FINANCIAL SERVICES ADVISORY AND COMPLIANCE

FINANCIAL SERVICES ENFORCEMENT ACTIONS TRACKER — Q4 2017

HIGHLIGHTS FROM Q4 2017:

- **45 total actions** were levied against financial institutions by federal, state, and local regulators in the fourth quarter, which is a **38% decrease compared to Q4 2016.** 280 total actions have been issued over the last five quarters, the highest being the 72 actions issued in Q4 2016, which was the last full quarter prior to the change in administration.
- State and local regulators were involved in a total of 11 actions or **24% of all actions, surpassing the Federal Depository Insurance Commission (FDIC), which had eight actions in the quarter.** The Consumer Financial Protection Bureau (CFPB), Federal Reserve Bank (FRB), and the Department of Justice (DOJ) followed, with six actions each. State regulators have posted a slight increase in percentage of total actions from the 23% that were initiated in Q3 2017 and continue to 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 **29 actions comprising 64% of the total Q4 2017 actions.** The next most commonly used method of enforcement was civil money penalty, with eight instances accounting for 18% of the quarter's actions.
- **Unfair, deceptive, or abusive acts or practices (UDAAP) violations continue to account for the highest number of actions, with 12 total actions,** as has been the case in the four prior quarters reviewed. There was also increased focus on enforcement of the National Flood Insurance Program, with nine associated violations, or more than double the actions in the prior period.
- Over **$25.8 billion in monetary fines, penalties, or borrower restitution was ordered for improper mortgage lending practices over the last five quarters,** with $192.7 million coming in Q4 2017. The highest source of monetary fines or penalties in Q4 were related to UDAAP violations, which totaled $295.7 million and accounted for nearly half of the period's fines.
- **13 actions in the quarter** were related to servicing or origination of closed-end mortgage loans, with an additional six actions related to student loans and credit card products.

Q4 2017 SUMMARY

The number of regulatory enforcement actions decreased 13% in Q4 2017 from Q3 2017, as seen in Figure 1, to the lowest level observed in the last five quarters. Sixty-nine percent of enforcement actions were issued by the five major federal agencies, with eight from the FDIC; six each from the CFPB, the FRB, and the DOJ; and five from the Office of the Comptroller of Currency (OCC), as seen in Figure 2. Compared to Q3 2017, the CFPB, FRB, and DOJ all experienced a decrease in actions, while the FDIC and OCC activity remained constant. Despite this decreased activity, **state or local regulators were involved in a total of 11 actions, surpassing the FDIC (with eight actions) as the most frequent actor in the period and maintained the top spot for the third straight quarter.**

SHIFT IN LEADERSHIP BRINGS NEW FOCUS TO THE CFPB

In November 2017, after increased criticism of the CFPB's regulation of financial institutions, CFPB Director Richard Cordray announced his resignation[1] and named Leandra English, who was previously serving as the CFPB's chief of staff, to serve as interim deputy director of the agency.[2] On the same day as Cordray's appointment, President Trump announced his own replacement, Mick Mulvaney, the current director of the Office of Management and Budget. This announcement sparked uncertainty for the agency, as Mulvaney was an outspoken critic of the agency prior to his appointment and as a congressman, co-sponsored legislation to disband the agency.[3] On November 26, 2017, English responded to President Trump's appointment with a lawsuit[4] aimed at preventing Mulvaney's appointment, which was promptly resolved with a ruling in the president's favor, based on the 1998 Federal Vacancies Reform Act.[5]

The CFPB with Mulvaney at the helm is marked by a more conservative approach to regulation than with the prior Obama-era administration. Mulvaney has stated that in his view, the CFPB's role is to serve both lenders and consumers,[6] and began his tenure with a 30-day moratorium on new regulation and a temporary hold on payments made to remediate wronged consumers.[7] CFPB enforcement action in Q4 2017 was at its lowest in the last five quarters, with less than half of the number of actions observed in Q4 2016. As a result of this decrease, the agency is not the primary federal actor in the quarter for only the second time in the last five periods.

REGULATORY ACTION HIGHLIGHTS

Noteworthy actions from the quarter are detailed below:

Fair Credit Reporting Act

Conduent Business Services, a software company providing software to facilitate the transmission of consumer information to credit reporting agencies, entered into a consent order with the CFPB in November 2017. The CFPB stated that known flaws in the company's software resulted in its clients furnishing more than one million inaccurate records, which led to the CFPB issuing the company a $1.1 million civil money penalty. This action differs from previous credit reporting-related enforcement, which faulted only the data furnisher, rather than a software vendor for inaccurate reporting. **The precedent set by this action for holding the third-party software provider accountable for system flaws that resulted in inaccurate reporting demonstrates that third-party vendors that assist with furnishing data also have a responsibility to ensure reporting systems are accurate and furnish data with integrity.**[8]

Auto Lending and the Servicemembers Civil Relief Act

Wells Fargo settled with the DOJ for violations of the Servicemembers Civil Relief Act (SCRA), continuing a focus on servicemembers evidenced by three SCRA-related settlements last quarter. **The bank was found in violation of SCRA after it repossessed automobiles of active duty servicemembers without first obtaining required court orders.** Wells Fargo agreed to pay $5.4 million and to remediate 450 borrowers whose cars were inappropriately repossessed. This follows a $4.1 million-dollar payment in 2016, bringing the total penalty amount to $10.1 million.[9]

1. Elizabeth Dexheimer and Mark Niquette, "Cordray to Resign From CFPB, Allowing Trump to Remake Watchdog," Bloomberg Politics, November 15, 2017. https://www.bloomberg.com/news/articles/2017-11-15/cfpb-s-cordray-to-step-down-allowing-trump-to-remake-watchdog.
2. "Leandra English Named Deputy Director of the Consumer Financial Protection Bureau," CFPB Newsroom, November 24, 2017. https://www.consumerfinance.gov/about-us/newsroom/leandra-english-named-deputy-director-consumer-financial-protection-bureau.
3. Renae Merle, "The CFPB now has two acting directors. And nobody knows which one should lead the federal agency," Washington Post, November 24, 2017. https://www.washingtonpost.com/news/business/wp/2017/11/24/the-cfpb-now-has-two-acting-directors-and-nobody-knows-which-one-should-lead-the-federal-agency/?utm_term=.dfbefeb5422c.
4. *Leandra English v. Donald John Trump and John Michael Mulvaney*, filed November 26, 2017. http://cdn.cnn.com/cnn/2017/images/11/26/leandra.english.lawsuit%5b2%5d.pdf.
5. Katie Rogers and Tara Siegel Bernard, "President Wins Round in the Battle for the Consumer Bureau," New York Times, November 28, 2017. https://www.nytimes.com/2017/11/28/us/politics/mick-mulvaney-leandra-english-consumer-bureau.html.
6. Ted Knutson, "The Little Black Book of Billionaire Secrets Mulvaney Takes Another Step Pushing CFPB Toward Light Touch Regulation," Forbes, March 1, 2018. https://www.forbes.com/sites/tedknutson/2018/03/01/mulvaney-takes-another-step-pushing-cfpb-towards-light-touch-regulation/#710464ad5562.
7. Gregory Korte, "What does Mulvaney's appointment mean for the future of CFPB?" USA TODAY, November 28, 2017. https://www.usatoday.com/story/news/politics/2017/11/28/what-does-mulvaneys-appointment-mean-future-cfpb/901067001/.
8. "CFPB Fines Xerox Business Services $1.1 Million for Incorrect Consumer Information Sent to Credit Reporting Agencies," CFPB Newsroom, November 20, 2017. https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-xerox-business-services-11-million-incorrect-consumer-information-sent-credit-reporting-agencies/.
9. "Justice Department Obtains $5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services," The United States Department of Justice, Justice News, November 14, 2017. https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful.

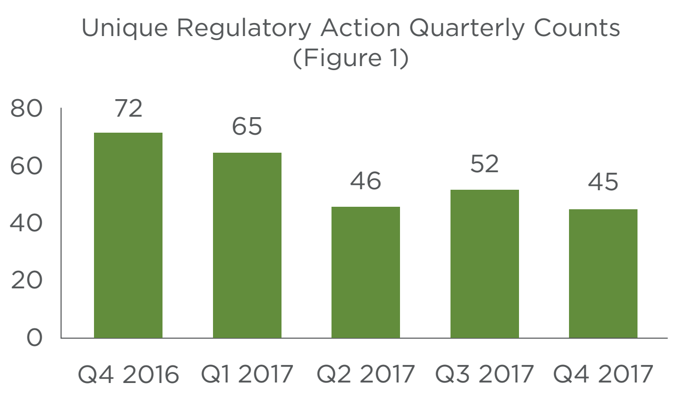
Per Diem Interest Exposure

Nationstar Mortgage, doing business as Mr. Cooper, settled with the California Department of Banking Oversight to **resolve allegations of overcharging borrowers for per diem interest,**[10] **recording fees, and origination charges, and failure to properly investigate consumer complaints.** The mortgage servicer is required to pay $9.2 million as a result of the settlement to provide restitution to over 48,000 borrowers, and associated penalties and investigation costs.[11]

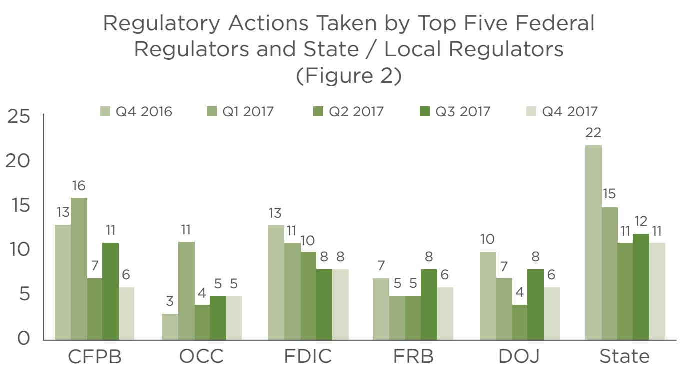
National Flood Insurance Program

Citibank agreed to enter into a consent order with the Office of the Comptroller of Currency (OCC) to avoid civil money penalty proceedings over allegations of continued failure to comply with the National Flood Act of 1968. **Specifically, the bank was accused of failures to meet regulatory requirements related to forced placement of flood insurance,** and as a result of the OCC's findings, agreed to pay $452,000, without admitting or denying any wrongdoing.[12] Citibank also faced regulatory scrutiny in Q4 2017 for violations related to Bank Secrecy Act/Anti-Money Laundering Act (BSA/AML) and for Fair Credit Reporting Act (FCRA) violations related to student loan products.

Actions by Regulators (Figures 1-2)



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



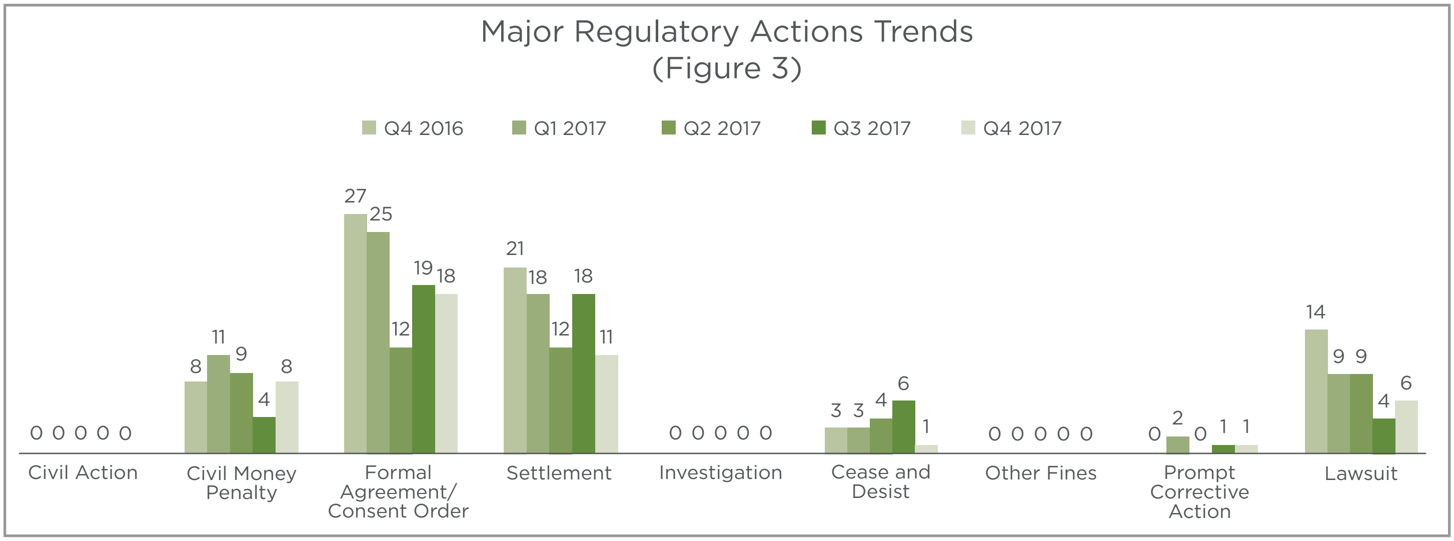
Note: Multiple regulatory bodies may be involved with one action.

Highlights:

- The total regulatory actions identified in Q4 2017 decreased by approximately 13% from Q3 2017 to a total of 45. This is a substantial decrease in activity from Q4 of the previous year, which totaled 72 enforcement actions and had the most regulatory activity of the last five quarters.
- Enforcement actions by all major actors decreased in Q4 2017, except for the FDIC and OCC, which accounted for the same number of actions in the current quarter and in Q3 2017.
- Eleven enforcement actions were levied by state and local regulators — two in conjunction with state regulatory bodies, and an additional nine actions independent from one of the key federal regulatory agencies — making state regulators the most active in the quarter.

10. Per diem interest is daily interest charged to borrowers outside of the standard loan repayment period, collected by mortgage lenders for the period between loan closing and the first day of the payment cycle, when the lender takes control of the note and begins servicing.
11. State of California, Department of Business Oversight Press Release, "DBO Announces $9.2 Million Settlement with Nationstar-Mr. Cooper Mortgage," December 4, 2017. http://www.dbo.ca.gov/Press/press_releases/2017/Press%20release%20-%20Nationstar-Mr.%20Cooper%20-%20FINAL%20-%2012-1-17.pdf.
12. United states of America Department of the Treasury, Office of the Comptroller of the Currency, In the Matter of Citibank, N.A., *Stipulation and Consent to the Issuance of an Order for a Civil Monetary Penalty*, #2017-096. https://www.occ.gov/static/enforcement-actions/ea2017-096.pdf.

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



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

Highlights:

- While the distribution of regulatory actions varies across each quarter, formal agreement/consent order accounted for the greatest number of actions in Q4 2017, with 18 total actions.
- Frequency of lawsuits increased slightly in Q4 2017, with six total lawsuits (two additional actions). However, lawsuit activity has generally been on a downward trend over the last five quarters and is less than half the level of the comparable 2016 quarter. Despite this decreasing trend, this action type is still the third most common method of enforcement, accounting for nearly 15% of all actions in the last year.
- Frequency of all observed action types decreased in Q4 2017 from Q3 2017, except for civil money penalty and lawsuits, which each increased from four actions in Q3 2017 to eight and six actions, respectively, in Q4 2017.
- Settlement has seen its lowest number of actions across the last five quarters with only 11 total actions, which is a 48% decrease from the Q3 2016 high for this period.

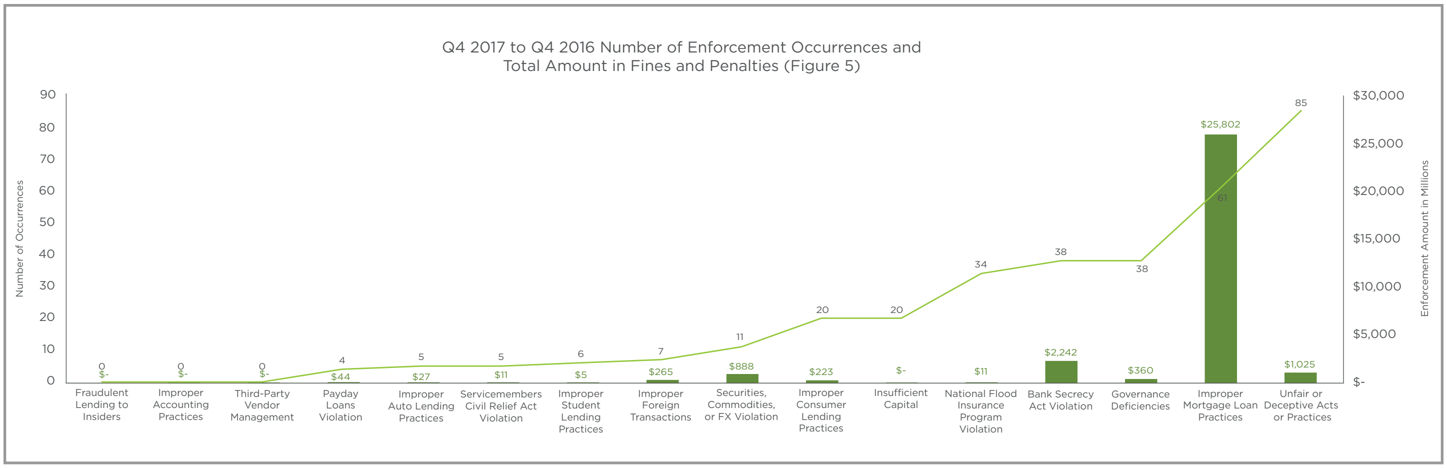
Q4 2016 to Q4 2017 Regulation/Regulating Agency Types of Violations (Figure 4)

REGULATORY VIOLATION TYPE	Q4 2016	Q1 2017	Q2 2017	Q3 2017	Q4 2017	TOTAL	% OF TOTAL
Allowance for Loan and Lease Losses	1	2	1	5	4	13	3.90%
Bank Secrecy Act/Anti-Money Laundering Act	10	8	4	6	6	34	10.20%
Basel — Capital Requirements	4	6	1	6	2	19	5.70%
Commodities or Securities Exchange Act	1	0	0	1	2	4	1.20%
Fair Housing Act	5	4	2	0	0	11	3.30%
Financial Industry Regulatory Authority	0	0	0	1	1	2	0.60%
Generally Accepted Accounting Principles	0	0	0	0	0	0	0.00%
Gramm-Leach-Bliley Act	0	0	0	0	0	0	0.00%
National Flood Insurance Program	4	9	6	4	9	32	9.60%
Office of Foreign Assets Control	0	0	2	0	1	3	0.90%
Regulation AB: Asset-Backed Securities & RBMS Violations	6	10	2	2	2	22	6.60%
Regulation B: Equal Credit Opportunity Act	2	2	0	1	0	5	1.50%
Regulation C: Home Mortgage Disclosure Act	0	1	0	0	0	1	0.30%
Regulation E: Electronic Funds Transfer Act	2	1	0	0	0	3	0.90%
Regulation H: Membership of State Banking Institutions in The Federal Reserve System	1	0	0	1	0	2	0.60%
Regulation O: Loans to Executive Officers, Directors, and Principal Shareholders	0	0	0	0	0	0	0.00%
Regulation V: Fair Credit Reporting Act	0	5	0	1	2	8	2.40%
Regulation X: Real Estate Settlement Procedures Act	1	5	5	4	0	15	4.50%
Regulation Y: Bank Holding Companies and Change in Bank Control	0	0	1	0	0	1	0.30%
Regulation Z: Truth in Lending Act	6	1	2	0	1	10	3.00%
Servicemembers Civil Relief Act	0	0	0	3	2	5	1.50%
State Foreclosure Laws	0	0	0	0	0	0	0.00%
State Payday Lending Statutes	3	2	0	1	0	6	1.80%
Unfair, Deceptive, or Abusive Acts or Practices	23	20	12	12	12	79	23.70%
Other	15	7	14	15	8	59	17.70%
Total	84	83	52	63	52	334	100.00%
Percentage of Total	25.10%	24.90%	15.60%	18.90%	15.60%	100.00%	100.00%

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

Highlights:

- Frequency of violations related to the National Flood Insurance Program increased from four actions in Q3 2017 to nine actions in Q4 2017.
- The top areas of violations over the last five quarters were: issues around UDAAP (23.7%); BSA/AML (10.2%); National Flood Insurance Program (9.6%); Regulation AB: asset-backed securities and residential mortgage-backed securities violations (6.6%); and Basel/capital requirements (5.7%).
- There were four regulatory violation types with enforcement action observed in Q3 2017 and no actions in Q4 2017: Regulation X: Real Estate Settlement Procedures Act (RESPA), Regulation B: Equal Credit Opportunity Act, Regulation H: membership of state banking institutions in the Federal Reserve system, and state payday lending statutes.



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 highest total dollars in fines and penalties.
- UDAAP violations (25%), improper mortgage loan practices (18%), BSA/AML violations (11%), governance deficiencies (11%), National Flood Insurance program violation (10%), and improper consumer lending practices (6%) 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
- Equal Credit Opportunity Act
- 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 Jan. 31, 2018, 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 directors and officers 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 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 Forex Violation: Violation of any law or regulation in the distribution, monitoring, or trading or securities, commodities, or forex.

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

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About Navigant

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