NAVIGANT

FINANCIAL SERVICES ADVISORY AND COMPLIANCE

FINANCIAL SERVICES ENFORCEMENT ACTIONS TRACKER — Q3 2018

HIGHLIGHTS FROM Q3 2018

Actions by Regulators

- **A total of 36 actions were observed this period.** This is only the second quarter since Navigant began publishing the tracker where the number of actions fell below 40. The current quarter is a **33% decrease from Q3 2017, and an 8% decrease since last quarter.**
- In Q3 2018, **there were 20 actions levied by the five main federal regulators,** including Consumer Financial Protection Bureau (CFPB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Bank (Fed), and the Department of Justice (DOJ). The number is **a 51% decrease from Q3 2017, and a 9% decrease since last quarter.**
- The decrease in number of total actions in Q3 2018 levied by federal regulators was primarily caused by a lower number of OCC actions. **In Q3 2018, there were only two actions levied by the OCC, which is a 60% decrease compared to Q3 2017 and a 67% decrease since last quarter.** This is also the fewest actions from the OCC in a single period observed over the past five quarters.
- **The DOJ had six actions in the quarter, with a total of nearly $7 billion civil money penalties and fines enforced.** Two of these actions were related to securitized mortgage products in violation of Regulation AB: Asset-backed Securities and RMBS, and resulted in $4.9 billion and $2 billion monetary penalties, respectively.
- **Actions by state and local regulators continue to increase,** with **14 actions** observed in Q3 2018, representing 39% of total Q3 actions. The number of state actions increased **17% compared to that in Q3 2017 and increased 27% since last quarter.**

Actions by Action Types

- **Civil Money Penalty continues to be regulators' most frequently used action type** to enforce regulatory requirements. In this quarter, there were 23 actions involving civil money penalties, which were 64% of the 36 Q3 2018 actions.
- **The next most frequently used method of enforcement was Settlement,** with 13 instances accounting for 36% of the quarter's 36 actions.

Actions by Cited Regulations

- **Violations related to unfair, deceptive or abusive acts or practices (UDAAP) were the area of law that was cited the most during the quarter,** with a total of five actions, or 14% of total Q3 actions. **It is also the law that was cited the most during the past five quarters,** with a total of 44 citations accounting for 17% of the total 262 observed regulatory citations.
- **Violations related to the Securities Act or Commodity Exchange Act** were the second-most frequently cited during the quarter, with a total of four actions, or 11% of the total Q3 2018 actions.

- It is also noteworthy that although **Regulation AB: Asset-backed Securities and RMBS violations** were only cited in three actions in this quarter, **it resulted in almost $7 billion in fines and civil money penalties.** These continue to be major carryover cases from the 2008 credit crisis that are only now reaching maturity.

Actions by Business Area

- Four actions in the quarter were related to servicing or origination of **closed-end mortgage loans,** and another three actions were related to **securitized mortgage products.**
- One Q3 action related to **overdraft protection** was collaboratively enforced by the CFPB and OCC, and resulted in **a total of $30 million in restitution and penalties.** This was the second time UDAAP violations were cited related to overdraft protections in the past five quarters.

Monetary Penalty by Violation Types

- In the past five consecutive quarters, **improper mortgage loan practices have been the source of the highest amount of associated monetary penalties,** with over $17 billion enforced. **UDAAP was the source of the highest number of occurrences,** and generated over $2.7 billion in fines or penalties enforced in the past five quarters.
- **Improper mortgage loan practices accounted for 12 actions this quarter** and had the highest fines in Q3 2018, **with $6.9 billion, or nearly 95% of the $7.3 billion total enforced fines and penalties,** reflecting another marked increase in penalties.
- Other violations that stand out this quarter include **securities, commodities, or foreign exchange (FX) violations,** which resulted in $215 million in penalties, and **governance deficiencies,** which resulted in $152 million in penalties.

Q3 2018 SUMMARY

A total of 36 actions were levied in Q3 2018. The number of regulatory enforcement actions decreased 8% from Q2 2018 and was driven primarily by a decrease in activity from the OCC, as seen in Table 1.

Number of Actions by Regulators (Table 1)

	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2018
CFPB	11	6	0	3	4
OCC	5	5	4	6	2
FDIC	9	8	10	5	4
FED	8	6	11	3	4
DOJ	8	6	7	5	6
Total Actions by Five Major Regulators	41	31	32	22	20
State/Local	12	11	13	11	14
Other[1]	6	5	6	6	5
Grand Total	59	47	51	39	39
Less: Actions Involved Multiple Regulators	(5)	(2)	(3)	(0)	(3)
Total Unique Actions	**54**	**45**	**48**	**39**	**36**

Note: "Other" consists of certain relevant enforcement actions by the Commodity Futures Trading Commission, Federal Housing Finance Agency, Financial Crimes Enforcement Network, Financial Industry Regulatory Authority, Federal Trade Commission, Department of Housing and Urban Development, Securities and Exchange Commission, National Credit Union Administration, and Office of Foreign Assets Control at banks and subsidiaries of bank holding companies.

The five major federal regulators issued 56% of total enforcement actions this quarter, with six from the DOJ, four from the CFPB, four from the FDIC, four from the Fed, and two from the OCC. The number of OCC actions dropped in Q3 2018 to two, which is the fewest actions from the regulator in a single period observed over the past five quarters.

REGULATORY ACTIONS HIGHLIGHTS

Noteworthy Actions from the Quarter are Detailed Below:

Overdraft Services/Sales Practices

TCF National Bank was disciplined by the CFPB and OCC in July 2018 for its **deceptive and abusive** sales and marketing practices for **account overdraft services.** The bank agreed to pay **a total of $30 million to settle the case,** including a $2 million fine to CFPB, a $3 million fine to OCC, and restitution in the amount of $25 million to be returned to affected customers.[1]

Originally sued by CFPB on Jan. 19, 2017, the bank faced allegations of **(1) tricking new customers into believing optional overdraft was mandatory and obscuring fees:** The bank placed its opt-in decision immediately after a series of mandatory items the consumer had to agree to in order to open the account so that consumers would be tricked into the rhythm of initialing the terms of the agreement and sign on; **(2) adopting a loose definition of consent to opt in for existing customers:** Instead of asking existing consumers whether they wanted to agree to overdraft services for a charge, the bank instructed its staff to ask whether they wanted their "TCF Check Card to continue to work as it does today?" Many consumers were not aware that by choosing to have their debit card "continue to work as it does today," they were granting the bank permission to authorize transactions and charge them overdraft fees; and **(3) pushing back on consumers who challenged opting in by using emotionally charged hypotheticals:** The bank not only instructed its staff to provide limited explanation of its opt-in programs, but also to sell the product by suggesting hypothetical emergency situations with high stakes if consumers challenge or question opting in.[2]

An overdraft occurs when a consumer does not have sufficient or available funds in their accounts to cover their payments. Most financial institutions provide consumers with options to cover or decline the overdraft transaction and charge service fees ranging from $20 to $40 per item with a daily maximum.[3] **TCF bank generated $132 million in fees and service charges in 2017, and it posted a $243 million net profit in the same period.**[4] In other words, over 50% of the bank's net profit was generated from fees and service charges. Although overdraft services first seem to be a convenient tool, such fees and service charges in fact have become a significant source of revenue at financial institutions and can further burden lower-income customers.

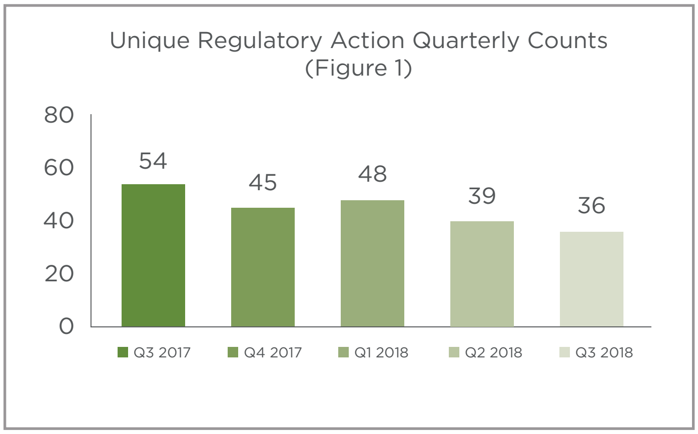
On Nov. 12, 2009, the Federal Reserve System announced their final rules that prohibit financial institutions from charging consumers fees for paying overdrafts on automated teller machine (ATM) and one-time debit card transactions, **unless a consumer consents, or opts in, to the overdraft service for those types of transactions.** The final rules also require that consumers must be provided a notice that explains the banks' overdraft services, associated fees, and the consumer's choices.[5]

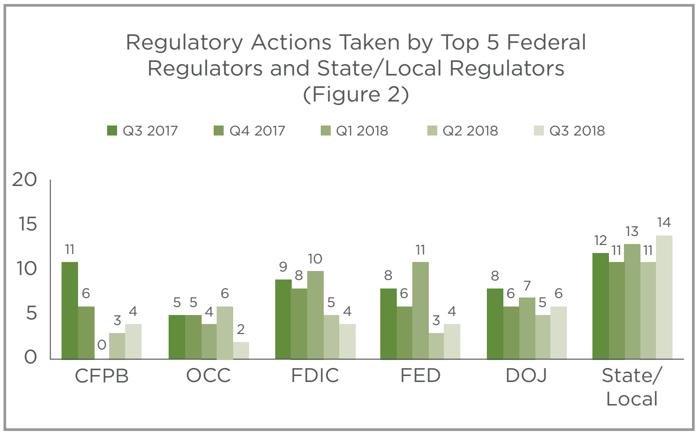
The final rules, which took effect on July 1, 2010, reflected an important step forward in consumer protection as the board's consumer testing showed that most consumers prefer not to be enrolled in overdraft services for ATM and one-time debit card transactions unless the overdraft services would cover important bills, such as rent and utilities.

1. Consumer Finance Protection Bureau, "Bureau of Consumer Financial Protection Settles with TCF National Bank," July 20, 2018, https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-tcf-national-bank/.
2. Consumer Financial Protection Bureau, "CFPB Sues TCF National Bank for Tricking Consumers into Costly Overdraft Service," January 19, 2017, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-tcf-national-bank-tricking-consumers-costly-overdraft-service/.
3. Spencer Tierney, "Overdraft Fees: Compare What Banks Charge," Nerdwallet, July 20, 2018, https://www.nerdwallet.com/blog/banking/overdraft-fees-what-banks-charge/.
4. Yuka Hayashi, "TCF Bank to Pay $30 Million for Handling of Overdraft Programs," *Wall Street Journal*, July 20, 2018, https://www.wsj.com/articles/tcf-bank-to-pay-30-million-for-handling-of-overdraft-programs-1532125121.
5. Federal Reserve System, "Federal Reserve Announces Final Rules Prohibiting Institutions from Charging Fees for Overdrafts on ATM and One-time Debit Card Transactions," November 12, 2009, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20091112a.htm.

Additional commentary on Q3 2018 financial enforcement actions, and related charts and graphs, can be found below:

Actions by Regulators (Figure 1-2)

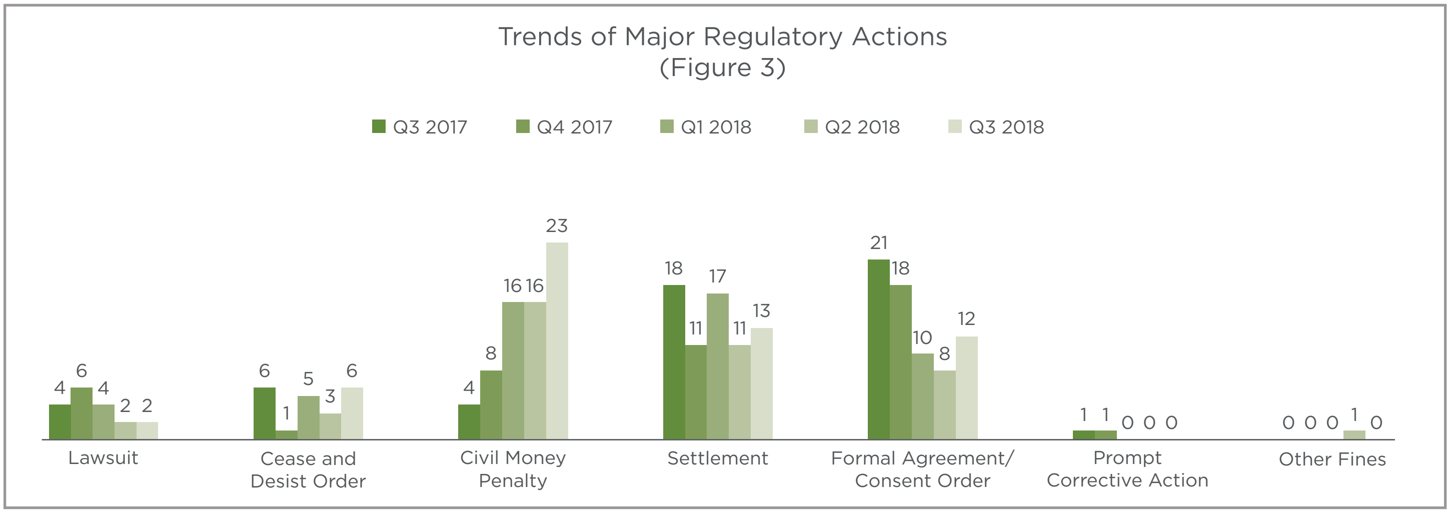




Highlights:

- A total of 36 actions were levied in Q3 2018, which is a 33% decrease compared to Q3 2017, and an 8% decrease compared to Q2 2018.
- Enforcement actions by major federal regulators continued to decrease in Q3 2018. The OCC had its fewest number of actions in the past five quarters.
- The main driver in number of actions continues to be state and local regulators. A total of 14 enforcement actions were levied by state and local regulators in Q3 2018, making state regulators the most active in the quarter. Nine out of these 14 state actions involved Improper Mortgage Loan Practices.

Regulatory Trends by Action/Violation and Enforcement Occurrences (Figure 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, civil money penalty continues to account for the greatest number of actions in Q3 2018, with 23 total actions.

Q3 2017 to Q3 2018 Regulation/Regulation Agency Types of Violations (Figure 4)

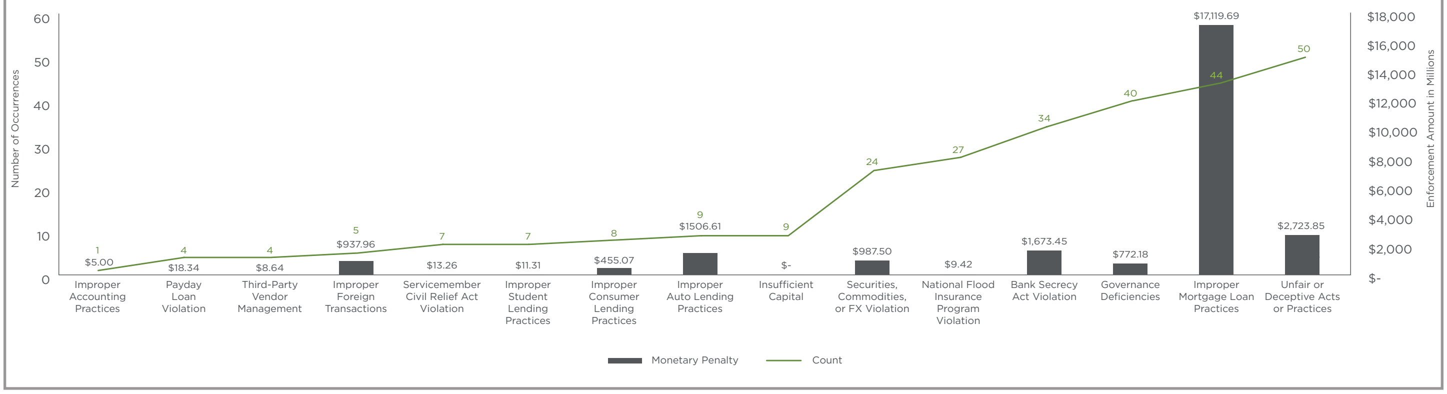
REGULATORY VIOLATION TYPE	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2018	GRAND TOTAL	% OF TOTAL
Allowance for Loan and Lease Losses	5	4	0	0	0	9	3.4%
Bank Secrecy Act/Anti-Money Laundering Act	8	6	13	5	3	35	13.4%
Basel — Capital Requriements	6	2	1	0	0	9	3.4%
Commodities or Securities Exchange Act	1	2	3	6	4	16	6.1%
Fair Housing Act	0	0	1	1	0	2	0.8%
Financial Industry Regulatory Authority	1	1	1	0	0	3	1.1%
National Flood Insurance Program	4	9	6	4	2	25	9.5%
Office of Foreign Assets Control	0	1	1	2	1	5	1.9%
Regulation AB: Asset-backed Securities & RMBS Violations	2	2	2	1	3	10	3.8%
Regulation B: Equal Credit Opportunity Act	1	0	0	1	0	2	0.8%
Regulation C: Home Mortgage Disclosure Act	0	0	0	0	0	0	0.0%
Regulation E: Electronic Fund Transfer Act	0	0	3	0	0	3	1.1%
Regulation H: Membership of State Banking Institutions in The Federal Reserve System	1	0	0	1	0	2	0.8%
Regulation V: Fair Credit Reporting Act	1	2	0	1	0	4	1.5%
Regulation X: Real Estate Settlement Procedures Act	4	0	2	0	0	6	2.3%
Regulation Y: Bank Holding Companies and Change in Bank Control	0	0	0	0	0	0	0.0%
Regulation Z: Truth in Lending Act	0	1	2	1	2	6	2.3%
Servicemember Civil Relief Act	3	2	2	0	0	7	2.7%
State Foreclosure Laws	0	0	0	2	0	2	0.8%
State Payday Lending Statutes	1	0	0	0	0	1	0.4%
Unfair, Deceptive, or Abusive Acts or Practices	12	12	5	10	5	44	16.8%
Other	16	8	13	15	19	71	27.1%
Total	**66**	**52**	**55**	**50**	**39**	**262**	**100%**

Note: Multiple violation types may be counted as part of one 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:

- In Q3 2018, there were five actions involving violations related to UDAAP, making it the most frequent regulatory violation types of the quarter.
- Four actions involved violations related to the Commodity Exchange Act or Securities Act, where Securities, Commodities, or FX Violation and Governance Deficiencies were the violation types that were cited the most. Two of these four actions were enforced after finding that the banks attempted to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix.
- The top areas of violations over the past five quarters were issues around UDAAP (17%); Bank Secrecy Act/Anti-Money Laundering (BSA/AML) (13%); National Flood Insurance Program (10%); Commodity Exchange Act or Securities Act (6%); and Regulation AB: Asset-backed Securities and RMBS Violations (4%).

Q3 2017 — Q3 2018 Number of Enforcement Occurrences and Total Amount in Fines and Penalties (Figure 5)



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; UDAAP accounted for the second-highest total dollars in fines and penalties.
- UDAAP violations (18%), improper mortgage loan practices (16%), governance deficiencies (15%), BSA/AML violations (12%), national flood insurance program violations (10%), and Securities, Commodities, or FX Violation (9%) were the most frequent enforcement occurrences over the past 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:

- 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 Oct. 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 exceeds 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 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.

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

Securities, commodities, or foreign exchange violation: Violation of any law or regulation in the distribution, monitoring, or trading of securities, commodities, or foreign exchanges.

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, 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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