NAVIGANT

FINANCIAL SERVICES ADVISORY AND COMPLIANCE

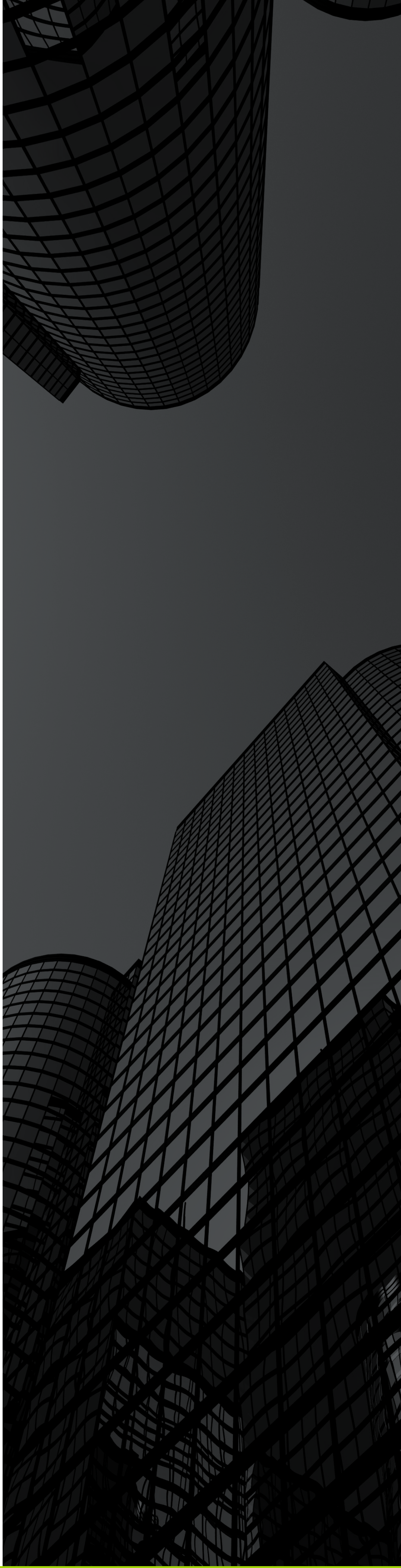
# FINANCIAL SERVICES ENFORCEMENT ACTIONS TRACKER - Q1 2017

## HIGHLIGHTS FROM Q1 2017:

- **65 total actions** were levied against financial institutions by federal, state, and local regulators. 307 total actions have been issued over the last five quarters, the highest being the 72 actions issued in Q4 2016. Frequency of actions in Q4 2016 and Q1 2017 are consistent with that of Q4 2015 and Q1 2016, respectively, showing no measurable change in the frequency of enforcement since the beginning of the Trump administration.
- The Consumer Financial Protection Bureau (CFPB), at nearly **25% of all actions**, accounted for the highest proportion of enforcement from a single body this period. This is up from 18% of actions in Q4 2016 and above the mark of 17% of all actions over the previous four quarters. State or local regulators were involved in 14 total actions in the quarter, or 22% of all enforcement, as compared to 25% over the previous four quarters.
- Regulators most commonly used Formal Agreements/Consent Orders to enforce regulatory requirements, issuing **25 in Q1 2017**, for 37% of all actions. The next-most common method of enforcement is the Settlement, which occurred 18 times in Q1 2017. Nine lawsuits were filed in Q1 2017 and 23 total were filed in the last two quarters, for a combined increase in legal action of over 50% from the prior three quarters.
- **27% of actions** were the result of unfair or deceptive acts or practices in the last five quarters, followed by improper mortgage loan practices at 23% of the total.
- Over **$32 billion in monetary fines, penalties, or borrower restitution** was ordered for improper mortgage-lending practices over the last five quarters, with $13.5 billion coming in Q1 2017. This is 16 times the amounts levied for the next most frequent infraction — which was Bank Secrecy Act/Anti-Money Laundering violations and totaled $2.1 billion.

## Q1 2017 SUMMARY

Frequency of regulatory enforcement actions decreased from Q4 2016 to Q1 2017, as seen in Figure 1, to a level comparable to the frequency observed in Q1 2016. 65% of enforcement actions were issued by the four major agencies, with 16 from the CFPB, 11 each from the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), and five from the Federal Reserve Bank (FRB) (see Figure 2), the second-highest proportion of action from the primary four observed in the last five quarters. State or local regulators were involved in a total of 14 actions or 22%, making them collectively the second-most frequent actors 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 Truth In Lending Act (TILA), Real Estate Settlement Procedures Act, Fair Credit Reporting Act and the Home Mortgage Disclosure Act (HMDA), while the FDIC, the OCC, and the FRB issued actions for violations of rules and regulations including BSA/AML, compliance with capital adequacy requirements, and the National Flood Insurance Program.



## CFPB AND Q1 LEGAL ACTIONS UPDATE

As first observed in the Q4 Enforcement Tracker, the instance of lawsuits brought by state and federal regulators against financial institutions has spiked dramatically in this quarter from the prior four periods. Nine lawsuits were filed in Q1 2017, after 14 filed in the prior quarter, primarily by the CFPB, related to alleged violations of several regulations, including Unfair, Deceptive or Abusive Acts or Practices (UDAAP), TILA, Regulation AB, and Regulation E: Electronic Fund Transfer Act. This count includes January suits against nation-leading student lender Navient[1] and large regional bank TCF.[2] The trend of financial institutions refusing to fold to regulatory action from the CFPB and other regulators, appears to continue into this quarter.

Financial institutions are not acquiescing as willingly to regulatory sanctions. This trend first started with PHH Mortgage , which took legal action to challenge the CFPB's constitutionality in response to a $103 million fine. Ocwen Financial Corp. has followed with a retaliatory suit, calling for the United States District Court for the Southern District of Florida to declare the CFPB unconstitutional in response to the CFPB's allegations, and accompanying legal action, or failures throughout the mortgage servicing life cycle.[3] While PHH was originally victorious in its suit, with the Court of Appeals ruling in October 2016 that the CFPB was unconstitutional and vacating the assessed penalty, the CFPB fought the ruling and in February 2017, the Court of Appeals agreed to rehear the case. Oral arguments were heard in May, and while no determination has been made, sources seem to suggest that the proceedings appear to have leaned toward a ruling in favor of the CFPB, perhaps in part due to precedent from prior Supreme Court rulings on removal of members of regulatory bodies and the potential implications a ruling of unconstitutionality might have for other regulators, such as the FDIC, FRB, or OCC.[5,6] The House-sponsored Financial Choice Act of 2016, which was unveiled in full in June, also has the potential to change the future of the CFPB and the financial regulatory environment. The act was passed by the House on June 8th.[7]

## HOME MORTGAGE DISCLOSURE ACT (HMDA)

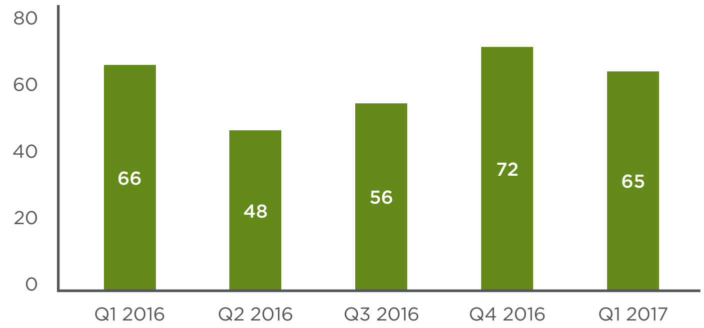
Amid ongoing legal action, the CFPB has continued to use other means to regulate financial intuitions, issuing formal agreement/consent orders and civil money penalties. One of the most notable of such enforcement actions is the March 15, 2017, civil money penalty order issued to Nationstar Mortgage for violations of the HMDA — the largest ever for a violation of the HMDA rule. The servicer was ordered to pay $1.75 million for allegedly failing to accurately report mortgage origination data for the period of 2012 to 2014.[8]

The HMDA was enacted in 1975 by Congress and governed by the FRB until regulatory authority was transferred to the CFPB in 2011. (To learn more about Navigant's HMDA Service Offering click here ) HMDA is implemented by Regulation C and requires mortgage lenders to make their lending data public to be used for evaluating the success of financial institutions in meeting the housing needs of their communities, driving public officials' distribution of public-sector investment, and identifying potential discrimination in lending practices.[9] The CFPB reviews both the accuracy of the data reported and the efficacy of the lender compliance programs in place to ensure adherence to HMDA rules.

The CFPB found Nationstar in violation in both areas, citing deficient compliance programs that resulted in erroneous data reported, and has ordered the company to develop and implement a HMDA compliance management system and correct HMDA data from the affected period, in addition to payment of the monetary penalty.[10]

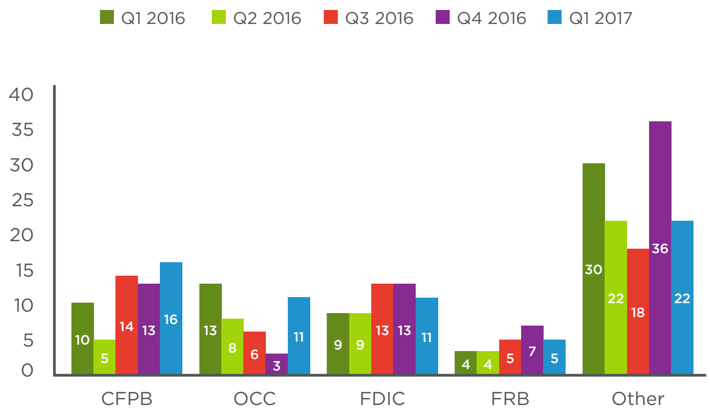
Additional commentary on Q1 2017 financial enforcement action, and related charts and graphs, can be found below.

**Figure 1. Regulatory Action Quarterly Counts**




1. https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/
2. http://news.tcfbank.com/press-release/arizona/tcf-financial-corporation-issues-statement%C2%A0regarding-lawsuit-filed-cfpb
3. https://www.housingwire.com/articles/39959-ocwen-pulls-a-phh-asks-court-to-declare-cfpb-unconstitutional-requests-doj-help
4. https://www.housingwire.com/articles/39615-in-major-reversal-us-sides-with-phh-calls-cfpb-structure-unconstitutional
5. https://www.americanbanker.com/news/cfpb-seen-as-likely-to-win-constitutional-case
6. https://www.americanbanker.com/news/how-cfpb-lawsuit-puts-spotlight-on-other-agencies-independence?utm_campaign=daily%20briefing-jun%205%202017&utm_medium=email&utm_source=newsletter&eid=46a873699dfc87ab236e1af9b4cbe06c
7. https://www.nytimes.com/2017/06/08/business/dealbook/house-financial-regulations-dodd-frank.html?_r=0
8. https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-nationstar-mortgage-flawed-mortgage-loan-reporting/
9. https://www.ffiec.gov/hmda/history.htm

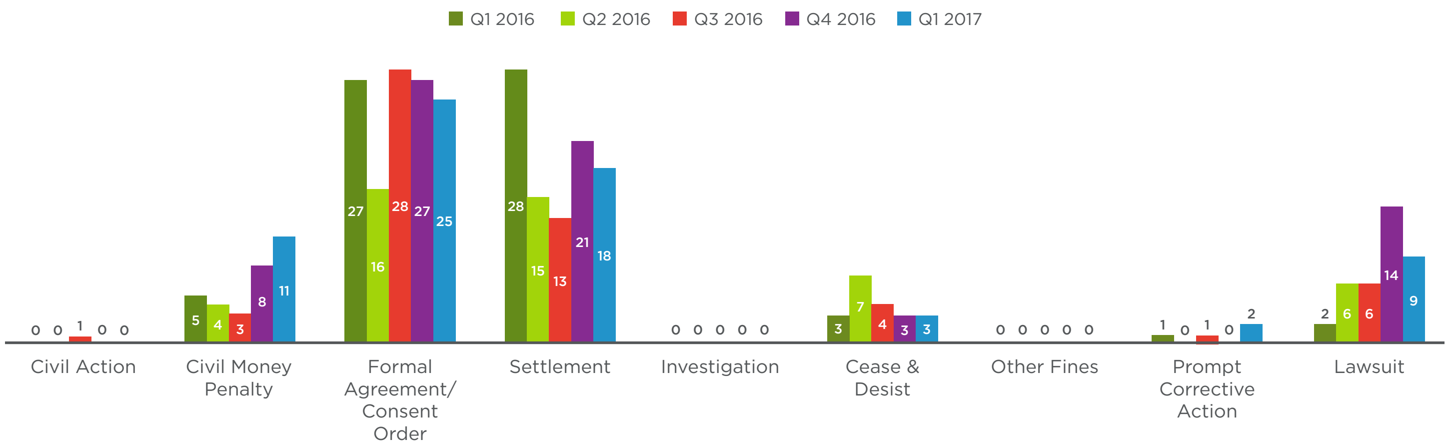
## Figure 2. Regulatory Actions Taken by Major Regulators




## Highlights:

- The total regulatory actions identified in Q1 2017 decreased by approximately 10% from the fourth quarter of 2016 to total 65. This is consistent with frequency of action in Q1 of the previous year, which accounted for 66 total enforcement actions.
- The CFPB, OCC, FDIC, and FRB were the primary actors in the quarter, with the agencies' combined actions accounting for 66% of the total. Five of these actions were taken in conjunction with state regulatory bodies, and an additional nine actions were taken by state or local regulators, independent from one of the key regulatory agencies.
- The Department of Justice (DOJ) was also a primary actor, and accounts for one-fourth of actions in the quarter not taken by the four primary regulatory bodies.
- Enforcement action by all major actors except the CFPB and OCC declined from Q4 2016. OCC actions nearly quadrupled from the prior period.

## Figure 3. Major Regulatory Action Trends




**Note:** Q2 and Q3 2016 Lawsuit Regulatory Action counts have been updated from zero to six for each quarter.

## Highlights:

- While the distribution of regulatory actions varies across each quarter, Settlement and Formal Agreement/Consent Order represented 70% of regulatory action types over the last five quarters.
- Frequency of Lawsuits has increased dramatically in recent periods, with over 50% more in the last two quarters than in the three previous review periods combined, accounting for 12% of all actions in the last year. This trend of financial institutions refusing to settle and forcing regulators to sue is evident in several high-visibility suits, in the first and second quarters of 2017, such as CFPB lawsuits against Navient in January and Ocwen in April.
- Formal Agreement/Consent Order and Settlement ranked as the most frequent regulatory actions taken in Q1 2017. These top regulatory actions types accounted for 63% of the total actions observed in the current quarter.
- Frequency of Civil Money Penalty increased approximately 38% in Q1 2017, after more than doubling in Q4 2016, to account for 16% of all actions observed in the quarter.

10. https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-nationstar-mortgage-flawed-mortgage-loan-reporting/

## Figure 4. Q1 2016 to Q1 2017 Regulation/Regulating Agency Types of Violations

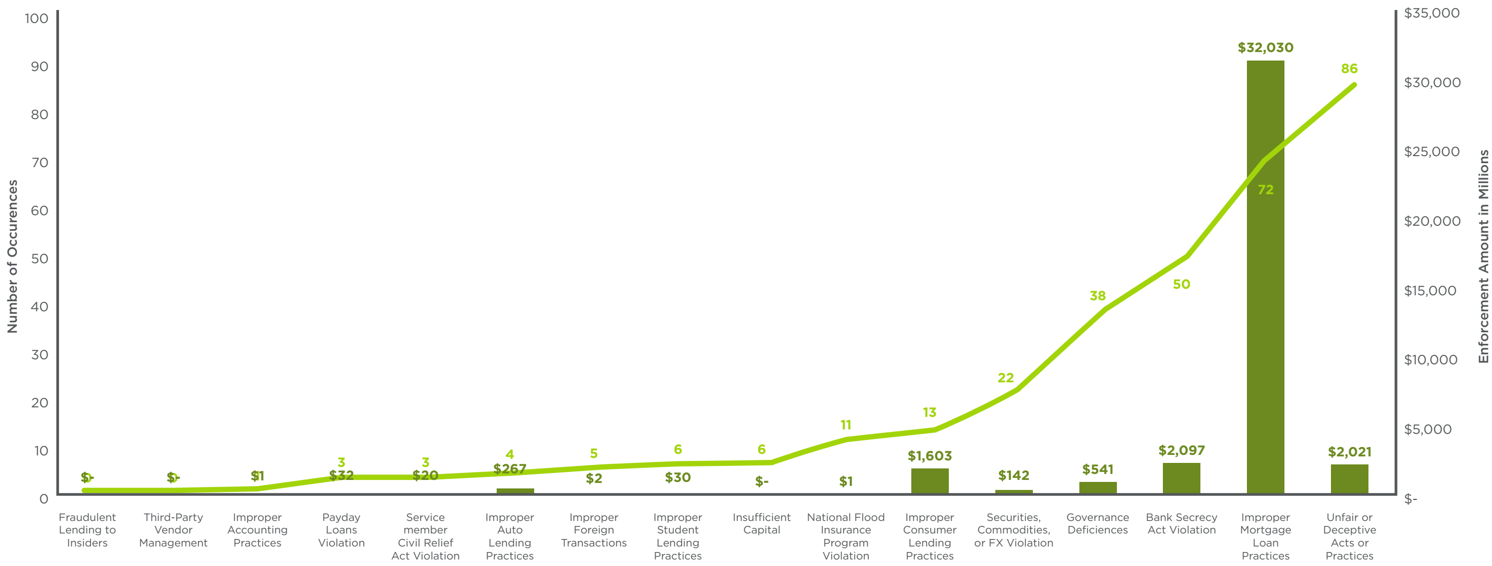
| REGULATORY VIOLATION TYPE | Q1 2016 | Q2 2016 | Q3 2016 | Q4 2016 | Q1 2017 | TOTAL | % OF TOTAL |
|---|---|---|---|---|---|---|---|
| Allowance for Loan and Lease Losses | 3 | 3 | 0 | 1 | 2 | 9 | 2.6% |
| Bank Secrecy Act/Anti-Money Laundering Act | 8 | 9 | 13 | 10 | 8 | 48 | 13.7% |
| Basel - Capital Requirements | 5 | 3 | 3 | 4 | 6 | 21 | 6.0% |
| Commodities or Securities Exchange Act | 3 | 2 | 0 | 1 | 0 | 6 | 1.7% |
| Fair Housing Act | 2 | 3 | 1 | 5 | 4 | 15 | 4,3% |
| Financial Industry Regulatory Authority | 0 | 1 | 0 | 0 | 0 | 1 | 0.3% |
| Generally Accepted Accounting Principles | 2 | 1 | 0 | 0 | 0 | 3 | 0.9% |
| Gramm-Leach-Bliley Act | 0 | 1 | 0 | 0 | 0 | 1 | 0.3% |
| National Flood Insurance Program | 1 | 4 | 2 | 4 | 9 | 20 | 5.7% |
| Office of Foreign Assets Control | 2 | 0 | 0 | 0 | 0 | 2 | 0.6% |
| Regulation AB: Asset-Backed Securities & RBMS Violations | 10 | 2 | 1 | 6 | 10 | 29 | 8.3% |
| Regulation B: Equal Credit Opportunity Act | 2 | 3 | 1 | 2 | 2 | 10 | 2.8% |
| Regulation C: Home Mortgage Disclosure Act | 0 | 0 | 0 | 0 | 1 | 1 | 0.3% |
| Regulation E: Electronic Funds Transfer Act | 0 | 0 | 0 | 2 | 1 | 3 | 0.9% |
| Regulation H: Membership of State Banking Institutions in The Federal Reserve System | 0 | 0 | 0 | 1 | 0 | 1 | 0.3% |
| Regulation O: Loans to Executive Officers, Directors, and Principal Shareholders | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Regulation V: Fair Credit Reporting Act | 0 | 1 | 2 | 0 | 5 | 8 | 2.3% |
| Regulation X: Real Estate Settlement Procedures | 1 | 1 | 0 | 1 | 5 | 8 | 2.3% |
| Regulation Y: Bank Holding Companies and Change in Bank Control | 1 | 0 | 1 | 0 | 0 | 2 | 0.6% |
| Regulation Z: Truth in Lending Act | 1 | 0 | 7 | 6 | 1 | 15 | 4.3% |
| Servicemembers Civil Relief Act | 0 | 0 | 3 | 0 | 0 | 3 | 0.9% |
| State Foreclosure Laws | 2 | 0 | 0 | 0 | 0 | 2 | 0.6% |
| State Payday Lending Statutes | 1 | 0 | 0 | 3 | 2 | 6 | 1.7% |
| Unfair, Deceptive, or Abusive Acts or Practices | 14 | 11 | 12 | 23 | 20 | 80 | 22.8% |
| Other | 11 | 10 | 14 | 15 | 7 | 57 | 16.2% |
| Total | 69 | 55 | 60 | 84 | 83 | 351 | 100.0% |
| Percentage of Total | 19.7% | 15.7% | 17.1% | 23.9% | 23.6% | 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 around UDAAP (22.8%); BSA/AML (13.7%); Regulation AB: Asset-Backed Securities and RMBS Violations (8.3%); and Basel/Capital Requirements (6.0%).
- Violations related to the National Flood Insurance Program and marketing or sale of residential mortgage-backed securities, particularly as governed by the Financial Institutions Reform Recovery and Enforcement Act of 1989, more than doubled collectively from Q4 2016. Five actions were levied related to violations of Regulation V: Fair Credit Reporting Act, after no related actions in Q4 2016 and only three total actions across the previous quarters.

### Figure 5. Q1 2017 to Q1 2016 Number of Enforcement Occurences and Total Amount in Fines and Penalties




**Note:** Multiple violation 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 (27%), improper mortgage loan practices (23%), BSA/AML violations (16%), governance deficiencies (12%), and improper consumer lending practices (7%) were the largest enforcement occurrences over the last five quarters.

## METHODOLOGY

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

- Office of the Comptroller of Currency ;
- Federal Deposit Insurance Commission;
- Federal Reserve Bank;
- Consumer Financial Protection Bureau; and, others.

### Regulatory issues include:

- Unfair, Deceptive, or Abusive Acts or Practices;
- Real Estate Settlement Procedures Act ;
- Bank Secrecy Act/Anti-Money Laundering;
- Servicemembers Civil Relief Act;
- Equal Credit Opportunity Act;
- Truth in Lending Act;
- Fair Credit Reporting Act; and, others.

## 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 Act.

**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 provides 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 Directors & Officers Actions; Compliance Risk Management; Management Replacement and Operations; Credit Risk and Interest Risk Management)

**Improper Accounting Practices:** Failure to follow GAAP (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 Office of Foreign Assets Control 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.

**Servicemember Civil Relief Act Violation:** Violation of any law or regulation in the origination of 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 or Deceptive Practices:** Any unfair or deceptive statement, disclosure, or action that causes material harm to the consumer.

## CONTACTS

To discuss Navigant's Financial Services Enforcement Actions Tracker in detail, please contact:


### PAUL NORING

Managing Director, Co-Practice Leader – Consumer Finance
pnoring@navigant.com
202.973.6550

### CHRIS SICURANZA

Managing Director, Co-Practice Leader - Consumer Finance
csicuranza@navigant.com
202.973.6545

### JOHN DELPONTI

Managing Director, Consumer Finance - BPO Solutions Leader - Consumer Finance
john.delponti@navigant.com
704.347.7650

### BEJI VARGHESE

Managing Director, Consumer Finance
beji.varghese@ncacf.com
704.347.7639

### RAMAN MANDAPAKA

Managing Director, Consumer Finance
raman.mandapaka@navigant.com
202.973.6572

### GREG CROUSE

Managing Director, Consumer Finance
greg.crouse@navigant.com
214.712.1589


**navigant.com**

### About Navigant

Navigant Consulting, Inc. (NYSE: NCI) is a specialized, global professional services firm that helps clients take control of their future. Navigant's professionals apply deep industry knowledge, substantive technical expertise, and an enterprising approach to help clients build, manage, and/or protect their business interests. With a focus on markets and clients facing transformational change and significant regulatory or legal pressures, the firm primarily serves clients in the healthcare, energy, and financial services industries. Across a range of advisory, consulting, outsourcing, and technology/analytics services, Navigant's practitioners bring sharp insight that pinpoints opportunities and delivers powerful results. More information about Navigant can be found at navigant.com.

linkedin.com/company/navigant

twitter.com/navigant