

# **Financial Services Enforcement Actions Tracker**

**October 2020**

## Regulatory Outlook

Over the second quarter of 2020, Guidehouse observed an increase in Federal Regulatory activities as regulatory agencies acclimate to enforcement during COVID-19. Guidehouse simultaneously observed a decrease in state enforcement actions over the prior quarter, possibly because many of the historically active state regulatory bodies are states which have had the most restrictive lock-down efforts. As Guidehouse expected, the regulatory climate is becoming more stringent as the Federal and State Governments begin attempting to return to normal. Guidehouse expects further increased enforcement as these agencies resume regular inspections of institutions. Regulators have provided updates related to current and future enforcement activity pertaining to COVID-19 including:

- **Jun 18th, 2020:** The FDIC, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the National Credit Union Administration in conjunction with the state bank and credit union regulators issued guidance for assessing the safety and soundness of institutions given the ongoing impact of the COVID-19 pandemic<sup>1</sup>
- **Jul 16th, 2020:** The Consumer Financial Protection Bureau issued an updated Complaint Bulletin, analyzing the more than 8,000 complaints it received from January through May 2020 that mention coronavirus or related terms. Per the bulletin, mortgage, credit card, and credit or consumer reporting complaints were the most prominent complaints the Bureau received that mentioned coronavirus keywords<sup>2</sup>
- **Aug 31st, 2020:** The Consumer Financial Protection Bureau issued a report, focused on mortgage, student, and auto loans, to examine the early effects of COVID-19 on consumer credit<sup>3</sup>
- **Sep 29th, 2020:** Federal bank regulatory agencies finalized two rules allowing individuals and businesses to more quickly access real estate equity to help address needs for liquidity as a result of the coronavirus and to support the flow of credit to households and businesses affected by the coronavirus<sup>4</sup>

Regulatory agencies have shown some leniency throughout 2020 as COVID-19 impacted businesses, but Guidehouse has noted an increase in enforcement activity in Q2 2020 and anticipates that this trend will continue as regulatory agencies learn to cope with the difficulties of working remote while attempting to resume normal activities.

1. <https://www.fdic.gov/news/financial-institution-letters/2020/fil20064.html>

2. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-updated-covid-19-consumer-complaint-data/>

3. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-examines-pandemic-impact-on-consumer-credit>

4. <https://occ.gov/news-issuances/news-releases/2020/nr-ia-2020-129.html>

# Federal-Level Enforcement Actions

## Key Outcomes and Topics of 2020

Based on regulatory announcements, enforcements, changes in rules, and our industry knowledge, Guidehouse anticipates the following areas to be key outcomes and topics of 2020:

Fair Lending Risk	Mortgage Servicing	Consumer Credit Reporting	Loss Mitigation & COVID-19	Debt Collections
<p>On June 23, the CFPB issued an interpretive ruling to describe updated procedures on determining what counties are underserved<sup>5</sup></p> <p>The CFPB indicated recent supervisory action related to</p> <ul style="list-style-type: none"> <li>• Redlining</li> <li>• Failure to consider public assistance income</li> </ul> <p>Guidehouse believes that regulators will focus on fair lending risk associated with the introduction of the Paycheck Protection Program (PPP) to ensure that lenders treat all applicants equally</p>	<p>On April 3, the CFPB issued a FAQ related to mortgage servicing during COVID-19<sup>6</sup></p> <p>The CFPB indicated recent supervisory action related to</p> <ul style="list-style-type: none"> <li>• Failure to provide consumers in bankruptcy with periodic statements</li> <li>• Failure to have a reasonable basis for force-placed insurance</li> <li>• Failure to timely refund all force-placed insurance for overlapping coverage</li> </ul> <p>California passed the California Consumer Financial Protection Law (CCFPL), expanding the enforcement authority of the state's banking agency</p>	<p>The CARES Act added a new provision to the Fair Credit Reporting Act with special instructions for reporting consumer credit information with pandemic related accommodations (such as deferred payments, forbearance, or a modified loans) to the credit reporting agencies.</p> <p>On June 16, the CFPB released FAQs to help ensure consumers receive the reporting protections required by the CARES Act<sup>7</sup></p>	<p>On June 23, the CFPB issued an interim rule to amend Regulation X<sup>8</sup></p> <ul style="list-style-type: none"> <li>• This amendment permits mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application</li> <li>• This amendment is specifically designed to allow these options for borrowers experiencing hardships (directly or indirectly) due to COVID-19.</li> </ul>	<p>On May 19, the CFPB proposed to amend Reg F to require debt collectors to make certain disclosures related to time-barred debts<sup>9</sup></p> <p>The CFPB indicated recent supervisory action related to</p> <ul style="list-style-type: none"> <li>• False litigation threats and misrepresentations regarding litigation</li> <li>• False implication that debt could be reported to CRCs</li> <li>• False representation that debt collector is a CRC</li> </ul> <p>It is rumored that the CFPB is issuing final ruling on its new collections rule in early fall 2020</p>

5. <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-underserved-areas-home-mortgage-disclosure-act-data/>

6. [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage-servicing-rules-covid-19\\_faqs.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf)

7. <https://www.consumerfinance.gov/about-us/blog/consumer-reporting-and-cares-act/>

8. <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/certain-covid-19-related-loss-mitigation-options-under-respa-regulation-x/>

9. <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/debt-collection-practices-regulation-f-supplemental-proposal-time-barred-debt/>

# Federal-Level Enforcement Actions

## Top Q2 2020 Federal Enforcement Actions

The following enforcement actions are examples of some of the top **federal enforcement actions** for Q2 2020

### **Unfair or Deceptive Acts or Practices; Payday Loans Violation**

The CFPB and Respondent settled charges related to violations of Truth in Lending and the CFPA for engaging in unfair debt collection practice and failure to refund overpayments on loans. The Bureau found that the Respondent concealed and understated finance charges of its auto-title loans and retained consumers' overpayments on loans. Approved Cash also violated the CFPA by calling consumers' workplaces, references and other third parties after being asked to stop, and improperly disclosed consumers' debts to third parties.

### **Fair Credit Reporting Act/ Truth In Lending Act**

The CFPB found the respondent made deceptive representations in its tv ads and telemarketing calls through false "50%-off" promotions. They violated the FCRA by failing to maintain adequate policies and procedures concerning the accuracy and integrity of the information it furnished to consumer reporting agencies, potentially affecting about 20,000 consumer accounts. The respondent also violated TILA by failing to provide the annual percentage rate to consumers when they inquired over the phone about the cost of their loans.

### **Real Estate Settlement Procedures Act**

The CFPB settled with the respondent after an investigation found they had violated RESPA and Regulation X by taking prohibited foreclosure actions against mortgage borrowers who were entitled to protection from foreclosure, and by failing to send evaluation notices to borrowers who were entitled to them. The order requires the respondent to implement procedures to ensure compliance and to pay a \$250,000 civil money penalty. Along with the civil money penalty, the respondent will also pay \$775,000 in restitution and will waive \$500,000 in borrower deficiencies.

### **False Claims Act and FIRREA**

The DOJ issued a Formal Agreement/Consent order and a Civil Money Penalty to a respondent who they allege violated the False Claims Act and FIRREA by knowingly causing false claims to government mortgage loan programs. According to the press release from the DOJ, Guaranteed Rate knowingly failed to comply with material program rules that require lenders to maintain quality control programs to prevent and correct underwriting deficiencies, self-report any materially deficient loans that they identify, and ensure that the underwriting process is free from conflicts of interest. The respondent has agreed to the civil money penalty of \$15.06 million.

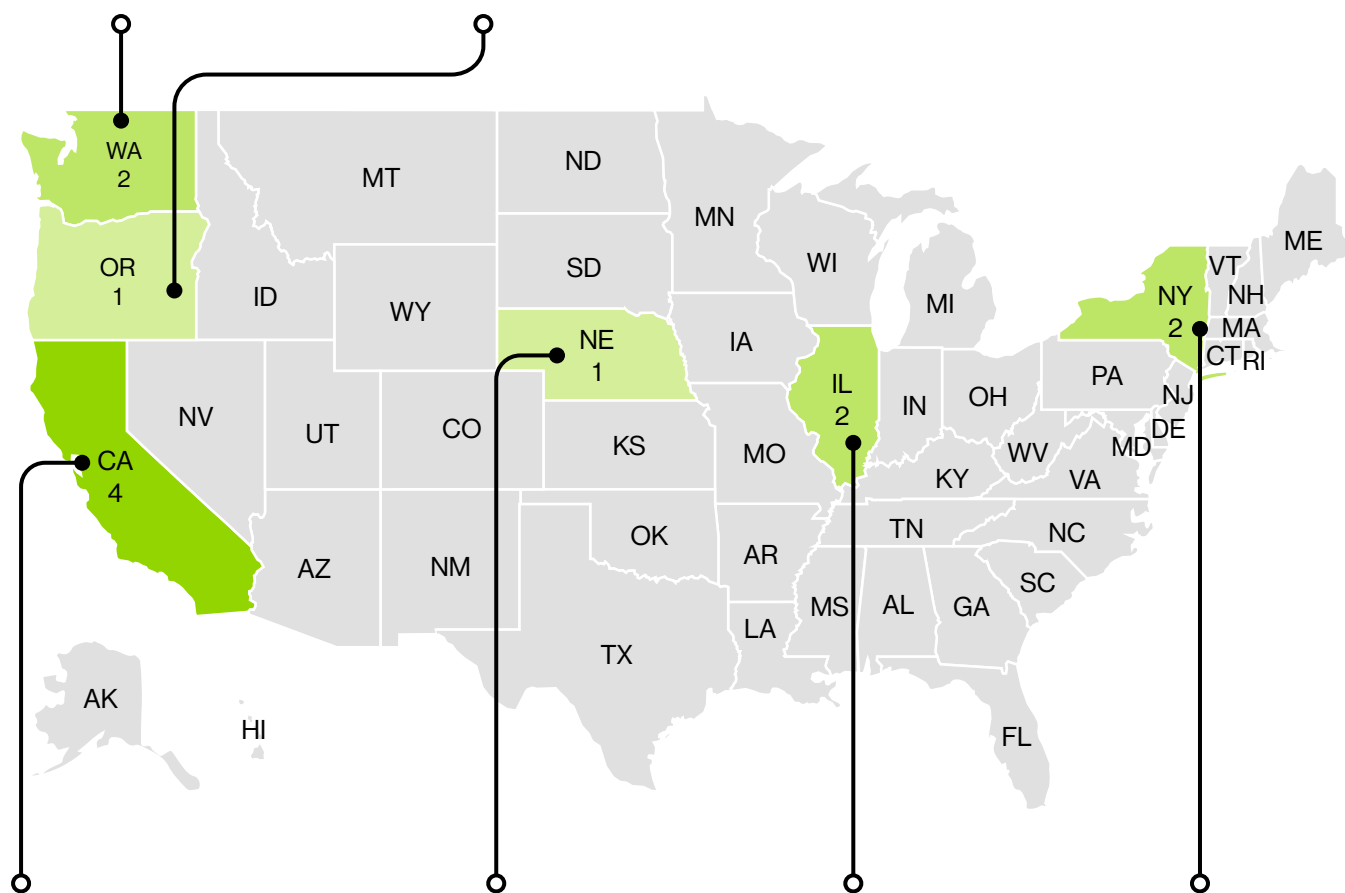
# State-Level Enforcement Actions

## Q2 2020 State Enforcement Actions

Below please find a map of enforcement actions for each state that had at least one enforcement action in Q2 2020

Washington enforced two actions related to **Improper Lending Practices**, involving **\$11,500 in total fines and penalties**

Oregon enforced one action related to **Improper Student Lending Practices**, involving **\$15,000 in total fines and penalties**



California enforced three actions related to **Improper Lending Practices** and one action related to **Improper Student Lending Practices**

Nebraska enforced one action related to **Governance Deficiencies**, involving **\$9,700 in total fines and penalties**

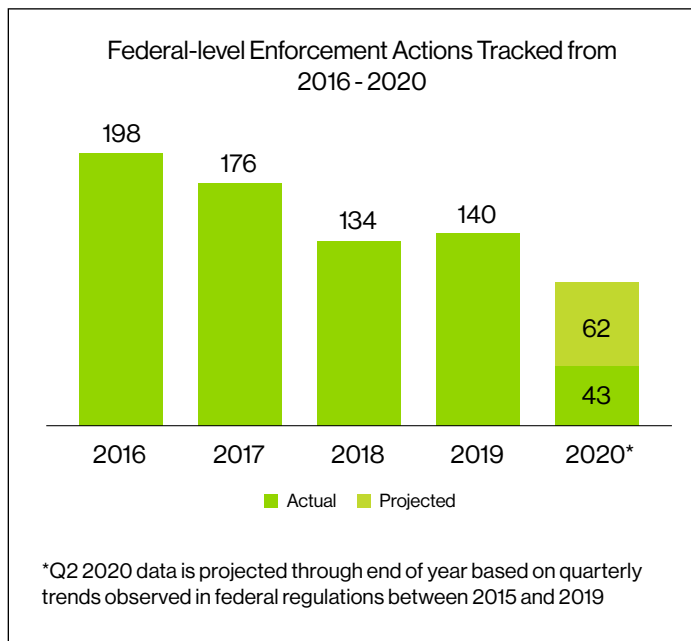
Illinois enforced one action related to **Bank Secrecy Act Violations** and one action related to **Insufficient Capital**

New York enforced one action related to **Bank Secrecy Act Violations** including **\$35,000,000 in total fines and penalties** and one action related to **Improper Foreign Transactions**, including **\$200,000,000 in fines and penalties**

# Federal-Level Enforcement Actions

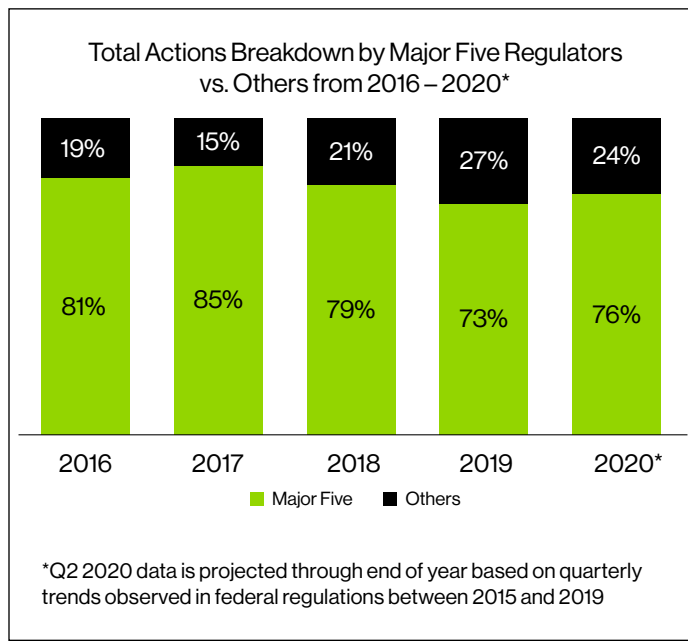
## Prior Five Years (2016 – 2020\*)

Below please find charts that describe the **federal-level enforcement actions from 2016 to 2020\***. As seen in these charts, there's been a **consistent decline in enforcement actions over this time** and an increasing role of regulators that are not considered the major five



### An overall downward trend in volume of federal-level enforcement actions was observed between 2016 – 2020\*:

- In 2016, federal-level regulators enforced 198 actions.
- In 2020, Guidehouse projects this number decreased to 105, representing a 46% decrease compared to 2016



### In the past four years, actions enforced by other federal-level regulators have accounted for a higher proportion in total federal-level enforcement actions:

- In 2017, 85% of federal actions were enforced by the major five regulators (CFPB, FRB, FDIC, OCC, and DOJ), **only 15% of federal-level enforcement actions were enforced by non-major five federal regulators.**
- In 2020, Guidehouse projects 76% of federal actions to be enforced by the major five regulators, and the **other federal regulators to enforce 24% of total federal-level actions.**

\*Q2 2020 data is projected through end of year based on quarterly trends observed in federal regulations between 2015 and 2019

Guidehouse tracks federal-level enforcement actions related to consumer finance from certain regulators. Specifically, Major Five federal regulators consist of the CFPB, DOJ, FDIC, FRB, and OCC. "Others" consist of certain relevant enforcement actions levied by the CFTC, FHFA, FinCEN, FINRA, FTC, HUD, SEC, NCUA, and OFAC at banks and subsidiaries of bank holding companies.

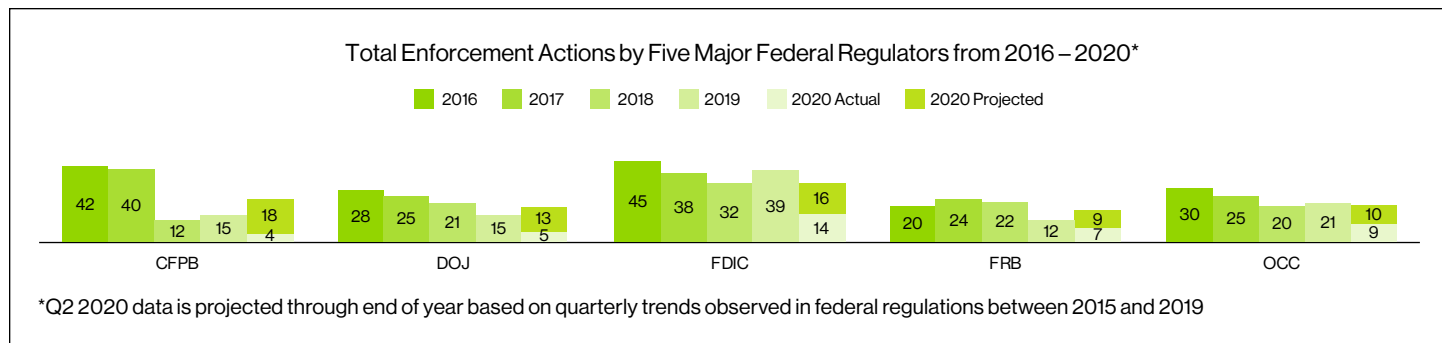


# Federal-Level Enforcement Actions

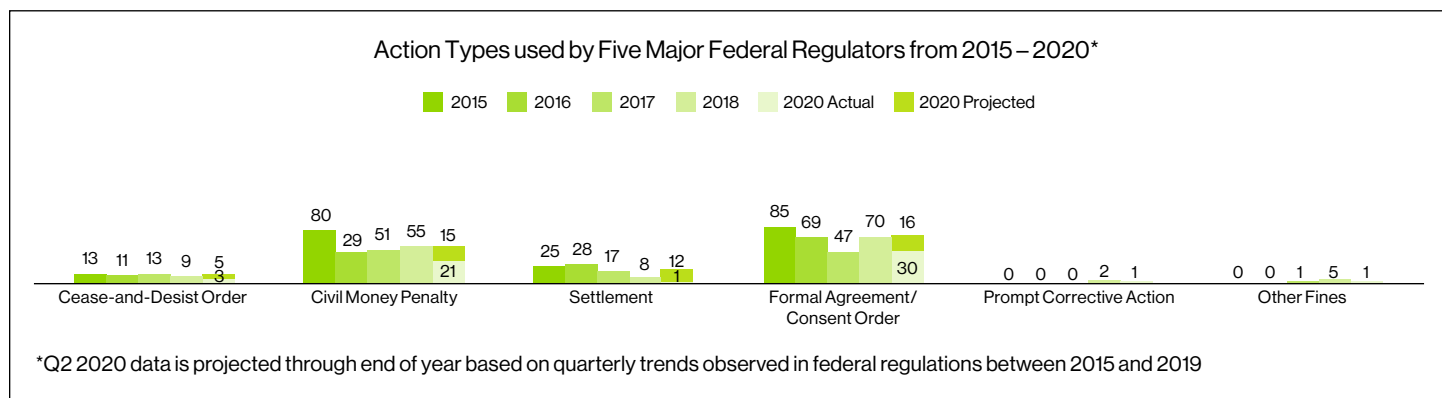
## Prior Five Years (2016 – 2020\*)

Below please find charts that describe the **federal-level enforcement actions from 2016 to 2020\* broken down by the five major regulators** and their corresponding action types. As seen in these charts, there's been a consistent decline in enforcement actions over this time

An **overall downward trend** in volume of actions enforced by **five major federal regulators** was observed between 2016 – 2020\*



**Formal Agreement/Consent Order** and **Civil Money Penalty** were the most frequently used action types for five major federal regulators to enforce regulatory requirements.



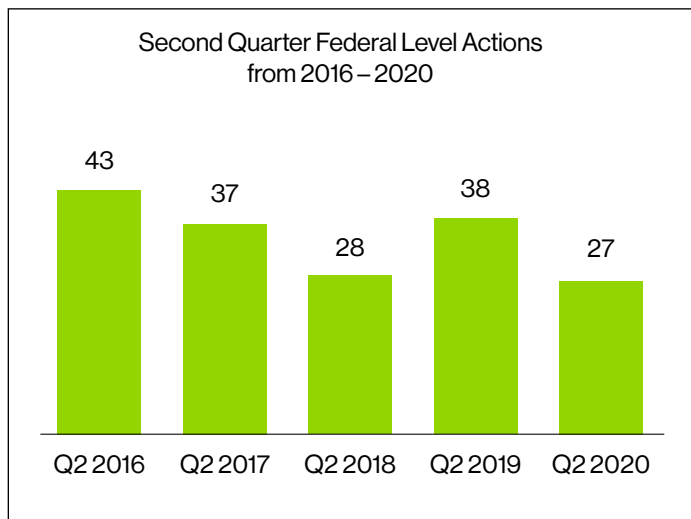
Note: One regulatory action may be categorized as multiple action types. Actions from previous quarters issued after the previous publication's cutoff date may be included in the above figures



# Federal-Level Enforcement Actions

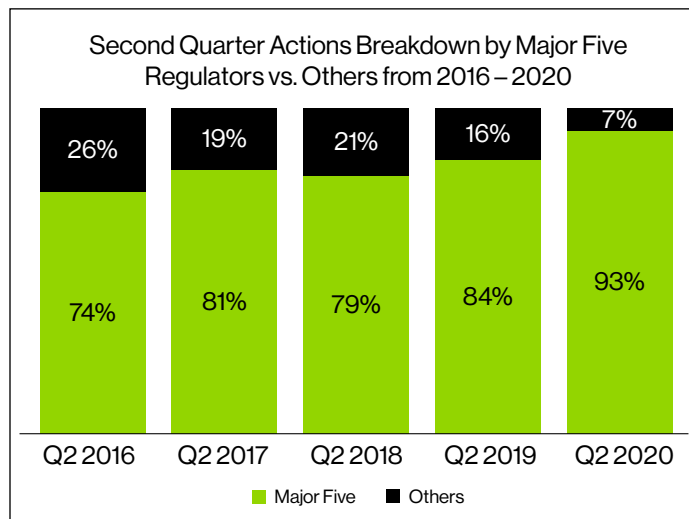
## Second Quarter Actions of Prior Five Years (Q2 2016 – Q2 2020)

Below please find charts that describe the **federal-level enforcement actions for the second quarter of each year from 2016 to 2020**. As seen in these charts, there's been a consistent decline in enforcement actions in the first quarter over this time as well as a decreasing role of regulators that are not considered the major five



### An overall downward trend in Q2 volume of federal-level enforcement actions was observed between 2016-2019:

- In Q2 2016, federal-level regulators enforced 43 actions.
- In Q2 2020, this number decreased to 27, representing a 37% decrease compared to five years ago.



### In the past five years, actions enforced by “other” federal-level regulators have accounted for a decreasing proportions in total federal-level enforcement actions for the second quarter of each year:

- “Other” federal-level regulators accounted for 26% of enforcements in Q2 2016, while only accounting for 7% of enforcements in Q2 2020.
- In Q2 2020, 93% of federal actions were enforced by the major five regulators, and the other federal regulators collectively enforced 7% of total federal-level actions.

Guidehouse tracks federal-level enforcement actions related to consumer finance from certain regulators. Specifically, Major Five federal regulators consist of the CFPB, DOJ, FDIC, FRB, and OCC. “Others” consist of certain relevant enforcement actions levied by the CFTC, FHFA, FinCEN, FINRA, FTC, HUD, SEC, NCUA, and OFAC at banks and subsidiaries of bank holding companies.

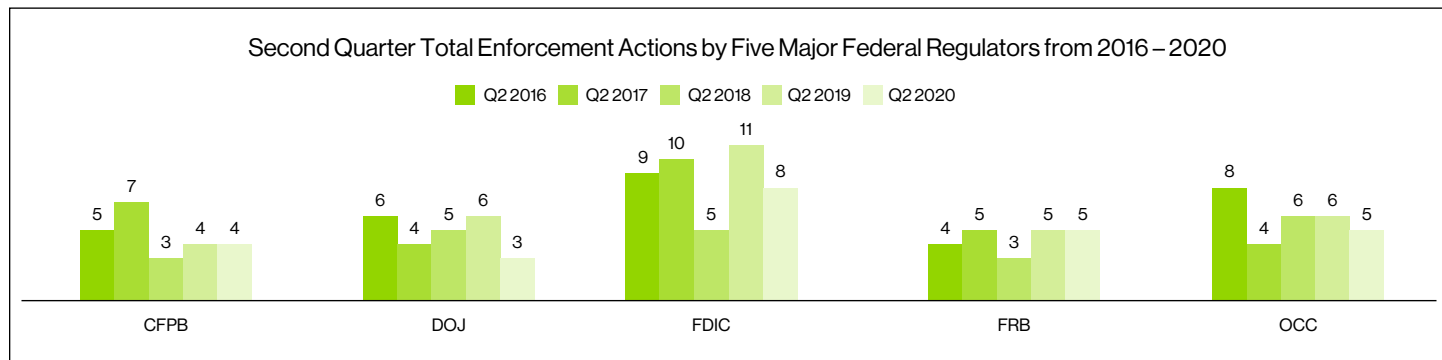


# Federal-Level Enforcement Actions

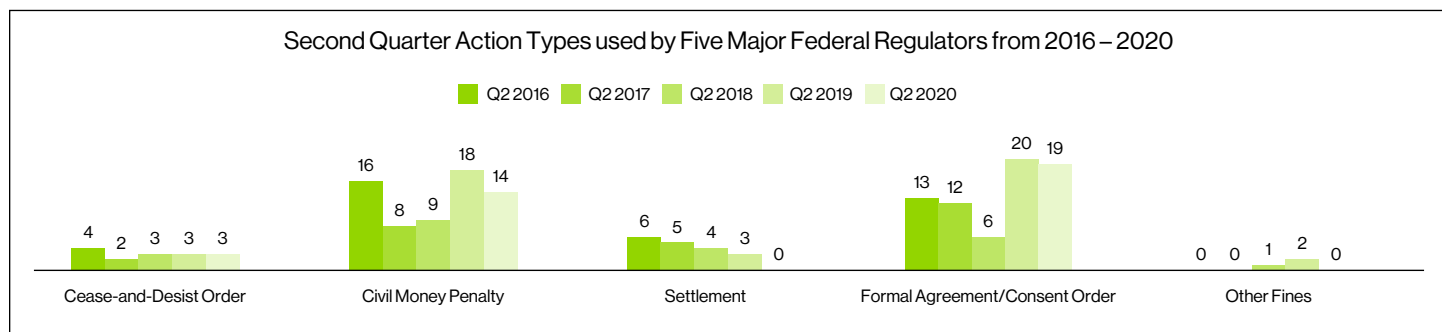
## Second Quarter Actions of Prior Five Years (Q2 2016 – Q2 2020)

Below please find charts that describe the **federal-level enforcement actions for the second quarter of each year from 2016 to 2020** broken down by the five major regulators and their corresponding action types. As seen in these charts, there's been a consistent decline in enforcement actions over this time

An **overall downward trend** in volume of actions enforced by **five major federal regulators** was observed between 2016 – 2020.



**Formal Agreement/Consent Order** and **Civil Money Penalty** were the most frequently used action types for the five major federal regulators to enforce regulatory requirements.



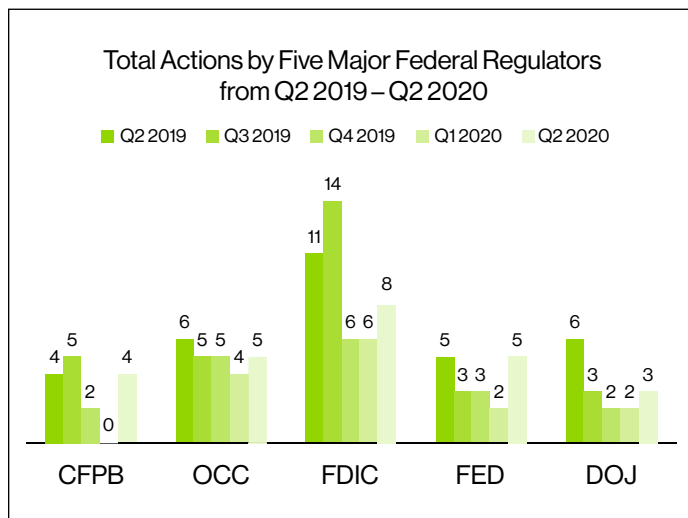
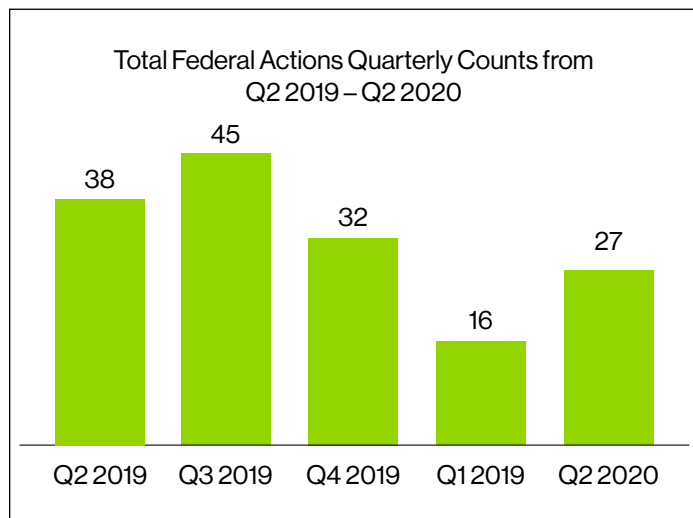
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## Federal-Level Enforcement Actions

### Prior Five Quarters (Q2 2019 – Q2 2020)

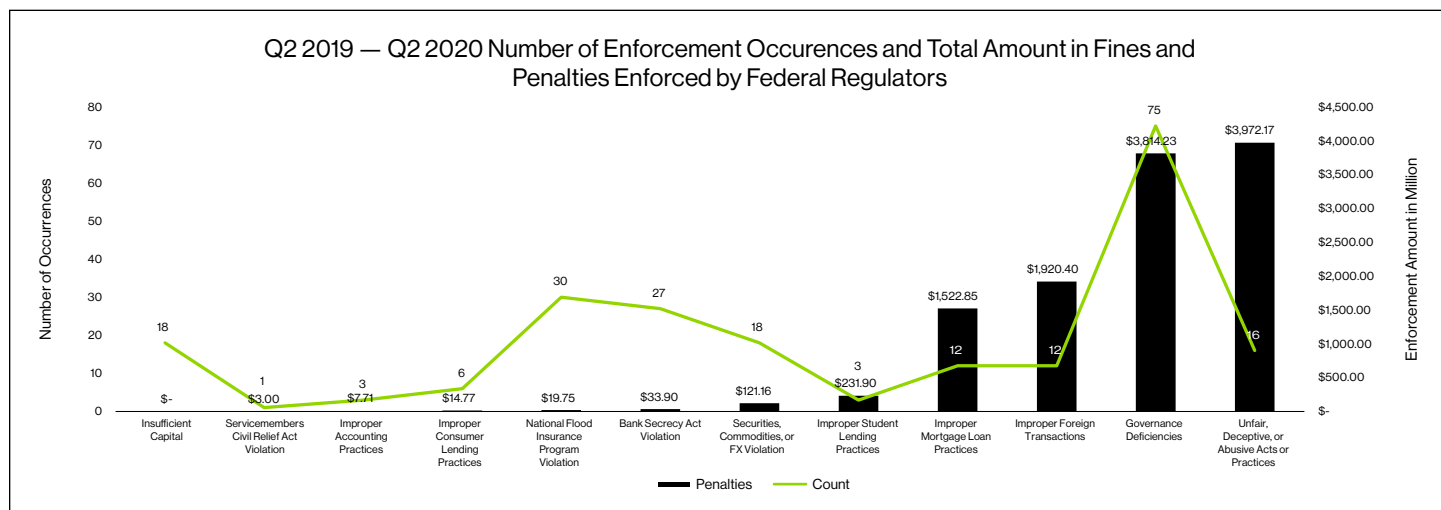
Below please find charts that describe the **federal-level enforcement actions for the last five quarters (Q2 2019 – Q2 2020)**. As seen in the charts, there was a significant increase of enforcement actions from Q2 2019 to Q3 2019 with the **highest concentration of enforcement actions over the last five quarters occurring in Q3 2019**. This large increase in Q3 2019 is largely caused by a higher than normal level of enforcement action by the FDIC for this quarter.



- A total of **27 federal level regulatory actions** were observed in Q2 2020.
  - With 16 federal actions in Q1 2020, Q2 2020 saw a **69% increase** quarter over quarter
  - With 38 federal actions in Q2 2019, Q2 2020 saw a **30% decrease** year over year
- In Q2 2020, all five major regulators saw increases in enforcement actions over the prior quarter.

### Prior Five Quarters (Q2 2019 – Q2 2020)

Below please find a chart that depicts the Federal-level enforcement actions for the last five quarters (Q2 2019 – Q2 2020). **A total of 75 actions over the past five quarters involved Governance Deficiencies**, making it the most frequently occurring violation and accumulating nearly \$4 billion in fines and penalties enforced. **UDAAP and Governance Deficiencies** were the source of the highest amount monetary penalties enforced by federal regulators, with nearly \$4 billion in fines and penalties each.



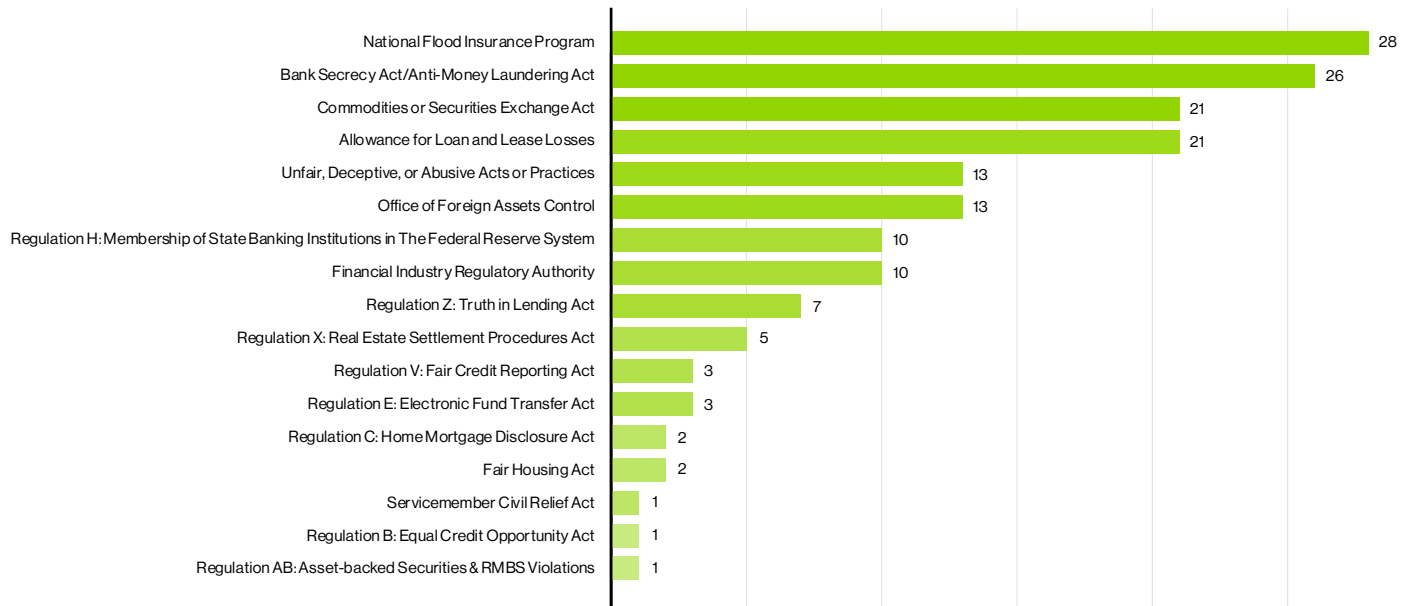
## Federal-Level Enforcement Actions

### Prior Five Quarters (Q2 2019 – Q2 2020)

Below please find a chart that breaks down the regulations cited in federal-level enforcement actions for Q2 2019 – Q2 2020.

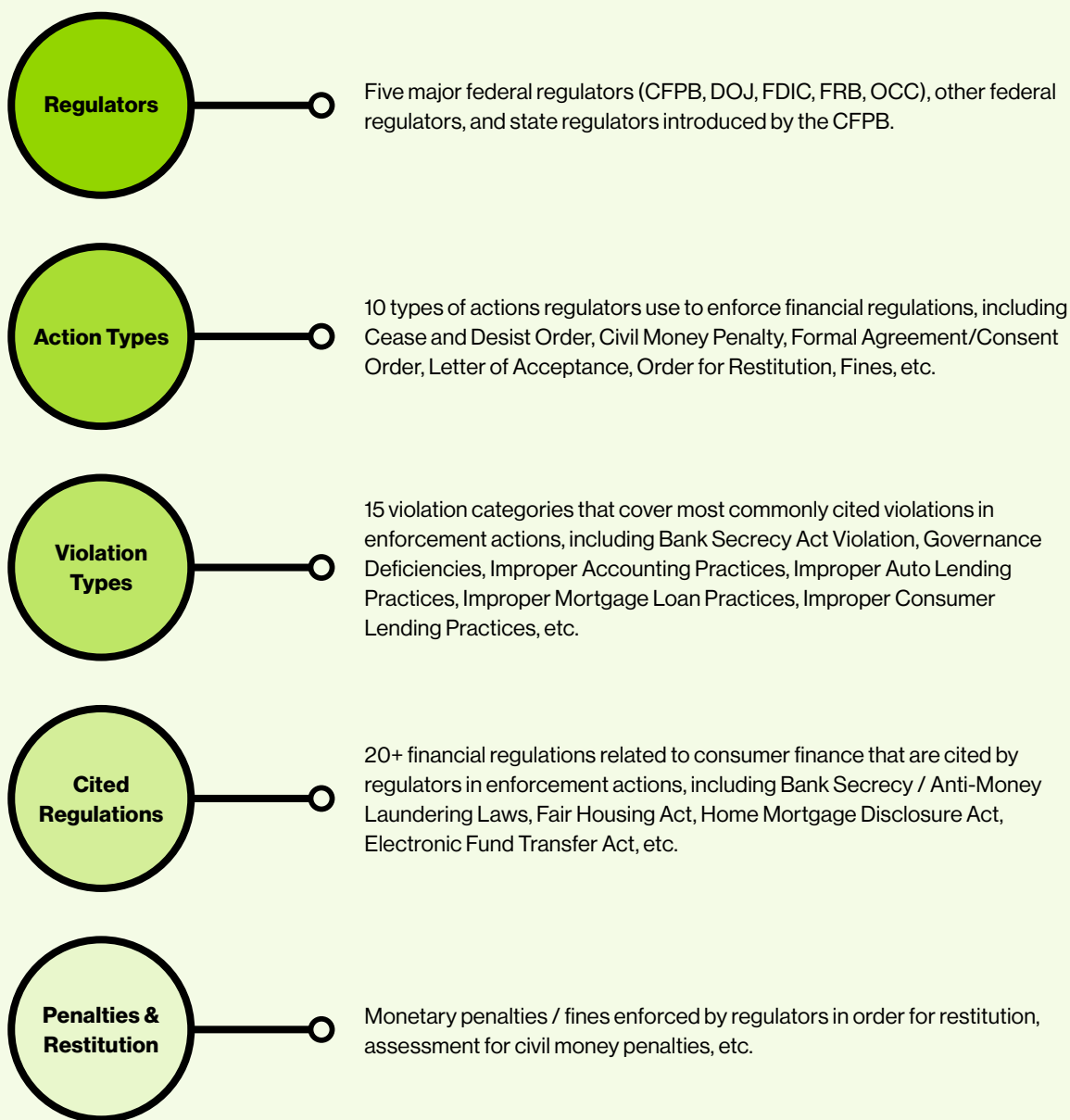
**National Flood Insurance Program** was the most frequently cited area of law in federal actions during the past five quarters, with a total of 28 citations. Other top areas of cited regulations were **Bank Secrecy Act/Anti-Money Laundering Act**, **Commodities or Securities Exchange Act**, **Allowance for Loan and Lease Losses**, **UDAAP**, and **Office of Foreign Assets Control**.

Q2 2019 to Q2 2020 Number of Regulations Cited by Federal Regulators



## Methodology

Guidehouse's Financial Services Enforcement Actions Tracker compiles publicly available data from both federal and state regulators regarding quarterly enforcement actions against financial institutions. First published in 2016, the Tracker showcases the types of activities that consumer finance-focused regulators are currently monitoring and helps the audience better address the trends and challenges in today's regulatory environment.



Note: 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.



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## About Guidehouse

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