/Aviation Economic Regulations Violations, the Federal Motor Carrier Safety Administration, the Saint Lawrence Seaway Development Corporation, the Maritime Administration, the Federal Aviation Administration, and the Highway Trust Fund.

¹³² *Id.*

¹³³ *Id.*; see also Email from Staff, DOT, to Staff, H. Comm. on Oversight & Gov’t Reform (Sept. 24, 2015 10:46 EST) (on file with the Committee).

¹³⁴ 33 U.S.C. §§ 981-990.

¹³⁵ Foxx, *supra* note 131, at 2.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ 49 U.S.C. § 521(b)(10).

¹³⁹ Foxx, *supra* note 131, at 2.

¹⁴⁰ *Id.*

¹⁴¹ Email from Staff, DOT, to Staff, H. Comm. on Oversight & Gov’t Reform (Sept. 24, 2015 10:46 EST) (on file with the Committee).

VIII. Department of Health and Human Services

The Department of Health and Human Services (HHS) collects and retains fines and penalties pursuant to statutory authorities within the Office for Civil Rights (OCR), Centers for Medicare and Medicaid Services (CMS), and the Office of Inspector General.¹⁴²

From FY 2010 through FY 2014, HHS collected and retained for agency use \$221,758,000.00.

1. Office for Civil Rights:

Office for Civil Rights (OCR) “may assess civil money penalties or compromise a penalty with payment of a monetary amount as part of a settlement under the Social Security Act, and may retain such monies under the Health Information Technology and Clinical Health Act for its enforcement.”¹⁴³ From FY 2010 through FY 2014, OCR collected and retained under this authority \$18,781,000.00.¹⁴⁴

2. Centers for Medicare and Medicaid Services:

The Centers for Medicare and Medicaid Services (CMS) assess and retain fines and penalties under a number of statutes which direct the funds to particular accounts within HHS.¹⁴⁵ From FY 2010 through FY 2014, CMS collected and retained \$99,725,000.00.¹⁴⁶ The bulk of these funds, \$92,034,000.00, were collected under the Health Care Fraud and Abuse Control Program and deposited into the Federal Hospital Insurance Trust Fund to offset losses from fraud or abuse under the this program.¹⁴⁷ Additionally, CMS deposited an additional \$233,000.00 into the Federal Hospital Insurance Trust Fund as a result of penalties collected under the Medicare Coverage Gap Discount Program under the Social Security Act for pharmaceutical manufacturers’ failure to provide applicable discounts to eligible beneficiaries.¹⁴⁸ CMS assessed and retained \$7,449,000.00 due to Long Term Care penalties.¹⁴⁹ These penalties are assessed when it is determined a skilled nursing facility no longer meets a requirement according to the statute or in some other way jeopardizes the health and safety of its residents and CMS must use these funds “to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified.”¹⁵⁰

¹⁴² Letter from Ellen G. Murray, Asst. Sec’y for Financial Resources, HHS, to Jim Jordan, Chairman, Subcomm. on Healthcare, Benefits, and Administrative Rules, H. Comm. on Oversight & Gov’t Reform 1-2 (May 28, 2015) (on file with the Committee).

¹⁴³ *Id.* at 1; *see also* 42 U.S.C. § 1320d-5 and 42 U.S.C. § 17939(c).

¹⁴⁴ *Id.* at enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet.

¹⁴⁵ *Id.* at 2. The statutory authorities providing for assessment, collection, and retention of funds are: 42 U.S.C. § 1395i-3, 42 U.S.C. § 1320a-7c, and 42 U.S.C. § 1395w-114A.

¹⁴⁶ *Id.* at enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet.

¹⁴⁷ *Id.* at 2 and enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet.

¹⁴⁸ *Id.* at 2 and enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet; *see also* Section 1860D-14A of the Social Security Act, 42 U.S.C. § 1395w-114A.

¹⁴⁹ *Id.* at enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet.

¹⁵⁰ *Id.* at 2.

3. *Office of Inspector General:*

The Office of the Inspector General for HHS may assess and retain fines and penalties under a number of statutes which directs the usage of the collected funds.¹⁵¹ Generally, the collected funds must first go “to make the affected program whole, then to cover the costs of the OIG investigation, audit and/or compliance monitoring. Any additional funds collected generally are remitted to the Federal Hospital Insurance Trust Fund, where they ultimately go to the Healthcare Fraud and Abuse Control Account.”¹⁵²

From FY 2010 through FY 2014, the Office of Inspector General collected \$103,252,000.00 and requested \$2,587,250.93 as reimbursement.¹⁵³

IX. Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) collects fines and penalties pursuant to statutory authorities within the Federal Housing Administration (FHA), HUD’s Departmental Enforcement Center (DEC), the Government National Mortgage Administration (Ginnie Mae), the Office of Lead Hazard Control and Healthy Homes (OLHCHH), and HUD’s General Counsel.¹⁵⁴

HUD collected \$22,539,750.37 between January 1, 2010, and November 3, 2015, and retained \$20,413,670.00; the remainder of these fines and penalties were submitted to the U.S. Department of the Treasury. Those funds retained by HUD for agency use are discussed below.

1. *Federal Housing Administration:*

The Federal Housing Administration (FHA) may assess and collect civil money penalties under Mortgagee Review Board against FHA-approved lenders who are not in compliance with FHA lending requirements as well as against individuals involved in HUD’s single family housing programs.¹⁵⁵ The use of funds collected is restricted to use by FHA’s insurance fund, as authorized by Congress.¹⁵⁶

Between January 1, 2010, and November 3, 2015, “FHA imposed or obtained civil money penalty judgements in the amount of \$12,420,175.00 pursuant to these authorities.”¹⁵⁷

2. *Departmental Enforcement Center:*

¹⁵¹ Specifically, pursuant to the Public Health Security and Bioterrorism Preparedness Act of 2002, the Health Care Quality Improvement Act of 1986 and the Social Security Act. *Id.* at 2.

¹⁵² *Id.*

¹⁵³ *Id.* at enclosed Collection and Retention of Fines and Penalties of HHS spreadsheet; *see also* Briefing by HHS Office of Inspector General to H. Comm. on Oversight & Gov’t Reform Staff on Fines and Penalties (June 15, 2015).

¹⁵⁴ Letter from Erika L. Moritsugu, Asst. Sec’y for Congressional and Intergov. Relations, HUD, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (Nov. 3, 2015) (on file with the Committee).

¹⁵⁵ *Id.* at 1. The statutory authorities used to collect and retain penalties are 12 U.S.C. § 1708, 24 C.F.R. § 25.12, 12 U.S.C. § 735f-14, and 24 C.F.R. § 30.36.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

The Departmental Enforcement Center (DEC)¹⁵⁸ has delegated authority to assess and retain civil penalties “against owners of multifamily housing properties (including nursing homes) that have FHA-insured or HUD-held mortgages or Housing Assistance Payments (HAP) contracts with HUD for violations of contractual and regulatory requirements.”¹⁵⁹ The DEC may “pursue civil money penalties against individuals involved in loans insured pursuant to the National Housing Act.”¹⁶⁰

Based on these authorities, DEC collected \$6,446,820.00 which was “deposited into the Flexible Subsidy Fund to provide assistance for troubled multifamily housing projects.”¹⁶¹ An additional \$73,600 was collected by DEC for violations of HAP contracts by non-FHA insured multi-family housing owners and these funds are deposited in a liquidating account for collection by Treasury.¹⁶²

3. *Government National Mortgage Administration:*

The Government National Mortgage Administration (Ginnie Mae) is authorized to levy civil money penalties against program participants for various program violations.¹⁶³ Ginnie Mae collected its first civil penalty in June 2014 and has since collected \$1,546,675.00.¹⁶⁴ The funds collected are “deposited in Ginnie Mae accounts at Treasury for use by Ginnie Mae to cover expenses and obligations,” including “funding the expenses for defaulted issuer portfolios.”¹⁶⁵

X. Department of Agriculture

The United States Department of Agriculture (USDA) may assess and collect fines and penalties in relation to sixteen operating administrations and components.¹⁶⁶ All of these fines and penalties are submitted to the Treasury, except for the three instances where funds are retained which are discussed below.¹⁶⁷

¹⁵⁸ The statutory authorities used to collect and retain penalties are 12 U.S.C. § 1735f-14, 12 U.S.C. § 1735f-15, 12 U.S.C. § 1715z-1a(j), 12 U.S.C. § 1701q-1, and 42 U.S.C. § 1437z-1.

¹⁵⁹ Moritsugu, *supra* note 154, at 2.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* As noted in the letter, this was specifically pursuant to 12 U.S.C. § 1735f-15(j) and 12 U.S.C. § 1701q-1(j).

¹⁶² *Id.* As noted in the letter, this was specifically pursuant to 42 U.S.C. § 1437z-1.

¹⁶³ Moritsugu, *supra* note 154, at 2-3. Statutory and regulatory authorities found in 12 U.S.C. § 1722, 12 U.S.C. § 1723i, and 24 C.F.R. § 30.50.

¹⁶⁴ *Id.* at 3.

¹⁶⁵ *Id.*

¹⁶⁶ Letter from Todd Batta, Asst. Sec’y, Office of Congressional Relations, USDA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 and Enclosure (Oct. 30, 2015) (on file with the Committee). Specifically, these agencies include the Animal and Plant Health Inspection Service, Agricultural Marketing Service, Agricultural Research Service, Commodity Credit Corporation, Economic Research Service, Foreign Agricultural Service, Forest Service, Farm Service Agency, Food Safety and Inspection Service, Grain Inspection Packers and Stockyards Administration, National Agricultural Statistics Service, National Institute of Food and Agriculture, Natural Resources Conservation Service, Rural Development, and Risk Management Agency.

¹⁶⁷ *Id.* at 1.

USDA reported collecting \$65,029,368.95 from FY 2010 through FY 2014; however, USDA only provided retention data for FY 2013 and FY 2014. During this period, USDA retained \$20,083,138.76 of the total amount.¹⁶⁸

1. Commodity Credit Corporation:

“USDA’s commodity and disaster programs are funded by the [Commodity Credit Corporation (CCC)] and are operated out of a revolving fund, in which CCC has a permanent indefinite borrowing authority.”¹⁶⁹ In calculating the CCC’s receipts in the revolving fund, there are proceeds from penalties.¹⁷⁰

In FY 2013 and FY 2014, CCC collected \$14,815,595.86 from fines and penalties.¹⁷¹

2. Agricultural Marketing Service:

The Agricultural Marketing Service (AMS) is authorized to collect fees to offset costs related to the evaluation of agricultural products shipped or received in interstate commerce, as well as late payment penalties and interest on overdue accounts.¹⁷²

In FY 2013 and FY 2014, AMS collected \$427,167.89.¹⁷³

3. Animal and Plant Health Inspection Service:

The Animal and Plant Health Inspection Service (APHIS) “operates under a fee structure that partially offsets the administration of the Agricultural Quarantine Inspection (AQI) program.”¹⁷⁴ “If a customer fails to pay the assessed fee, APHIS is authorized to assess late payment penalties that are retained in the same accounts that fund the service and are therefore not returned to the Treasury.”¹⁷⁵

During FY 2013 and FY 2014, APHIS collected \$4,795,375.01 in fines and penalties.¹⁷⁶

¹⁶⁸ *Id.* at 1 and enclosure; *see also* Email attachment USDA Fines and Penalties from Staff, USDA, to Staff, H. Comm. on Oversight & Gov’t Reform (Nov. 4, 2015 11:22 EST) (on file with the Committee).

¹⁶⁹ Letter from Todd Batta, Asst. Sec’y, Office of Congressional Relations, U.S. Dep’t of Agriculture, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (Sept. 25, 2015) (on file with the Committee).

¹⁷⁰ *Id.*

¹⁷¹ Batta, *supra* note 166, at 1 (Oct. 30, 2015).

¹⁷² Batta, *supra* note 169, at 1 (Sept. 25, 2015).

¹⁷³ Batta, *supra* note 166, at Enclosure (Oct. 30, 2015). There are some unexplained inconsistencies in USDA’s data for the AMS. One letter states in FY 2014, “AMS collected a little more than \$3,000 in total fines and penalties that were retained for use by the agency.” Batta, *supra* note 169, at 1 (Sept. 25, 2015). Yet, the subsequent letter on Oct. 30, 2015, provides a higher amount of total fines and penalties for FY 2014. Batta, *supra* note 166, at 1 (Oct. 30, 2015).

¹⁷⁴ Batta, *supra* note 169, at 1 (Sept. 25, 2015).

¹⁷⁵ *Id.*

¹⁷⁶ Batta, *supra* note 166, at Enclosure (Oct. 30, 2015). The USDA’s providing of APHIS retention data appears unclear as one letter states in FY 2014, “APHIS collected \$603 million in the account to fund AQI, of which \$210,000 was collected through fines and penalties.” Batta, *supra* note 169, at 1 (Sept. 25, 2015). Yet, the subsequent letter on Oct. 30, 2015, denotes a higher amount of total fines and penalties for FY 2014 for APHIS. *See* Batta, *supra* note 166, at 1 (Oct. 30, 2015).

XI. Department of Commerce

According to the Department of Commerce's (Commerce's) response, Commerce may assess and collect fines and penalties in relation to five operating administrations and components.¹⁷⁷ All of these fines and penalties are submitted to the Treasury, except where funds were either retained by Commerce or sent to another Department.¹⁷⁸

Commerce reported collecting \$131,776,148.00, retaining \$20,776,148.00, and sending \$35,000 directly to the Department of State for an administrative penalty between January 1, 2010, and July 14, 2015.¹⁷⁹

1. National Oceanic and Atmospheric Administration:

The National Oceanic Atmospheric Administration (NOAA) assesses and retains fines and penalties under a number of statutes, including three authorizing the retention of funds which directs the funds to particular accounts.¹⁸⁰ The three statutes authorizing retention of funds are: the Magnuson-Stevens Fishery Conservation and Management Act; the South Pacific Tuna Act; and the National Marine Sanctuaries Act.¹⁸¹

Between January 1, 2010, and July 14, 2015, NOAA collected approximately \$20.8 million in civil and criminal fines and penalties. The majority of this amount, \$20.6 million, was deposited into funds established pursuant to the *Magnuson-Stevens Act*, which authorizes NOAA to fund certain enforcement-related costs associated with violations of marine resource laws NOAA enforces.¹⁸² The additional \$176,148.00 was retained in accordance with the *National Marine Sanctuaries Act* and was deposited into the National Marine Sanctuaries Fund to support the management of marine sanctuaries.¹⁸³

2. Bureau of Industry and Security:

Under the Chemical Weapons Convention Regulations (CWCR)¹⁸⁴ and the Additional Protocol Regulations,¹⁸⁵ the Bureau of Industry and Security (BIS) is authorized to assess penalties.¹⁸⁶ Since January 1, 2010, BIS has brought one administrative enforcement action

¹⁷⁷ Letter from Jim Stowers, Acting Asst. Sec'y for Legislative and InterGovernmental Affairs, Commerce, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1-4 (July 14, 2015) (on file with the Committee). Specifically, these agencies include the Bureau of Industry and Security, National Oceanic and Atmospheric Administration, International Trade Administration, Census, and National Technical Information Service.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* 2-3 and footnote 2.

¹⁸¹ *Magnuson-Stevens Fishery Conservation and Management Act*, 16 U.S.C. §§ 1801 *et seq.*; *South Pacific Tuna Act*, 16 U.S.C. §§ 973 *et seq.*, and *National Marine Sanctuaries Act*, 16 U.S.C. §§ 973 *et seq.* *Id.* at 2-3.

¹⁸² Stowers, *supra* note 177, at 3.

¹⁸³ *Id.*

¹⁸⁴ 15 C.F.R. §§ 710 *et seq.*, implementing certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, codified as the *Chemical Weapons Convention Implementation Act of 1998* (22 U.S.C. §§6701 *et seq.*).

¹⁸⁵ 15 C.F.R. §§ 781 *et seq.*, implementing certain obligations of the United States under the Additional Protocol to the U.S.-IAEA Safeguards Agreement, codified as the *United States Additional Protocol Implementation Act of 2006* (Pub. L. No. 109-401).

¹⁸⁶ Stowers, *supra* note 177, at 2.

related to the CWCR.¹⁸⁷ This resulted in an administrative penalty of \$35,000 paid directly to the Department of State. The BIS did collect the majority of fines and penalties for Commerce under the *International Emergency Economic Powers Act* and Export Administration Regulations which authorizes the assessment and collection of administrative penalties relating to export enforcement and antiboycott compliance matters.¹⁸⁸ This does not, however, provide retention authority. There was approximately \$111,000,000.00 which BIS assessed in penalties between FY 2010 and March 2015, and all was transferred to the Treasury.¹⁸⁹

XII. Department of Defense

The Department of Defense (DOD) is unique in its collection and retention of fines and penalties. Pursuant to statutory authorities DOD collects and retains fees for its own use and additionally, DOD collects and then transfers fines and penalties pursuant to statutory authority to another Governmental entity; which is neither DOD nor Treasury.¹⁹⁰ Pursuant to these authorities, FY 2010 through FY 2014, DOD collected \$6,340,000.00 through fines and forfeitures which were assessed and retained for agency use but specifically directed to military pay appropriations.¹⁹¹ Additionally, pursuant to statutory authorities,¹⁹² from FY 2010 through FY 2014, DOD collected through fines and forfeitures assessed to enlisted members, warrant officers, and limited duty officers \$171,140,000.00, which was transferred to the Armed Services Retirement Home Trust Fund.¹⁹³

DOD's total collection from FY 2010 through FY 2014 was \$177,480,000.00.¹⁹⁴

XIII. Pension Benefit Guaranty Corporation

The Pension Benefit Guaranty Corporation (PBGC) may assess, collect, and retain civil penalties for three types of violations of Title IV of the Employee Retirement Income Security Act (ERISA).¹⁹⁵ "Section 4005 of ERISA requires that all penalties collected are credited to PBGC's revolving funds and authorizes PBGC to use funds only for PBGC's insurance programs."¹⁹⁶

PBGC collected and retained \$16,766,425.00 between January 1, 2010, and May 31, 2015.¹⁹⁷ The bulk of this came under PBGC's authority for late payment premiums,¹⁹⁸ of which

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Letter from Michael McCord, Under Secretary of Defense (Comptroller) and Chief Financial Officer, DOD, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1-2 (July 31, 2015) (on file with the Committee).

¹⁹¹ *Id.* at 2.

¹⁹² 10 U.S.C. § 2772 and 10 U.S.C. §§ 801-946.

¹⁹³ McCord, *supra* note 190, at 2. Please note the Armed Services Retirement Home is an independent agency, further information *available at* <https://www.afrh.gov/>.

¹⁹⁴ *Id.* at 2.

¹⁹⁵ Letter from Alice C. Maroni, Acting Dir., PBGC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (July 24, 2015) (on file with the Committee).

¹⁹⁶ *Id.*; *see also* 29 U.S.C. § 1305.

¹⁹⁷ *Id.* at 2-4.

¹⁹⁸ 29 U.S.C. § 1307, 29 U.S.C. § 1305, and 29 CFR § 4007.8.

\$15,812,232.00 PBGC retained between January 1, 2010, and May 31, 2015.¹⁹⁹ The remaining \$954,193.00 between January 1, 2010, and May 31, 2015, was retained pursuant to PBGC's authority to assess penalties for late filing of information.²⁰⁰ Between January 1, 2010, and May 31, 2015, PBGC did not collect or retain funds pursuant to their final authority under multiemployer notices penalties.²⁰¹

XIV. Small Business Administration

The Small Business Administration (SBA) collects fines and penalties pursuant to statutory authorities within the Small Business Act and the Small Business Investment Act.²⁰² SBA collected \$2,591,000.00 between January 1, 2010, and June 26, 2015, and retained \$2,580,000.00; the remainder of these fines and penalties were submitted to the U.S. Department of the Treasury.²⁰³ The amount retained for agency use was assessed and collected as a penalty on late payment of secondary market fees.²⁰⁴ The agency uses retained fees in its Office of Capital Access for administration of the program which generated the fees.²⁰⁵

XV. Department of Homeland Security

The Department of Homeland Security (DHS) collects fines and penalties pursuant to statutory authorities within five components: U.S. Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), U.S. Immigration and Custom Enforcement (ICE), Transportation Security Administration (TSA), and United States Coast Guard (USCG).²⁰⁶

DHS collected \$1,258,471,275.33 between January 1, 2010, and July 22, 2015, and retained \$2,900,402.00; the remainder of these fines and penalties were submitted to the Treasury.²⁰⁷

1. Federal Emergency Management Agency:

Within DHS, only Federal Emergency Management Agency (FEMA) may retain funds collected through fines and penalties and pursuant to its statutory authority, the \$2,900,402.00 retained was paid into the National Flood Mitigation Fund.²⁰⁸

¹⁹⁹ Maroni, *supra* note 195, at Attachment A and Attachment B.

²⁰⁰ *Id.*; *see also* 29 U.S.C. § 1371, 29 U.S.C. § 1363, 29 U.S.C. § 1083, 29 U.S.C. § 1305, 29 C.F.R. § 4010.14, 29 C.F.R. § 4041.29, and 29 C.F.R. § 4071.

²⁰¹ Maroni, *supra* note 193, at 4; *see also* 29 U.S.C. § 1452, 29 U.S.C. § 1305, and 29 C.F.R. § 4302.

²⁰² Letter from Thaddeus Inge, Assoc. Admin'r, Office of Congressional and Legislative Affairs, SBA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform – Attachment A (June 26, 2015) (on file with the Committee).

²⁰³ The SBA's letter to the Committee stated the SBA in total collected \$297,900.17. However, the attachment denoted a higher amount. *Id.* at 2 – question 5 and Attachment A. The SBA clarified the total amount was provided in the attachment. Staff, SBA, to Staff, H. Comm. on Oversight & Gov't Reform (Apr. 13, 2016, 16:39 EST) (on file with the Committee).

²⁰⁴ 15 U.S.C. § 634(b)(12)-(13). Inge, *supra* note 202, at Attachment A.

²⁰⁵ 15 U.S.C. § 634(b)(13).

²⁰⁶ Letter from Russell C. Deyo, Under Secretary for Management, DHS, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform Enclosure 1 (July 22, 2015).

²⁰⁷ *Id.* at Enclosure 3.

²⁰⁸ *Id.* at Enclosure 2-3; *see also* 42 U.S.C. § 4012a(f)(8).

2. *The United States Coast Guard:*

The United States Coast Guard (USCG) is located within DHS and has statutory authority to collect fines and penalties; however all fines and penalties collected under these authorities are remitted to the Treasury's General Fund.²⁰⁹ Under these authorities, the USCG collected \$809,619,864.57.²¹⁰

XVI. Social Security Administration

The Social Security Administration (SSA) is authorized to impose civil monetary penalties and assessments for certain misconduct, such as making false or misleading statements or withholding information necessary to determining eligibility, under Sections 1129 and 1140 of the Social Security Act.²¹¹ Further, under Section 201(g)(1) of the Social Security Act certain fines and penalties are remitted to the "Federal Old Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund (collectively, the Social Security Trust Funds)."²¹² Specifically, the SSA's Office of Inspector General is delegated the authority to assess these penalties.²¹³

Between FY 2010 and March 31, 2015, under this authority \$61,550,000.00 was collected and remitted to these funds pursuant to statutory authority.²¹⁴

²⁰⁹ *Id.* at Enclosure 1-2; *see also* Letter from Todd A. Sokalzuk, Rear Admiral and Assistant Commandant for Resources and Chief Financial Officer, USCG, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (April 10, 2015). The Committee separately sent a letter to the USCG prior to its letter to the DHS. However, after receiving responses from both because USCG is a component of DHS and does not retain any funds, the Committee opted to place USCG under DHS although the response was counted as an additional agency surveyed and the amount of funds was noted in the total collections chart. The Committee did not utilize USCG reported numbers to calculate the total collected as DHS included it and inclusion of both would have been duplicative.

²¹⁰ *Id.* at Enclosure 3.

²¹¹ Email from Staff, SSA, to Staff, H. Comm. on Oversight & Gov't Reform (July 8, 2015 12:13 EST) (on file with the Committee); *see also* 42 U.S.C. § 1320a-8 and 42 U.S.C. § 1320b-10.

²¹² Letter from Carolyn W. Colvin, Acting Commissioner, SSA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1-2 (June 25, 2015) (on file with the Committee).

²¹³ Email from Staff, SSA, to Staff, H. Comm. on Oversight & Gov't Reform (July 8, 2015 12:13 EST) (on file with the Committee).

²¹⁴ *Id.*

Agencies Retention or Redistribution of Fines for Special Funds

While several agencies retain funds collected from fines and penalties for their own use within specific accounts, other agencies reported, pursuant to statutory authorities, certain fines and penalties collected were transferred to another agency under the statute or to the Treasury for use in a specific single-purpose fund which is subject to Congressional appropriations.

I. Environmental Protection Agency

The Environment Protection Agency's (EPA's) total collection between January 1, 2010, and December 31, 2014, was \$607,666,246.80.²¹⁵ The EPA has three single-purpose funds into which fines and penalties flow into specific accounts within Treasury for specific uses subject to Congressional appropriations.²¹⁶

1. Superfund Trust Fund:

Penalties for violations of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")²¹⁷ are "generally directed to the Superfund Trust Fund."²¹⁸ Once in the Superfund Trust Fund, the EPA may not use the funds absent a Congressional appropriation.²¹⁹ Generally, appropriations from the Superfund Trust Fund are provided to EPA as "a part of the EPA's Hazardous Substance Superfund appropriation, which is generally available '[f]or necessary expenses to carry out [CERCLA].'"²²⁰

2. Oil Spill Liability Trust Fund:

Under Section 311 of the Clean Water Act,²²¹ EPA may assess fines and penalties related to oil and hazardous substance liability.²²² The funds collected from this are transferred "to the U.S. Coast Guard via the intra-Governmental payment and collection ('IPAC') system for deposit in the Oil Spill Liability Trust Fund."²²³ Once the funds are deposited into the Oil Spill Liability Trust Fund, the EPA may not spend them absent a Congressional appropriation.²²⁴

²¹⁵ Letter from Laura Vaught, Assoc. Admin'r, Office of Congressional and InterGovernmental Affairs, EPA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform Enclosure ii (May 14, 2015) (on file with the Committee).

²¹⁶ *Id.*

²¹⁷ 42 U.S.C. §§ 9601-9675.

²¹⁸ Vaught, *supra* note 215, at Enclosure i.

²¹⁹ *Id.* ("Once deposited in the Superfund Trust Fund, Congress must appropriate such funds before the EPA may spend them. Therefore, spending is constrained by whatever terms and conditions Congress includes in the EPA's appropriations acts.")

²²⁰ *Id.* (quoting Pub. L. No. 113-235 (2015)).

²²¹ 33 U.S.C. §§ 1251-1376.

²²² Vaught, *supra* note 215, at Enclosure i.

²²³ *Id.* (citing Pub. L. No. 101-380, § 4304 (1990) (26 U.S.C. § 9509 note)).

²²⁴ *Id.*

The EPA did not specifically provide the Committee with the amount collected and directed into this fund.²²⁵

3. Asbestos Trust Fund:

Under the Toxic Substances Control Act,²²⁶ portions of penalties are deposited into the Asbestos Trust Fund in the Treasury.²²⁷ The funds are first directed to local education agencies to asbestos management, and the remaining, unspent portions are deposited into the Asbestos Trust Fund.²²⁸

As with the other funds noted for EPA, the EPA may only spend monies in the Asbestos Trust Fund by way of a Congressional appropriation. Congress has not appropriated funds for this purpose since FY 1993.²²⁹

II. Federal Reserve Board

The Federal Reserve Board (FED or Board) has statutory authority to impose civil money penalties under a variety of statutes.²³⁰ From January 1, 2010, through June 30, 2015, the FED collected \$3,739,783,660.00, of which \$2,809,655,000.00 was remitted to Treasury, as the FED does not retain any funds collected through penalties to support its own operations.²³¹ However, there are instances where the FED is statutorily authorized to transfer collected penalties to other agencies or authorities.²³²

1. Payments to the National Flood Mitigation Fund:

Under the Flood Act the FED may assess a penalty against a lending institution that violates the Act's requirements.²³³ "Any penalties collected under this provision must be paid into the National Flood Mitigation Fund, which makes funds available for planning and carrying out activities designed to reduce the risk of flood damage to structures covered by flood insurance required by the Act."²³⁴

From January 1, 2010, through June 30, 2015, the FED collected and remitted \$428,660.00 to the National Flood Mitigation Fund.²³⁵

2. Payments to Federal Agencies and Borrower Assistance under National Mortgage Settlement and Approved Consumer Groups:

²²⁵ *Id.* at 1.

²²⁶ 15 U.S.C. §§ 2601-2697.

²²⁷ Vaught, *supra* note 215, at Enclosure i.

²²⁸ *Id.* (citing 15 U.S.C. § 2647(a); 20 U.S.C. § 4022).

²²⁹ *Id.* at Enclosure i-ii.

²³⁰ Letter from Janet Yellen, Chair, Federal Reserve System, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 2 (July 17, 2015) (on file with the Committee).

²³¹ *Id.* at 2 and Attached Table.

²³² *Id.* at 1-4 and Attached Table.

²³³ Yellen, *supra* note 230, at 2. Statutory authority provided at 42 U.S.C. § 4012(a)(f).

²³⁴ *Id.* at 2-3. See 42 U.S.C. § 4012(a)(f)(8) and 42 U.S.C. § 4104(c).

²³⁵ *Id.* at Attached Table.

Under the Federal Deposit Insurance Act, the FED is authorized “to assess penalties against regulated banks, bank holding companies, other types of banking institutions, among other things for violations of law or regulations, or orders or conditions of the Board, for unsafe and unsound practices, or for breaches of fiduciary duty.”²³⁶ The FED is further given authority to “compromise, modify, or remit” any penalty under this authority.²³⁷

From January 1, 2010, through June 30, 2015, there were six cases in which the FED exercised its authority to assess civil monetary penalties against six banking organizations for unsafe and unsound practices residential mortgage loan servicing and foreclosure processing. These six cases resulted in \$926,500,000.00 being provided to the National Mortgage Settlement.²³⁸ Additionally, in August 2012, the FED assessed a \$3,200,000.00 penalty against MetLife for the same reasons but as MetLife had not yet entered into a settlement with other Federal and state entities yet, these funds were provided to approved consumer groups.²³⁹

III. Department of Veterans Affairs

The Department of Veterans Affairs (VA) may assess fines and penalties for violations of Security and Law Enforcement at VA facilities as well as fines for late filing of forms under Employee ethics rules.²⁴⁰ However, in both instances VA does not retain the funding.²⁴¹

Under employee ethics rules, from January 1, 2010, through August 21, 2015, the VA collected \$1800 which was remitted to Treasury in accordance with the Miscellaneous Receipts Act.²⁴² For violations of security and law enforcement at VA facilities, the fines are collected through federal United States Courts for deposit through the Central Violations Bureau to the Department of Justice’s (DOJ’s) Crime Victims Fund.²⁴³

IV. Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation (FDIC) has statutory authority to impose civil money penalties under a variety of statutes.²⁴⁴ Between January 1, 2010, and March 31, 2015, FDIC collected a total of \$47,472,954.00; of which \$45,044,994.63 in civil monetary penalties was remitted to the Treasury.²⁴⁵

²³⁶*Id.* at 2. See 12 U.S.C. § 1818(i)(2)(A)-(C).

²³⁷ *Id.*

²³⁸ *Id.* FED worked with other federal agencies such as HUD and DOJ in this settlement process and after the requisite time period money from this fund will be transferred to Treasury in accordance with the funds rules and settlement procedures. *Id.*

²³⁹ *Id.*

²⁴⁰ Letter from Edward J. Murray, Acting Asst. Sec’y. for Mgmt. and Interim Chief Financial Officer, VA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (Aug. 21, 2015) (on file with the Committee).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ These statutes include 12 U.S.C. § 1818(i)(2) and 42 U.S.C. § 4012a(f). *Id.*

²⁴⁵ Letter from Martin J. Gruenberg, Chairman, FDIC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform at 2, 5 (July 6, 2015) (on file with the Committee).

FDIC also collects civil monetary penalties under the Flood Disaster Protection Act²⁴⁶ and remits the funds to the Federal Emergency Management Agency (FEMA) for the Flood Disaster Mitigation Fund.²⁴⁷ Pursuant to this statutory authority, between January 1, 2010, and March 31, 2015, FDIC collected \$2,427,960 which was remitted to FEMA under the Flood Disaster Protection Act.²⁴⁸

V. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) has statutory authority to impose civil money penalties under a variety of statutes.²⁴⁹ Between January 1, 2010, and June 26, 2015, the FERC collected \$485,486,154.00 through penalty assessments.²⁵⁰ The FERC has no authority to keep any of these funds collected through fines and penalties.²⁵¹ These funds are sent to the Treasury, pursuant to the Miscellaneous Receipts Act, except in limited instances where a Commission-certified Electric Reliability Organization (ERO) participates in a FERC investigation and then the collected funds are split between the ERO and Treasury.²⁵²

FERC did not provide specifics related to the funds potentially split between an ERO and Treasury.²⁵³

VI. Federal Housing Finance Agency

Although, the Federal Housing Finance Agency (FHFA) has statutory authority to impose civil money penalties in two instances, the FHFA has never utilized these authorities.²⁵⁴ Under FHFA's first authority²⁵⁵ the funds would be deposited into the Treasury's General Fund, whereas under the second authority²⁵⁶ the funds would be placed into the Housing Trust Fund administered by the Department of Housing and Urban Development (HUD).²⁵⁷

Agencies Whose Funds Flow Directly to Treasury

Under the Miscellaneous Receipts Act, absent statutory authority providing otherwise, all fines, fees, and penalties collected by agencies are required to be deposited in the Department of the Treasury's General Fund.²⁵⁸ In light of the Miscellaneous Receipts Act, a substantial number

²⁴⁶ Flood Disaster Protection Act of 1973, Pub. L. No. 93-234, 87 Stat. 978 (1973) (codified as amended in scattered sections of 42 U.S.C.); *see also* 42 U.S.C. § 4012a (civil penalty provision).

²⁴⁷ Gruenberg, *supra* note 245, at 1.

²⁴⁸ *Id.* at 2 and 5.

²⁴⁹ Letter from Norman Bay, Chairman, FERC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (June 26, 2015) (on file with the Committee).

²⁵⁰ *Id.* at 3.

²⁵¹ *Id.* at 1-2.

²⁵² *Id.* at 2.

²⁵³ *Id.* at 2-3.

²⁵⁴ Letter from Melvin Watt, Dir., FHFA, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (April 7, 2015) (on file with the Committee).

²⁵⁵ *Id.*; *see also* 12 U.S.C. § 4686.

²⁵⁶ *Id.*; *see also* 12 U.S.C. § 4585.

²⁵⁷ *Id.*; *see also* 12 U.S.C. § 4585(f).

²⁵⁸ 31 U.S.C. § 3302(b).

of the agencies surveyed reported having authority to collect funds but no authority to retain the funds and all funds collected are remitted to the Treasury.

Agency	Amount Collected and Remitted to Treasury
Department of Education	\$4,864,386.99 ²⁵⁹
Consumer Product Safety Commission	\$38,961,500.00 ²⁶⁰
Federal Communications Commission	\$179,253,000.00 ²⁶¹
U.S. Agency for International Development (USAID)	\$1,118,375.22 ²⁶²
Department of Energy	\$25,633,028.00 ²⁶³
Federal Maritime Commission	\$10,937,250.00 ²⁶⁴
Federal Trade Commission	\$96,754,227.51 ²⁶⁵
U.S. Nuclear Regulatory Commission	\$1,558,036.00 ²⁶⁶
Department of State	\$157,171,566.63 ²⁶⁷
National Transportation Safety Board	\$0 ²⁶⁸
Department of the Treasury	As of November 21, 2016, Treasury failed to provide the Committee with the total amount collected or remitted to the General Fund. ²⁶⁹

²⁵⁹ The total noted is from January 1, 2010, through July 13, 2015. Letter from Lloyd Horwich, Asst. Sec’y, ED, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 2 (July 13, 2015) (on file with the Committee).

²⁶⁰ The total noted is from January 1, 2010, through June 19, 2015. Letter from Elliot Kaye, Chairman, CPSC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 4 (June 19, 2015) (on file with the Committee).

²⁶¹ The total noted is from January 1, 2010, through May 31, 2015. Letter from Hon. Tom Wheeler, Chairman, FCC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform - Attached Responses 5 (July 17, 2015) (on file with the Committee). \$158 million settlement with Verizon and Sprint discussed in the Executive Summary section of this report occurred after FCC’s reporting of its data to the Committee and is therefore not included in the figure above. FCC Press Release, *supra* note 7.

²⁶² The total noted is from January 1, 2010, through July 1, 2015. Letter from T. Charles Cooper, Asst. Admin’r, USAID, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (July 1, 2015) (on file with the Committee).

²⁶³ The total noted is from January 1, 2010, through May 18, 2015. Letter from Eric J. Fygi, Deputy General Counsel, DOE, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1-2 (May 18, 2015) (on file with the Committee).

²⁶⁴ The total noted is from January 1, 2010, through June 23, 2015. Letter from Mario Cordero, Chairman, FMC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1-2 (June 23, 2015) (on file with the Committee).

²⁶⁵ The total noted is from January 1, 2010, through June 19, 2015. Letter from Edith Ramirez, Chairwoman, FTC, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1-3 (June 19, 2015) (on file with the Committee). The totals provided in the letter created a discrepancy and the FTC followed up in email with Committee staff providing the correct figured for Bureau of Competition cases as \$4,776,000 rather than the \$4,746,000 initially provided in the letter. Email from Staff, FTC, to Staff, H. Comm. on Oversight & Gov’t Reform (Apr. 4, 2016 16:06 EST) (on file with the Committee).

²⁶⁶ The total noted is from January 1, 2010, through June 22, 2015. Letter from Stephen Burns, Chairwoman, NCR, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform, Enclosure 4 (June 22, 2015) (on file with the Committee).

²⁶⁷ The total noted is from FY 2010 through FY 2014. Letter from Julia Frifield, Asst. Sec’y, Legislative Affairs, State, to Jim Jordan, Chairman, Subcomm. on Healthcare, Benefits, and Administrative Rules of H. Comm. on Oversight & Gov’t Reform 1 (July 1, 2015) (on file with the Committee).

²⁶⁸ The total noted is from January 1, 2010, through June 24, 2015. Letter from Christopher Hart, Chairman, NTSB, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov’t Reform 1 (June 24, 2015) (on file with the Committee).

Conclusion and Recommendations

While agencies reported compliance with the Miscellaneous Receipts Act and were able to detail those circumstances where funds were retained or otherwise set aside, the level of accountability of those funds which are not returned to the General Fund of the Treasury is questionable. In order to improve oversight and transparency of this process, there are various options.

First, there is legislation to improve agencies' accounting of funds collected through fines and penalties. Based on Committee review, agencies have vast differences in how information from each enforcing program office or division is collected and maintained, making it nearly impossible to track the exact amount of funds collected or retained. Agencies response time varied as some agencies did not track or keep such information in a consolidated or organized manner. Efforts should include evaluating ways to standardize the type of information required to be recorded across the Government and centralizing accounting efforts within each agency. Further, for funds transferred between agencies and state or local Governments, a standardized system of accounting would improve agencies' abilities to track and account for such funds.

Second, agencies can improve their oversight over retained funds. Agencies were generally unable to provide detail regarding the use of such funds besides stating the funds were retained or deposited into the correct account. If the agencies feel overburdened by this, the Inspectors General (IGs) are well-positioned to provide oversight of retained funds and ensure its use is consistent with statutory requirements.

Third, additional oversight is necessary to evaluate statutorily-exempt funds for compliance with how funds are distributed or used by the agency or other agency-recipients of those funds. Further review of the following may aid in identifying appropriate legislation:

- Existing statutory carve-outs and agency discretion in the use of retained funds;
- Flexibility agencies and DOJ have to craft the terms of legal settlements;
- Level of involvement agencies have in the settlement process;
- Extent to which funds aid or provide restitution to victims and the public; and
- Controls over funds flowing to private parties from settlement and administrative enforcement activities.

Finally, Congressional review of agencies which rely on collections to fund their activities, do not receive congressional appropriation, or are funded primarily through mandatory spending is necessary. This will restore Congress' "power of the purse" and reduce inappropriate use of settlements.

²⁶⁹ Letter from Randall DeValk, Acting Asst. Sec'y for Legislative Affairs, Treasury, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform 1 (May 15, 2015) (on file with the Committee). Treasury was informed its initial response did not provide a sufficient response and Treasury as of November 21, 2016, has failed to provide the Committee with this information.