



FINANCIAL SERVICES ADVISORY AND COMPLIANCE

FINANCIAL SERVICES ENFORCEMENT ACTIONS TRACKER — Q1 2018

HIGHLIGHTS FROM Q1 2018:

- **No actions were issued by the Consumer Financial Protection Bureau (CFPB) in the first quarter of 2018** — this is the first instance of no new actions from a regulator since the inception of this publication.
- **Forty-eight total actions** were levied against financial institutions by federal, state, and local regulators in the first quarter, which is a **26% decrease compared to Q1 2017, but up 7% since last quarter**. Two hundred fifty-eight total actions have been issued over the past five quarters, the most in a single quarter being the 65 actions issued in Q1 2017, where there was still some overlap between the current and previous administrations.
- The main driver of actions was again **state and local regulators, which were involved with 13 actions, or 27% of all actions**. State activity, which increased 18% in the period, continues to step up to fill the void of declining CFPB activity.
- The **Federal Reserve Bank (Fed) had 11 actions in the quarter**. This is the most actions from the Fed in a single period observed over the past five quarters and **up 83% from the previous quarter**.
- Regulators most frequently used Settlements and Civil Money Penalties to enforce regulatory requirements, with a total of **33 actions composing 69% of the 48 total Q1 2018 actions**. The next most commonly used method of enforcement was Formal Agreement/Consent Order, with 10 instances accounting for 21% of the quarter's 48 actions.
- **Thirteen actions in the quarter** were related to servicing or origination of closed-end mortgage loans, with an additional three actions related to securitized mortgage products.
- **Bank Secrecy Act and Anti-Money Laundering rules-related violations were the area of law that was cited the most during the quarter, with a total of 13 actions**. This is the first time in the past five quarters reviewed where Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) violations have not been the most frequent. There was also increased focus on enforcement of Regulation E: Electronic Fund Transfer Act (EFTA) and Regulation X: Real Estate Settlement Procedures Act (RESPA), which had three and two related actions in Q1 2018, respectively, after no action was observed in Q4 2017.
- **Improper mortgage loan practices remained the source of highest amount of associated monetary fines, with over \$23.1 billion in the past five quarters**. Improper mortgage loan practices also accounted for the highest amount of fines in Q1, with \$2.8 billion, or 63% of total fines. This was followed by violations related to the Bank Secrecy Act, which totaled \$1.2 billion, or 28% of the total, which is the highest amount of BSA-related fines observed for a single period in the past five quarters.



Q1 2018 SUMMARY

The number of regulatory enforcement actions increased 7% from Q4 2017 to Q1 2018 and was driven primarily by an increase in activity from the Fed, as seen in Figures 1 and 2. Sixty-seven percent of enforcement actions were issued by the five major federal agencies, with 11 from the Fed, 10 from the Federal Deposit Insurance Corporation (FDIC), seven from the Department of Justice (DOJ), four from the Office of the Comptroller of the Currency (OCC), and none from the CFPB, as seen in Figure 2. Compared to Q4 2017, the FDIC, Fed, and DOJ all experienced an increase in actions, while the CFPB and OCC activity dropped. **State or local regulators were involved in a total of 13 actions and maintained the top spot for the fourth straight quarter.**

NO NEW ENFORCEMENT ACTION ISSUED BY THE CFPB IN Q1 2018

In its first full quarter with Mick Mulvaney at the helm, the CFPB's regulatory action has dropped to an all-time low. While the start of his tenure at the CFPB has been marked by a conservative approach to regulation, particularly when compared to Richard Cordray's CFPB stint, Mulvaney has not brought the agency to a complete standstill, despite the lack of any new enforcement actions in the quarter. The CFPB has 25 active lawsuits, as compared to 26 when Mulvaney took control,¹ and in Q2 of this year, issued its second-largest fine ever associated with an auto lending-related settlement with Wells Fargo.²

In addition to decreased regulation, Mulvaney has also promised to put an end to the CFPB's public consumer complaints database,³ to cut agency spending and limit funding from the Fed.⁴ Under Mulvaney, the CFPB has issued 12 requests for information (RFIs) seeking input from the public on ways to improve several key regulatory functions, including bureau enforcement process, guidance and implementation support, inherited and new regulations and rule-making authorities, the rule-making process, and supervision program.⁵

Additionally, two updates to CFPB enforcements from prior periods occurred in the quarter. The October 2016 decision in the case brought by mortgage lender PHH Corp. challenging the single-leader structure of the CFPB was overturned by the D.C. Circuit Court of Appeals,⁶ however the court upheld their determination that the CFPB was incorrect in its interpretation of RESPA's kickback provision, vacating the monetary penalty against PHH and upholding the ruling against retroactive application of the bureau's new interpretation to the law.⁷ Additionally, a penalty amount related to the 2013 CFPB suit brought against personal lender CashCall was deemed to be too high by the same judge who initially ruled in favor of the CFPB, and was decreased from \$287 million to \$10.3 million.⁸

REGULATORY ACTION HIGHLIGHTS

Noteworthy Actions from the Quarter are Detailed Below:

Bank Secrecy Act/Anti-Money Laundering Rules

Rabobank National Association, a California-based subsidiary of Dutch Coöperatieve Rabobank U.A., was disciplined by the OCC and DOJ in February 2018 after pleading guilty to violations of Bank Secrecy Act and Anti-Money Laundering laws. In addition to findings from the OCC of **deficiencies in the bank's compliance and due diligence programs as they relate to BSA/AML, and omission of suspicious activity from Suspicious Activity Reports filed,**⁹ Rabobank also admitted to **DOJ allegations of intentionally impeding the OCC during their review.** In the Feb. 7, 2018, hearing, the bank admitted that the deficiencies in BSA/AML identified by the OCC resulted in over \$360 million in illegal funds to be deposited into the bank's California branches and transferred without proper noticing.¹⁰ This follows sanctions in 2006 and 2008 for materially similar violations.¹¹ The bank will pay over \$360 million in related fines as a result of the violations.

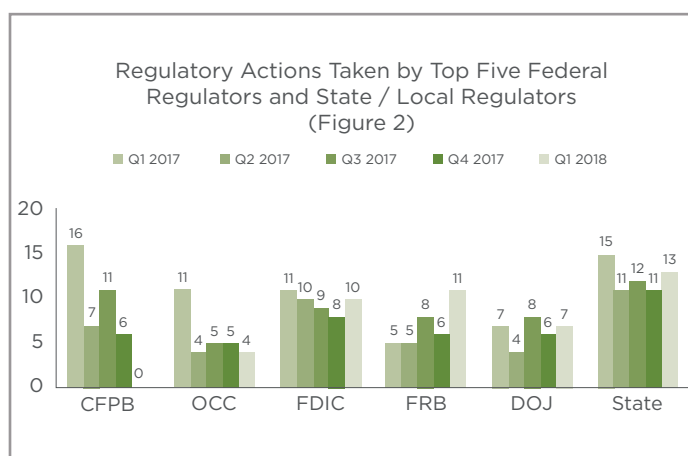
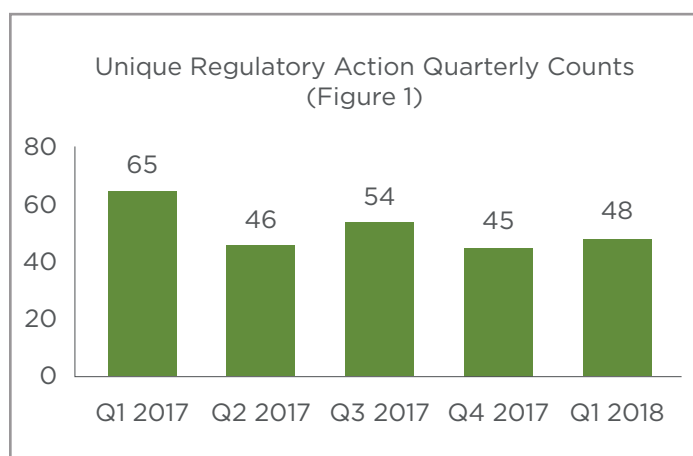
1. Katy O'Donnell, "Mick Mulvaney isn't blowing up the CFPB," Politico, April 30, 2018, <https://www.politico.com/story/2018/04/30/mick-mulvaney-consumer-protection-507460>.
2. Wayne Duggan, "CFPB Fines Wells Fargo \$1 Billion," Yahoo! Finance, April 20, 2018, <https://finance.yahoo.com/news/cfpb-fines-wells-fargo-151851943.html>.
3. Julia Horowitz and Donna Borak, "Mick Mulvaney wants to shut public out of CFPB's 'Yelp' of banks," CNN Money, April 24, 2018, <http://money.cnn.com/2018/04/24/news/economy/mulvaney-cfpb-database-complaints/index.html>.
4. Elizabeth Dexheimer, "Mulvaney's CFPB Considers Moving Staff to the Basement, or Dallas," Bloomberg Businessweek, May 1, 2018, <https://www.bloomberg.com/news/articles/2018-05-01/mulvaney-s-cfpb-considers-moving-staff-to-basement-or-to-dallas>.
5. Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/open-notices/call-for-evidence/>.
6. Evan Weinberger, "CFPB Structure Is Constitutional, DC Circ. Says In Reversal," Law360, January 31, 2018, <https://www.law360.com/articles/938626/cfpb-structure-is-constitutional-dc-circ-says-in-reversal>.
7. David F. Freeman, Jr., Christopher L. Allen, Michael A. Mancusi, Brian C. McCormally, Kevin M. Toomey, "Implication of the DC Circuit Court's Ruling in PHH v. CFPB," Arnold & Porter, February 9, 2018, <https://www.arnoldporter.com/en/perspectives/publications/2018/02/implications-of-the-dc-circuit-courts-ruling>.
8. James Rufus Koren, "Judge fines CashCall \$10.3 million, a fraction of what was sought by CFPB for lending law violations," LA Times, January 23, 2018, <http://www.latimes.com/business/la-fi-cashcall-ruling-20180123-story.html>.
9. Office of the Comptroller of the Currency, "OCC Assesses \$50 Million Civil Money Penalty and Terminates Consent Order Against Rabobank, N.A.," February 7, 2018, <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-15.html>.
10. Department of Justice, "Rabobank NA Pleads Guilty, Agrees to Pay Over \$360 Million," Justice News, February 7, 2018, <https://www.justice.gov/opa/pr/rabobank-na-pleads-guilty-agrees-pay-over-360-million>.
11. Ivana Kottasova, "European bank caught laundering Mexican drug money," CNN Money, February 8, 2018, <http://money.cnn.com/2018/02/08/news/rabobank-mexico-drug-money-laundering/index.html>.

Regulators also took action against U.S. Bancorp and its subsidiary U.S. Bank for violations of the Bank Secrecy Act due to failure to implement a sufficient anti-money laundering program. **FinCEN, the DOJ, the Fed, and the OCC assessed fines to the bank for knowingly misreporting suspicious activity by capping the number of suspicious-activity alerts allowed by their automated transaction-monitoring software.**¹² The regulators cited various governance deficiencies in the bank's BSA/AML programs, and assessed a total of \$728 million in monetary fines in response.

Fair Lending

The city of Sacramento, Calif., filed suit against Wells Fargo in federal court in February, alleging that the bank **violated the federal Fair Housing Act by steering African-American and Latino borrowers to high-cost loans when less-risky loans were available based on borrower's credit.** This follows a suit filed in 2017 by the city of Philadelphia, Pa., and cites enforcement from the Fed against the bank for deficiencies in compliance and risk management programs that resulted in adverse action to borrowers.¹³ A suit from Illinois' Cook County may follow, after a March 26, 2018, ruling from a U.S. District Court judge allowing the county to pursue federal charges against Wells Fargo for its discriminatory lending practices.¹⁴ This action continues the **recent trend of state and local regulators stepping in to regulate financial institutions either in conjunction with or in place of federal regulators.**

Actions by Regulators (Figures 1-2)



Note: Multiple regulatory bodies may be involved with one action. Actions from prior quarters issued after the prior publication's cutoff date may be included in the above figures.

Highlights:

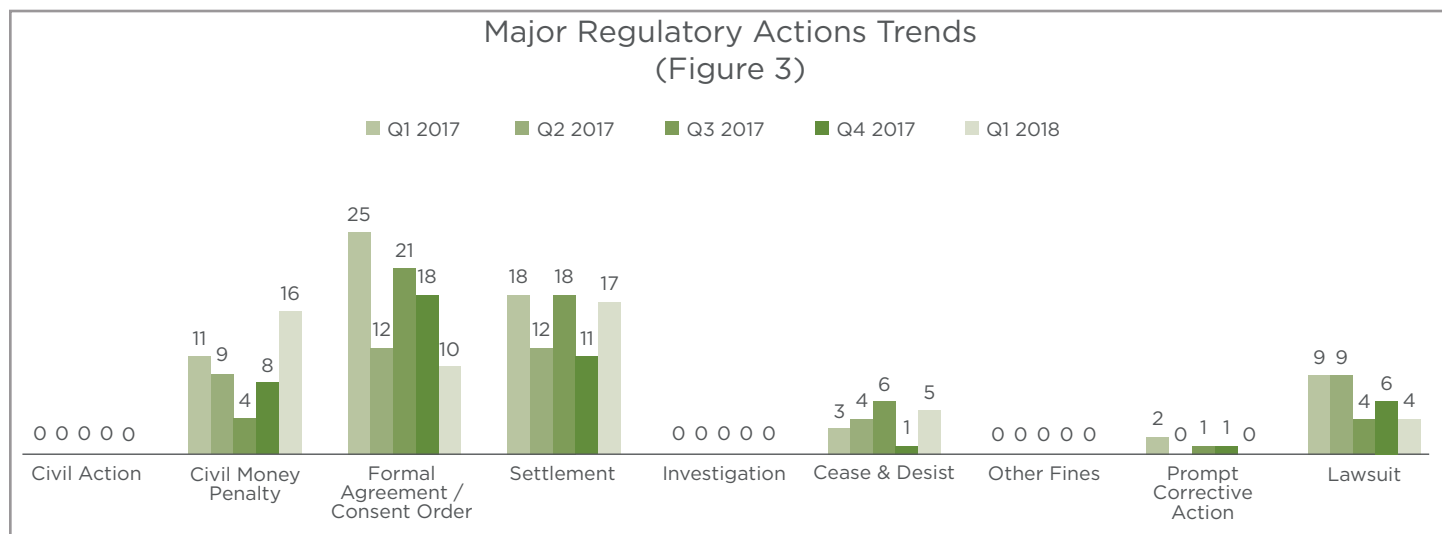
- The total regulatory actions identified in Q1 2018 increased by approximately 7% from Q4 2017 to a total of 48. This is a substantial decrease in activity from Q1 of the previous year, which totaled 65 enforcement actions and had the most regulatory activity of the past five quarters.
- Enforcement actions by all major actors increased in Q1 2018, except for the CFPB and OCC, which each had the fewest number of actions in the past five quarters.
- Thirteen enforcement actions were levied by state and local regulators — three in conjunction with federal regulatory bodies, and an additional 10 actions independent from any of the key federal regulatory agencies — making state regulators the most active in the quarter.

12. "US Bank Fined \$613M For AML Violations," February 15, 2018, PYMNTS.com, <https://www.pymnts.com/bank-regulation/2018/us-bank-occ-doj-fincen-financial-crime/>.

13. Ben Lane, "Sacramento sues Wells Fargo over lending discrimination," Housingwire, February 28, 2018, <https://www.housingwire.com/articles/42637-sacramento-sues-wells-fargo-over-lending-discrimination>.

14. Jonathan Stempel, "Chicago can pursue part of Wells Fargo predatory lending case," Reuters, March 27, 2018, <https://www.reuters.com/article/us-wells-fargo-chicago/chicago-can-pursue-part-of-wells-fargo-predatory-lending-case-idUSKBN1H32YD>.

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



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.

Highlights:

- While the distribution of regulatory actions varies across each quarter, settlements accounted for the greatest number of actions in Q1 2018, with 17 total actions.
- Frequency of civil money penalties doubled in Q1 2018 from the rates observed in Q4 2017 to account for 33% of the 48 total actions in the quarter. The 16 civil money penalties in Q4 are the highest in the past five quarters.
- Formal agreements/consent orders, which have been the most frequently used action type in the previous four quarters, reached their lowest, both in total count and percentage of total action, in Q1 2018.

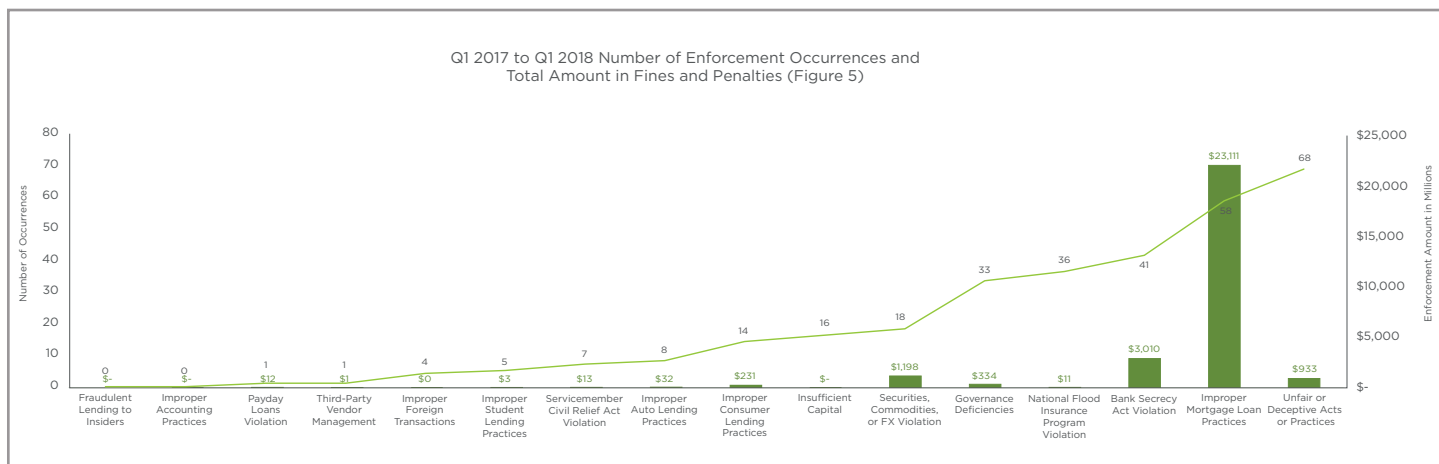
Q1 2017 to Q1 2018 Regulation/Regulating Agency Types of Violations (Figure 4)

REGULATORY VIOLATION TYPE	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	TOTAL	% OF TOTAL
Allowance for Loan and Lease Losses	2	1	5	4	0	12	3.9%
Bank Secrecy Act/Anti-Money Laundering Act	8	4	8	6	13	39	12.7%
Basel - Capital Requirements	6	1	6	2	1	16	5.2%
Commodities or Securities Exchange Act	0	0	1	2	3	6	1.9%
Fair Housing Act	4	2	0	0	1	7	2.3%
Financial Industry Regulatory Authority	0	0	1	1	1	3	1.0%
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	9	6	4	9	6	34	11.0%
Office of Foreign Assets Control	0	2	0	1	1	4	1.3%
Regulation AB: Asset-Backed Securities & RBMS Violations	10	2	2	2	2	18	5.8%
Regulation B: Equal Credit Opportunity Act	2	0	1	0	0	3	1.0%
Regulation C: Home Mortgage Disclosure Act	1	0	0	0	0	1	0.3%
Regulation E: Electronic Funds Transfer Act	1	0	0	0	3	4	1.3%
Regulation H - Membership of State Banking Institutions in The Federal Reserve System	0	0	1	0	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	5	0	1	2	0	8	2.6%
Regulation X: Real Estate Settlement Procedures Act	5	5	4	0	2	16	5.2%
Regulation Y: Bank Holding Companies and Change in Bank Control	0	1	0	0	0	1	0.3%
Regulation Z: Truth in Lending Act	1	2	0	1	2	6	1.9%
Servicemembers Civil Relief Act	0	0	3	2	2	7	2.3%
State Foreclosure Laws	0	0	0	0	0	0	0.0%
State Payday Lending Statutes	2	0	1	0	0	3	1.0%
Unfair, Deceptive, and Abusive Acts and Practices	20	12	12	12	5	61	19.8%
Other	7	14	16	8	13	58	18.8%
Total	83	52	66	52	55	308	100.0%
Percentage of Total	26.9%	16.9%	21.4%	16.9%	17.9%	100.0%	100.0%

Note: Multiple violation types may be counted as part of one consent order or action taken by federal and state regulators. Actions from previous quarters issued after the previous publication's cutoff date may be included in the above figures.

Highlights:

- Frequency of violations related to the Bank Secrecy Act increased from six actions in Q4 2017 to 13 actions in Q1 2018, making it the most frequent regulatory violation type of the quarter.
- The top areas of violations over the past five quarters were: issues around Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) (19.8%); BSA/AML (12.7%); National Flood Insurance Program (11.0%); and Regulation AB: Asset-Backed Securities & Residential Mortgage-Backed Securities violations (5.8%).
- There were three regulatory violation types with enforcement action observed in Q1 2018 and no actions in Q4 2017: Regulation X: Real Estate Settlement Procedures Act (RESPA), Regulation E: Electronic Funds Transfer Act (EFTA), and the Fair Housing Act.



Note: Multiple violation types may be counted as part of one consent order or action taken by federal and state regulators. Actions from previous quarters issued after the previous publication's cutoff date may be included in the above figures.

Highlights:

- Improper mortgage loan practices accounted for the highest total related fines over the past five quarters; BSA/AML-related violations accounted for the second-highest total dollars in fines and penalties.
- UDAAP violations (22%), improper mortgage loan practices (19%), BSA/AML violations (13%), National Flood Insurance program violation (12%), governance deficiencies (11%), securities, commodities, or foreign exchange (forex) violations (6%), and insufficient capital (5%) were the most frequent enforcement occurrences over the past five quarters.

METHODOLOGY

Navigant Consulting Inc.'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:

- Office of the Comptroller of the Currency (OCC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Reserve (Fed)
- Consumer Financial Protection Bureau (CFPB)
- Department of Justice (DOJ)
- State and local regulators, and others

The team focused on regulatory issues related to violations of:

- Unfair, Deceptive, or Abusive Acts or Practices (UDAAP).
- Real Estate Settlement Procedures Act (RESPA).
- Bank Secrecy Act/Anti-Money Laundering laws (BSA/AML).
- Servicemembers Civil Relief Act (SCRA).
- Equal Credit Opportunity Act (ECOA).
- Truth in Lending Act (TILA).
- Fair Credit Reporting 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 April 30, 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; 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 laws or regulations 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 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, Deceptive, or Abusive Acts or 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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