

Financial Services Enforcement Actions Tracker 1H 2023

Guidehouse's Financial Services Enforcement Actions Tracker compiles publicly available data from both federal and state regulators regarding quarterly enforcement actions against financial institutions. First published in 2016, the Tracker highlights the types of activities that consumer finance-focused regulators are currently monitoring and helps the audience better address the trends and challenges in today's regulatory environment.

Market Highlights & a Look Ahead

Stock market volatility, high inflation, and conflicts in Europe are examples of notable events that impacted the financial markets in 2022. However, in the first half of 2023, regulators and financial services firms have faced significant challenges, leading to new areas of focus for enforcement. Below, Guidehouse reflects on a few highlights from 1H 2023 that have challenged, and could continue to challenge, industry participants, regulators, and the banking industry.

Electronic / "Off-Channel" Communications

- With remote and largely decentralized workforces, and the access to a number of messaging applications, many individuals have turned to unapproved channels of communication, such as iMessage and WhatsApp, to conduct business activities with colleagues and customers.



- Federal regulators, including the US Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Industry Regulatory Authority (FINRA), brought charges and significant fines against several firms for their failure to adequately control the use of these "off-channel"/unapproved communications, and, as a result, violating federal recordkeeping provisions.
- Despite regulations dictating the specific retention requirements that firms must adhere to, there are a number of complexities that financial institutions must wade through and implement, including establishment of necessary controls, processes, and procedures to curb/eliminate the use of unapproved communication channels.

- Regulators have stated they will continue to examine and enforce record-retention regulations and the use of unapproved communication channels to ensure they can effectively provide regulatory oversight and ensure compliance with the laws and regulations in their purview.
- Guidehouse continues to monitor the regulator activity on this topic, as there continues to be activity with settlements and investigations being reported weekly.

Small Business Rule 1071

- The Consumer Financial Protection Bureau (CFPB) has prioritized small-business lending as part of continued efforts to enforce fair lending regulation and laws. On March 30, 2023, the CFPB finalized the rule on small business data collection, Dodd-Frank 1071, which requires lenders to collect and report data on loan applications for small businesses with gross annual revenue less than \$5 million.
- Several industry participants, including trade groups and financial institutions, have brought cases challenging the 1071 rule and CFPB's standing in enforcing it, given the pending US Supreme Court case regarding CFPB's funding structure. In Texas, a federal judge blocked enforcement of the CFPB's Section 1071 final rule while the Supreme Court hears a challenge to the constitutionality of the CFPB's funding structure. The injunction came at the request of the American Bankers Association, the Texas Bankers Association, and McAllen, Texas-based Rio Bank in litigation brought challenging the Section 1071 rule. This was followed by a ruling in Kentucky, which joined Texas in limiting the CFPB from enforcing the 1071 rule.
- Increased transparency around small business lending has been emphasized during the pandemic. Guidehouse expects the CFPB and other regulators to continue its examination and enforcement to combat unlawful discrimination.

Payday Lender Collection Practices

- Most recently, the CFPB identified payday lenders engaged in abusive and unfair collection practices. Examples of such actions include making false collection threats to garnish wages of borrowers and seeking wage deductions from the borrower's employer in amounts higher than the individual scheduled payment due.
- Although this issue came to light at the beginning of Q2 2023, Guidehouse expects the CFPB to continue to focus on lender collection practices, given the significant impact to consumers.



Although there were no enforcement actions in the first half of 2023 related to previously noted events, Guidehouse anticipates the tougher rules will significantly impact the regulators and their approach in the months ahead.

Bank Failures

- When Silicon Valley Bank collapsed after a bank run and a capital crisis in March 2023, the financial markets were overly influenced by panicked responses, which led to similar failures, such as Signature Bank and First Republic.
- It was clear from the three bank failures that social media played a significant role in short selling, and continues to adversely impact the "health" of remaining banks, resulting in, amongst others, the plummeting of bank trades.
- To ensure their place in the market, many banks have raised their lending standards for business and consumer loans, and it is anticipated they will continue to increase them, which may further slow the future economy, with increased recession risk. Just before the publication of this tracker, the FDIC approved a proposal for an increase of capital requirements for US banks.
- Given the current environment, Guidehouse expects regulators to continue review of their existing policies by focusing on topics such as deposit insurance, liquidity and capital management, management of interest rate risk, overall risk management practices, and mergers and acquisitions, to regain the trust of depositors.

1H 2023 Federal-Level Enforcement Actions

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1. Unfair, Deceptive, or Abusive Acts or Practices

There were **14 actions** related to UDAAP, totaling approximately **\$138 million** in monetary penalties and restitution. Examples of these actions include, but are not limited to:

UDAAP Violation	Regulation Violated	Regulation Description
Collecting debt without providing required documentation to consumers	Fair Debt Collection Practices Act	Prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts
Engaging in a pattern or practice of lending discrimination (e.g., algorithmic discriminatory advertising, redlining)	Fair Housing Act	Protects consumers from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities
Providing loans that exceeded the Military Annual Percentage Rate caps	Military Lending Act	Provides special protections for active duty servicemembers like capping interest rates on many loan products
Mortgage advertisements containing deceptive representations	Regulation N: Mortgage Acts and Practices-Advertising Rule	Prohibits any person from making any material misrepresentation in connection with an advertisement for any mortgage credit product
Not resolving consumers’ disputes in a timely manner	Regulation V: Fair Credit Reporting Act	Ensures consumer reports are accurate and used for permissible purposes and disputes are timely investigated
Failure to make disclosures and/or providing inadequate or impermissible disclosures	Regulation Z: Truth in Lending Act	Protects consumers when they use consumer credit

2. Office of Foreign Assets Control Violations

There were **two actions** taken in conjunction by two separate regulators that are related to violations of US sanctions regulations, resulting in fines totaling approximately **\$97.8 million**. The charged fines are due to the bank’s unsafe or unsound practices relating to historical inadequate oversight of sanctions compliance risks. This led to the bank’s violation of US sanctions regulations by supplying a foreign bank with a trade finance platform, which was used to process more than \$500 million in illegal transactions from 2010 to 2015.

4. Consumer Financial Protection Act of 2010 (CFPA)

There were **five actions** cited as pertaining to the CFPA, totaling **\$50.9 million** in civil money penalties and restitution. These actions were related to improper auto lending, consumer lending, and mortgage loan practices. Examples include misrepresenting key loan terms, exploiting consumer’s lack of knowledge regarding the risk of default, not disclosing information to borrowers, and initiating debt collection without collating the required documentation.

3. The Securities Act of 1933 and The Securities Exchange Act of 1934

There were **five actions** related to the Securities Act of 1933 and Securities Exchange Act of 1934, totaling approximately **\$80 million** in monetary penalties and restitution. Specifically, two of these actions were related to the failure to maintain and preserve electronic communications, two were related to the unregistered offering of crypto asset lending products, and one was for misleading disclosures about its valuation methodologies for fixed income securities.

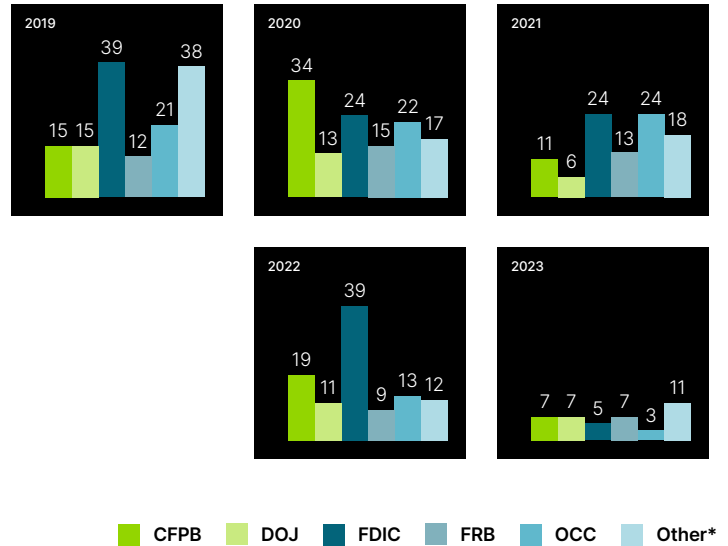
Yearly Trends

Guidehouse observed year-over-year trends for 2019-2023, with an overall downward trend in volume of observed federal-level enforcement actions:

- In 2019, federal-level regulators enforced 140 actions.
- In 2020, federal-level regulators enforced 125 actions.
- In 2021, federal-level regulators enforced 96 actions.
- In 2022, federal-level regulators enforced 103 actions.
- Thus far in 2023, federal-level regulators enforced 40 actions. Guidehouse has seen an increase in enforcement actions from other regulators relative to the major five federal regulators.

Federal-Level Enforcement Actions Tracked

2019 – 2023



Quarterly Trends

Guidehouse observed:

- A decrease of 5% in federal actions quarter over quarter, with the majority coming from “Other” regulators. There were 20 federal actions in Q2 2023, whereas in Q1 2023 the number was slightly higher, at 21 actions.
- Compared to Q2 2022, which saw 24 federal actions, there was a 17% decrease year over year. Notable is the decrease in actions by the FDIC (total of two in Q2 2023), which quarter-over-quarter typically has the highest number of actions of the monitored federal regulators.

Federal-Level Enforcement Actions Tracked

Q2 2022 – Q3 2023



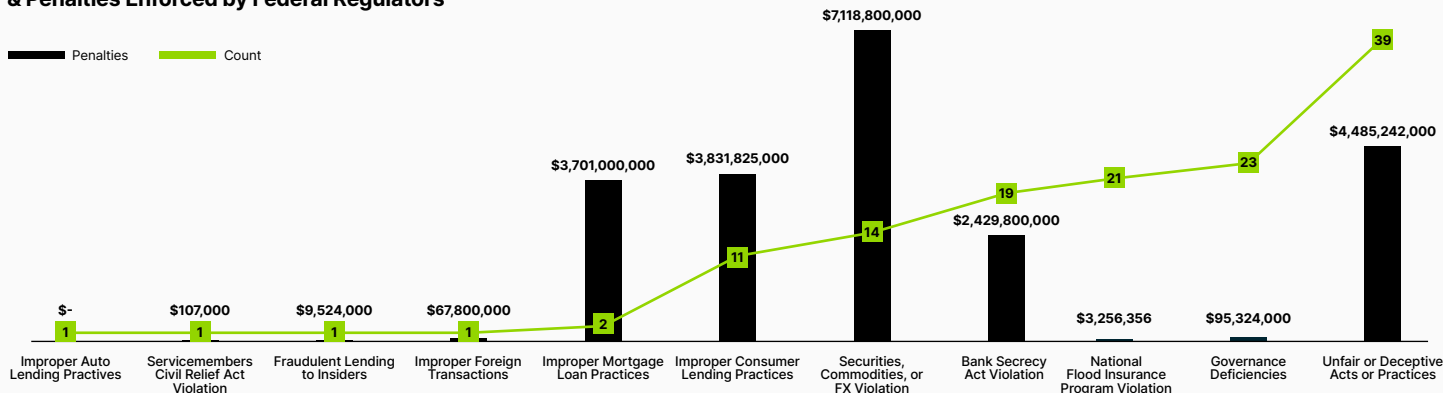
*Guidehouse tracks federal-level enforcement actions related to consumer finance from certain regulators. Specifically, major five federal regulators consist of the CFPB, DOJ, FDIC, FRB, and OCC. “Others” consist of certain relevant enforcement actions levied by the CFTC, FHFA, FinCEN, FINRA, FTC, HUD, SEC, NCUA, and OFAC at banks and subsidiaries of bank holding companies.

Quarterly Trends – Fines & Penalties

The chart below depicts federal-level enforcement actions broken down by violation type for the past five quarters (Q2 2022 – Q2 2023). **A total of 39 actions over the past five quarters involved Unfair, Deceptive, and Abusive Acts and Practices**, making it the most frequently occurring violation — accumulating over \$4.5 billion in fines and penalties enforced.

Q2 2022 – Q2 2023

Number of Enforcement Occurrences & Total Amount in Fines & Penalties Enforced by Federal Regulators



Note: One regulatory action may be categorized as multiple action types. Actions from previous quarters issued after the previous publication's cutoff date may be included in the above figures.

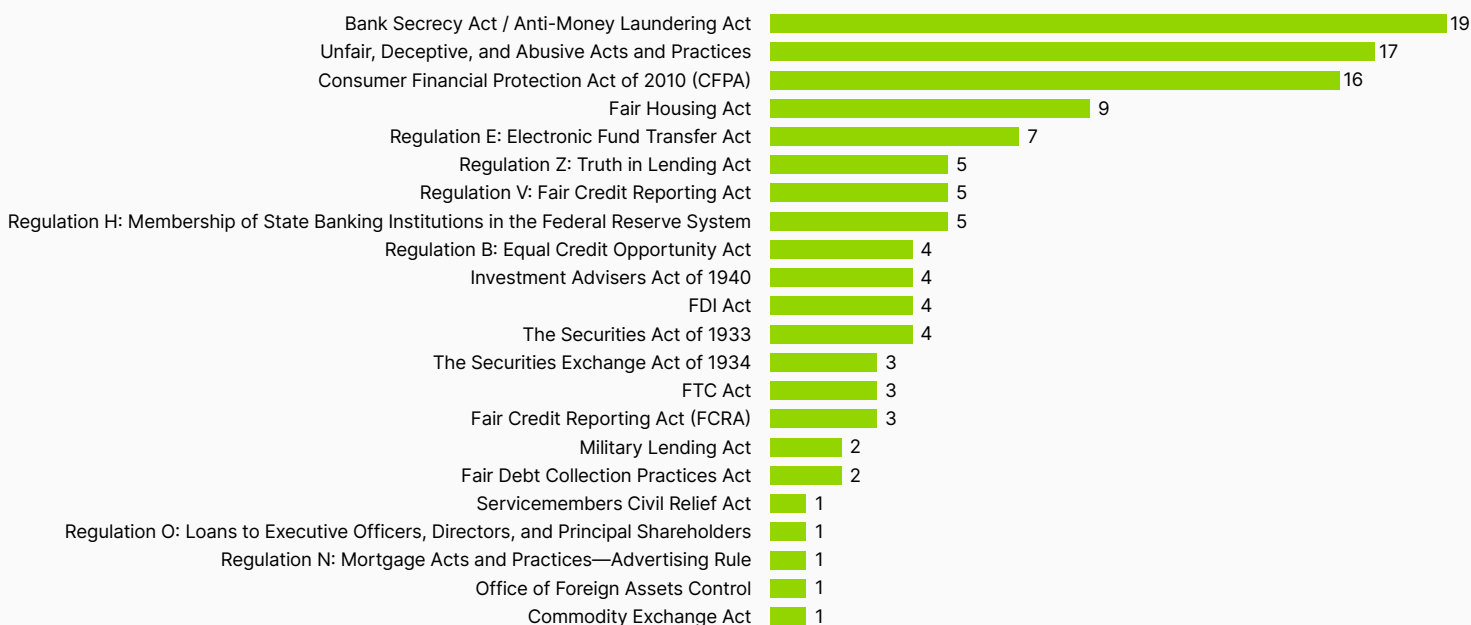
Quarterly Trend – Regulations Cited

The chart below provides a breakdown of the regulations cited in federal-level enforcement actions for Q2 2022 – Q2 2023.

National Flood Insurance Program was the most frequently cited area of law in federal actions during the past five quarters, with a total of 21 actions. Other key areas of cited regulations were **Bank Secrecy Act/Anti-Money Laundering Act, UDAAP, and CFPA**.

Q2 2022 – Q2 2023

Number of Regulations Cited by Federal Regulators



State-Level Enforcement Actions

The chart below provides a breakdown of select state-level enforcement actions in 1H 2023. As observed in prior quarters, New York and Massachusetts continue to primarily focus their attention to larger violations, while California, Florida, and Illinois primarily focused on enforcing a higher quantity of smaller level actions.



Note: Based on experience and historic data, judgmentally selected, and reviewed five states, as included in the above figures.

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About Guidehouse

At Guidehouse, we combine unequalled expertise, specialized resources, and deep domain experience to solve problems that cross sectors, industries and geographies for clients of the public sector and the regulated commercial markets they serve. Guidehouse is the only scaled consultancy in the world to fully integrate commercial and public or government businesses within each of our industry segments because complex problems require both perspectives to address and outwit. We see this integrated model as the future of consulting and the only way forward reshaping the future together with our clients.

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