



FINANCIAL SERVICES ADVISORY AND COMPLIANCE

FINANCIAL SERVICES ENFORCEMENT ACTIONS TRACKER – Q3 2017

HIGHLIGHTS FROM Q3 2017:

- **52 total actions** were levied against financial institutions by federal, state, and local regulators in the third quarter, which is a slight decrease from the comparable prior year quarter. 291 total actions have been issued over the last five quarters, the highest being the 72 actions issued in Q4 2016. To date, there has been no major falloff in regulatory enforcement actions stemming from the 2016 election, as the frequency of actions in Q4 2016 to Q3 2017 are generally on par with that of the same quarter in the prior year.
- State and local regulators were involved in a total of 12 actions or **23 percent of all actions, surpassing the Consumer Financial Protection Bureau (CFPB) as the most frequent actors in the period.** State regulators have posted a slight decrease in percentage of total actions from the 24 percent that were initiated in Q2 2017, but have more relative actions over the last five quarters than they have had historically.
- Regulators most commonly used settlements and formal agreements/consent orders to enforce regulatory requirements, with a total of **37 actions for 71 percent of the total Q3 2017 actions.** The next most commonly used method of enforcement was cease and desist, with six instances accounting for 12 percent of the quarter's actions. Lawsuits, which occurred four times in Q3 2017 for 8 percent of the total actions, have dropped to their lowest mark, both in number of actions and percentage of total actions, in the last five quarters.
- **Unfair, deceptive, or abusive acts or practices (UDAAP) violations accounted for the highest number of actions in the quarter, with 12 total actions,** as has been the case in four prior quarters reviewed. There was also a resurgence of enforcement for violations of the Servicemembers Civil Relief Act (SCRA) in Q3 2017, after three consecutive quarters with no related action.
- Over **\$26.7 billion in monetary fines, penalties, or borrower restitution was ordered for improper mortgage lending practices over the last five quarters,** with \$6.6 billion coming in Q3 2017. This is more than eight times the amount levied for the next most frequent infraction in Q3, which was securities, commodities, or FX violations for \$790 million.
- **12 actions in the quarter** were related to servicing or origination of closed-end mortgage loans, followed by four actions each related to student and auto loan products.



Q3 2017 SUMMARY

The number of regulatory enforcement actions increased 13 percent in Q3 2017 from Q2 2017, as seen in Figure 1, to a level comparable to the frequency observed in Q3 2016. 78 percent of enforcement actions were issued by the five major federal agencies, with 11 from the CFPB; eight each from the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Bank (FRB), and Department of Justice (DOJ); and five from the Office of the Comptroller of Currency (OCC) (see Figure 2). Compared to Q2 2017, the CFPB, OCC, FRB, and DOJ all experienced a measurable uptick in actions. Yet despite this increased activity, **state or local regulators were involved in a total of 12 actions, surpassing the CFPB (with 11 items) as the most frequent actor in the period.**

The CFPB's actions centered around unfair, deceptive, or otherwise improper mortgage practices or other consumer lending practices in violation of the Real Estate Settlement Procedures Act (RESPA), Fair Credit Reporting Act (FCRA), and Equal Credit Opportunity Act (ECOA), while the FDIC, OCC, and FRB issued actions for violations of rules and regulations including the Bank Secrecy Act (BSA) and anti-money laundering (AML) programs, capital adequacy requirements, the National Flood Insurance Program, and general governance deficiencies. The DOJ focus was centered on violations of the SCRA and False Claims Act.

REGULATORY ACTION FOR STUDENT AND MILITARY BORROWERS

Instances of enforcement for violations of the SCRA and for improper student lending practices have spiked in Q3 2017, after four consecutive quarters with little to no related action. In the current quarter, four service member-related actions were issued with financial penalties exceeding \$108 million, which surpassed the three total SCRA-related actions in the previous year. Similarly, four actions were levied against lenders who allegedly used unfair or deceptive means when marketing or servicing loans to students and public servants, up from one total student lending-related action in the four previous quarters combined.

Student Lending

On Aug. 23, 2017, the Massachusetts attorney general filed suit against student loan servicing behemoth Pennsylvania Higher Education Assistance Agency (PHEAA), doing business as FedLoan Servicing, claiming violations of state and federal law through the commission of unfair and deceptive loan servicing. Specifically, the suit alleges that PHEAA caused teachers and other public servants to lose benefits and financial assistance under the Public Service Loan Forgiveness and the Teacher Education Assistance for College and Higher Education Grant programs. Additionally, it was alleged that PHEAA overcharged student borrowers and prevented them from staying on track with income-driven repayment plans.¹ Massachusetts Attorney General Maura Healy asserted that PHEAA's actions have put the financial future of teachers and public servants at risk. The suit follows a June 2017 CFPB report that highlighted borrower complaints related to the administration of programs designed to provide student loan debt forgiveness, and seeks restitution to borrowers, financial penalties, and an injunction.²

The CFPB also took action against student loan owner National Collegiate Student Loan Trusts, alleging that it and its debt collector, Transworld Systems Inc., attempted to collect debt that the company could not prove that it owned.³ In the settlement, Transworld Systems Inc. will pay \$2.5 million to the CFPB, while National Collegiate Student Loan Trusts will pay \$7.8 million to the CFPB, \$7.8 million to the U.S. Treasury, and an additional \$3.5 million in restitution to borrowers.⁴

The CFPB focus on student lending violations will likely continue into Q4 2017, as the agency reported more than 20,000 borrower complaints received related to student loan servicing in the previous year⁵ and, as noted at the time of this report, reached a \$6.5 million settlement with major industry player Citibank related to allegations of harm to student borrowers in November.⁶

Military Borrowers

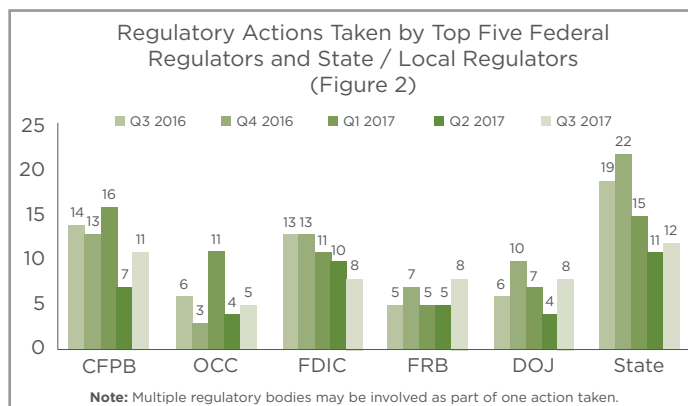
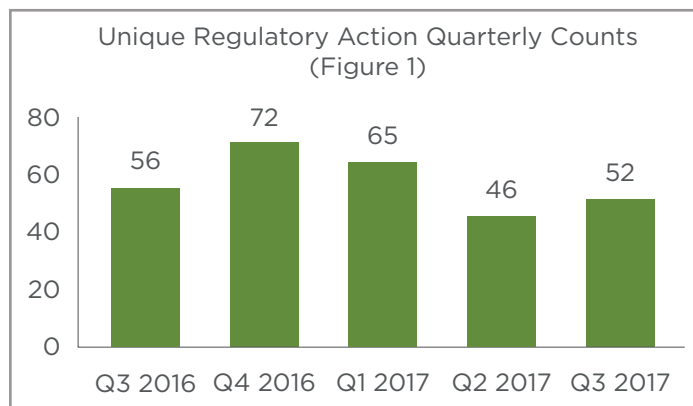
In addition to student lending violations, military borrowers saw similar regulatory focus with three DOJ settlements for violations of the SCRA and one additional settlement by Wells Fargo & Co. of a whistleblower lawsuit, which claimed hidden fees were charged to military veterans.

1. *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a FedLoan Servicing*, Aug. 23, 2017, <http://www.mass.gov/ago/docs/consumer/com-of-ma-v-pheaa-complaint-8-23-17.pdf>.
2. Nate Raymond, "Massachusetts Accuses PHEAA of Unfair Student Loan Servicing Practices," *Reuters*, Aug. 23, 2017, <https://www.yahoo.com/news/massachusetts-accuses-pheaa-unfair-student-loan-servicing-practices-172353430--sector.html>.
3. *Consumer Financial Protection Bureau v. National Collegiate Loan Trusts*, filed Sept. 18, 2017, http://files.consumerfinance.gov/f/documents/201709_cfpb_national-collegiate-student-loan-trusts_complaint.pdf.
4. Danielle Douglas-Gabriel, "Student Loan Companies Reach \$21.6 million Settlement over Dubious Debt Collection Lawsuits," *The Washington Post*, Sept. 18, 2017, https://www.washingtonpost.com/news/grade-point/wp/2017/09/18/student-loan-companies-reach-21-6-million-settlement-over-dubious-debt-collection-lawsuits/?utm_term=.f8b064e4791d.
5. Consumer Financial Protection Bureau, *CFPB Report Finds Consumer Complaints Spurred Actions That Brought More Than \$750 Million in Relief for Student Loan Borrowers*, Oct. 16, 2017, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-consumer-complaints-spurred-actions-brought-more-750-million-relief-student-loan-borrowers/>.
6. Yuka Hayashi, "Citibank Agrees to \$6.5 Million Settlement over Student Loans," *The Wall Street Journal*, Nov. 21, 2017, <https://www.wsj.com/articles/citibank-agrees-to-6-5-million-settlement-over-student-loans-1511303946>.

The largest of these was a \$108 million settlement reached by Wells Fargo & Co. in response to whistleblower allegations of unfair and deceptive practices in servicing loans made to military veterans. Eight lenders, including Wells Fargo, were accused of collecting hidden refinancing fees from military veterans and subsequently submitting fraudulent claims for federal loan guarantees. Wells Fargo is the seventh company to settle in response to the class-action suit, and theirs marks the largest settlement financially.⁷

Following is additional commentary on Q3 2017 financial enforcement action, and related charts and graphs.

Actions by Regulators (Figures 1-2)



Note: Multiple regulatory bodies may be involved with one action.

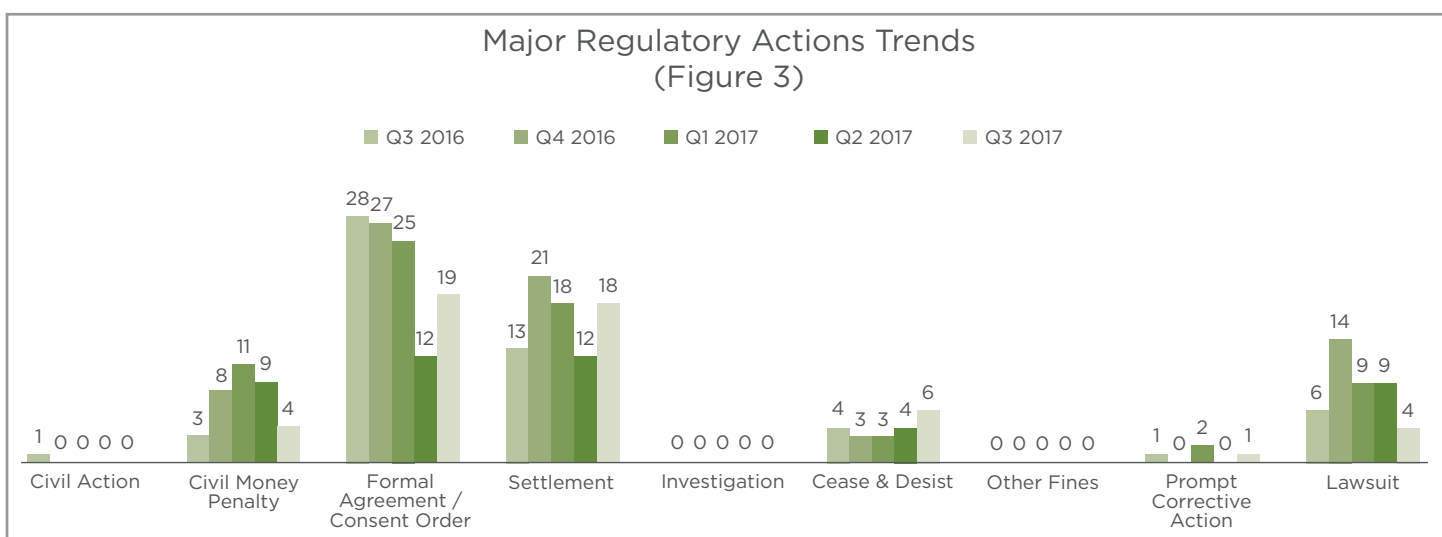
Highlights:

- The total regulatory actions identified in Q3 2017 increased by approximately 13 percent from Q2 2017 to total 52. This is generally on par with the number of actions in Q3 of the previous year, which totaled 56 enforcement actions.
- The CFPB, OCC, FDIC, FRB, and DOJ were the primary actors in the quarter, with the agencies' combined actions accounting for 62 percent of the total. Five of these actions were taken in

conjunction with state regulatory bodies, and an additional seven actions were taken by state or local regulators, independent from one of the key federal regulatory agencies.

- Enforcement action by all major actors increased in Q3 2017, with the exception of the FDIC, which decreased from 10 actions in Q2 2017 to eight actions in the current quarter.

Regulatory Trends by Action/Violation and Enforcement Occurrences (Figures 3-5)



Note: One regulatory action may be categorized as multiple action types.

7. Jonathan Stempel, "Wells Fargo to Pay US \$108 million over Veterans' Loans," *Reuters*, Aug. 4, 2017, <https://finance.yahoo.com/news/wells-fargo-pay-u-108-million-over-veterans-150943111--finance.html>.

Highlights:

- While the distribution of regulatory actions varies across each quarter, settlements and formal agreements/consent orders represented 65 percent of regulatory action types over the last five quarters.
- Frequency of lawsuits decreased in Q3 2017, with four total lawsuits. Despite this decrease, this action type is still the third most common method of enforcement, accounting for 14 percent of all actions in the last year.
- Formal agreements/consent orders and settlements ranked as the most frequent regulatory actions taken in Q3 2017. These top regulatory action types accounted for 71 percent of the total actions observed in the current quarter.
- Frequency of all observed action types increased in Q3 2017 from Q2 2017, except for civil money penalties and lawsuits, which each decreased from nine actions in Q2 2017 to four in Q3 2017.

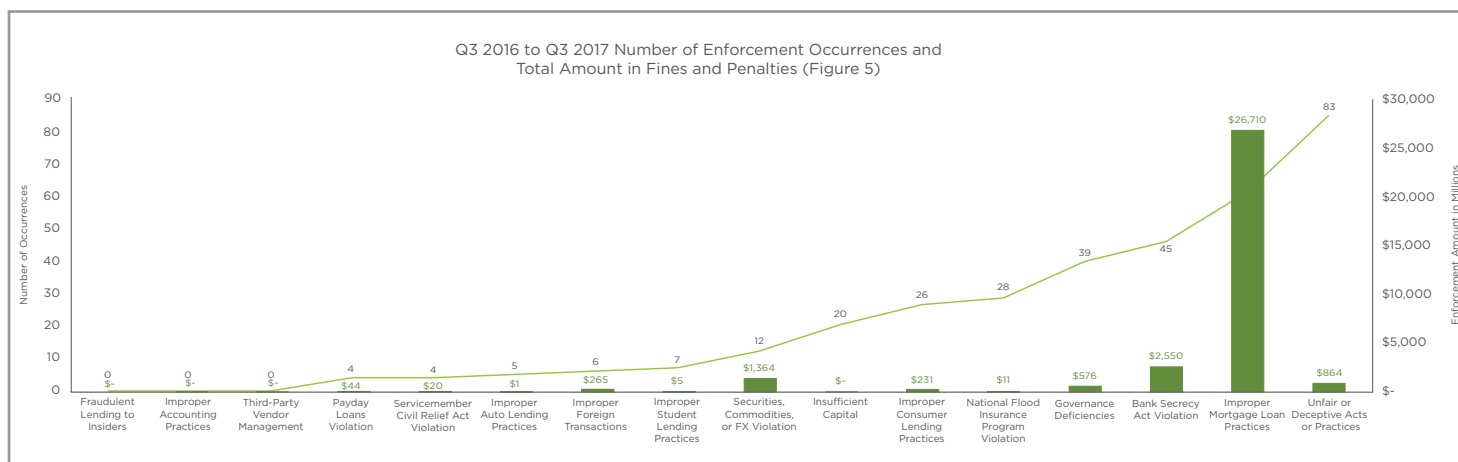
Q3 2016 to Q3 2017 Regulation/Regulating Agency Types of Violations (Figure 4)

REGULATORY VIOLATION TYPE	Q3 2016	Q4 2016	Q1 2017	Q2 2017	Q3 2017	TOTAL	% OF TOTAL
Allowance for Loan and Lease Losses	0	0	0	0	0	0	0.0%
Bank Secrecy Act/Anti-Money Laundering Act	13	10	8	4	6	41	12.3%
Basel - Capital Requirements	3	4	6	1	6	20	6.0%
Commodities or Securities Exchange Act	0	1	0	0	1	2	0.6%
Fair Housing Act	1	5	4	2	0	12	3.6%
Financial Industry Regulatory Authority	0	0	0	0	1	1	0.3%
Generally Accepted Accounting Principles	0	0	0	0	0	0	0.0%
Gramm-Leach-Bliley Act	0	0	0	0	0	0	0.0%
National Flood Insurance Program	2	4	9	6	4	25	7.5%
Office of Foreign Assets Control	0	0	0	2	0	2	0.6%
Regulation AB: Asset-Backed Securities & RBMS Violations	1	6	10	2	2	21	6.3%
Regulation B: Equal Credit Opportunity Act	1	2	2	0	1	6	1.8%
Regulation C: Home Mortgage Disclosure Act	0	0	1	0	0	1	0.3%
Regulation E: Electronic Funds Transfer Act	0	2	1	0	0	3	0.9%
Regulation H - Membership of State Banking Institutions in The Federal Reserve System	0	1	0	0	1	2	0.6%
Regulation O: Loans to Executive Officers, Directors, and Principal Shareholders	0	0	0	0	0	0	0.0%
Regulation V: Fair Credit Reporting Act	2	0	5	0	1	8	2.4%
Regulation X: Real Estate Settlement Procedures Act	0	1	5	5	4	15	4.5%
Regulation Y: Bank Holding Companies and Change in Bank Control	1	0	0	1	0	2	0.6%
Regulation Z: Truth in Lending Act	7	6	1	2	0	16	4.8%
Servicemembers Civil Relief Act	3	0	0	0	3	6	1.8%
State Foreclosure Laws	0	0	0	0	0	0	0.0%
State Payday Lending Statutes	0	3	2	0	1	6	1.8%
Unfair, Deceptive, and Abusive Acts and Practices	12	23	20	12	12	79	23.7%
Other	14	15	7	14	15	65	19.5%
Total	60	83	81	51	58	333	100.0%
Percentage of Total	18.0%	24.9%	24.3%	15.3%	17.4%	100.0%	100.0%

Note: Multiple violations types may be counted as part of one consent order or action taken by federal and state regulators.

Highlights:

- The top areas of violations over the last five quarters were issues regarding UDAAP (23.1 percent), BSA/AML (12.0 percent), the National Flood Insurance Program (7.3 percent), Regulation AB: asset-backed securities and residential mortgage-backed securities violations (6.1 percent), and Basel capital requirements (5.8 percent).
- For four regulatory violation types with enforcement action observed in Q2 2017, no actions were observed in Q3 2017: Fair Housing Act; Office of Foreign Assets Control (OFAC); Regulation Y: Bank Holding Companies and Change in Bank Control; and Regulation Z: Truth in Lending Act.
- Frequency of violations related to the National Flood Insurance Program and RESPA decreased from six and five actions, respectively, in Q2 2017 to four actions each in Q3 2017.



Note: Multiple violations types may be counted as part of one consent order or action taken by federal and state regulators.

Highlights:

- Improper mortgage loan practices accounted for the highest total related fines over the last five quarters; BSA/AML-related violations accounted for the second most total dollars in fines and penalties.
- UDAAP violations (24 percent), improper mortgage loan practices (18 percent), BSA/AML violations (13 percent), governance deficiencies (12 percent), National Flood Insurance Program violations (8 percent), and improper consumer lending practices (8 percent) were the largest enforcement occurrences over the last five quarters.

METHODOLOGY

Navigant's dedicated internal research team leverages regulatory agency publications *Factiva*, *SNL Financial*, and *LSM* to monitor regulatory action in the financial services space by key federal, state, and local regulators.

Our internal research team collected information about actions taken over the past five quarters by the following U.S. regulators including:

- OCC,
- FDIC,
- FRB,
- CFPB,
- DOJ,
- State and local regulators, and others.

with a focus on regulatory issues related to violations of:

- UDAAP,
- RESPA,
- BSA/AML,
- SCRA,
- ECOA,
- Truth in Lending Act,
- FCRA,
- Various state laws, and others.

Actions against individuals, removal or prohibition orders, termination of insurance, Section 19 letters, 1829 letters, and securities enforcement actions are not captured in this tracker. Actions published after Oct. 31, 2017, are not included in this report.

APPENDIX

Enforcement Tracker Violation Type Definitions

Bank Secrecy Act Violation: Failure of the financial institution to meet internal controls and monitoring requirements set forth by the Bank Secrecy Act or anti-money laundering regulations.

Fraudulent Lending to Insiders: Extension of credit to an insider, as defined by Regulation O and Regulation W, that exceed limits set by Regulation O or Regulation W, or provide the insider with any preferential treatment.

Governance Deficiencies: Failure of a financial institution and/or its board to fulfill its fiduciary responsibilities in various areas of bank management, such as compliance risk management, operational efficiency, or interest rate risk management. This category includes director and officer actions, compliance risk management, management replacement and operations, and credit risk and interest risk management.

Improper Accounting Practices: Failure to follow generally accepted accounting principles through means such as fraudulent reporting, omission of assets or liabilities, etc.

Improper Auto Lending Practices: Violation of law or regulation in the origination or servicing of an auto loan.

Improper Foreign Transactions: Violation of any law or regulation governing interactions with foreign entities; commonly an OFAC violation.

Improper Mortgage Loan Practices: Violation of a law or regulation in the origination or servicing of a mortgage loan or mortgage-backed securities.

Improper Student Lending Practices: Violation of law or regulation in the origination or servicing of an education loan.

Improper Consumer Lending Practices: Violation of law or regulation in the origination or servicing of a consumer loan, other than mortgage, auto, or student loans.

Insufficient Capital: Failure of a financial institution to meet minimum capital requirements set forth by Basel.

National Flood Insurance Program Violation: Violation of the National Flood Insurance Program requirements or related acts and regulations, such as the National Flood Insurance Act or Flood Disaster Protection Act (Regulation H).

Payday Loans Violation: Violation of any law or regulations in the issuance or servicing of payday loans.

Securities, commodities, or FX violation: Violation of any law or regulation in the distribution, monitoring, or trading of securities, commodities, or forex.

Servicemembers Civil Relief Act Violation: Violation of any law or regulation in the origination or servicing of a line of credit to an active-duty member of the U.S. Armed Forces.

Third-Party Vendor Management: Failure by an institution to ensure that third-party vendors are operating in compliance with pertinent laws and regulations.

Unfair and Deceptive Practices: Any unfair or deceptive statement, disclosure, or action that causes material harm to the consumer.

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