Guidehouse

Financial Services Enforcement Actions Tracker — Q3 2019

Banking, Insurance, and Capital Markets

Financial Services Enforcement Actions Tracker — Q3 2019

Panel 1 — Federal Actions Highlights from Q3 2019:

Actions by Regulators

- **A total of 45 federal-level regulatory actions were observed this period.** Compared with 38 federal actions in the past quarter and 23 federal actions in Q3 2018, the current quarter is an 18% increase since last quarter, and a 96% increase from Q3 2018.
- **In Q3 2019, there were 30 actions levied by the five major federal regulators,** including the Consumer Financial Protection Bureau (CFPB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Bank (FED), and Department of Justice (DOJ). **The number is a 6% decrease since last quarter, and a 58% increase compared with Q3 2018.**
- **In this quarter, the FDIC had its highest number of actions in a single period observed over the past five quarters:** a total of 14 actions were levied by the FDIC in Q3 2019, an increase of three over last quarter, and 2.5 times more actions than Q3 2018.
- **The Q3 2019 increase was primarily driven by high activity from regulators other than the five major federal regulators,** with 16 actions enforced, representing 36% of total actions enforced by federal regulators.

Actions by Action Types

- **Civil Money Penalty is still the most frequently used action type for federal regulators to enforce regulatory requirements.** In Q3 2019, 30 actions involved Civil Money Penalty, making up 67% of the 45 federal actions. In the past quarter, there were 24 actions involving Civil Money Penalty, making up 63% of the 38 federal actions.
- **The second-most frequently used action type was Consent Order.** In Q3 2019, 23 actions involved Consent Order, making up 51% of the 45 federal actions.

Actions by Cited Regulations

- **National Flood Insurance Program** was the area of law that was cited the most during this quarter, with a total of 10 actions, or 22% of total Q3 2019 federal actions. Most of these actions were enforced by the FDIC. It is also the most frequently cited area of law in federal actions during the past five quarters, with a total of 27 citations accounting for 13% of the total 214 observations.

- **Allowance for Loan and Lease Losses-**related violations were the area of law that was cited the second-most frequently during this quarter, with a total of six citations accounting for 13% of the total Q3 2019 federal-level enforcement actions. These actions were mostly related to insufficient capital and governance deficiencies violations.
- **Bank Secrecy Act/Anti-Money Laundering laws** is the other most frequently cited area of law in federal actions during the past five quarters, with a total of 27 citations observed.

Actions by Business Area

- **Twelve federal actions in the third quarter were related to mortgage origination or mortgage servicing.** In Q3 2019, California-based loan modification service providers were alleged for discrimination in loan origination process; one bank violated the Real Estate Settlement Procedures Act (RESPA) by agreeing to pay and accept fees for the referral of mortgage loan business, and the bank also violated the Telephone Consumer Protection Act by placing telemarketing phone calls to consumers on the “Do Not Call” registry.
- **One federal action in the quarter was related to auto loans,** violating the Servicemembers Civil Relief Act. The company repossessed vehicles without obtaining appropriate court orders and failed to refund lease amounts paid in advance on a pro rata basis.

Monetary Penalty by Violation Types

- **In Q3 2019, Unfair, Deceptive or Abusive Acts or Practices (UDAAP) has been the source of the highest amount of associated monetary penalties enforced by federal regulators, with over $783 million enforced.** Most of these monetary penalties were caused by a global settlement with Equifax that provided up to $700 million in monetary relief and penalties.
- In the past five consecutive quarters, **improper mortgage loan practice has been the source of the highest amount of associated monetary penalties enforced by federal regulators,** with almost $8.5 billion enforced, most of which were related to carryover cases from the credit crisis that involved loan underwriting and securitizing/issuance of residential mortgage-backed securities.
- **A total of 59 actions over the past five quarters involved governance deficiencies,** making it the source of the highest number of occurrences, with almost $1 billion in fines or penalties. Most of these observed governance deficiencies violations were related to UDAAP, insufficient capital, BSA/AML, and risk management.
- **National Flood Insurance Program; Bank Secrecy Act; Unfair, Deceptive or Abusive Acts or Practices; and Securities, Commodities, or Foreign Exchange** are some of the other most frequently referenced violation types in the past five quarters, with over 20 cases observed for each.

Panel 2 — Federal Actions Q3 2019 Summary:

A total of 45 actions were levied by federal regulators in Q3 2019. The number of regulatory enforcement actions increased 18% from Q2 2019 and was driven primarily by an increase in activities from the FDIC and other federal regulators, as seen in Table 1.

Number of Actions by Federal Regulators (Table 1)

	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019
CFPB	4	5	4	4	5
OCC	1	8	5	6	5
FDIC	4	13	8	11	14
FED	4	4	1	5	3
DOJ	6	3	4	6	3
Total Actions by Five Major Regulators	19	33	22	32	30
Other[1]	5	12	3	6	16
Grand Total	24	45	25	38	46
Less: Actions Involved Multiple Regulators	(1)	(0)	(0)	(0)	(1)
Total Actions Enforced by Federal Regulators	**23**	**45**	**25**	**38**	**45**

1. Note: "Other" consists of certain relevant enforcement actions by CFTC, FHFA, FinCEN, FNRA, FTC, HUD, SEC, NCUA, and OFAC at banks and subsidiaries of bank holding companies.

Starting from Q4 2018, the FDIC has been providing a larger percentage of overall actions enforced by federal regulators: In Q4 2018, it enforced 29% of total actions; in Q1 2019, it enforced 32% of total actions; in Q2 2019, it enforced 29% of total actions; and in this past quarter, the FDIC enforced 14 actions accounting for 31% of the total 45 actions. Some of FDIC's top regulatory focus areas are National Flood Insurance Program violations, and Governance Deficiencies related to Insufficient Capital and Bank Secrecy Act violations.

It is noteworthy that the Commodity Futures Trading Commission (CFTC) enforced seven actions in Q3 2019, with most of these actions involved improper records-keeping, data reporting, or documents filing.

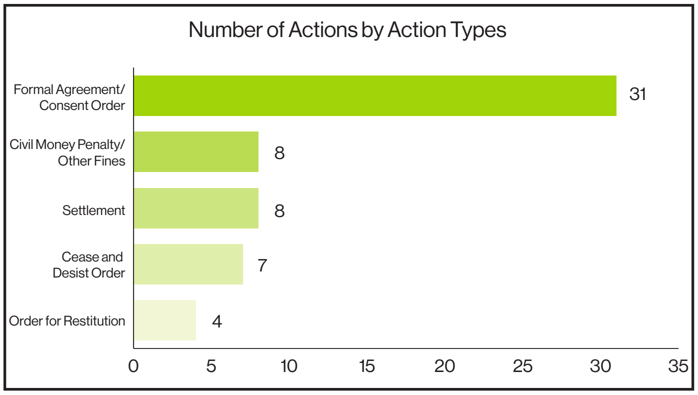
Panel 3 — State Actions Highlights from Q2 2019:

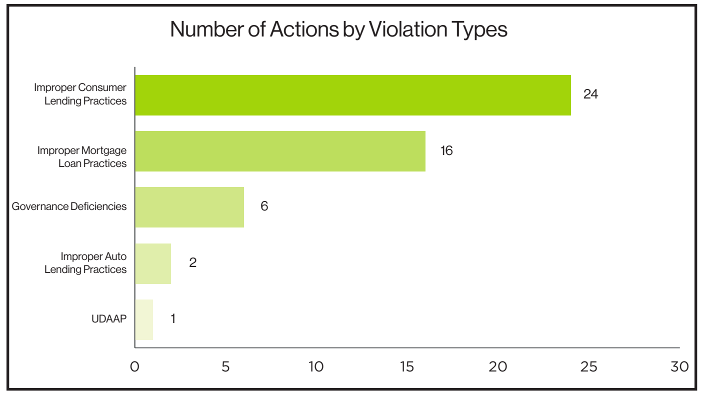
Navigant tracks financial enforcement actions issued by the state regulators that are referenced on the CFPB website.[2] These actions are primarily associated with consumer finance, specifically related to mortgage and other consumer-lending activities.

- **A total of 46 actions were brought by state regulators in Q3 2019.** One of these actions were collaboratively enforced with the FDIC, one action was collaboratively enforced with the CFPB, and one action was collaboratively enforced with the Federal Trade Commission (FTC).
- **California was again the most active state regulator in this quarter,** with 21 mortgage loan and financing-related actions enforced, representing 46% of total state actions observed. **The second-most active state regulator is the Washington Department of Financial Institutions,** with six actions enforced accounting for 13% of the total state actions.

2. Consumer Financial Protection Bureau, "How do I find my state's bank regulator?" September 28, 2017, https://www.consumerfinance.gov/ask-cfpb/how-do-i-find-my-states-bank-regulator-en-1637/

- **State regulators enforced nearly $6 million in fines and penalties in Q3 2019, excluding the global settlement with Equifax.** During the same period, $917 million were enforced by federal regulators, with one action collaboratively enforced with 48 states and Puerto Rico, accounting for a total monetary penalties and restitution amounts of $700 million.





- **In Q3 2019, a total of 31 state actions were enforced as a formal agreement or consent order,** making it the most frequently used action type.
- **There were eight state actions involving civil money penalty or other fines, and another eight state actions enforced as settlement,** making them the second- and third-most frequently used action types.
- In Q3 2019, 24 actions were related to improper consumer lending practices, and 16 actions were related to improper mortgage loan practices, making them the most frequently cited violation types.
- While state enforcement actions usually reference state and local regulations, in Q3 2019, one of the state actions cited Allowance for Loan and Lease Losses (ALLL), and one action cited the Truth in Lending Act.

Regulatory Actions Highlights:

Noteworthy Actions from the Q3 2019 are detailed below:

SEC Issues a Cease-and-Desist Order to the Bancorp Inc.

In September, the Securities and Exchange Commission (SEC) issued Cease-and-Desist Proceedings to the Bancorp Inc., pursuant to Section 21C of the SEC Act of 1934. The order resulted from several findings in the period between April 2012 and September 2014, when Bancorp failed to properly classify loans, assign appropriate risk ratings, identify borrowers as impaired, and failed to maintain related internal accounting controls.

During the relevant time period, Bancorp pursued a strategy of “relationship banking,” in an effort to develop customer loyalty and increase revenue. The strategy led the bank to overlook indicators of financial distress and repeatedly fail to re-evaluate loans and downgrade risk ratings when confronted with negative information. The SEC cited a multitude of individual cases where the bank placed revenue targets while ignoring risk.

As a result of the failures during this time period, Bancorp restated its financial results for certain prior years and the aggregate adjustment to the ALLL and Provisions for Loan and Lease Losses (PLLL). The SEC found Bancorp in violation of Sections 13(a), 12(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1 and 13a-13 of the Exchange Act.

Bancorp’s ALLL for 2012 increased by 78.23%, and by 73.97% for 2013. By failing to make correct and appropriate TDR determinations, identify certain loans as impaired, and, as a result, correctly state its ALLL and PLLL, Bancorp failed to keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of its assets.

FDIC Fines Willamette Valley Bank $275,000

In September, Willamette Valley Bank was ordered to pay $275,000 in penalties for violation of RESPA and Regulation X. In the first of two cited offenses, the bank was found to accept fees for the referral of mortgage loan business. The second citation found the bank placed telemarketing calls to consumers on the Do-Not-Call registry and used an automated dialing system to send prerecorded calls or text messages to consumers' cellular telephones in violation of the Telephone Consumer Protection Act 47 U.S.C. § 227.

RESPA was enacted in 1974 to protect consumers from unnecessarily high settlement charges caused by obtrusive practices that developed in parts of the United States. As part of the legislation, all fees for mortgage-related services must be disclosed and kickbacks and unearned fees are prohibited.

The Telephone Consumer Protection Act (TCPA) was enacted in 1991 to curtail a growing number of telemarketing calls. The TCPA restricts making of telemarketing calls and the use of automated dialing systems or prerecorded voice messages.

In connection with the violations, Willamette Valley Bank agreed to pay a civil money penalty without admitting or denying any violations of law or regulation.

CFPB, FTC, and States Announce Settlement with Equifax Over 2017 Data Breach

The Consumer Financial Protection Bureau, the Federal Trade Commission, and 48 states, the District of Columbia, and Puerto Rico announced a settlement with Equifax that would provide up to $700 million in monetary relief and penalties. The settlement is a result of a 2017 data breach of Equifax's systems that impacted around 147 million consumers.

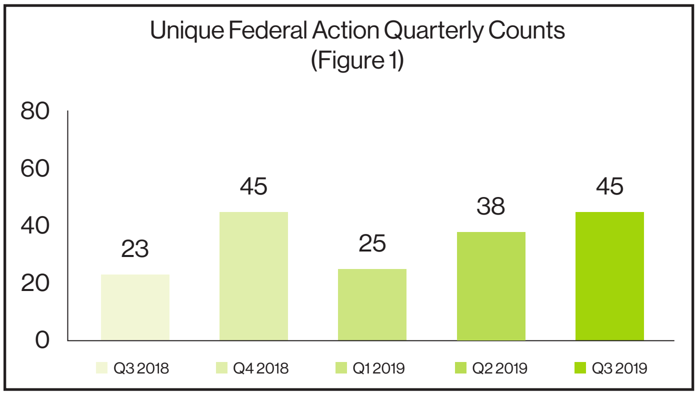
In its complaint, the CFPB alleges Equifax engaged in unfair and deceptive practices in violation of the Consumer Financial Protection Act of 2010 with a list of infractions, including: failing to provide reasonable information security and causing substantial injury, deceiving consumers about the strength of its security program, and engaging in acts that caused additional harm to consumers in response to the breach.

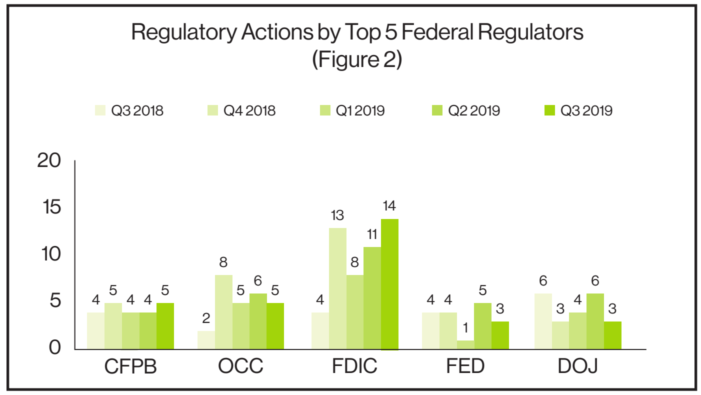
Consumers impacted by the breach will be entitled to access to a consumer fund, established by Equifax, which contains $425 million to offset the cost of redress. If approved by the court, these consumers may claim up to $20,000 per consumer for lost time and money, including an hourly rate for time spent pursuing remediation, money spent purchasing identity theft or monitoring products, and the cost of freezing or unfreezing credit reports at the consumer reporting agency.

A settlement administrator will be appointed to manage the claims process. In addition to consumer relief, Equifax will be required to pay the CFPB $100 million in civil money penalties.

Additional commentary on Q3 2019 financial enforcement actions, and related charts and graphs, can be found below:

Actions by Federal Regulators (Figures 1-2)

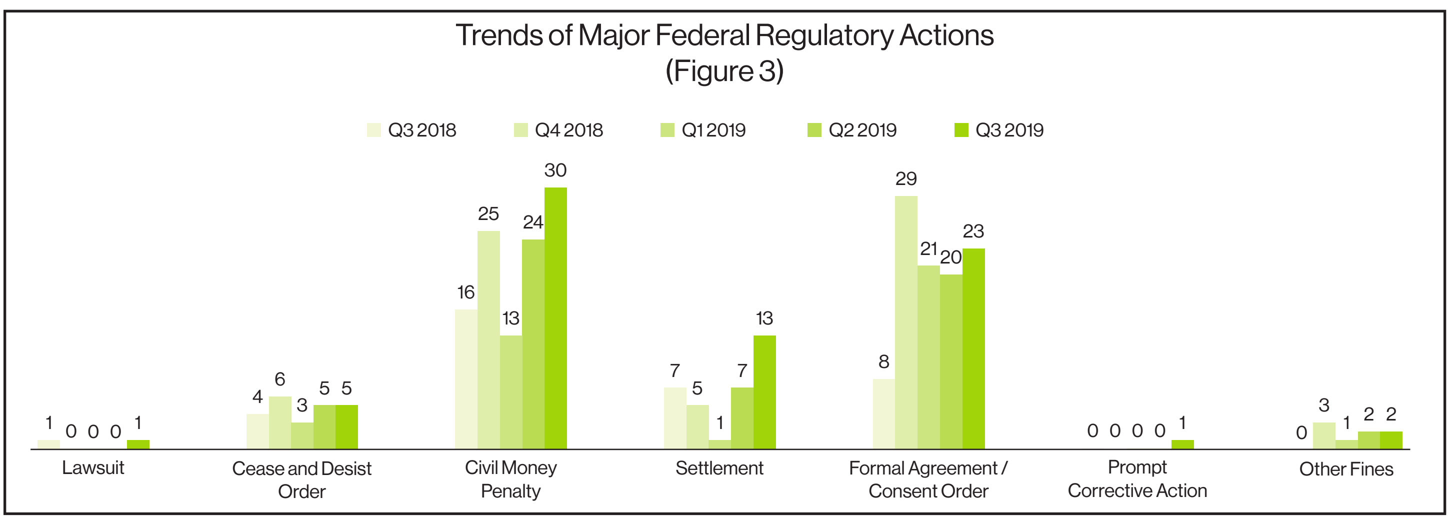




Highlights:

- A total of 45 actions were levied by federal regulators in Q3 2019, the current quarter is an 18% increase since Q2 2019, and a 96% increase from Q3 2018.
- Enforcement actions by the five major federal regulators decreased in Q3 2019. The number is a 6% decrease since last quarter and is driven by relatively lower activities from the OCC, FED, and DOJ.
- The FDIC was again the most active federal regulator in this quarter, with 14 actions enforced. The actions enforced by the FDIC were primarily related to national flood insurance program violations, governance deficiencies, and insufficient capital.

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:

- Usually embedded in consent order, formal agreement, or settlement actions, civil money penalty is the most frequently used action type by federal regulators in Q3 2019, with 30 total actions.
- Formal agreement or consent order is the second-most frequently used action type by federal regulators in this quarter, with 23 total actions.

Q3 2018 to Q3 2019 Number of Regulations Cited by Federal Regulators (Figure 4)

REGULATORY VIOLATION TYPE	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	GRAND TOTAL	% OF TOTAL
Allowance for Loan and Lease Losses	0	2	0	4	6	12	5.61%
Bank Secrecy Act/Anti-Money Laundering Act	3	13	3	5	3	27	12.62%
Basel — Capital Requirements	0	2	0	0	0	2	0.93%
Commodities or Securities Exchange Act	4	5	2	3	9	23	10.75%
Fair Housing Act	0	0	1	1	0	2	0.93%
Financial Industry Regulatory Authority	0	0	0	0	1	1	0.47%
National Flood Insurance Program	2	5	1	9	10	27	12.62%
Office of Foreign Assets Control	1	6	0	8	3	18	8.41%
Regulation AB: Asset-backed Securities & RMBS Violations	2	0	0	1	0	3	1.40%
Regulation B: Equal Credit Opportunity Act	0	0	0	1	0	1	0.47%
Regulation C: Home Mortgage Disclosure Act	0	0	0	1	0	1	0.47%
Regulation E: Electronic Fund Transfer Act	0	0	1	1	1	3	1.40%
Regulation H: Membership of State Banking Institutions in The Federal Reserve System	0	2	0	1	4	7	3.27%
Regulation V: Fair Credit Reporting Act	0	1	0	0	0	1	0.47%
Regulation X: Real Estate Settlement Procedures Act	0	0	0	2	1	3	1.40%
Regulation Y: Bank Holding Companies and Change in Bank Control	0	0	0	0	0	0	0.00%
Regulation Z: Truth in Lending Act	2	1	2	2	1	8	3.74%
Servicemember Civil Relief Act	0	1	2	0	1	4	1.87%
Unfair, Deceptive, or Abusive Acts or Practices	5	4	4	3	3	19	8.88%
Other	7	18	15	4	8	52	24.30%
Total	**26**	**60**	**31**	**46**	**51**	**214**	**100%**

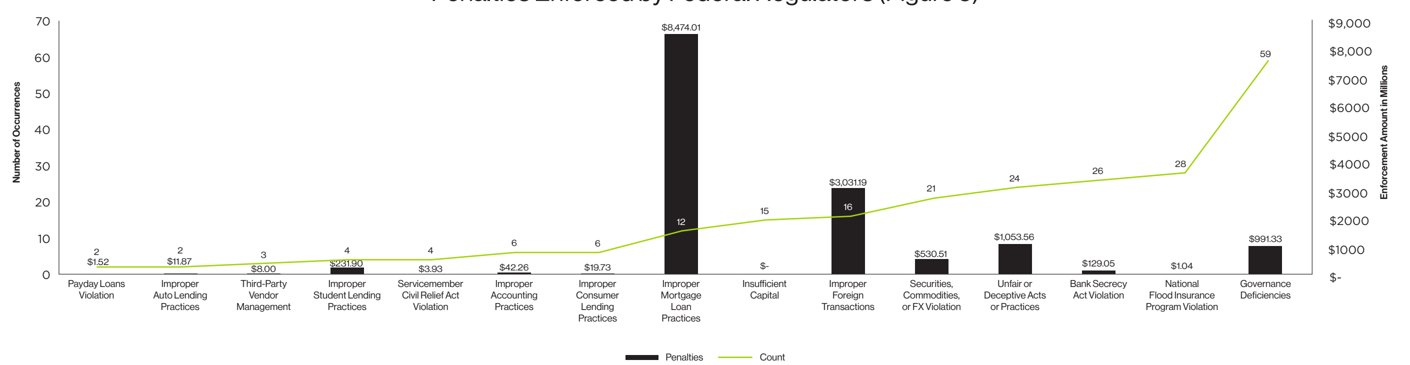
Note: Multiple violation types may be counted as part of one action taken by federal and state regulators. Actions from previous quarters issued after the previous publication's cutoff date may be included in the above figures.

Highlights:

- In Q3 2019, there were 10 actions involving violations related to National Flood Insurance Program, making it the most frequently cited regulation in the quarter.

Nine actions involved violations related to Commodities or Securities Exchange Act, making it the second-most frequently cited regulation in the quarter.

Q3 2018 — Q3 2019 Number of Enforcement Occurences and Total Amount in Fines and Penalties Enforced by Federal Regulators (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. This may include violations surrounding Truth in Lending Act, Equal Credit Opportunity Act, Fair Housing Act, etc.; improper foreign transactions accounted for the second-highest total dollars in fines and penalties.
- Governance deficiencies (26%); national flood insurance program violation (12%); BSA/AML violations (11%); UDAAP violations (11%); and securities, commodities, or FX violation (9%) were the most frequent enforcement occurrences over the past five quarters.

Panel 4:

Methodology:

Guidehouse 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 Bank (FED)
- Consumer Financial Protection Bureau (CFPB)
- Department of Justice (DOJ)

For state and local enforcement actions, Guidehouse tracks the actions enforced by state regulators who are introduced by the CFPB:

STATES	REGULATORS	STATES	REGULATORS
AL	Alabama State Banking Department	MT	Division of Banking and Financial Institutions
AK	Alaska Division of Banking and Securities	NE	Nebraska Department of Banking & Finance
AZ	Arizona Department of Financial Institutions	NV	Nevada Financial Institutions Division
AR	Arkansas Attorney General	NH	New Hampshire State Banking Department
CA	California Division of Corporations	NJ	New Jersey Department of Banking and Insurance
CO	Colorado Office of the Attorney General	NM	New Mexico Financial Institutions Division
CT	Connecticut Department of Banking	NY	New York State Department of Financial Services
DE	Delaware Office of the State Bank Commissioner	NC	North Carolina Commissioner of Bankers/NC Attorney General
FL	Florida Office of Financial Regulation/Florida Attorney General	ND	North Dakota Department of Financial Institutions
GA	Georgia Office of the Commissioner of Insurance	OH	Ohio Division of Financial Institutions
HI	Hawaii Department of Commerce and Consumer Affairs	OK	Oklahoma Department of Consumer Credit
ID	Idaho Department of Finance	OR	Oregon Department of Consumer & Business Services
IL	Illinois Division of Financial Institutions	PA	Pennsylvania Department of Banking
IN	Indiana Department of Financial Institutions	RI	Rhode Island Department of Business Regulation
IA	Iowa Division of Banking	SC	South Carolina State Board of Financial Institutions
KS	Office of the State Bank Commissioner/Kansas Attorney General	SD	South Dakota Division of Banking
KY	Kentucky Office of Financial Institutions	TN	Tennessee Department of Financial Institutions
LA	Louisiana Office of Financial Institutions	TX	Texas Office of Consumer Credit Commissioner
ME	Maine Office of Consumer Credit Regulation	UT	Utah Department of Financial Institutions
MD	Maryland Commissioner of Financial Regulation/MD Attorney General	VT	Vermont Banking Division
MA	Massachusetts Division of Banks	VA	Virginia Bureau of Financial Institutions
MI	Michigan Office of Financial and Insurance Regulation	WA	Washington Department of Financial Institutions
MN	Minnesota Department of Commerce	WV	Office of West Virginia Attorney General
MS	Mississippi Department of Banking and Consumer Finance	WI	Wisconsin Department of Financial Institutions
MO	Missouri Division of Finance	WY	Wyoming Division of Banking

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, certain securities enforcement actions, and actions related to improper report filing or licensing, unlawful debt collection, and complaints are not captured in this tracker. Actions published after Sept. 30, 2019, 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 FX violation: Violation of any law or regulation in the distribution, monitoring, or trading of securities, commodities, or foreign exchange.

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.

Contacts

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

Chris Sicuranza
Partner, Practice Leader
Banking, Insurance, and Capital Markets
+1-202-973-6545
csicuranza@guidehouse.com

Vincent Urbancic
Director
Banking, Insurance, and Capital Markets
+1-202-973-3243
vincent.urbancic@guidehouse.com

linkedin.com/company/guidehouse

twitter.com/guidehouse

guidehouse.com

About Guidehouse

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