CORPORATE IMPUNITY

“Tough on Crime” Trump Is Weak on Corporate Crime and Wrongdoing

PUBLIC CITIZEN

VIOLATION TRACKER
Corporate Impunity

“Tough on Crime” Trump Is Weak on Corporate Crime and Wrongdoing

Acknowledgements
This report was co-authored by Rick Claypool, Taylor Lincoln, Michael Tanglis and Alan Zibel, research directors for Public Citizen’s president’s office and Congress Watch divisions. Philip Mattera of the Corporate Research Project of Good Jobs First, which produces Violation Tracker, provided data, analysis and invaluable guidance. Robert Weissman, president of Public Citizen, authored the introduction.

About Public Citizen
Public Citizen is a national non-profit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

About the Corporate Research Project
The Corporate Research Project is a non-profit center that provides research assistance to organizations working on a wide range of corporate accountability issues. It produces public resources such as a guide to online corporate research; Corporate Rap Sheet profiles of more than 70 large and controversial companies; and Violation Tracker, a database containing more than 300,000 entries relating to corporate regulatory violations and other forms of misconduct. The Corporate Research Project is an affiliate of Good Jobs First, a national resource center on economic development accountability.
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EXECUTIVE SUMMARY

Table 1: In 11 out of 12 agencies led by a Trump administration official for most of 2017, the amount of penalties imposed on corporate violators¹ declined, in many cases quite dramatically.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Penalty Sum from Obama’s Last Year</th>
<th>Penalty Sum from Trump’s First Year</th>
<th>% Change in Penalty Sums</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Protection Agency</td>
<td>$23,870,000,000</td>
<td>$1,460,000,000</td>
<td>-94%</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>$51,506,033,030</td>
<td>$4,898,284,958</td>
<td>-90%</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>$257,034,240</td>
<td>$39,631,327</td>
<td>-85%</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>$751,793,192</td>
<td>$153,469,100</td>
<td>-80%</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>$2,909,912,692</td>
<td>$927,377,931</td>
<td>-68%</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>$12,387,666,094</td>
<td>$4,338,996,773</td>
<td>-65%</td>
</tr>
<tr>
<td>Office of the Comptroller of the Currency</td>
<td>$214,981,500</td>
<td>$89,316,420</td>
<td>-58%</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>$37,300,000</td>
<td>$21,350,000</td>
<td>-43%</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>$52,000,000</td>
<td>$42,000,000</td>
<td>-19%</td>
</tr>
<tr>
<td>Bureau of Safety and Environmental Enforcement</td>
<td>$2,198,770</td>
<td>$1,939,158</td>
<td>-12%</td>
</tr>
<tr>
<td>Aviation Consumer Protection Division</td>
<td>$3,605,000</td>
<td>$3,205,000</td>
<td>-11%</td>
</tr>
<tr>
<td>Office of Foreign Assets Control</td>
<td>$22,012,520</td>
<td>$118,974,240</td>
<td>440%</td>
</tr>
</tbody>
</table>

Source: Public Citizen analysis of data from Violation Tracker and federal agencies.

Table 2: In 10 out of 12 agencies led by a Trump administration official for most of 2017, the number of enforcement actions against corporate violators² declined, in many cases quite dramatically.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Enforcement Actions in Obama’s Last Year</th>
<th>Enforcement Actions in Trump’s First Year</th>
<th>% Change in Enforcement Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Trade Commission</td>
<td>27</td>
<td>14</td>
<td>-48%</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>207</td>
<td>116</td>
<td>-44%</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>49</td>
<td>30</td>
<td>-39%</td>
</tr>
<tr>
<td>Aviation Consumer Protection Division</td>
<td>28</td>
<td>18</td>
<td>-36%</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>6</td>
<td>4</td>
<td>-33%</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>51</td>
<td>36</td>
<td>-29%</td>
</tr>
<tr>
<td>Office of the Comptroller of the Currency</td>
<td>14</td>
<td>10</td>
<td>-29%</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>171</td>
<td>125</td>
<td>-27%</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>308</td>
<td>241</td>
<td>-22%</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>2107</td>
<td>1847</td>
<td>-12%</td>
</tr>
<tr>
<td>Bureau of Safety and Environmental Enforcement</td>
<td>27</td>
<td>24</td>
<td>-11%</td>
</tr>
<tr>
<td>Office of Foreign Assets Control</td>
<td>12</td>
<td>13</td>
<td>8%</td>
</tr>
</tbody>
</table>

Source: Public Citizen analysis of data from Violation Tracker and federal agencies.

¹ EPA and FCC penalty sums include non-corporate violators (i.e., individuals and public entities).
² EPA and FCC enforcement action tallies include non-corporate violators (i.e., individuals and public entities).
INTRODUCTION

Americans may be divided on many issues, but not on favoring tough enforcement of regulations and laws.

Americans are virtually united in support for regulatory enforcement. Polling shows Americans favoring tough regulatory enforcement by an 87-12 margin. Democrats (89), Republicans (85), Independents (87) all agree, as do Americans from all parts of the country: Northeast (86), Midwest (88), South (88), West (84). In focus groups, Americans connect proper and fair enforcement of the rules to concerns about a rigged political and economic system. They favor enforcement to ensure that everyone has a fair shot in society. They want assurances that weak regulatory enforcement does not enable corporations and the rich to play by a different set of rules – with everyday people held to account, but the powerful able to disregard the rules because they know they won’t be enforced against them. These views are durable, and withstand counter-messaging. Indeed, Americans express overwhelming support for stronger regulatory enforcement.

Americans’ overwhelming support for tough law-and-order against corporate wrongdoers reflects three interconnected understandings. First, basic standards of justice require that the rules be enforced equally against powerful corporations as they are against vulnerable individuals. Americans of all political stripes perceive that the system is rigged, creating both a crisis of political legitimacy and a pervasive sense of injustice. Second, justice requires that wrongdoers be punished – and corporate violators, who can inflict damage on a scale vastly greater than street criminals, must be punished commensurate with the scale of the harms they impose. Americans of all income brackets, for example, expressed strong support for prosecuting and seeking jail terms for high-level Wall Street executives in connection with the 2008 financial crash. Third, strong enforcement is needed to ensure compliance with the laws and regulations that protect American’s quality of life, from clean air safeguards to protections against predatory lenders.

Indeed, corporations are the ultimate rational actors. If the chances of being prosecuted for lawbreaking drop and the penalties when caught are slight, we should expect a surge in corporate wrongdoing. That means more workers needlessly injured and killed on the job. It means more consumers ripped off by predatory lenders. It means more preventable contaminated food outbreaks and more avoidable asthma attacks from illegal air pollution. It means more dangerous products on the market, more ripped-off investors, more discrimination on the job. It also means a greatly

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4 Ibid. https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf (page 5)
5 Ibid. https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf (page 11)
6 Ibid. https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf (page 6-7)
7 Will Dobbs-Allsopp, “”Too Big to Jail” on Trial in the Court of Public Opinion,” Morning Consult, April 6, 2015, available at https://morningconsult.com/2015/04/06/too-big-to-jail-on-trial-in-court-of-public-opinion/
increased chance of corporate catastrophes, on the scale of the BP Gulf oil disaster and the 2008 financial crash, both of which can be traced directly to regulatory enforcement failures.

Americans’ views may be clear on the matter of regulatory enforcement, but equally clear is that the Trump administration has a precisely contrary orientation. Officials throughout the administration have made clear that they believe their job is to serve and assist corporations, not hold them accountable. Trump regulators routinely refer to the companies and industries they regulate or oversee as “customers” or “constituents,” and explain that they believe regulatory enforcement should be a last resort. At their most aggressive, they make the case for “light touch” regulation:

- “Government should make things easier for our customers whenever possible,” said Agriculture Secretary Sonny Perdue – referring to agribusiness compliance with food safety standards, not consumers of food.8

- Housing and Urban Development Secretary Ben Carson said the rise in enforcement of the Fair Housing Act under President Obama was “ridiculous” and that he aimed to roll back the use of a whistleblower statute enabling tougher enforcement.9

- “We do not believe that we or the government know best,” Secretary of Transportation Elaine Chao told an industry group in touting voluntary standards instead of binding regulations. “We’re partners with you.”10

- Announcing that he would no longer “push the envelope” when it comes to enforcement, Acting Consumer Financial Protection Bureau Director Mick Mulvaney asserted that the agency works for “everyone” – “those who use credit cards and those who provide the credit; those who take out loans and those who make them; those who buy cars and those who sell them.”11 Mulvaney would later assert that, under his watch, the agency is ending “regulation by enforcement.”12 And he offered a remarkable standard for assessing corporate wrongdoing, claiming at an industry event that “twelve thousand [regulatory violations] of 3.5 million [transactions] is not that many,” by way of a hypothetical example. “And so the question then becomes, is this systematic, is it intentional? So we are going to start to look at that.”13


10 Claire Tran, "Sec. of Transportation Elaine Chao Emphasizes Deregulation and Consumer Confidence," Boston University News Service (Jan. 12, 2018), http://bunewsservice.com/sec-transportation-elaine-chao-emphasizes-deregulation-consumer-confidence/


• “We should not be hoping for multi-million dollar penalties. We should be hoping for zero penalties,” said Anne Marie Buerckle, the acting chair of the Consumer Product Safety Commission.

• “I worry that the FTC imposes unnecessary and disproportionate costs on businesses,” said former acting Federal Trade Commission Chair Maureen K. Ohlhausen. “The most obvious examples occur when the Commission wrongly sues a firm to potentially devastating effect.” She even called for the agency to display “regulatory humility” in enforcement.

• Scott Angelle, the Department of Interior’s director of the Bureau of Safety and Environmental Enforcement, created to ensure the safety of offshore oil drilling in the wake of the BP oil disaster in the Gulf of Mexico, told a group of industry executives, “Help is on the way, help is on the way.”

• “You can’t prosecute unlawful conduct out of existence,” said Commodities Future Trading Commission director of enforcement James McDonald, explaining that the agency's emphasis will be on partnering with industry.

• Joseph Otting, the Comptroller of the Currency, in charge of enforcement of nationally chartered banks, explained that he aimed to improve his agency’s “responsiveness to our customers, which are the banks.”

Those words have been matched by policy changes, starting at the Justice Department, the nation’s law enforcement agency. Under Attorney General Jeff Sessions, the Justice Department has adopted numerous policies to soften civil and criminal enforcement against corporations:

• In November 2017, Deputy Attorney General Rod Rosenstein announced a new Foreign Corrupt Practices Act (FCPA) enforcement policy to allow corporations to avoid criminal prosecution by self-reporting violations they discover. (The FCPA makes it illegal for U.S. companies to bribe overseas government officials). The idea is that corporations that come clean upon discovering acts of foreign bribery by their employees should not be prosecuted; but critics argue the policy encourages companies to create a culture of lawbreaking, and then “discover” violations if they are about to be caught.

15 Ibid.
• Also in November 2017, Rosenstein identified a heretofore unidentified problem of “piling on,” when corporations may be penalized by multiple agencies, in the United States or globally, for a single illegal act. Telling a banking group that such multiple penalties are “duplicative and unwarranted,” he said the Department of Justice would work on coordinating strategies to put an end to multiple penalties. “Repeated punishment for the same conduct has the potential to undermine the spirit of fair play and the rule of law,” he said.20

• In January 2018, then-Associate Attorney General Rachel Brand issued a memo prohibiting reliance on guidance documents – formal interpretations and clarifications of regulatory standards – as a basis for civil enforcement.21 Although guidance documents by definition cannot create new rights and obligations, their clarifying role can provide the certainty that makes it possible to hold corporations accountable for wrongdoing. The Brand memo applies to any lawsuit by or on behalf of the federal government “to impose penalties for violations of federal health, safety, civil rights or environmental laws.” One notable area where it will have a severe impact is whistleblower lawsuits against health care providers that allegedly overcharged or defrauded the federal government. Proper billing standards are commonly established by guidance, and have provided the backdrop for lawsuits under the federal False Claims Act, which enables whistleblowers to bring cases on behalf of the United States against those defrauding the government.22

The Department of Education under Secretary Betsy DeVos also has moved aggressively to weaken enforcement policies and has virtually disbanded an enforcement unit set up toward the end of the Obama administration to investigate abuses by for-profit colleges.23

• In September 2017, the department ended an agreement with the Consumer Financial Protection Bureau (CFPB) by which the two agencies coordinated enforcement of rules to protect student loan borrowers. In an extraordinary letter from Acting Assistant Secretary Kathleen Smith, the department labeled the CFPB “overreaching and unaccountable.”24

• In March 2018, the department issued guidance in which it asserted federal authority to block state attorneys general from enforcing state fair lending laws against federal student loan

servicers. The attorneys general reacted with outrage. Among other efforts to prod better enforcement of rules to protect victims of predatory student loans, attorneys general have alleged a systematic failure of the department in processing loan discharge applications from students who attended the fraudulent for-profit Corinthian Colleges, urging the department to process group discharge petitions rather than undergoing a laborious case-by-case review.

- Also in March 2018, the department adopted guidance that permitted dismissal of complaints regarding access for persons with disabilities if the complaints are filed by a person who has filed multiple complaints. The direct result was the dismissal of hundreds of complaints filed by a Michigan woman – whose previous complaints have led to resolutions in roughly 1,000 previous cases regarding web accessibility for persons with disabilities.

- Department of Education guidance leaked in June 2018 reoriented the department's civil rights protections to scale back identification of systemic issues and wrongdoing that affect whole categories of students. A ProPublica analysis found that, reflecting this new approach, the department's civil rights office had dismissed more than 1,200 civil rights investigations commenced under the Obama administration. ProPublica noted as well a March case processing memo making it easier to dismiss complaints.

In one striking example of a policy shift to lighten enforcement, the Centers for Medicare and Medicaid Services (CMS) has moved aggressively to reduce the use of fines and penalties against nursing homes that harm residents or put them at risk of serious injury. The shift comes in direct response to a request for relief by the nursing home industry. The New York Times reports that, since 2013, 40 percent of the nation's nursing homes have been cited for a serious violation, resulting in fines two-thirds of the time. A July 2017 memo discouraged the use of fines for each day of a violation, preferring one-time fines for each instance. An October 2017 memo discouraged the use

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27 Case Processing Manual, U.S. Department of Education Office for Civil Rights (March 5, 2018), https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf


29 Memo from Candace Jackson, OCR Acting Assistant Secretary for Civil Rights, leaked in June 2018 and posted by ProPublica https://www.documentcloud.org/documents/3863019-doc00742420170609111824.html


31 Annie Waldman, "DeVos Has Scuttled More Than 1,200 Civil Rights Probes Inherited From Obama," ProPublica (June 21, 2018), https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-civil-rights-probes-inherited-from-obama


33 David R. Wright, Director of CMS’s Survey and Certification Group, Memo to State Survey Agency Directors, "Subject: Revision of Civil Monetary Penalty (CMP) Policies and CMP Analytic Tool," Centers for Medicare & Medicaid Services, (July 7, 2017),
of fines. In June 2018 came yet another memo discouraging use of monetary fines. States attorneys general have reacted with alarm to the effect that these changes will have on nursing home care. Fines “are an essential tool for regulators to ensure [skilled nursing facility] compliance and guarantee better performance in the future,” wrote a group of 17 state attorneys general in a May 2018 letter to Secretary of Health and Human Services Alex Azar and CMS Administrator Seema Verma. “Consequently, weakening or delaying their application hampers our ability to both punish bad actors and ensure improvement, thereby putting beneficiaries’ lives at risk.”

Policy shifts away from rigorous enforcement are evident throughout federal government under the Trump administration:

- At the CFPB, Acting Director Mick Mulvaney moved almost immediately upon taking control of the agency to impose a freeze on new enforcement actions, which extended for many months. Mulvaney also stripped enforcement powers from the CFPB’s fair lending office. The agency’s press releases, once filled with plain-English statements about companies’ bad conduct, are now written in legalese. “Mulvaney’s CFPB News Releases Embrace Industry’s Yearning for Soft Touch,” wrote National Law Journal.

- Housing and Urban Development Secretary Ben Carson is pushing a sweeping policy shift at the department to diminish or eliminate enforcement of fair housing rules. As The New York Times wrote: “The Trump administration is attempting to scale back federal efforts to enforce

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fair housing laws, freezing enforcement actions against local governments and businesses, including Facebook, while sidelining officials who have aggressively pursued civil rights cases.”

- In March 2018, the Department of Labor’s Wage and Hour Division announced a new initiative, the Payroll Audit Independent Determination program making it easier for employers to avoid penalties for overtime and minimum wage violations. Under the program, “the Division will not impose penalties or liquidated damages to finalize a settlement for employers who choose to participate in the PAID program and proactively work with the Division to fix and resolve their potential compensation errors.” In other words, businesses can self-audit and self-report overtime and minimum wage violations and be required to pay only the amount owed to workers, with no additional penalties. A group of 11 state attorneys general denounced the program, saying it “appears to be an amnesty program allowing employers who violate labor laws to avoid prosecution and penalties in exchange for simply paying the back wages their employees were already owed under federal law.”

- The Department of Agriculture is proposing to privatize and reduce hog plant inspection, handing key control of the process over to packing plants. “We would be removing the generic E. coli (testing) requirement and really allowing establishments to choose what they want to sample for,” according to Carmen Rottenberg, acting deputy undersecretary for food safety at the U.S. Department of Agriculture, “because they’re in the best position to identify process control.” Food safety advocates have denounced the proposal as putting consumers at risk.

- The Securities and Exchange Commission has proposed to limit awards to whistleblowers for exposing wrongdoing, a move that critics say is without statutory justification and will reduce the incentive for whistleblowers to bring forward cases.

This hostility to enforcement from federal agency leaders, the shift to consider regulated industry as partners or customers and new anti-enforcement policies have had an immediate effect, as this report demonstrates. In almost every agency under control of a Trump appointee, and perhaps most notably at the nation’s lead law enforcement agency, the Department of Justice, regulatory enforcement against corporations fell as compared to Obama levels, often plummeting to just a small
fraction of what it had been. Taken together, these policies represent an all-out assault on regulatory enforcement.

**Methodology**

This report tallies monetary enforcement actions, primarily against businesses, taken by federal agencies during the final two years of the Obama administration and the first year of the Trump administration. To the extent possible, this report attributes each enforcement action to the administration in power when the action was finalized.

Enforcement agencies that were included in this report met two criteria. First, the agency had to have been led by a Trump administration official for at least half of Trump’s first year in office. Second, the agency must provide reliable information about its enforcement activities.

The enforcement information was taken either from the Violation Tracker database maintained by Good Jobs First or directly from the federal agencies themselves. Violation Tracker compiles federal enforcement actions of $5,000 or more against corporations, primarily by mining press releases issued by agencies.

The value of an enforcement action is often subject to interpretation, as an action might include several subcategories, such as penalties, restitution of ill-gotten gains, costs to upgrade internal systems, and/or costs to remediate harms. In this report, we generally use the overall figure announced by the government, which is typically broadly construed. We use the catch-all term “penalties,” to represent the totality of sanctions.

For the most part, this report attributes credit for each enforcement actions to the agency that announced it or listed that action in its enumeration of its enforcement activities. Multiple agencies often announce the same enforcement action or overlapping portions of an enforcement action for the same underlying offense. For example, the Environmental Protection Agency and Department of Justice might each announce a settlement for a case they both worked on. In cases in which this occurred, we give credit to both agencies for the same or related enforcement activities. This double counting does not affect year-to-year comparisons of one agency to itself.

An important exception to this methodology is criminal enforcement. Regardless of agency jurisdiction, criminal prosecutions are carried out by the Department of Justice, so all criminal enforcement is attributed to that agency.

For additional methodological information about each agency in this report, see the methodology boxes at the end of each section and Appendix B.
I. LAW ENFORCEMENT

1. Department of Justice

“When a company discovers corporate misconduct and quickly raises its hand and tells us about it, that says something. It shows the company is taking misconduct seriously and not willing to tolerate it. And we are rewarding those good decisions.”

—Former Acting Assistant Attorney General John Cronan

Enforcement Trends

During Trump’s first year in office, the Department of Justice (DOJ), the number of enforcement actions against corporations dropped 22 percent (from an average of the Obama administration’s last two years, the drop was 40 percent). Between Obama’s last year and Trump’s first year, penalties dropped 90 percent.

Public Citizen’s analysis found:

- The Justice Department completed 241 enforcement actions against businesses with penalties of at least $5,000 in Trump’s first year, down from 308 in the Obama administration’s seventh year and 501 in its eighth year, according to Public Citizen’s analysis of Violation Tracker data.

- The DOJ issued about $4.9 billion in penalties against businesses during Trump’s first year. That was less than one-tenth of the penalties the DOJ imposed on companies during the Obama administration’s final years, which were $51.5 billion in Obama’s last year and $49.6 billion in the prior year, according to Public Citizen’s analysis of Violation Tracker data. [See Figure 1.1.]

- Demonstrated declines in all types of corporate criminal enforcement, with pleas down to 50 in Trump’s first year compared to 117 in Obama’s last; deferred prosecution agreements down to 9 in Trump’s first year compared to 22 in Obama’s last; non-prosecution agreements down to 10 in Trump’s first year from 16 in Obama’s last, and convictions down to one in Trump’s first year from two in Obama’s last. [See Table 1.2.]

- Out of the 20 largest criminal cases against corporations during the Obama’s last two years and Trump’s first year, four were completed under Trump. Of the 20 largest civil enforcement cases completed over the past three years, only one was completed under Trump.

For section-specific methodological notes, see page 28.

Table 1.1: Summary of DOJ enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>241</td>
<td>$4,898,284,958</td>
<td>$20,324,834</td>
</tr>
<tr>
<td>Obama 8</td>
<td>308</td>
<td>$51,506,033,030</td>
<td>$167,227,380</td>
</tr>
<tr>
<td>Obama 7</td>
<td>502</td>
<td>$49,731,707,030</td>
<td>$99,067,145</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

Public Citizen also separately analyzed DOJ’s criminal and civil enforcement actions against corporations.

Figure 1.1: Summary of DOJ penalties against companies from Jan. 20, 2015, through Jan. 19, 2018, by administration.

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

The Department of Justice (DOJ) oversees federal law enforcement in the United States. The department prosecutes federal crimes and represents the federal government in civil litigation. The department includes major U.S. investigative agencies such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Marshals Service, the Bureau of Prisons and other law enforcement agencies. Among the
divisions of the DOJ that engage in litigation are the 94 U.S. attorneys' offices, the Antitrust Division, the Civil Rights Division, the Environment and Natural Resources Division and the Tax Division.

The department is led by the attorney general. DOJ divisions investigate, litigate, and prosecute in collaboration with each other and with other federal agencies that investigate and identify wrongdoing.

**Top Personnel and Conflicts Under Trump**

On Feb. 8, 2017, Jeff Sessions, a Republican U.S. senator from Alabama, was confirmed as attorney general by the U.S. Senate. Sessions replaced Loretta Lynch, the second attorney general under Obama, who served from April 2015 until January 2017. Sessions served as Alabama’s attorney general in the mid-90s, a tenure during which he did not demonstrate a strong commitment to law enforcement against corporate wrongdoers. For example, Sessions in 1996 resisted joining the multi-state litigation against tobacco companies, leading to the state of Alabama receiving only about half of the tobacco settlement amount it would have received had Sessions allowed the state to join.

In April 2017, Rod Rosenstein was sworn in as deputy attorney general. Rosenstein’s entire career has been within DOJ. Rosenstein’s predecessor, Sally Yates, was confirmed in 2015 and served through the end of the Obama administration and into the Trump administration as acting attorney general after Lynch’s departure. Trump fired Yates, also a career attorney with DOJ, in January after she refused to defend Trump’s “Muslim ban” executive order.

Much of the DOJ’s civil and criminal enforcement work is done in partnership with other federal agencies and whistleblowers. Because the DOJ is the agency primarily responsible for prosecuting criminal offenders, this report primarily attributes criminal enforcement to the DOJ, even in cases in which other agencies have contributed significantly. For civil enforcement cases, Public Citizen made an effort as much as possible also to attribute enforcements to their originating civil enforcement agencies in other sections of this report that highlight enforcement at those agencies.

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52 Ibid.


CRIMINAL ENFORCEMENT

Shifting Enforcement Policies: Deprioritizing Corporate Crime

Under Sessions, the DOJ has adopted policies to crack down on violent street crime, human trafficking and immigration while deprioritizing corporate crime.

Sessions’ revised criminal charging policy instructs prosecutors to seek the most severe sentences possible, and specifically embraces the use of mandatory minimum sentences. The order reverses the Obama-era DOJ policy that instructed prosecutors in some cases to avoid bringing charges that would trigger mandatory minimums.56 In March 2018,57 Sessions issued a memo urging prosecutors to seek the death penalty in certain drug-related cases.58 Additionally, Sessions has called for the detention and criminal prosecution of any immigrant who illegally enters the U.S.59 To address the backlog of immigration cases, DOJ has set new quotas requiring immigration judges to complete 700 cases a year – a policy immigration lawyers say will discourage judges from taking the time hear all necessary evidence.60 And Sessions sent U.S. Attorneys Offices in border states a “zero-tolerance memo”61 instructing those offices to prioritize prosecuting misdemeanor border crossings. Former U.S. attorney Tim Purdon, who expressed frustration with the time and resources that immigration cases take away from white-collar cases, criticized the zero-tolerance policy as “a net drain on the scarce resources of U.S. attorneys.”62

At the same time, DOJ has relaxed its approach to corporate and white collar crime and wrongdoing.63 DOJ revised Foreign Corrupt Practices Act enforcement policy to allow corporations that violate the law to avoid criminal prosecution entirely by satisfying certain requirements.64 (Dun & Bradstreet, a business data and research firm, became the first company to avoid prosecution by satisfying the memo’s requirements.65) A Sessions memo from June 2017 prohibits DOJ settlements from including

59 Sarah N. Lynch, Mica Rosenberg, “U.S. attorney general renews calls to prosecute first-time border crossers,” Reuters (March 21, 2018),
62 Roque Planas, “Jeff Sessions Wants To Make The Justice Department More Like ICE,” HuffPost (April 26, 2018), https://www.huffingtonpost.com/entry/jeff-sessions-wants-to-make-the-justice-department-more-like-ice_us_5aa0f3d3e4b02baed1b60a7a
63 The Transactional Records Access Clearinghouse (TRAC) at Syracuse University notes the number white collar prosecutions has been in decline since its peak in the 2011 fiscal year, when there were more than 10,000. In fiscal year 2017, there were 5,825. See http://traced.syr.edu/results/9x705a4d46abc0.html
payments to third-parties not involved in the immediate litigation. A practical effect of that June memo was that the DOJ’s March 2018 settlement with Barclays investment bank for mortgage-backed securities fraud allegations was less for an amount significantly less – perhaps half the size – than it otherwise might have been. Unlike similar settlements with major banks over similar allegations, this settlement provided no consumer relief. Rosenstein also has announced that the agency is limiting the degree to which a single corporate violation can trigger penalties from multiple regulatory agencies, both within the U.S. and globally, calling such multiple penalties “duplicative and unwarranted” and saying they are indicative of a “piling on problem.” On the civil side, a memo by Associate Attorney General Rachel Brand instructed DOJ lawyers to stop citing lack of compliance with “guidance documents” as evidence that a violation has been committed – a change that severely restricts the agency’s power to bring cases against corporations, especially for False Claims Act violations.

A March 2018 memo by Acting Assistant Attorney General Jeffrey Wood, who leads DOJ’s Environment and Natural Resources Division (ENRD), illustrates these enforcement shifts. Wood is a former lobbyist for Southern Company, one of the largest power companies in the U.S., and has conflicts of interest that have forced him to recuse himself from at least 40 cases before the division. The memo cites the Sessions memo prohibiting payments to third parties and the Brand memo restricting the use of guidance documents and notes that the division must “take action to advance the enforcement priorities identified by the Executive Branch.” The memo says the division should give “due attention” to “violent or organized crime” and concedes these priorities are “not traditionally a central focus of our Division’s work.” The memo also says the division should prioritize protecting fuel pipelines. Following a pattern documented elsewhere in the administration, the memo – an 11-page document with nearly 5,000 words – contains zero mentions of the word “climate.”

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72 Sean Reilly, “Many recusals for acting chief of DOJ environment section,” E&E News (April 25, 2017), [https://www.eenews.net/stories/1060053554](https://www.eenews.net/stories/1060053554)

In a press release announcing the release of the division’s 2017 fiscal year report, Wood’s emphasis on limiting enforcement and restricting regulations is clear. He says,

“Our aim at ENRD is to avoid unnecessary litigation, support the integrity of the administrative process, and conserve the resources of the courts, the agencies, and other litigants, while also defending the rightful prerogative of the Administration to review the costs and benefits of regulations and to chart a new direction where appropriate.

Though Sessions has exacerbated the trend, significant policy shifts away from prosecuting corporations began long before he took the helm at DOJ. In 1999, when Eric Holder was deputy attorney general under President Bill Clinton, Holder issued a memo on the agency’s policy concerning criminal charges against corporations, which specifically mentioned that DOJ attorneys should consider “collateral consequences” when bringing charges. The “Holder Doctrine,” as it came to be known, directed DOJ prosecutors to consider the adverse effects on shareholders and employees when deciding whether to bring charges against corporations. Holder left the DOJ for private corporate defense practice at the law firm Covington & Burling; he would later return to the DOJ as Obama’s first attorney general. Afterward, Holder returned to Covington & Burling.

A 2003 memo by Deputy Attorney General Larry Thompson emphasized the use of “pretrial diversion” – deferred prosecutions agreements (DPAs) and non-prosecution agreements (NPAs) – as an appropriate method for disciplining corporations accused of violating the law. Proponents of these agreements say they enable the DOJ to punish corporations accused of crimes without unfairly punishing shareholders and employees who are not implicated in the crimes. Critics view them as creating, in effect, a two-tiered justice system in which economically significant businesses escape prosecution or plea agreements on terms not offered to street criminals.

In 2005, the U.S. Supreme Court overturned a conviction against accounting firm Arthur Andersen that had occurred in the wake of the Enron scandal. But the conviction had already put Andersen

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75 For current guidance on DOJ views with regard to collateral consequences, see https://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations#9-28.1000


out of business. Remorse over that development led DOJ to further soften its approach to prosecuting corporations.

Finally, another memo, this one authored by Deputy Attorney General Yates in 2015, offered yet another modification to DOJ’s white collar crime enforcement policy. The Yates memo was an effort to address the widespread perception – especially after the 2008 financial crash – that corporate executives were effectively immune from prosecution. It conditioned any leniency for corporations’ cooperating with the DOJ on companies providing all relevant information about the individuals involved in the misconduct, and it directed prosecutors to focus on individuals in corporate crime and wrongdoing cases. It amounted to a modest move to upgrade corporate enforcement – but while it has not been rescinded, there is little evidence that it is reflected in current agency policy.

**Criminal Enforcement Findings**

Under the Trump administration, all types of corporate criminal enforcement declined, with pleas down to 50 in Trump’s first year compared to 117 in Obama’s last; deferred prosecution agreements down to 9 in Trump’s first year compared to 22 in Obama’s last; non-prosecution agreements down to 10 in Trump’s first year from 16 in Obama’s last, and convictions down to one in Trump’s first year from two in Obama’s last. Nevertheless, the Trump administration’s use of pretrial diversion is an area of continuity with the Obama administration. Though the total number of DOJ corporate criminal enforcements declined, the percentage of enforcements represented by DPAs and NPAs remained about the same, increasingly slightly to 27 percent from 24 percent. [See Table 1.2.]

Between January 2015 and January 2018, only three corporations were tried and convicted of crimes: two Greek shipping companies, Oceanfleet Shipping Limited and Oceanic Illsabe Limited, which were sentenced in the final weeks of the Obama administration, and Black Elk Energy Offshore Operations, which was convicted in August 2017 for worker safety and Clean Water Act violations.

<table>
<thead>
<tr>
<th>Table 1.2: DOJ criminal enforcement actions against corporations resulting in convictions, pleas, deferred prosecution and non-prosecution agreements from Jan. 20, 2015, through Jan. 19, 2018.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Corporations</strong></td>
</tr>
<tr>
<td>DPAs</td>
</tr>
<tr>
<td>NPAs</td>
</tr>
<tr>
<td>Pleas</td>
</tr>
<tr>
<td>Convictions</td>
</tr>
</tbody>
</table>

**SOURCE:** Corporate Prosecution Registry database from the University of Virginia School of Law.


The Obama DOJ’s Swiss Bank Program, announced in 2013 and completed mostly over the latter half of 2015, offered NPAs to Swiss financial institutions that were potentially liable for criminal penalties for breaking U.S. tax laws.\textsuperscript{86} Between March 2015 and January 2016, the DOJ entered into 78 NPAs with these Swiss banks, which, in exchange for avoiding prosecution, were required to provide DOJ and the IRS with detailed information, including information about accounts held by U.S. citizens, to bring their institutions into compliance with U.S. law, and to pay penalties. As a result, there were an unusually large number of NPAs reported during Obama’s seventh year.

Public Citizen’s analysis found that during Trump’s first year in office, the DOJ completed fewer criminal enforcement actions against corporations than in previous years. The agency completed 52 criminal enforcement actions with penalties of $5,000 or more, compared with 94 cases of that size in the last year of the Obama administration and 156.5\textsuperscript{87} in the prior year. During Trump’s first year, the DOJ issued $1.8 billion in criminal penalties against corporations, down from more than $7.5 billion a year earlier and more than $17.2 billion in the prior year. [See Table 1.3 and Figure 1.2.]

**Table 1.3: Summary of DOJ criminal enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>52</td>
<td>$1,812,458,133</td>
<td>$34,854,964</td>
</tr>
<tr>
<td>Obama 8</td>
<td>94</td>
<td>$7,557,506,520</td>
<td>$80,399,006</td>
</tr>
<tr>
<td>Obama 7</td>
<td>156.5</td>
<td>$17,435,316,260</td>
<td>$111,407,772</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

\textsuperscript{86} “Swiss Bank Program,” U.S. Department of Justice (viewed on April 18, 2018), https://www.justice.gov/tax/swiss-bank-program

\textsuperscript{87} For the purposes of separately analyzing criminal and civil penalties, nine DOJ cases are counted as half cases (0.5) in order to separate criminal penalties from civil penalties. For a list of these split cases, see Appendix C.

\textsuperscript{88} See footnote 87.
Of the 20 largest enforcement cases completed over the past three years, 16 were completed under Obama, compared with only 4 under Trump. [See Table 1.4.]

Table 1.4: Top 20 DOJ criminal enforcement cases against corporations from Jan. 20, 2015, through Jan. 19, 2018, by size.

<table>
<thead>
<tr>
<th>Company</th>
<th>Federal Non-DOJ Partner Agencies</th>
<th>Penalty Date</th>
<th>Criminal Penalties</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNP Paribas S.A.</td>
<td>Treasury (IRS)</td>
<td>5/1/2015</td>
<td>$8,973,600,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Volkswagen</td>
<td>EPA, DHS (CBP)</td>
<td>1/11/2017</td>
<td>$2,800,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Takata Corporation</td>
<td>DOT</td>
<td>1/13/2017</td>
<td>$1,000,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Citicorp</td>
<td>CFTC, OCC, SEC, Fed</td>
<td>5/20/2015</td>
<td>$925,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>General Motors</td>
<td>DOT (NHTSA)</td>
<td>9/17/2015</td>
<td>$900,000,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>

89 Key to agency abbreviations: BIS (Bureau of Industry and Security), CBP (Customs and Border Patrol), CFPB (Consumer Financial Protection Bureau), CFTC (Commodity Futures Trading Commission), DCIS (Defense Criminal Investigative Service), DHS (Department of Homeland Security), DOD (Department of Defense), DOT (Department of Transportation), FDA (Food and Drug Administration), Fed (Federal Reserve), FTC (Federal Trade Commission), HHS (Department of Health and Human Services), ICE (Immigration and Customs Enforcement), ICE-HSI (ICE-Homeland Security Investigations), NHTSA (National Highway Traffic Safety Administration), OCC (Office of the Comptroller of the Currency), OFAC (Office of Foreign Assets Control), OPM (Office of Personnel Management), SEC (Securities and Exchange Commission), USPIS (United States Postal Inspection Service)

90 Including civil penalties, Volkswagen in this case was required to pay a total of $4.3 billion. Press Release, "Volkswagen AG Agrees to Plead Guilty and Pay $4.3 Billion in Criminal and Civil Penalties; Six Volkswagen Executives and Employees are Indicted in Connection with Conspiracy to Cheat U.S. Emissions Tests;" U.S. Department of Justice (Jan. 11, 2017), https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six
## CIVIL ENFORCEMENT

### Shifting Enforcement Policies

As mentioned earlier, Attorney General Sessions’ DOJ policies deprioritize corporate crime and wrongdoing. Policies that are likely to have the greatest impact on civil enforcement are the June 2017 memo prohibiting settlements from including payments to third-parties not involved in the immediate litigation,\(^{92}\) the policy Rosenstein announced limiting the degree to which a single corporate violation can trigger multiple enforcement actions\(^{93}\) and the Brand memo instructed DOJ

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91 Including civil penalties, Olympus Corp. of the Americas in this case was required to pay a total of $646 million. Press Release, "Medical Equipment Company Will Pay $646 Million for Making Illegal Payments to Doctors and Hospitals in United States and Latin America," U.S. Department of Justice (March 1, 2016), [https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals](https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals)


lawyers to stop citing lack of compliance with “guidance documents” as evidence that a violation has been committed. This last change, which severely restricts the agency’s power to bring cases against corporations, is expected to result in a steep decline in False Claims Act enforcement.94

When the Justice Department sues corporations for overcharging government programs such as Medicare and Medicaid or for anticompetitive activity that results in the overpayment of government contractors, the claims are brought under the False Claims Act.95 The False Claims Act is the primary method through which civil claims of fraudulent use of government funds are brought. Generally, the government relies on whistleblowers to initiate False Claims Act cases. Whistleblowers who bring successful cases are entitled to 25 to 30 percent of the funds recovered through the action.96

In late January 2018, Associate Attorney General Rachel Brand released a memo97 directing DOJ lawyers to stop citing lack of compliance with “guidance documents” as evidence that a civil violation has been committed. Guidance documents represent an agency’s interpretation of the law, and are generally used to provide practical information to help regulated industries ensure they are operating in compliance with the law. Corporate defense attorneys viewed the Brand memo as placing significant limitations on the government’s power to bring civil cases, especially cases brought under the False Claims Act.98 Brand resigned shortly after releasing the memo to take the top legal post at Walmart.99

The U.S. Chamber of Commerce, which calls the False Claims Act a “lucrative money machine for plaintiffs’ lawyers and their clients” and characterizes the law’s enforcement as “overzealous,”100 celebrated the policy change,101 as did corporate defense attorneys.102 Brand previously served as the U.S. Chamber’s chief counsel for regulatory litigation.103

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100 “False Claims Act (FCA),” U.S. Chamber Institute for Legal Reform (viewed on April 18, 2018), http://www.instituteforlegalreform.com/issues/false-claims-act
101 Ibid.
Out of the 748.5\textsuperscript{104} civil cases against corporations resulting in penalties of $5,000 or more that were concluded over the last three years, 517.5 (69 percent) were False Claims Act cases.\textsuperscript{105} Over these three years, these cases accounted for $9.5 billion in penalties against businesses, accounting for 12 percent of the total civil penalties ($79 billion) DOJ imposed against corporate wrongdoers.

Brand’s memo was issued too late for the policy to have any effect during Trump’s first year, when the number of False Claims Act cases dropped slightly from Obama’s last year. Penalties, however, dropped by 75 percent, from $4.3 billion to $2.5 billion. [See Table 1.5]

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>131</td>
<td>$2,484,896,845</td>
<td>$18,968,678</td>
</tr>
<tr>
<td>Obama 8</td>
<td>137</td>
<td>$4,347,931,478</td>
<td>$31,736,726</td>
</tr>
<tr>
<td>Obama 7</td>
<td>251</td>
<td>$2,865,113,398</td>
<td>$11,414,794</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.\textsuperscript{106}

The largest False Claims Act penalty during this time was against Wells Fargo in April 2016, when the bank reached a $1.2 billion settlement with DOJ admitting to engaging in improper lending practices (specifically, falsely certifying that loans were qualified for Federal Housing Administration mortgage insurance when they were not).\textsuperscript{107}

**Overlapping Enforcement Responsibilities**

As with criminal cases, for civil cases, the Justice Department is only part of the story. A Public Citizen analysis of civil DOJ cases of $1 million or more found that an overwhelming majority of these cases (more than 90 percent) are investigated in partnership with one or more additional regulatory or enforcement agencies. The Department of Health and Human Services (DHS), and in particular the DHS Office of the Inspector General, originates most of these large civil cases, largely via whistleblowers bringing suits under the False Claims Act.

Many of the largest civil enforcements were investigated and litigated as part of collaborative interagency initiatives. The Residential Mortgage-Backed Securities (RMBS) Working Group, formed in the aftermath of the 2008 financial crisis, included enforcement leadership from multiple divisions of DOJ as well as HUD, FHFA and SEC.\textsuperscript{108}

\textsuperscript{104} See footnote 87.

\textsuperscript{105} Public Citizen analysis of Violation Tracker data

\textsuperscript{106} The DOJ also issues fiscal year reports on False Claims Act cases. The latest report, which covers fiscal year 2017, announced $3.7 billion in recoveries, representing a decrease from fiscal year 2016, when $4.7 billion was recovered. See “Fraud Statistics - Overview,” Civil Division, U.S. Department of Justice (Dec. 19, 2017), https://www.justice.gov/opa/press-release/file/1020126/download


final two years in office and Trump’s first – those between DOJ and Deutsche Bank, Credit Suisse, Goldman Sachs, Morgan Stanley and Moody’s – came out of the RMBS Working Group’s collaborative efforts. Likewise, the Obama administration’s Health Care Fraud Prevention and Enforcement Team, abbreviated as “HEAT,” was a collaborative enforcement effort launched in 2009 by Holder’s DOJ and HHS under Secretary Kathleen Sebelius. Out of the top twenty settlements in the past three years, the Pfizer, Shire Pharmaceuticals and Tenet Healthcare Corporation settlements are attributed to the HEAT initiative. Additionally, the spike in civil enforcements in October 2015, when there were 79 DOJ settlements with corporations that exceeded $1 million, is the result of 457 hospitals reaching 70 settlements with DOJ under the HEAT initiative during that month. These initiatives ended with the Obama administration.

A comparable Trump administration initiative was announced in late February 2018. The Prescription Interdiction & Litigation (PIL) Task Force, which seeks to combat the opioid epidemic through coordinated efforts between DOJ components, including civil and criminal divisions of DOJ and the Drug Enforcement Administration, could result in increased enforcements against corporate wrongdoers. Whether that will be the case, it is too early to tell.

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115 Ibid.


Civil Enforcement Findings

Public Citizen's analysis found that during Trump's first year in office, the DOJ completed fewer large civil enforcement actions against businesses than in previous years.

Under the Trump administration, the agency completed 189 civil settlements with penalties of more than $5,000, compared with 214 cases of that size in the last year of the Obama administration and 345.5\footnote{See footnote 87.} in the prior year. [See Table 1.6.]

Table 1.6: Summary of DOJ civil enforcement cases against corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>189</td>
<td>$3,085,826,825</td>
<td>$16,327,126</td>
</tr>
<tr>
<td>Obama 8</td>
<td>214</td>
<td>$43,948,526,510</td>
<td>$205,366,946</td>
</tr>
<tr>
<td>Obama 7</td>
<td>345.5</td>
<td>$32,296,390,770</td>
<td>$93,477,253</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

The size of penalties decreased significantly between Obama’s final years and Trump's first year. Under Trump, the DOJ issued $3 billion in penalties. Under Obama, total penalties during the administration's final year were more than 14 times higher – $43.9 billion – and were $32.2 billion in the prior year. [See Figure 1.3.]

Figure 1.3: Summary of DOJ civil penalties against companies from Jan. 20, 2015, through Jan. 19, 2018, by administration.

SOURCE: Public Citizen analysis of Violation Tracker database.

\footnotetext{87}{See footnote 87.}

\footnotetext{120}{See footnote 87.}
Of the 20 largest civil enforcement cases completed over the past three years, only one, a $465 million settlement with the pharmaceutical company Mylan,\textsuperscript{122} was completed under Trump. During these years, the Obama administration completed 10 enforcement actions of $1 billion or more.\textsuperscript{123} [See Table 1.7.]

A small number of multibillion-dollar settlements, notably BP in 2015 and Volkswagen in 2016, help explain the disproportionate size of the Obama administration penalties. But even if those penalties are stripped out, the difference between Obama and Trump penalty levels is startling. Without the BP penalty, Obama’s Year 7 total would be four times Trump’s Year 1; and without the Volkswagen penalty, Obama’s Year 8 penalty total would remain roughly 10 times greater than Trump’s first year.

<table>
<thead>
<tr>
<th>Company</th>
<th>Federal Non-DOJ Partner Agencies</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>BP</td>
<td>Commerce, Interior, USDA, EPA, DHS (Coast Guard)</td>
<td>10/5/2015</td>
<td>$20,800,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Volkswagen AG</td>
<td>EPA, FTC</td>
<td>6/28/2016</td>
<td>$14,700,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Deutsche Bank</td>
<td>FHFA</td>
<td>1/17/2017</td>
<td>$7,200,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Credit Suisse</td>
<td>FHFA</td>
<td>1/18/2017</td>
<td>$5,280,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Anadarko Petroleum Corp.</td>
<td>EPA</td>
<td>1/23/2015</td>
<td>$5,150,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Goldman Sachs</td>
<td>FHFA</td>
<td>4/11/2016</td>
<td>$5,060,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Morgan Stanley</td>
<td>FHFA</td>
<td>2/11/2016</td>
<td>$2,600,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Volkswagen\textsuperscript{125}</td>
<td>EPA, DHS (CBP)</td>
<td>1/11/2017</td>
<td>$1,500,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Standard &amp; Poor's Financial Services LLC</td>
<td>n/a</td>
<td>2/3/2015</td>
<td>$1,375,000,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>


\textsuperscript{124} Key to agency abbreviations: CFPB (Consumer Financial Protection Bureau), DHS (Department of Homeland Security), EPA (Environmental Protection Agency), FHFA (Federal Housing Finance Administration), FTC (Federal Trade Commission), HHS (Department of Health and Human Services), HUD (Department of Housing and Urban Development), SEC (Securities and Exchange Commission), USDA (Department of Agriculture), VA (Veterans Affairs).

\textsuperscript{125} Including criminal penalties, Volkswagen in this case was required to pay a total of $4.3 billion. https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six
**Under the Trump administration, the agency completed 189 civil settlements with penalties of more than $5,000, compared with 214 cases of that size in the last year of the Obama administration and 345.5 in the prior year.**

### Conclusion

DOJ enforcement against corporate crime and wrongdoing fell dramatically in Trump’s first year. New initiatives, such as the PIL Taskforce to take on opioid addiction, may result in increased corporate enforcements, as Attorney General Sessions recently testified “going after drug companies, doctors and pharmacists” is a top priority. Nevertheless, penalties are already down to less than one tenth of what they were under the previous administration. Cases that were initiated under the previous administration are still under being investigated, and their settlements are still being

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126 Including criminal penalties, Tenet Healthcare Corporation in this case was required to pay a total of $513 million. [https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-513-million-defrauding-united-states-and-making-illegal-payments](https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-513-million-defrauding-united-states-and-making-illegal-payments)

127 See footnote 87.


negotiated. Meanwhile, the effects of Trump DOJ policies that would further decrease corporate enforcement are only beginning to be felt.

“Crime rates are not like the tides — we can help change them,” Sessions wrote in a USA Today op-ed\textsuperscript{10} celebrating a decline in violent crime reported by the FBI.\textsuperscript{11} Whether the DOJ under Trump changes corporate crime rates for the better or worse remains to be seen – and may be difficult to tell. The agency does not release reports on the corporate crime rate, and has not produced a report on corporate crime since 1979. Public Citizen, Good Jobs First, and others are calling on Sessions to publish annual reports on corporate crime.\textsuperscript{12} Considering the administration’s systematic softening of enforcement actions intended to deter corporate crime and wrongdoing, it would be a mistake to infer that a continued decline in corporate settlements and criminal enforcements is the outcome of a parallel decline in wrongdoing by corporations.

\begin{center}
DOJ METHODOLOGY
\end{center}

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at https://www.goodjobsfirst.org/violation-tracker. All cases tagged “criminal” were included, as were all cases involving all DOJ divisions and referrals by other agencies to DOJ. To avoid double counting, enforcement actions containing both a criminal and civil portion were split, with each portion counting as $\frac{1}{2}$ of a case in the separate criminal and civil sections. For a full list of split cases, see Appendix C. All cases against corporations with penalties of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.

\textsuperscript{10} Jeff Sessions, "Trump promised to end 'American carnage.' Promise delivered.,” USA Today (Jan. 23, 2018), https://www.usatoday.com/story/opinion/2018/01/23/trump-promised-end-american-carnage-has-come-true-jeff-sessions-column/1057630001/
\textsuperscript{12} “Letter to Jeff Sessions,” Ralph Nader website (May 1, 2018), https://nader.org/2018/05/01/letter-to-jeff-sessions/
II. CONSUMER AND WORKER PROTECTION

2. Aviation Consumer Protection Division

Enforcement Trends

During Trump’s first year in office, the Aviation Consumer Protection Division completed fewer enforcement actions and for less money than in previous years. [See Table 2.1.]

Public Citizen’s analysis found that:

- The office issued 16 percent fewer fines during the first year of the Trump administration than the average for the seventh and eighth years of the Obama administration.

- The cumulative amount of fines issued by the agency fell by 27 percent during the first year of the Trump administration compared to the average for the previous two years.

- The average penalty issued by the agency during the first year of the Trump administration was 12 percent lower than in the previous two years.

For section-specific methodological notes, see page 33.

Table 2.1: Summary of the Transportation Department’s Aviation Consumer Protection Division cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Period</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump Year 1</td>
<td>18</td>
<td>$3,205,000</td>
<td>$178,056</td>
</tr>
<tr>
<td>Obama Year 8</td>
<td>28</td>
<td>$3,605,000</td>
<td>$128,750</td>
</tr>
<tr>
<td>Obama Year 7</td>
<td>15</td>
<td>$5,145,000</td>
<td>$343,000</td>
</tr>
<tr>
<td>Obama 7-8 average</td>
<td>21.5</td>
<td>$4,375,000</td>
<td>$203,488</td>
</tr>
<tr>
<td>% difference Obama 7-8 avg. to Trump 1</td>
<td>-16%</td>
<td>-27%</td>
<td>-12%</td>
</tr>
</tbody>
</table>
Agency Mission

The Aviation Consumer Protection Division of the Department of Transportation enforces consumer issues regarding airlines. The office, according to its mission statement on its web site, “reviews and responds to consumer complaints and promotes awareness and understanding of consumer rights through online consumer information and education.”

Personnel and Policy

The agency was criticized in 2017 for failing to penalize United Airlines over an incident in which one of its customers was injured while being dragged off an airplane by police to free up an extra seat for a United employee. A video of the episode went viral. An agency spokesman told a Washington Post columnist that the police officer’s conduct in the incident fell outside of its purview.

A spokeswoman for the consumer advocacy group Flyers Rights disagreed. “For the Department of Transportation to conclude that United Airlines’ conduct did not warrant an enforcement action is a dereliction of duty,” she said.

If the Trump administration continues on its current course, the number of fines issued by the Aviation Consumer Protection Division may decline in the coming years simply because there will little left to enforce. In 2017, the administration cancelled rulemakings begun during the Obama administration that would have required airlines to disclose baggage fees at the point of sale, as well

135 “All passenger videos of United kicking off Dr. David Dao,” You Tube (April 11, 2017), https://www.youtube.com/watch?v=dASATLLvGRM
as report annually on their revenue from add-on charges, such as baggage fees, seat reservations and early boarding.

That may have been just the beginning. The Trump administration also solicited suggestions for existing regulations to eliminate. The airlines' trade association obliged, providing a list of ideas to do away with just about all the protections that consumers still enjoy amid the explosion of ancillary fees and other obstacles of modern-day air travel.

Among the favors the airlines requested were:

- Eliminating the 24-hour grace period consumers are permitted to cancel their ticket purchase;
- Eliminating requirements that airlines announce updates every half-hour when flights are delayed;
- Eliminating requirements that airlines provide payments to passengers who are involuntarily bumped from flights. Airlines should have the option to provide vouchers, the airlines said;
- Eliminating rules requiring the airlines to provide compensation to passengers stuck on airport tarmacs for hours and hours;
- Eliminating requirements that airlines report on-time rates;
- Eliminating requirements that airlines honor tickets that they mistakenly sell at lower prices than they intended; and
- Eliminating requirements that airlines publish the full price of tickets, including fees.

While characterizing the Department of Transportation's historical conduct towards it as “draconian,” the airline industry said it “stands ready to partner with the Department to establish a more collaborative approach to efficiently resolving customer service issues.”136

In light of its request to eliminate many of the modest protections consumers enjoy, one wonders what the industry's vision of that collaborative approach might be.

Out of the division's top 20 monetary enforcement penalties from the past three years, six were imposed under the Trump administration [See Table 2.2.]

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Table 2.2: Top 20 Aviation Consumer Protection Division corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Airlines Inc.</td>
<td>1/7/2016</td>
<td>$2,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>American Airlines</td>
<td>12/14/2016</td>
<td>$1,600,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Southwest Airlines Co.</td>
<td>1/15/2015</td>
<td>$1,600,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Frontier Airlines</td>
<td>9/15/2017</td>
<td>$1,500,000</td>
<td>Trump</td>
</tr>
<tr>
<td>United Airlines, Inc.</td>
<td>1/7/2016</td>
<td>$750,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Frontier Airlines, Inc.</td>
<td>7/8/2017</td>
<td>$400,000</td>
<td>Trump</td>
</tr>
<tr>
<td>American Airlines, Inc.</td>
<td>7/9/2017</td>
<td>$250,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Air Canada</td>
<td>8/29/2016</td>
<td>$225,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Delta Air Lines, Inc.</td>
<td>7/10/2017</td>
<td>$200,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Lufthansa German Airlines</td>
<td>4/14/2016</td>
<td>$200,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Societe Air France</td>
<td>4/14/2016</td>
<td>$200,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Dynamic Airways LLC</td>
<td>3/16/2016</td>
<td>$200,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Qatar Airways Q.C.S.C.</td>
<td>11/11/2016</td>
<td>$185,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Fareportal Inc., d/b/a CheapOair</td>
<td>3/13/2015</td>
<td>$185,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Hawaiian Airlines, Inc.</td>
<td>5/26/2015</td>
<td>$160,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Aeroenlaces Nacionales, S.A. de CV</td>
<td>5/5/2016</td>
<td>$150,000</td>
<td>Obama</td>
</tr>
<tr>
<td>British Airways Plc</td>
<td>4/14/2016</td>
<td>$150,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Delta Air Lines</td>
<td>6/20/2017</td>
<td>$120,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Dynamic International Airways, LLC</td>
<td>4/12/2017</td>
<td>$120,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Air India</td>
<td>2/13/2017</td>
<td>$115,000</td>
<td>Trump</td>
</tr>
</tbody>
</table>

ACPD METHODOLOGY

Enforcement data were obtained by searching the Transportation Aviation Consumer Protection Division’s enforcement page, available at https://www.transportation.gov/airconsumer/enforcement-orders. All actions involving monetary penalties that were finalized between from Jan. 20, 2015, to Jan. 19, 2017 are included.
3. Consumer Product Safety Commission

“We should not be hoping for multi-million dollar penalties. We should be hoping for zero penalties.”

- Anne Marie Buerkle, acting chairman of the Consumer Product Safety Commission

Enforcement Trends

Trump’s first year in office saw a decline in CPSC enforcement actions against corporations compared with previous years. [See Table 3.1.]

Public Citizen’s analysis found that the CPSC:

- Completed four enforcement actions against corporations in Trump’s first year in office, down from six in Obama’s last year and seven in the prior year.

- Imposed about $21.4 million in penalties during Trump’s first year, with an average penalty of $5.3 million. That was down from $37.3 million a year earlier but up from $18.8 million in the prior year.

Significantly, although Trump installed an acting chair at the CPSC who was viewed as industry friendly, the commission continues to operate with a Democratic majority.

For section-specific methodological notes, see page 38.

Table 3.1: Summary of CPSC cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>4</td>
<td>$21,350,000</td>
<td>$5,337,500</td>
</tr>
<tr>
<td>Obama 8</td>
<td>6</td>
<td>$37,300,000</td>
<td>$6,216,667</td>
</tr>
<tr>
<td>Obama 7</td>
<td>7</td>
<td>$18,800,000</td>
<td>$2,685,714</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

Created by legislation signed by President Richard Nixon in 1972, the Consumer Product Safety Commission protects the public against injuries and deaths from consumer products. The CPSC has delivered137 immeasurable benefits to the public including safety standards for products including lawn mowers, pill bottles, infant cribs, flammable clothing and household furnishings, toys and bicycles. As a former CPSC commissioner, David Pittle, wrote in 2007, the enforcement of CPSC rules has resulted in “substantial reductions in the numbers of deaths and injuries to consumers from

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hazardous products — and all were accomplished in a cost-effective manner.” Nevertheless, the agency’s many accomplishments have come despite “strong resistance from the affected industries and their trade associations,” Pittle emphasized.

**Personnel and Policy**

In 2008, Congress strengthened the agency’s enforcement power when it passed the bipartisan Consumer Product Safety Improvement Act. The law:

- Required that toys and infant products be tested before they are sold;
- Banned lead and toxic phthalates from children’s products; and
- Created SaferProducts.gov, a publicly accessible consumer complaint database.

The Trump administration in February 2017 named Commissioner Anne Marie Buerkle to lead the CPSC. Buerkle, a former Tea Party Republican congresswoman from New York State, has a record of opposing strong mandatory health and safety regulations, including a mandatory standard that would reduce the risk of finger amputations from table saws and rules to protect drivers from unstable recreational off-highway vehicles.

Despite Buerkle’s appointment as acting chairman, the continued presence of a Democratic majority at the CPSC has impeded her ability to fully implement a pro-corporate enforcement agenda. However, consumer advocates fear the agency’s penalties will decline precipitously in the years ahead and that rulemaking on critical safety standards will not advance to protect consumers.

In an interview with the *New York Times*, Buerkle said that the agency had become too “emotional” under Obama. “The agency is supposed to be data-driven and science-driven,” she said. “It’s not supposed to be emotional.” Before Trump’s election, Buerkle decried efforts to celebrate “marquee penalties,” saying they should be a “last resort.” She said:

> We should not be hoping for multi-million dollar penalties. We should be hoping for zero penalties — that is, a world in which every company subject to the [Consumer Product Safety Act] reporting requirements understands its reporting obligations and complies with them. And until that day comes, we should be trying to do everything we can to help firms understand how we interpret the requirements. There will be cases where penalties are

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entirely appropriate, but they should be more of a last resort. Consumers will be safer if we help companies prevent violations rather than celebrating marquee penalties.\(^{143}\)

In nearly five years as a commissioner at the CPSC, Buerkle voted against imposing civil penalties on companies in 16 out of 21 instances for companies that failed to report problems with their products.\(^{144}\) Buerkle says she prioritizes voluntary standards over mandatory standards. Voluntary standards are "a better way to go," Buerkle told ProPublica.\(^{145}\) "They are quick to complete. There’s much more efficiency in implementation. And there’s much more buy-in from stakeholders.” But some of Buerkle’s colleagues are skeptical. “More often than not, collaboration seems to be a code word for capitulation by the agency,” Elliot Kaye, a current Democratic commissioner who led the agency under Obama, told the *Washington Post*. "It’s gone pretty dark on civil penalty cases.”\(^{146}\)

Another one of Buerkle’s colleagues on the commission, Marietta Robinson, a Democratic appointee, castigated Buerkle in an op-ed, saying that she has “consistently aligned herself with the positions of regulated industries at the expense of the safety of consumers. Her positions often were extreme enough that even her fellow Republican commissioner did not support her.”\(^{147}\) Robinson added that: “Buerkle does not believe in penalties, no matter how flagrantly a company violated the law or how dangerous those violations were to consumers.”

Despite longstanding concerns about carbon monoxide poisoning from portable generators, Buerkle was the only CPSC commissioner to vote against a rule that would force generator makers to lower their carbon monoxide emissions. After becoming acting chairman, Buerkle agreed with EPA Administrator Scott Pruitt’s contention that the CPSC doesn’t have authority to limit carbon monoxide emissions from portable generators.\(^{148}\) Buerkle even named portable generator industry lawyer, Patricia Hanz, to be the CPSC’s general counsel.\(^{149}\) Hanz’s former law firm represented a manufacturer of gasoline engines and power generators that has fought the CPSC’s effort to reduce generators’ carbon monoxide emissions.\(^{150}\) Hanz is also a board member of the Portable Generators Manufacturers Association.

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144 Renae Merle and Tracy Jan, “Trump is systematically backing off consumer protections, to the delight of corporations,” *The Washington Post* (March 6, 2018), [https://www.washingtonpost.com/business/economy/a-year-of-rolling-back-consumer-protections/2018/03/05/e11713ca-0d05-11e8-95a5-c396801049ef_story.html](https://www.washingtonpost.com/business/economy/a-year-of-rolling-back-consumer-protections/2018/03/05/e11713ca-0d05-11e8-95a5-c396801049ef_story.html)


146 Ibid.


150 Ibid.
Buerkle was not confirmed in 2017, but continues as acting chairman and was re-nominated in early 2018.\textsuperscript{151} The White House also named Dana Baiocco, a former partner at law firm Jones Day, which has extensive White House ties,\textsuperscript{152} to fill one of the two vacancies on the commission. Baiocco has made a career representing corporate defendants\textsuperscript{153} including R.J. Reynolds. Her LinkedIn and Jones Day biography pages describes her specialties as product liability and tort litigation, consumer products and recalls and class action litigation \textsuperscript{154} and describe her as a member of a Jones Day “multidisciplinary legal group prepared to respond in recall or crisis situations.”\textsuperscript{155}

The CPSC completed no enforcement actions in the fourth quarter of 2017 or the first quarter of 2018. However, the agency reached a record-high $27 million settlement with Polaris Industries Inc. over off-road vehicle safety in April 2018,\textsuperscript{156} the first CPSC enforcement action since the previous August. During Obama’s last two years and Trump’s first year, the CPSC completed a total of 17 enforcement actions against corporations, four of which occurred under Trump [See Table 3.2.]

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gree Electric Appliances Inc.</td>
<td>3/25/2016</td>
<td>$15,450,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Keurig Green Mountain, Inc./JAB Holding Co.</td>
<td>2/21/2017</td>
<td>$5,800,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Home Depot</td>
<td>8/30/2017</td>
<td>$5,700,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Goodman Company, L.P.</td>
<td>9/8/2016</td>
<td>$5,550,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Kawasaki</td>
<td>6/2/2017</td>
<td>$5,200,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Viking Range, LLC and Middleby Corporation</td>
<td>4/13/2017</td>
<td>$4,650,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Sunbeam Products, Inc. /b/a Jarden Consumer Solutions</td>
<td>6/7/2016</td>
<td>$4,500,000</td>
<td>Obama</td>
</tr>
<tr>
<td>PetSmart Inc.</td>
<td>11/14/2016</td>
<td>$4,250,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Best Buy Co., Inc.</td>
<td>10/3/2016</td>
<td>$3,800,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Teavana/Starbucks</td>
<td>6/1/2016</td>
<td>$3,750,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>


\textsuperscript{152} Alan Zibel, "Big Law, Big Conflicts: More than 75 Trump Administration Lawyers Present Revolving Door Concerns," Public Citizen’s Corporate Presidency project (March 1, 2018), \url{https://corporatepresidency.org/biglaw/}


\textsuperscript{154} "Dana Baiocco," LinkedIn profile (viewed on April 25, 2018), \url{https://www.linkedin.com/in/dana-baiocco-663215/}

\textsuperscript{155} "Dana Baiocco: Partner," Jones Day (viewed on April 25, 2018), \url{http://www.jonesday.com/dbaiocco/}

<table>
<thead>
<tr>
<th>Company</th>
<th>Date</th>
<th>Penalty</th>
<th>President</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Electric Co.</td>
<td>2/19/2015</td>
<td>$3,500,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Phil&amp;teds USA</td>
<td>9/10/2015</td>
<td>$3,500,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Office Depot Inc.</td>
<td>5/27/2015</td>
<td>$3,400,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Johnson Health Tech Co. Ltd</td>
<td>8/8/2015</td>
<td>$3,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Philips Lighting North America</td>
<td>11/24/2015</td>
<td>$2,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>LG</td>
<td>7/7/2015</td>
<td>$1,825,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Stanley Black &amp; Decker</td>
<td>4/29/2015</td>
<td>$1,575,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

**CPSC METHODOLOGY**

Enforcement data were obtained from the Violation Tracker database of Good Jobs First, available at https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=CPSC&order=pen_year&sort=desc and were verified at the CPSC’s civil and criminal penalties page, available at https://www.cpsc.gov/Business--Manufacturing/Civil-and-Criminal-Penalties. All cases against corporations from Jan. 20, 2015, to Jan. 19, 2017, are included.
4. Equal Employment Opportunity Commission

Trump’s first year in office saw a decline in EEOC enforcement cases against corporations compared with previous years. [See Table 4.1.]

Public Citizen’s analysis found that the EEOC:

- Reported it resolved 125 suits for fiscal year 2017 – a 27 percent drop from fiscal year 2016. This is smallest number of cumulative resolutions in any fiscal year on record, according to EEOC data.\(^{157}\)

- The resolutions resulted in $42 million in total monetary benefits – a 19 percent reduction from the previous fiscal year.

- For fiscal year 2017, the EEOC reported it had resolved 125 suits – a 27 percent drop from fiscal year 2016. This is the smallest number of cumulative resolutions in any fiscal year on record, according to EEOC data.\(^{158}\) The resolutions resulted in $42 million in total monetary benefits – a 19 percent reduction from the previous fiscal year. Monetary benefits can include the recovery of front pay and back pay as well as compensatory and punitive damages.\(^{159}\)

For section-specific methodological notes, see page 44.

Table 4.1: Summary of EEOC cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 2017</td>
<td>125</td>
<td>$42,000,000</td>
<td>$336,000</td>
</tr>
<tr>
<td>Fiscal Year 2016</td>
<td>171</td>
<td>$52,000,000</td>
<td>$304,094</td>
</tr>
<tr>
<td>Fiscal Year 2015</td>
<td>171</td>
<td>$65,000,000</td>
<td>$380,117</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of EEOC data.

Agency Mission

The mission of the Equal Employment Opportunity Commission is to prevent unlawful employment discrimination and compensate those who have faced discrimination in the workplace.\(^{160}\) The EEOC

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enforces a litany of laws governing civil rights laws, protections for the disabled, wage discrimination based on gender and age discrimination in the workplace.\textsuperscript{161}

\textbf{Personnel and Enforcement Policy}

President Trump’s administration appears to be having a limited impact on the Equal Employment Opportunity Commission thus far. The EEOC, which investigates discrimination complaints, has been led by a Republican and longtime commission member since January 2017. A former member of the George W. Bush administration, she appears disinclined to make sweeping changes at the agency.

Though the EEOC reported a significant drop in resolved lawsuits in fiscal 2017, the decline appears to stem largely from a decline in filed lawsuits toward the end of the Obama administration.

The EEOC is made up of five members – a chair, vice chair, and three commissioners – all of whom are appointed by the president and confirmed by the Senate. Two seats currently are vacant.\textsuperscript{162} Republican Victoria Lipnic, who worked in the Labor Department as assistant secretary for labor standards under President George W. Bush, was named acting chair by President Trump on Jan. 25, 2017.\textsuperscript{163} Lipnic has had a long career in government, working on Capitol Hill, the U.S. Postal Service and the Commerce Department.\textsuperscript{164} Chair Lipnic has said “more will remain the same than will change” under her tenure at EEOC.\textsuperscript{165}

Lipnic has received some pushback from the White House Office of Management and Budget (OMB) over EEOC plans to collect additional pay data.\textsuperscript{166} The recently passed $1.3 trillion spending bill included a $16 million increase to the EEOC’s budget – the first increase in the agency’s budget in eight years, according to Time.\textsuperscript{167} Lipnic told Time that “going forward, I will ensure that we use these additional funds judiciously to enhance the agency’s work — especially as to harassment prevention.”\textsuperscript{168} The remaining two commissioners, both Democrats, have served on the commission since 2010\textsuperscript{169} and 2014.\textsuperscript{170}

President Trump’s nominees to fill the two vacant positions, Janet Dhillon and Daniel Gade,\textsuperscript{171} have not been approved by the U.S Senate and appear more ideological than Lipnic. If confirmed, Dhillon, 

\begin{thebibliography}{99}
\bibitem{EEOCRegulations} EEOC Regulations & Guidance, “Laws Enforcement by EEOC,” \url{https://www.eeoc.gov/laws/statutes/index.cfm}
\bibitem{AboutEEOC} About EEOC, “The Commission and the General Counsel,” \url{https://www.eeoc.gov/eeoc/commission.cfm}
\bibitem{VictoriaLipnic} About EEOC, “Victoria A. Lipnic, Acting Chair,” \url{https://www.eeoc.gov/eeoc/lipnic.cfm}
\bibitem{ChairLipnic} About EEOC, “Victoria A. Lipnic, Acting Chair,” \url{https://www.eeoc.gov/eeoc/lipnic.cfm}
\bibitem{JenniferCalfas} Jennifer Calfas, “A $16 Million Win for #MeToo and Time’s Up Was Slipped into Trump’s Budget,” Time Money (March 29, 2018), \url{http://time.com/money/5221146/metoo-eeoc-funding-increase/}
\bibitem{JenniferCalfas2} Jennifer Calfas, “A $16 Million Win for #MeToo and Time’s Up Was Slipped into Trump’s Budget,” Time Money (March 29, 2018), \url{http://time.com/money/5221146/metoo-eeoc-funding-increase/}
\bibitem{ChaiFeldblum} About EEOC, “Chai R. Feldblum, Commissioner,” \url{https://www.eeoc.gov/eeoc/feldblum.cfm}
\bibitem{CharlotteBurrows} About EEOC, “Charlotte A. Burrows, Commissioner,” \url{https://www.eeoc.gov/eeoc/burrows.cfm}
\end{thebibliography}
a corporate lawyer, would replace Lipnic as EEOC Chair. The bulk of Dhillon’s employment and labor experience includes defending corporations in employment matters.172 Prior to her nomination, Dhillon was general counsel at Burlington Stores, Inc.173 Earlier in her career, Dhillon ran the legal departments at US Airways and J.C. Penney.174 Dhillon also helped found175 the Retail Litigation Center (RLC),176 a coalition of retail industry lawyers “dedicated to advocating the retail industry’s perspective in those judicial proceedings that are most important to the retail community.”177

Civil rights groups have opposed Dhillon’s nomination. The NAACP said Dhillon’s “interests lie in protecting the interests of businesses, not in protecting or advancing workers’ rights,”178 while the National Women’s Law Center said she “has no experience working in the public sector or leading a government agency.”179 Daniel Gade, Trump’s other nominee for commissioner, is a retired U.S. Army officer,180 West Point professor and a veteran who lost his right leg during combat in Iraq.181 Gade wrote in 2011 that allowing women in combat roles was “silly” and “laughable,” according to The Center for Investigative Reporting.182 As a result, his nomination has been criticized by some Democrats.183 Gade has since said his views have changed, and he now believes “that anyone who can meet the physical and mental standards of the profession should be allowed into the profession in ground combat roles, and whatever role they qualify for.”184 Trump also has the power to appoint the EEOC’s general counsel, as Trump has done with the nomination of Sharon Fast Gustafson, who has yet to be confirmed.185

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175 Retail Litigation Center, “RLC Files 100th Brief,” https://www.rila.org/enterprise/retaillitigationcenter/Pages/100th-Brief.aspx
176 Retail Litigation Center, “Board of Directors,” http://www.rila.org/enterprise/retaillitigationcenter/Pages/BoardofDirectors3.aspx
177 Retail Litigation Center, “About,” http://www.rila.org/enterprise/retaillitigationcenter/Pages/default.aspx
Findings

For fiscal year 2017, the EEOC reported it had resolved 125 suits – a 27 percent drop from fiscal year 2016. [See Figure 4.1.] This is smallest number of cumulative resolutions in any fiscal year on record, according to EEOC data.\(^{186}\) The resolutions resulted in $42 million in total monetary benefits – a 19 percent reduction from the previous fiscal year. [See Figure 4.2.] Monetary benefits can include the recovery of front pay and back pay as well as compensatory and punitive damages.\(^ {187}\)

This decline, however, does not necessarily stem from Trump administration policy: The agency filed fewer suits in fiscal year 2016 than it had in any previous year, resulting in far fewer cases to settle in 2017. [See Figure 4.3.]


In fiscal year 2016, the EEOC reported that it had only filed 114 enforcement suits, which represented the fewest suits filed of any fiscal year on record.\(^{188}\) In fiscal 2017, the EEOC filed 201 cases – a 76 percent increase from fiscal year 2016\(^{189}\) and the most since the 2011 fiscal year.

**Will Trump’s EEOC Protect LGBTQ Americans?**

President Trump received criticism from members of his own party when he re-nominated one of the current Democratic commissioners whose term expires in July 2018, Chai Rachel Feldblum, to serve another term which would end in 2023.\(^{190}\) Feldblum, the first openly lesbian commissioner of the EEOC,\(^{191}\) is passionate defender of the employment rights of LGBTQ individuals.

But even with the re-nomination of Feldblum, many LGBTQ advocates are concerned that if confirmed, Dhillon and Gade will reverse recent progress on protecting LGBTQ employees against discrimination.\(^{192}\)

In 2015, the EEOC ruled that discrimination based on sexual orientation was covered under the Civil Rights Act of 1964.\(^{193}\) After the ruling, the EEOC began to weigh in on employment cases on behalf of gay and lesbian individuals.\(^{194}\) As late as March 2018, under chair Lipnic, the EEOC has made it clear that it still believes federal civil rights laws protect gay and lesbian individuals against workplace discrimination.\(^{195}\)

Attorney General Jeff Sessions recently wrote a memo stating that the law “does not prohibit discrimination based on gender identity per se,”\(^ {196}\) putting the EEOC and the Justice Department on opposite sides of the issue.

Dhillon and Gade have both refused to say whether or not they support the EEOC or the DOJ position.\(^ {197}\) While the EEOC is an independent agency, many believe Dhillon’s non-answers to the LGBTQ protection question can be interpreted as a signal of deference to Sessions. “I see every reason

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191 About EEOC, “Chai R. Feldblum, Commissioner,” [https://www.eeoc.gov/eeoc/feldblum.cfm](https://www.eeoc.gov/eeoc/feldblum.cfm)


to believe that the new commissioners are going to change course on transgender as well as sexual orientation discrimination,” 198 Melissa Hart, a law professor from the University of Colorado told NBC News.

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**EEOC METHODOLOGY**

Enforcement data were obtained by viewing the EEOC’s litigation statistics summary table, available at [https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm). The section includes “all suits filed,” “all resolutions” and “monetary benefits.” Fiscal years 2015, 2016 and 2017, are included.

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5. Federal Communications Commission

Enforcement Trends

During Trump’s first year in office, the Federal Communications Commission completed significantly fewer enforcement actions and for far less money than in the previous two years. [See Table 5.1.]

Public Citizen’s analysis found that:

- The number of enforcement actions completed by the Federal Communications Commission declined by more 50 percent during the first year of the Trump administration compared to the average for the final two years of the Obama administration.

- The amount of penalties completed by the Federal Communications Commission declined by 86 percent during the first year of the Trump administration compared to the average for the final two years of the Obama administration.

- The average fine completed during the first year of the Trump administration was 71 percent smaller than an average of the final two years of the Obama administration.

For section-specific methodological notes, see page 50.

Table 5.1: Summary of Federal Communications Commission enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Period</th>
<th>Number</th>
<th>Amount</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>30</td>
<td>$39,631,327</td>
<td>$1,321,044</td>
</tr>
<tr>
<td>Obama 8</td>
<td>49</td>
<td>$257,034,240</td>
<td>$5,245,597</td>
</tr>
<tr>
<td>Obama 7</td>
<td>77</td>
<td>$318,388,696</td>
<td>$4,134,918</td>
</tr>
<tr>
<td>Obama 7-8 average</td>
<td>63</td>
<td>$287,711,468</td>
<td>$4,566,849</td>
</tr>
<tr>
<td>% difference Obama 7-8 avg. to Trump 1</td>
<td>-52%</td>
<td>-86%</td>
<td>-71%</td>
</tr>
</tbody>
</table>


Agency Mission

The Federal Communications Commission (FCC), created in 1934 to replace the Federal Radio Commission, is charged by Congress “to make available, so far as possible, to all the people of the United States […] a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”

In practice this means regulating myriad forms of electronic communications, old and new, including traditional telephone service, radio and television, cellular telephones, cable and satellite television, public service radio networks, the Internet, and much more.

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The commission’s enforcement functions include policing the methods by which radio signals are transmitted through the public spectrum, the contents of communications, and laws protecting consumers.

**Personnel and Policy**

For this project, Public Citizen built a database of enforcement actions based on records included within the Electronic Document Management System that the agency maintains on its web site. Examination of these records revealed a precipitous drop in both the number and amount of fines in the first year of the Trump administration.

Ajit Pai, who has served on the commission since 2012, was appointed FCC chairman in January 2017. Pai previously represented telecommunications interests for the firm Jenner & Block (2011-2012) and served as deputy general counsel for telecom giant Verizon (2001-2003). In between, he served as a congressional staffer, a U.S. Department of Justice official and in the general counsel’s office of the FCC.

Pai’s most controversial move to date was spearheading a decision, finalized in December 2017, to repeal “net neutrality” rules governing Internet service providers established during the Obama Administration. Those rules deemed Internet service to be akin to a public utility. As such, they prohibited providers from favoring content from one provider over another. Supporters fear that without net neutrality rules, Internet service providers will provide “fast lanes” to content generated by their own company or highly paying customers, while potentially blocking content from competitors.

Pai envisions protecting customers in a post-net neutrality world with “targeted enforcement” coupled with increased transparency.

The Net Neutrality rollback relies largely on Federal Trade Commission (FTC) authority to take action in the event of anti-competitive behavior. While the acting chair of the FTC said that agency was “ready to resume its role as the cop on the broadband beat,” the director of the FTC’s Bureau of

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202 Ibid.
Consumer Protection from 2013 to 2017 said it was highly questionable whether the commission even has authority, let alone the resources, to police broadband providers.\textsuperscript{206}

The FCC’s record on enforcement under Pai has been underwhelming, especially against the largest players in the telecommunications world.

During the last two years of the Obama administration, the FCC finalized eight penalties against telecommunications giants AT&T, Sprint, T-Mobile and Verizon totaling $234.4 million. These penalties were for conduct such as charging consumers for products they did not order, slowing down Internet speed in violation of service agreements, and failing to provide required emergency call service.

In Pai’s first year as chair of the FCC, the commission finalized only one penalty against these telecommunications giants, a $17.7 million penalty against Verizon for violating the terms of a program in which providers furnish discounted broadband services to school districts. In dissent to that settlement, FCC commissioner Mignon L. Clyburn wrote,\textsuperscript{207} “the Commission says for over $50 million in harm to the Fund, we do not even want all of our money back – just 34 cents on the dollar.” In response, Pai said the settlement was negotiated under the prior commission, led by a Democrat.\textsuperscript{208}

A separate controversy emerged over the FCC’s resolution of a case involving Securus Technologies Inc, which provides telephone services to prison inmates. Securus sought approval to be acquired by another firm for $1.5 billion.

In 2013 and 2015, the FCC adopted policies “to rein in the excessive rates and egregious fees on ... people trying to stay in touch with loved ones serving time in jail or prison,” as the FCC said in a press release following adoption of the 2015 rule.\textsuperscript{209} The consumer advocacy group Free Press and others accused Securus of dodging the FCC’s rules by engaging in such practices as labeling newly prohibited “per-call connection” and “flat fee” charges as “first minute rates,” which were identical in practice to the prohibited actions. Free Press documented that a 15-minute intrastate call made from at least 46 Michigan jails cost more than $20.\textsuperscript{210}

In its review of Securus’s merger application, the FCC’s Wireline Competition Bureau concluded that Securus was not honest in all it its representations. It found “Securus’s cavalier and willful attitude towards the Commission and its transaction review process unacceptable” and referred its findings


to the FCC’s Enforcement Bureau.\textsuperscript{211} Due to findings that Securus submitted incorrect information, the Enforcement Bureau negotiated a $1.7 million fine against the company to settle the case. On the same day it approved the fine, the FCC approved Securus's bid to be acquired.\textsuperscript{212}

Democratic commissioners Clyburn and Jessica Rosenworcel issued a scathing dissent to that decision, noting that the fine amounted to just 0.1 percent of the money Securus's owners were receiving through the newly approved sale. Securus “is a company that has shown it is willing to operate on the bleeding edge of legality when it comes to this agency’s rules,” they wrote. “Is this transfer of control and consent decree just a slap on the wrist? More like a pat on the back. And it is precedent-setting. Until now, the FCC has never granted a transfer of control when a company has made misrepresentations during the review process.”\textsuperscript{213}

Pai represented Securus while at Jenner & Block prior to being appointed an FCC commissioner. Watchdog groups demanded that Pai recuse himself from the Securus decision. A spokesman for Pai said in a statement that recusal was not necessary because his work was cleared by the FCC’s ethics office and, further, that FCC guidelines governing conflicts of interest only last one year from the time of appointment.\textsuperscript{214}

Prior to the merger approval, Securus and another firm had sued to overturn the FCC’s rule governing rates for prisoners’ in-state phone calls, which make up the overwhelming majority of their calls.\textsuperscript{215} Days after assuming the chairmanship of the FCC, Pai said that the commission would no longer defend the rule in court. In June, a federal court struck down the rule in a 2 to 1 decision.\textsuperscript{216}

“The D.C. Circuit agreed with my position that the FCC exceeded its authority when it attempted to impose rate caps on intrastate calls made by inmates,” Pai said in a statement issued the day of the decision. “Looking ahead, I plan to work with my colleagues at the Commission, Congress, and all stakeholders to address the problem of high inmate calling rates in a lawful manner.”\textsuperscript{217}

\begin{itemize}
\item \textsuperscript{213} “Joint Dissenting Statement of Commissioners Mignon L. Clyburn and Jessica Rosenworcel Re: Joint Application of Securus Investment Holdings, LLC, Securus Technologies, Inc.” (Oct. 27, 2017), \url{https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-140A4.pdf}
\item \textsuperscript{214} Immanuel Jotham, “FCC head Ajit Pai accused of ‘clear conflict of interest’ in prison phone company deal,” International Business Times (Aug. 11, 2017), \url{http://www.ibtimes.co.uk/fcc-head-ajit-pai-accused-clear-conflict-interest-prison-phone-company-deal-1634573}
\item \textsuperscript{215} David Goldman , “Government’s plan to cut sky-high prison phone rates is put on hold,” CNN (March 9, 2016), \url{http://money.cnn.com/2016/03/09/technology/prison-phones/index.html}
\end{itemize}
In October, Clyburn and FTC commissioner Terrell McSweeny wrote that Pai had yet to take any actions to address the exorbitant cost of inmates’ in-state calls.\(^{218}\)

Out of the FCC’s largest 20 monetary enforcement penalties from the past three years, two were imposed under the Trump administration. [See Table 2.2.]

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty Date</th>
<th>Penalty</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Straight Path</td>
<td>1/12/2017</td>
<td>$100,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Verizon</td>
<td>5/12/2015</td>
<td>$90,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Sprint</td>
<td>5/12/2015</td>
<td>$68,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>T-Mobile</td>
<td>10/19/2016</td>
<td>$48,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>AT&amp;T</td>
<td>4/8/2015</td>
<td>$25,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Verizon</td>
<td>10/17/2017</td>
<td>$17,680,000</td>
<td>Trump</td>
</tr>
<tr>
<td>T-Mobile</td>
<td>7/17/2015</td>
<td>$17,500,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Century Link</td>
<td>4/6/2015</td>
<td>$16,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Purple Communications</td>
<td>12/18/2015</td>
<td>$11,937,549</td>
<td>Obama</td>
</tr>
<tr>
<td>Purple Communications</td>
<td>2/15/2017</td>
<td>$9,116,527</td>
<td>Trump</td>
</tr>
<tr>
<td>GPSPCS</td>
<td>7/23/2015</td>
<td>$9,065,000</td>
<td>Obama</td>
</tr>
<tr>
<td>AT&amp;T</td>
<td>8/8/2016</td>
<td>$7,750,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Optic Internet Protocol</td>
<td>3/11/2015</td>
<td>$7,620,000</td>
<td>Obama</td>
</tr>
<tr>
<td>AT&amp;T</td>
<td>4/29/2015</td>
<td>$6,900,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Birch Communications</td>
<td>12/29/2016</td>
<td>$6,100,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Locus Telecommunication</td>
<td>10/21/2015</td>
<td>$5,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Lyca Tel</td>
<td>10/21/2015</td>
<td>$5,000,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Company</th>
<th>Date</th>
<th>Amount</th>
<th>President</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norba Tel</td>
<td>10/21/2015</td>
<td>$5,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Simple Network</td>
<td>10/21/2015</td>
<td>$5,000,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>

**FCC METHODOLOGY**

6. Federal Trade Commission

“I worry that the FTC imposes unnecessary and disproportionate costs on businesses. The most obvious examples occur when the Commission wrongly sues a firm to potentially devastating effect.”

—Former acting FTC Chair Maureen K. Ohlhausen

Enforcement Trends

Trump’s first year in office saw a significant decline in FTC enforcements against corporations compared to previous years. [See Table 6.1.]

Public Citizen’s analysis found that the FTC:

- Completed 14 enforcement actions against corporations in Trump’s first year in office, down 48 percent from 27 in Obama’s last year.

- Issued $4.3 billion in penalties during Trump’s first year, down from more than $12.3 billion a year earlier but up from about $1.5 billion in the prior year. Excluding the Volkswagen “Dieselgate” settlements, penalties in Trump’s first year were $299.8 million and in Obama’s last year were $2.3 billion. [See Figure 6.1.]

For section-specific methodological notes, see page 58.

Table 6.1: Summary of FTC enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>14</td>
<td>$4,338,996,773</td>
<td>$309,928,341</td>
</tr>
<tr>
<td>Obama 8</td>
<td>27</td>
<td>$12,387,666,094</td>
<td>$458,802,448</td>
</tr>
<tr>
<td>Obama 7</td>
<td>32</td>
<td>$1,518,036,459</td>
<td>$47,438,639</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

Figure 6.1: Summary of FTC penalties against corporations from Jan. 20, 2015, through Jan. 19, 2018, by administration.

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

Enforcement actions by the Federal Trade Commission (FTC) fall into two broad categories: protecting consumers and promoting competition. The FTC’s consumer protection enforcement activities, undertaken by the FTC’s Bureau of Consumer Protection, include policing against fraud, deception and other unfair business practices.

The enforcement aspect of competition promotion – that is, enforcing antitrust law – is undertaken by the FTC’s Bureau of Competition, and is a responsibility the FTC shares with the Antitrust Division of the Department of Justice. The Bureau of Competition’s enforcement activities include reviewing proposed corporate mergers and penalizing corporations that engage in anticompetitive behavior such as price-fixing and bid-rigging. The commission is responsible for enforcing or administering statutes under more than 70 laws.

Five commissioners who are appointed by the president of the United States, and whose nominations must be approved by the Senate, oversee the FTC. One of the five commissioners is named by the president to serve as the chairman. The commissioners serve seven-year terms, and no more than three at a time may represent the same political party.

Within the FTC’s Bureau of Consumer Protection is its Division of Enforcement, which investigates, litigates, initiates court actions and takes other civil actions against violators. The enforcement division also works with criminal law enforcers such as U.S. Attorney’s Offices to coordinate referrals and assist in the pursuit of prosecutions.

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221 "Enforcement," U.S. Federal Trade Commission (viewed on April 24, 2018), [https://www.ftc.gov/enforcement](https://www.ftc.gov/enforcement)
Within the FTC’s competition bureau are two divisions that focus primarily on enforcement: the health care division and the anticompetitive practices division. The anticompetitive practices division works to investigate and take action against illegal anticompetitive behavior and to shape federal antitrust policy. The health care division has the same mission, but with a special focus on the health care industry. A recent priority of this division has been to thwart “pay for delay” schemes in which pharmaceutical corporations pay generics manufacturers not to introduce competition into the prescription drug marketplace.\(^{224}\)

### Personnel and Policy

The Trump administration’s FTC chair, Joseph Simons, and commissioners were not confirmed until April 2018,\(^{225}\) but the agency’s transition to Republican control started even before Trump entered the White House. Before Trump’s inauguration, Obama’s FTC chair resigned,\(^{226}\) and less than a week into his presidency, Trump named Republican commissioner Maureen K. Ohlhausen acting chairman.\(^{227}\) During Trump’s first year in office, only two of the five commission seats were occupied: one by Ohlhausen, and one by Terrell McSweeny, a Democratic commissioner who served from 2014\(^{228}\) through April 2018.\(^{229}\)

Ohlhausen named Thomas Pahl, a lawyer and deregulation supporter\(^{230}\) acting director of the Bureau of Consumer Protection.\(^{231}\) At the Bureau of Competition, Tad Lipsky became acting director;\(^{232}\) Pahl,\(^{233}\) Lipsky\(^{234}\) and Ohlhausen\(^{235}\) all have worked as adjunct faculty for the Antonin Scalia Law School at George Mason University. The law school has been criticized for accepting of $30 million in funds from a charity created by libertarian billionaire Charles Koch and anonymous donors affiliated

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\(^{228}\) "Commissioners," U.S. Federal Trade Commission (viewed on April 24, 2018), [https://www.ftc.gov/about-ftc/commissioners](https://www.ftc.gov/about-ftc/commissioners)


\(^{233}\) "Thomas B. Pahl: Adjunct Professor," George Mason University (viewed April 24, 2018), [https://www.law.gmu.edu/faculty/directory/former/pahl_thomas](https://www.law.gmu.edu/faculty/directory/former/pahl_thomas)

\(^{234}\) "Tad Lipsky: Adjunct Professor," George Mason University (viewed April 24, 2018), [https://www.law.gmu.edu/faculty/directory/adjunct/lipsky_tad](https://www.law.gmu.edu/faculty/directory/adjunct/lipsky_tad)

\(^{235}\) Press Release, "Mason alumna Maureen Ohlhausen named acting head of FTC," George Mason University (Jan. 27, 2017), [https://www2.gmu.edu/news/319326](https://www2.gmu.edu/news/319326)
with the conservative Federalist Society in exchange for influence over the school’s hiring practices.\footnote{Erica L. Green and Stephanie Saul, "What Charles Koch and Other Donors to George Mason University Got for Their Money," The New York Times (May 5, 2018), \url{https://www.nytimes.com/2018/05/05/us/koch-donors-george-mason.html}}


In April 2017, the FTC issued a press release containing the subhead, “Acting Chairman Ohlhausen is streamlining agency processes and improving transparency.”\footnote{Press Release, "Process Reform Initiatives are Already Underway at the Federal Trade Commission," U.S. Federal Trade Commission (April 17, 2017), \url{https://www.ftc.gov/news-events/press-releases/2017/04/process-reform-initiatives-are-already-underway-federal-trade}} The release included examples of how the FTC under Ohlhausen was purportedly “eliminating wasteful, legacy regulations and processes that have outlived their usefulness.” Actions listed in the FTC release that are likely to hinder the agency’s enforcement efforts include efforts to “streamline demands for information in investigations to eliminate unnecessary costs to companies”; instructing both enforcement agencies to review their dockets and close older investigations, “where appropriate”; and instructing the consumer protection and economics divisions of the agency to “integrate economic expertise even earlier in FTC investigations to better inform agency decisions about the consumer welfare effects of enforcement actions.” Rep. Bob Latta (R-Ohio), chairman of the congressional consumer protection and digital commerce committee, praised Ohlhausen’s proposals, noting that they implemented policies Republican lawmakers had proposed via an “FTC Process Reform package.”\footnote{Press Release, "Latta Pleased to See Process Reforms Well Underway at FTC," U.S. House of Representatives Energy and Commerce Committee (April 17, 2017), \url{https://energycommerce.house.gov/news/press-release/latta-pleased-see-process-reforms-well-underway-ftc/}}
In May 2018, Joseph Simons was sworn in,243 as were three of Trump’s FTC commissioner nominees: Republican Joshua Phillips and Democrats Rebeca Kelly Slaughter and Rohit Chopra.244 A fifth Republican nominee, Christine Wilson, will take the place of Ohlhausen, who Trump has nominated to serve as a federal claims court judge,245 after she leaves the agency.

Simons is an antitrust lawyer who served as director of the Bureau of Competition from 2001 to 2003 under President George W. Bush. In the questionnaire Simons submitted ahead of his confirmation hearing before the U.S. Senate Committee on Commerce, Science and Transportation, the FTC, during his previous tenure, he says he “brought more non-merger enforcement actions than in any comparable period two decades before or since, while remaining very active in merger enforcement as well.” Simons further expresses his interest in strengthening antitrust enforcement by noting:

Significant concerns have been raised that the federal antitrust agencies have been too permissive in dealing with mergers and acquisitions, resulting in harm to consumer welfare via increased prices, limited consumer choice, and harm to workers. [...] The FTC needs to devote substantial resources to determine whether its merger enforcement has been too lax, and if that’s the case, the agency needs to determine the reason for such failure and to fix it.247

Despite Simon’s tough talk, it’s important to note his swings through the Washington, D.C., revolving door. His recent work in the private sector was representing corporations in antitrust matters, including major finance (MasterCard) and technology (Microsoft, Sony, Sharp) corporations.248

As head of the FTC’s consumer protection bureau, Simons named Andrew M. Smith, a corporate lawyer whose client list includes Facebook, Uber and Equifax and who represented AMG Capital Management,249 which in 2016 received a $1.3 billion penalty from the FTC for engaging in an illegal predatory lending scheme.250 Smith was approved by a 3-2 party line vote among the commissioners.

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The commissioners unanimously approved the appointees to head the agency’s competition and economics bureaus.251

Findings

Out of the 20 largest penalties against corporations during the past three years, only two were completed by the Trump administration. [See Figure 6.2.] During Trump's first year in office, the FTC completed 14 enforcement actions against corporations, down 48 percent from 27 in Obama’s last year, according to Violation Tracker data.252

Table 6.2: Top 20 FTC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volkswagen</td>
<td>6/28/2016</td>
<td>$10,033,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Volkswagen</td>
<td>5/17/2017</td>
<td>$4,039,246,773</td>
<td>Trump</td>
</tr>
<tr>
<td>AMG Capital Management et al</td>
<td>10/4/2016</td>
<td>$1,300,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Cephalon, Inc.</td>
<td>5/28/2015</td>
<td>$1,200,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Western Union</td>
<td>1/19/2017</td>
<td>$586,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Dish Network</td>
<td>6/6/2017</td>
<td>$280,000,000</td>
<td>Trump</td>
</tr>
<tr>
<td>Herbalife</td>
<td>7/15/2016</td>
<td>$200,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>LifeLock</td>
<td>12/17/2015</td>
<td>$100,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>DeVry University</td>
<td>12/15/2016</td>
<td>$100,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Mallinckrodt ARD Inc</td>
<td>1/18/2017</td>
<td>$100,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Green Tree Servicing LLC</td>
<td>4/21/2015</td>
<td>$63,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>TracFone</td>
<td>1/28/2015</td>
<td>$40,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Danielson Law Group</td>
<td>2/5/2015</td>
<td>$28,600,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Cardinal Health Inc.</td>
<td>4/20/2015</td>
<td>$26,800,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Uber Technologies</td>
<td>1/19/2017</td>
<td>$20,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>CoreLogic, Inc.</td>
<td>4/6/2015</td>
<td>$11,900,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Sale Slash</td>
<td>2/8/2016</td>
<td>$10,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Inbound Call Experts</td>
<td>12/22/2016</td>
<td>$10,000,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Health Formulas LLC</td>
<td>5/3/2016</td>
<td>$9,200,000</td>
<td>Obama</td>
</tr>
<tr>
<td>Pure Health LLC and Genesis Today Inc.</td>
<td>1/26/2015</td>
<td>$9,000,000</td>
<td>Obama</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.


252 Violation Tracker usefully makes it possible to sort data according to date, making it possible to categorize enforcements according to the U.S. presidential administrations under which they occurred. Separately, the FTC issues its own annual reports that show data by the federal government’s fiscal year, which runs from the beginning of October through the end of September. The FTC annual report counts a broader range of enforcement data. To date, the Trump FTC has not released its fiscal year 2017 report. Generally, agencies aggregate enforcement numbers are higher because they include enforcements against individuals and below $5,000. The 2016 and 2015 reports are available on the FTC’s website here https://www.ftc.gov/policy/reports/policy-reports/ftc-annual-reports
The FTC imposed $4.3 billion in penalties during Trump’s first year, down from more than $12.3 billion a year earlier but more than about $1.5 billion in the prior year.

The largest FTC penalties in Trump’s first year and Obama’s last year were those imposed against Volkswagen. The German car corporation designed diesel vehicles to emit allowable levels of pollutants while undergoing required emissions tests, even though they polluted far more than permitted under normal driving conditions. Under the Obama administration, Volkswagen reached a $10 billion partial settlement with FTC, the largest false-advertising case in the agency’s history, to resolve allegations the German corporation deceived consumers with its “clean diesel” marketing campaigns for two-liter engine vehicles. Under the Trump administration, the FTC reached a $4 billion settlement with Volkswagen customers who had purchased three-liter engine vehicles. Both the $10 billion and $4 billion represent the maximum amount Volkswagen could be required to provide consumer relief such as buying back vehicles and making repairs.

Excluding these Volkswagen “Dieselgate” settlements, penalties in Obama’s last year were $2.3 billion and in Trump’s first year were nearly $300 million.

The FTC’s Annual Highlights reports include data on enforcements initiated, enforcements completed, and non-monetary enforcement activity. The two most recent reports show slight increases in antitrust enforcement and consumer protection actions filed between fiscal year 2016 and fiscal year 2017. The reports also show a decline in the number of consumer protection orders obtained – that is, completed consumer protection enforcement actions. [See Table 6.3.]

The FTC is undergoing the turnover of all five commissioners. Time will tell if the new chair, commissioners and bureau directors are prioritizing the interests of past corporate clients or serving the public interest by carrying out meaningful enforcement.

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Table 6.3: FTC enforcement statistics reported via annual highlights reports.

<table>
<thead>
<tr>
<th></th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>'15-'16 average</th>
<th>% difference from '15-'16 avg to 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antitrust Enforcement Actions</td>
<td>37</td>
<td>25</td>
<td>36</td>
<td>31</td>
<td>14%</td>
</tr>
<tr>
<td>Consumer Protection Actions Filed</td>
<td>107</td>
<td>70</td>
<td>74</td>
<td>88.5</td>
<td>-20%</td>
</tr>
<tr>
<td>Consumer Protection Orders Obtained</td>
<td>178</td>
<td>153</td>
<td>147</td>
<td>165.5</td>
<td>-13%</td>
</tr>
</tbody>
</table>


FTC METHODOLOGY

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=FTC. All cases against corporations involving penalties of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.

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III. ENVIRONMENTAL PROTECTION

7. Bureau of Safety and Environmental Enforcement

“Help is on the way.”

– BSEE Director Scott Angelle to oil and gas executives

Enforcement Trends

During Trump’s first year in office, the number of BSEE cases against corporations declined slightly, as did penalty amounts. [See Table 7.1.]

Public Citizen’s analysis found that the BSEE:

- Issued 24 civil penalties during the first year of the Trump administration, down slightly from Obama’s last year and a continued decline from the prior year, when BSEE reported significantly more penalties.

- Under Trump, BSEE reported a 12 percent decrease in the total dollar amount of paid penalties compared with Obama’s final year. The penalty total for both years were significantly less than Obama’s seventh year total of nearly $3.7 million. [See Figure 7.1.]

For section-specific methodological notes, see page 65.

Table 7.1: Summary of BSEE enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>24</td>
<td>$1,939,158</td>
<td>$80,798</td>
</tr>
<tr>
<td>Obama 8</td>
<td>27</td>
<td>$2,198,770</td>
<td>$81,436</td>
</tr>
<tr>
<td>Obama 7</td>
<td>42</td>
<td>$3,674,018</td>
<td>$87,477</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of BSEE data.

The largest single penalty paid in 2017, which accounted for nearly half of the total penalty amount paid that year, was a $965,000 penalty paid in February 2017 by Energy XXI Gulf Coast Inc., a Houston-based offshore drilling firm. The company filed for Chapter 11 bankruptcy protection in 2016 amid sinking oil prices and emerged from bankruptcy later that year. BSEE found methane gas “bubbling up” from two wells Energy XXI had abandoned. Energy XXI has paid nearly $1.3 million in penalties from 2015 through 2017—the most of any company over the three year period. A recent exposé by the New York Times’ Eric Lipton highlighted Energy XXI, among other energy companies, as beneficiaries of the Trump administration’s efforts to undo Obama-era safety regulations.

**Agency Mission**

To establish a clear separation between the oil and gas industry and its regulator, the Obama administration split up the Minerals Management Service, creating the Bureau of Safety and Environmental Enforcement (BSEE) and giving it the exclusive mission of regulating offshore drilling to protect the environment and improve safety.

Created in the wake of the 2010 Deepwater Horizon oil rig explosion, the Obama administration gave BSEE the exclusive mission of regulating offshore drilling, citing a need for an organization that “acts as the oil industry’s watchdog – not its partner.” BSEE’s enforcement powers include issuing civil

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265 Bureau of Safety and Environmental Enforcement, About Us, [https://www.bsee.gov/who-we-are/about-us](https://www.bsee.gov/who-we-are/about-us).
266 Ibid.
penalties as well as referring criminal cases to the Department of the Interior’s Office of Inspector General (OIG).267

**Personnel and Policy**

In 2010, the nation watched in horror for 87 days as more than 3 million barrels of oil spewed into the Gulf of Mexico.268 The spill, which became the largest oil spill in U.S. history, was the result of an explosion on BP’s Deepwater Horizon oil rig in the Gulf of Mexico – which left 11 dead.269 The country demanded action to ensure no such disaster would ever happen again.

After the disaster, President Obama promised reform.270 The backdrop for the regulatory failure that made the Gulf disaster possible was the conflicted mission of the Department of Interior’s Minerals Management Service,271 which both issued drilling permits and conducted industry oversight. Obama declared that the agency “has become emblematic of a failed philosophy that views all regulation with hostility – a philosophy that says corporations should be allowed to play by their own rules and police themselves.”272 Obama said that “industry insiders were put in charge of industry oversight. Oil companies showered regulators with gifts and favors, and were essentially allowed to conduct their own safety inspections and write their own regulations.”273

**“Longtime Ally” of the Oil and Gas Industry, Scott Angelle, Appointed as BSEE Director**

On May 24, 2017, Scott A. Angelle began his work as BSEE director.274 Prior to joining BSEE, Angelle was an elected member Louisiana Public Service Commission, the state’s public utility regulator.275 A native of Louisiana, Angelle is described as a “longtime ally” of the offshore drilling industry.276

The description is well-earned. In 2004, he was appointed to be his state’s secretary for natural resources a role in which he dramatically expanded fracking, according to *The Times-Picayune.*277 In 2010, Angelle was appointed interim lieutenant governor of Louisiana – a position he held for six

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267 Bureau of Safety and Environmental Enforcement, Safety Enforcement, Civil Penalties, [https://www.bsee.gov/what-we-do/safety-enforcement/civil-penalties](https://www.bsee.gov/what-we-do/safety-enforcement/civil-penalties)
268 Steven Mufson, “BP’s Big Bill for the World’s Largest Oil Spill Reaches $61.6 Billion,” The Washington Post (July 14, 2016), [http://wapo.st/2HFLlEn](http://wapo.st/2HFLlEn)
269 Joel Achenbach, “BP’s Cost Cuts Contributed to Oil Spill Disaster, Federal Probe Finds,” The Washington Post (Sept. 14, 2011), [http://wapo.st/2piwQ1A](http://wapo.st/2piwQ1A)
271 Ibid.
272 Ibid.
273 Ibid.
274 Bureau of Safety and Environmental Enforcement, Director, [https://www.bsee.gov/who-we-are/organization/leadership/director](https://www.bsee.gov/who-we-are/organization/leadership/director)
275 Bureau of Safety and Environmental Enforcement, Director, [https://www.bsee.gov/who-we-are/organization/leadership/director](https://www.bsee.gov/who-we-are/organization/leadership/director)
months. The highlight of his short tenure as lieutenant governor – according to his official biography – was his efforts to end the offshore drilling moratorium put into effect after the Deepwater Horizon disaster.

Angelle also served on the board of directors of pipeline owner Sunoco Logistics between 2013 and 2016, for which he was paid close to $1 million. During Angelle’s three political campaigns, the oil and gas industry has showered him with campaign contributions. After being elected to the Louisiana Public Service Commission in 2012, Angelle unsuccessfully ran for governor of Louisiana in 2015 and for U.S. Congress in 2016. During Angelle’s unsuccessful gubernatorial campaign, he received the support of a super PAC largely funded by a former Freeport-McMoRan oil and gas executive, who contributed $1.25 million. In his congressional campaign, Angelle’s top contributing industry was oil and gas, which contributed $151,000 to his campaign, according to the Center for Responsive Politics. A recent Public Citizen report found that nearly one-fifth of the companies that have paid civil penalties to the BSEE over the past five years have contributed directly to one of Angelle’s political campaign. At least five of those companies have met with Angelle since he assumed office in Washington.

**Angelle’s Plans to Roll-Back Safety and Environmental Protection Regulations Will Save the Industry $900 Million**

According to the *New York Times*, Scott Angelle told a group of oil and gas executives in September 2017 that “help is on the way, help is on the way.” Angelle has been eager to hear advice from the industry he now regulates, encouraging executives to call him, and telling oil and gas lobbyists “to the degree this industry wants to be part of the discussion, tell me where you want me to be and we will be there.”

While Angelle has pledged to continue the agency’s focus on safety, he has also openly acknowledged that he believes the agency should try to “drive performance” in offshore drilling. This philosophy contrasts with how the BSEE’s first director, Michael Bromwich, views the agency. The regulator’s

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278 Ibid.
279 Ibid.
280 Bureau of Safety and Environmental Enforcement, Director, [https://www.bsee.gov/who-we-are/our-organization/leadership/director](https://www.bsee.gov/who-we-are/our-organization/leadership/director)
285 This includes instances where the CEO, Owner, or President and his or her family contributed directly to Angelle.
286 Michael Tanglis, “Regulating the Hands That Fed Him,” Public Citizen (March 22, 2018), [https://www.citizen.org/sites/default/files/regulating_the_hands_that_fed_him.pdf](https://www.citizen.org/sites/default/files/regulating_the_hands_that_fed_him.pdf)
287 Ibid.
“mission is not to expand domestic production,” Bromwich recently told the Wall Street Journal,\textsuperscript{289} adding that under Angelle’s leadership, BSEE has become a “cheerleader for the industry.”\textsuperscript{290}

The BSEE now plans to roll back or amend many Obama-era offshore drilling safety regulations. One BSEE proposal would loosen requirements on streaming real-time safety data to the shore, giving regulators the ability to spot problems faster. Another proposal would remove a requirement that only approved third-parties inspect critical safety devices, such as blow-out preventers – the failure of which precipitated the BP oil disaster, according to the Wall Street Journal.\textsuperscript{291} In response, Public Citizen wrote in public comments\textsuperscript{292} that “the federal government and the industry are not prepared to respond to the next offshore oil disaster, and the industry is not capable of self-policing.”\textsuperscript{293} Many regulations Angelle plans to weaken were designed to fix problems found during the investigation into the Deepwater Horizon disaster.\textsuperscript{294}

BSEE has claimed its efforts to roll back safety regulations will save the industry more than $900 million over the next decade.\textsuperscript{295} These significant savings for industry may well cost energy producers in the long run: in 2016, BP reported the Deepwater Horizon disaster had cost it $61.6 billion since 2010.\textsuperscript{296}

**Will Scott Angelle Put Safety Over Oil and Gas Company Profits?**

The Deepwater Horizon tragedy was only eight years ago. Many have not – and will not – fully recover what they lost. The regulations put in place in response “were written with human blood,” Lillian Espinoza-Gala, an industry safety consultant and former offshore worker told the New York Times.\textsuperscript{297}

The BSEE’s mission statement makes no mention of increasing oil production. The name of the agency, the Bureau of Safety and Environmental Enforcement, makes it quite clear what the intent of the agency should be.

Still, Scott Angelle insists increasing oil production is part of the agency’s mission, claiming the agency can promote an increase in oil production without sacrificing safety.
But history tells us those two goals will often be in direct conflict. A government report on the Deepwater Horizon incident found that 11 people died in part because BP “cut costs, reduced drilling time and increased risk,” according to the Washington Post.\(^{298}\) BP was able to increase oil production because the company cut corners related to health and safety.

Out of the 20 largest penalties against corporations during the past three years, two were completed by the Trump administration – including a $965,000 penalty against Energy XXI, the largest during this time period. [See Table 7.2.]

**Table 7.2: Top 20 BSEE corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.**

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty</th>
<th>Date Paid</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy XXI GOM</td>
<td>$965,000</td>
<td>2/9/2017</td>
<td>Trump</td>
</tr>
<tr>
<td>Dynamic Offshore Resources</td>
<td>$490,000</td>
<td>6/10/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Tengasco Inc</td>
<td>$386,000</td>
<td>8/27/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Chevron U.S.A.</td>
<td>$350,000</td>
<td>4/27/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Black Elk Energy Offshore Operations</td>
<td>$334,986</td>
<td>8/31/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Castex Offshore</td>
<td>$300,000</td>
<td>8/26/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>Energy Resource Technology GOM Inc</td>
<td>$300,000</td>
<td>4/1/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>Walter Oil &amp; Gas Corporation</td>
<td>$222,000</td>
<td>5/26/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>Stone Energy Corporation</td>
<td>$200,000</td>
<td>3/28/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>EPL Oil &amp; Gas</td>
<td>$165,000</td>
<td>10/28/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Chevron U.S.A.</td>
<td>$149,520</td>
<td>2/24/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>Fieldwood Energy LLC</td>
<td>$140,000</td>
<td>1/15/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>Hilcorp Energy GOM</td>
<td>$130,000</td>
<td>7/10/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Energy XXI GOM</td>
<td>$126,000</td>
<td>8/9/2017</td>
<td>Trump</td>
</tr>
<tr>
<td>Apache Corporation</td>
<td>$120,000</td>
<td>4/28/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>SandRidge Offshore</td>
<td>$111,750</td>
<td>9/1/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>W &amp; T Offshore</td>
<td>$100,000</td>
<td>6/24/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>DCCOR</td>
<td>$100,000</td>
<td>5/21/2015</td>
<td>Obama</td>
</tr>
<tr>
<td>Castex Offshore</td>
<td>$95,000</td>
<td>7/19/2016</td>
<td>Obama</td>
</tr>
<tr>
<td>SandRidge Offshore</td>
<td>$87,000</td>
<td>2/25/2015</td>
<td>Obama</td>
</tr>
</tbody>
</table>

**SOURCE:** Public Citizen analysis of BSEE data.

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\(^{298}\) Joel Achenbach, “BP’s Cost Cuts Contributed to Oil Spill Disaster, Federal Probe Finds,” The Washington Post (Sept. 14, 2011), [http://wapo.st/2pjwQ1A](http://wapo.st/2pjwQ1A)
BSEE METHODOLOGY

Enforcement data were obtained by downloading the BSEE’s calendar and fiscal year summaries of civil penalties paid, available at https://www.bsee.gov/what-we-do/safety-enforcement/civil-penalties. Public Citizen also obtained fiscal year 2018 enforcement data from BSEE. All items from Jan. 20, 2015, to Jan. 19, 2017, are included.
8. Environmental Protection Agency

Enforcement Trends

The dollar amount of penalties from Environmental Protection Agency enforcement orders dropped 94 percent in the first year of the Trump administration, according to EPA data. [Table 8.1]


<table>
<thead>
<tr>
<th>Administration</th>
<th>Cases</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>1,847</td>
<td>$1.46 B</td>
</tr>
<tr>
<td>Obama 8</td>
<td>2,107</td>
<td>$23.87 B</td>
</tr>
<tr>
<td>Obama 7</td>
<td>2,197</td>
<td>$20.08 B</td>
</tr>
<tr>
<td>Total</td>
<td>6,151</td>
<td>$45.42 B</td>
</tr>
</tbody>
</table>

For section-specific methodological notes, see page 75.

Agency Mission

Created in 1970, the mission of the EPA is to create a cleaner, healthier environment. The EPA is tasked with ensuring compliance with the U.S. environmental laws and taking civil or criminal action against those who violate the law.

Personnel and Enforcement Policy

On February 17, 2017, Scott Pruitt was confirmed by the Senate as the EPA administrator. Pruitt was the attorney general of Oklahoma. Pruitt has questioned the science behind climate change, claiming it is "far from settled," has denied that carbon dioxide is a "primary contributor" to global warming, and has suggested that global warming may actually be beneficial. As the Oklahoma attorney general, Pruitt sued the EPA over its clean power plan rule and worked closely with the

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299 “EPA History,” Environmental Protection Agency (viewed on March 8, 2018), [https://www.epa.gov/history](https://www.epa.gov/history)
301 “EPA’s Administrator, Scott Pruitt,” Environmental Protection Agency (viewed on March 8, 2018), [https://www.epa.gov/aboutepa/epas-administrator](https://www.epa.gov/aboutepa/epas-administrator)
fossil fuel industry. Pruitt’s industry-friendly track record coupled with his casual attitude toward climate change caused skeptics to predict that his EPA would go easy on polluters.

The president’s attitude towards the EPA only reinforced this belief. As a candidate, Donald Trump pledged to get rid of the EPA “in almost every form,” and leave only “little tidbits” of the agency intact, according to the Washington Post.

Findings

This analysis tracks issued civil enforcement orders in which the EPA was the lead agency and that resulted in “compliance action costs” and/or “federal monetary penalties.” (Hereinafter, we refer to the combination of these two categories, broadly, as “penalties”). This analysis uses data in the EPA’s downloadable database of enforcement activities, as of April 21, 2018. Criminal enforcement orders are not included in this analysis because the EPA’s database does not include monetary values in its records relating to criminal orders. Our methodology is explained in detail at the end of this section.

Enforcement orders issued by the EPA in the first year of the Trump administration resulted in a 94 percent reduction in the penalty amounts from orders issued in the eighth year of the Obama administration and a 93 percent reduction in penalties from orders issued in Obama’s seventh year. [Figure 8.1]

Figure 8.1: Summary of penalties imposed by EPA from Jan. 20, 2015, through Jan. 19, 2018, by administration.

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Beyond comparing total penalties, this analysis looks at several subcategories of penalties, and also isolates data from enforcement orders adjudicated in the court system as well as those that were handled administratively. Whether one looks at the overall picture or subsets of data, the dollar value of penalties assessed during the first year of the Trump administration declined dramatically from the final two years of the Obama administration.

**Breakdown: Compliance Costs and Federal Penalties**

The EPA’s database of enforcement actions list several categories of penalties, including “federal penalties,” which are essentially fines for violating the law, and “compliance action costs,” which defendants pay to remediate environmental offenses. As noted above, this report collectively refers to the sum of federal penalties and compliance costs as “penalties.” Note: The EPA’s database also lists “state and local penalties,” “Supplemental Environmental Projects (SEPs),” and “cost recovery” amounts. These account for a tiny fraction of total penalties and are not analyzed in this report. Compliance costs and federal penalties account for about 99 percent of EPA penalties during the three years analyzed.

Of the $45.4 billion in penalties for enforcement orders issued since 2015, compliance action costs accounted for $37.9 billion and federal penalties accounted for $7.5 billion.

Total compliance action costs for enforcement orders issued in Trump’s first year plummeted by 94 percent compared to Obama’s eighth year and by 90 percent compared to Obama’s seventh year. [Figure 8.2]

Federal penalties for orders – fines – issued in Trump’s first year plummeted by 95 percent compared to Obama’s eighth year and by 99 percent compared to Obama’s seventh year. [Figure 8.3]
**Breakdown: Administrative Actions and Judicial Actions**

There are two main types of EPA civil enforcement adjudication: civil administrative and judicial. Administrative orders are adjudicated within the EPA. Judicial orders are handled in the court system. Although administrative orders far outnumber judicial orders, the vast majority of money assessed by the agency in penalties comes from judicial orders.

Administrative enforcement orders are non-court proceedings in which the EPA issues a notice informing an entity or individual it is out of compliance with EPA laws, and instructing it to take action to get in compliance. In these enforcement orders, EPA can order the entity or individual to pay some type of penalty for noncompliance. Penalty amounts assessed in administrative enforcement orders fell 54 percent between Obama’s eighth year and Trump’s first year and 29 percent from Obama’s seventh year to Trump’s first year. [Figure 8.4]

**Figure 8.4: Administrative enforcement orders: total penalties.**

![Bar chart showing penalty amounts](image)

In Trump’s first year, compliance action costs in administrative enforcement orders fell by 56 percent. [Table 8.2]

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Administrative Orders With Compliance Costs</th>
<th>Total Compliance Action Costs Relating to Administrative Orders</th>
<th>Average Compliance Action Costs for Administrative Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>1,317</td>
<td>$593,190,834</td>
<td>$450,411</td>
</tr>
<tr>
<td>Obama 8</td>
<td>1,500</td>
<td>$1,338,680,908</td>
<td>$892,454</td>
</tr>
<tr>
<td>Obama 7</td>
<td>1,592</td>
<td>$857,342,353</td>
<td>$538,532</td>
</tr>
<tr>
<td>Total</td>
<td>4,409</td>
<td>$2,789,214,094</td>
<td>$632,618</td>
</tr>
</tbody>
</table>
In Trump’s first year, federal penalties assessed in administrative enforcement orders fell by 15 percent. [Table 8.3]

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Administrative Orders With Federal Penalties</th>
<th>Total Federal Penalties</th>
<th>Average Federal Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>1,156</td>
<td>$42,162,130</td>
<td>$36,472</td>
</tr>
<tr>
<td>Obama 8</td>
<td>1,353</td>
<td>$48,571,848</td>
<td>$35,899</td>
</tr>
<tr>
<td>Obama 7</td>
<td>1,366</td>
<td>$42,110,577</td>
<td>$30,828</td>
</tr>
<tr>
<td>Total</td>
<td>3,875</td>
<td>$132,844,554</td>
<td>$34,282</td>
</tr>
</tbody>
</table>

Many administrative enforcement orders are entered into the EPA’s database before or on the same day they are issued. For the remaining enforcement orders, on average, about 28 days pass after the completion of an administratively administered enforcement order before it is posted in the EPA’s database of enforcement orders. Thus, one can expect that final figures for the first year of the Trump administration will show a slightly higher number of administrative enforcement orders and a slight increase in compliance costs and penalties than shown here.309

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Judicial enforcement orders involve lawsuits filed310 against companies or individuals that fail to comply with one or more of laws enforced by the EPA.311 Judicial enforcement orders also can occur if an entity fails to comply with an EPA administrative order312 or if an entity or individual fails to pay the EPA what it is owed for cleanup work.313

Penalties arising from EPA judicial enforcement orders fell by 96 percent from Obama’s eighth year. [Figure 8.5]

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309 For reference: for Obama year seven, less than one percent of the administrative enforcement orders we entered after April 2016. For Obama year eight, three percent of the administrative enforcement orders we entered after April 2017. As Public Citizen downloaded the EPA data on April 21, 2018, it is likely few Trump year one administrative enforcement orders will be added in the future.

310 EPA Enforcement Basics, “Enforcement Basic Information,” https://www.epa.gov/enforcement/enforcement-basic-information


312 EPA Enforcement Basics, “Enforcement Basic Information,” https://www.epa.gov/enforcement/enforcement-basic-information

313 Ibid.
Looking solely at compliance action costs resulting from judicial enforcement orders, the EPA issued 52 percent fewer judicial enforcement orders that resulted in compliance costs in Trump’s first year compared to Obama’s final year. Compliance costs arising from these enforcement orders fell by 96 percent from Obama’s final year. [Table 8.4]

Table 8.4: Total compliance action costs related to judicial enforcement orders

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Judicial Orders Issued With Compliance Costs</th>
<th>Total Compliance Action Costs</th>
<th>Average Compliance Action Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>44</td>
<td>$789,390,719</td>
<td>$17,940,698</td>
</tr>
<tr>
<td>Obama 8</td>
<td>91</td>
<td>$20,881,657,134</td>
<td>$229,468,760</td>
</tr>
<tr>
<td>Obama 7</td>
<td>92</td>
<td>$13,423,856,966</td>
<td>$145,911,489</td>
</tr>
<tr>
<td>Total</td>
<td>227</td>
<td>$35,094,904,819</td>
<td>$154,603,105</td>
</tr>
</tbody>
</table>

The same pattern occurred in judicial enforcement orders that resulted in federal penalties. In Trump’s first year, the number of issued judicial enforcement orders that resulted in a federal penalty fell by 40 percent from Obama’s eighth year. The value of federal penalties arising from these enforcement orders fell by 98 percent. [Table 8.5]

Table 8.5: Total federal penalties related to judicial enforcement orders

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Judicial Orders Concluded With Federal Penalties</th>
<th>Total Federal Penalties</th>
<th>Average Federal Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>49</td>
<td>$35,909,241</td>
<td>$732,842</td>
</tr>
<tr>
<td>Obama 8</td>
<td>82</td>
<td>$1,605,115,660</td>
<td>$19,574,581</td>
</tr>
<tr>
<td>Obama 7</td>
<td>84</td>
<td>$5,757,845,574</td>
<td>$68,545,781</td>
</tr>
<tr>
<td>Total</td>
<td>215</td>
<td>$7,398,870,475</td>
<td>$34,413,351</td>
</tr>
</tbody>
</table>
Unlike administrative enforcement orders, there is little delay in the reporting of judicial enforcement orders, so the statistics here should not be subject to much revision.\textsuperscript{314}

**The Sharp Decline in Enforcement Activity Holds True Even if One Excludes the Unusually Large Enforcement Orders at the End of the Obama Administration**

Two extraordinary enforcement orders were issued in the final years of the Obama administration. These involved actions against BP concerning the record-breaking 2010 Deepwater Horizon oil spill off the coast of Gulf of Mexico, and against Volkswagen for selling diesel vehicles that emitted pollutants far in excess of permissible levels and hiding this fact from regulators.

The more than $30.8 billion in penalties resulting from these episodes account for 68 percent of the EPA penalties covered in this report.

The BP and Volkswagen enforcement orders were adjudicated judicially. To gain a clearer picture of enforcement at the EPA under Trump and Pruitt, we also analyzed judicial enforcement orders over the past three years excluding the BP and Volkswagen enforcement orders.

Overall, EPA penalties from judicially adjudicated enforcement orders fell by 84 percent during Trump’s first year compared to Obama’s eighth year and by 86 percent compared to Obama’s seventh year if the BP and Volkswagen enforcement orders are excluded. [Figure 6]

\textbf{Figure 8.6: Judicial enforcement orders total penalties (Volkswagen and BP enforcement orders excluded)}

\begin{figure}
\centering
\includegraphics[width=0.5\textwidth]{enforcement_orders.png}
\end{figure}

\textsuperscript{314} For reference: for Obama year seven, less than one percent of the judicial enforcement orders we entered after April 2016. For Obama year eight, one percent of the judicial orders we entered after April 2017. As Public Citizen downloaded the EPA data on April 21, 2018, it is likely very few Trump year one judicial orders will be added in the future.
Excluding BP and Volkswagen enforcement orders, total compliance costs from judicially adjudicated enforcement orders fell by 84 percent during Trump’s first year compared to Obama’s eighth and by 86 percent compared to Obama’s seventh year. [See Table 8.6.]

**Table 8.6: Total compliance action costs related to judicial enforcement orders (Volkswagen and BP enforcement orders excluded)**

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Orders With Compliance Costs</th>
<th>Total Compliance Action Costs</th>
<th>Average Compliance Action Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>44</td>
<td>$789,390,719</td>
<td>$17,940,698</td>
</tr>
<tr>
<td>Obama 8</td>
<td>89</td>
<td>$4,923,657,134</td>
<td>$55,321,990</td>
</tr>
<tr>
<td>Obama 7</td>
<td>90</td>
<td>$5,648,856,966</td>
<td>$62,765,077</td>
</tr>
<tr>
<td>Total</td>
<td>223</td>
<td>$11,361,904,819</td>
<td>$50,950,246</td>
</tr>
</tbody>
</table>

Excluding BP and Volkswagen enforcement orders, federal penalty amounts from judicially adjudicated enforcement orders fell by 77 percent during Trump’s first year compared to Obama’s eighth and by 63 percent compared to Obama’s seventh. [See Table 8.7.]

**Table 8.7: Total federal penalties related to judicial enforcement orders (Volkswagen and BP enforcement orders excluded)**

<table>
<thead>
<tr>
<th>Administration</th>
<th>Number of Orders Concluded With Federal Penalties</th>
<th>Total Federal Penalties</th>
<th>Average Federal Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>49</td>
<td>$35,909,241</td>
<td>$732,842</td>
</tr>
<tr>
<td>Obama 8</td>
<td>81</td>
<td>$155,115,660</td>
<td>$1,915,008</td>
</tr>
<tr>
<td>Obama 7</td>
<td>80</td>
<td>$98,345,574</td>
<td>$1,229,320</td>
</tr>
<tr>
<td>Total</td>
<td>210</td>
<td>$289,370,475</td>
<td>$1,377,955</td>
</tr>
</tbody>
</table>

Out of the 20 largest penalties imposed by the EPA during the last two years of the Obama administration and the first year of the Trump administration, only one, a $240 million penalty against Hammond Sanitary District, was done under Trump. [See Table 8.8.]

**Table 8.8: Top 20 EPA civil enforcement cases (including penalties against non-corporate entities.) from Jan. 20, 2015, through Jan. 19, 2018, by size.**

<table>
<thead>
<tr>
<th>Company</th>
<th>Settlement Date</th>
<th>Administration</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volkswagen</td>
<td>6/28/2016</td>
<td>Obama 8</td>
<td>$14,733,000,000</td>
</tr>
<tr>
<td>BP Exploration &amp; Production Inc. (Gulf of Mexico Oil Spill) (National Case) (Lead)</td>
<td>10/5/2015</td>
<td>Obama 7</td>
<td>$8,581,250,000</td>
</tr>
<tr>
<td>BP Exploration/Moex/Transocean Deepwater/Triton/Gulf of Mexico Oil Spill/Deepwater Horizon (NC)</td>
<td>10/5/2015</td>
<td>Obama 7</td>
<td>$4,693,750,000</td>
</tr>
<tr>
<td>Baltimore, Mayor &amp; City Council of</td>
<td>6/1/2016</td>
<td>Obama 8</td>
<td>$1,644,000,000</td>
</tr>
<tr>
<td>Volkswagen</td>
<td>1/11/2017</td>
<td>Obama 8</td>
<td>$1,450,000,000</td>
</tr>
</tbody>
</table>
Volkswagen 
12/20/2016 Obama 8 $1,225,000,000

District of Columbia Water and Sewer Authority (1st Amendment) 
5/20/2015 Obama 7 $1,024,000,000

Evansville, City of 
2/18/2016 Obama 8 $729,025,000

PRASA - Puerto Nuevo Regional WWTP et al. 
9/15/2015 Obama 7 $700,000,000

IMC Phosphates Co. (New Wales Facility) (aka Mosaic Fertilizer, LLC) (04-2016-C013) 
9/30/2015 Obama 7 $637,954,000

Interstate Power & Light - Alliant 
7/15/2015 Obama 7 $620,733,333

General Electric 
10/20/2016 Obama 8 $613,000,000

U.S VS Cyprus Amax Minerals Company and Western Nuclear, Inc. 
1/17/2017 Obama 8 $600,000,000

Delaware County Regional Control Authority (Delcora) 
8/17/2015 Obama 7 $300,687,500

Lexington-Fayette Urban County Government (04-2015-C013) 
7/9/2015 Obama 7 $300,000,000

Red Hill Bulk Fuel Storage Facility 
9/28/2015 Obama 7 $270,000,000

Hammond Sanitary District 
5/8/2017 Trump 1 $240,225,000

City of New York 
6/9/2016 Obama 8 $236,000,000

Tesoro Refining and Marketing Company (NC) 
7/18/2016 Obama 8 $234,683,333

Rhode Island DOT 
10/15/2015 Obama 7 $200,315,000

Conclusion

In the first year of the Trump administration, penalties assessed by the EPA fell dramatically. Furthermore, the New York Times reported that the agency initiated significantly fewer new enforcement actions during Trump’s first year compared to previous administrations. If so, issued enforcement orders and penalties will likely continue to decline.

In a statement announcing an annual report released in February, the EPA boasted that the penalties it levied in fiscal year 2017 were the second highest in a decade. “A strong enforcement program is essential to achieving positive health and environmental outcomes,” said Susan Bodine, a Trump appointee who heads the EPA’s enforcement office. “In fiscal year 2017, we focused on expediting site cleanup, deterring noncompliance, and returning facilities to compliance with the law …”

While conveying a view that EPA enforcement is vital, Bodine failed to acknowledge that most of the activities outlined in the annual report were issued before the Trump administration took office. Such an anomaly was possible because fiscal year 2017 overlapped the Obama and Trump administrations. In future years, the Trump EPA will not be able to hide behind the Obama administration’s accomplishments in enforcement.

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EPA Methodology

This report relies on the EPA’s downloadable Federal Enforcement and Compliance (FE&C) data, taken from the agency’s Integrated Compliance Information System (ICIS).

The dataset includes all EPA civil enforcement orders. Only EPA enforcement orders that resulted in at least $1 in federal penalties or at least $1 in compliance action costs are included in this analysis. The EPA’s database does not include monetary penalties associated with criminal enforcement orders. For that reason, criminal enforcement orders are not included in this analysis. The data was downloaded on April 21, 2018.

In this report, we endeavored to credit each enforcement order to the administration in power at the time the enforcement order was effectively completed. We did so based on the following criteria:

- We credited administratively adjudicated enforcement orders to the administration in power on the “settlement entered date” for that enforcement order. This is the only date the EPA’s database lists for issued administrative enforcement orders. Historically there has been a lag for a small percentage of administrative enforcement orders between the settlement entered date and the time when that date is actually listed in the database. Therefore, the number and value of administratively adjudicated enforcement orders issued in Trump’s first year will likely increase slightly from the numbers listed in this report.

- The EPA’s database lists two dates for judicially adjudicated enforcement orders: “settlement lodged” and “settlement entered.” With the exception of about 10 percent of enforcement orders for which the settlement lodged date and settlement entered date are the same, the settlement entered date has historically trailed the settlement lodged date by an average of 108 days. In its calculations of annualized enforcement totals, the EPA appears to use the “settlement entered date” for judicial enforcement orders, as well as administrative ones. We credited judicial enforcement orders to the administration in power on the settlement lodged date. We chose to use the settlement lodged date because most enforcement orders are effectively over at that point and it did not make sense in the scope of this report to provide credit to an administration for merely rubber-stamping a completed enforcement order.

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318 https://echo.epa.gov/tools/data-downloads
IV. FINANCIAL REGULATION

9. Commodity Futures Trading Commission

Enforcement Trends

The Commodity Futures Trading Commission (CFTC) polices commodity markets, enforces laws to prevent money laundering and seeks to ensure that business activities on markets for derivatives, futures, options and swaps comply with the law.

Trump's first year in office saw a decline in CFTC enforcement against corporations compared with previous years. [See Table 9.1.] Public Citizen's analysis found that the CFTC:

- Completed 36 enforcement actions against corporations, in Trump's first year in office, down from 51 in Obama’s last year.
- Issued about $153 million in penalties during Trump’s first year, down from more than $751 million a year earlier and about $2.1 billion in the prior year. [See Figure 9.1.]

For section-specific methodological notes, see page 80.

Table 9.1: Summary of CFTC enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>36</td>
<td>$153,469,100</td>
<td>$4,263,031</td>
</tr>
<tr>
<td>Obama 8</td>
<td>51</td>
<td>$751,793,192</td>
<td>$14,741,043</td>
</tr>
<tr>
<td>Obama 7</td>
<td>43</td>
<td>$2,113,852,436</td>
<td>$49,159,359</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.
Figure 9.1: Summary of CFTC penalties against from Jan. 20, 2015, through Jan. 19, 2018, by administration.

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

The CFTC is led by five commissioners appointed by the president and confirmed by the Senate. One commissioner is named by the president to serve as CFTC chairman. The commissioners serve staggered five-year terms, and no more than three at a time may represent the same political party.

The CFTC’s enforcement division investigates and prosecutes violations, and is overseen by the agency’s office of the director. Enforcement investigations may lead to administrative proceedings against an alleged offender, fines, restriction or revocation of market participation privileges and other sanctions. If the CFTC uncovers evidence of criminal behavior, the agency may refer the case to the Department of Justice.

Personnel and Policy

Obama’s first nominee to chair the CFTC was Gary Gensler, a former Goldman Sachs partner. Initially, Gensler’s Wall Street work history generated skepticism about whether he would be an effective regulator, and his nomination was temporarily blocked by Sen. Bernie Sanders. Gensler did turn out to be a polarizing figure, but among corporate defense lawyers rather who criticized Gensler’s CFTC as “hyper-aggressive.” Advocates for stronger enforcement, meanwhile, praised

322 "Former Commissioners: Chairman Gary Gensler," U.S. Commodity Futures Trading Commission (viewed on April 25, 2018), https://www.cftc.gov/About/Commissioners/FormerCommissioners/fgensler.html
Gensler’s tenure, with Public Citizen’s Bart Naylor telling the Corporate Crime Reporter, "The single best regulator in the financial sector is Gary Gensler and he came from Goldman Sachs." 325

After Gensler departed the agency, a Treasury Department official under Obama and former corporate lawyer, Timothy Massad326 took the reins. On the first day of Donald Trump’s presidency, Massad stepped down from his chairmanship, and Christopher Giancarlo, a former swaps executive327 and Republican member of the CFTC since 2014, was designated acting chairman.328 Giancarlo was later nominated by Trump and confirmed by the U.S. Senate to full chairmanship, which he assumed in August 2017. To date, two CFTC commissioner chairs remain vacant.329

The changes at the top of the agency's structure coincided with changes at its enforcement office. Aitan Goelman, who had been enforcement director under Massad since 2014,330 left the agency early in Trump’s presidency331 and was replaced by James McDonald, most recently a federal prosecutor in New York.332 In a speech at New York University, McDonald emphasized a preference for using cooperation with offenders and self-reporting as law enforcement tools. “I learned early on you can’t prosecute unlawful conduct out of existence,” McDonald said. Rather than focusing on stronger punishments to deter corporate crime, McDonald said, “[W]e at the CFTC are committed to working together with the companies and individuals we regulate to identify and prosecute wrongdoing that has occurred, and to stop future wrongdoing before it starts.”333

McDonald vowed to incentivize self-reporting by significantly reducing penalties for self-reporters and working closely with self-reporting companies to restore compliance. A goal of the program, in McDonald's vision, is to “align the interests and incentives of the Commission and the business community” on self-reporting and cooperation.334 Former CFTC Enforcement Director Goelman, now an attorney with Zuckerman Spaeder,335 agreed in an interview with The New York Times that

332 Ibid.
334 Ibid.
cooperation with business was an appropriate priority for the agency, but said the CFTC is so “chronically and acutely under-resourced” that taking a more aggressive stance was not an option.\textsuperscript{336} Goelman, shortly after leaving the CFTC, elsewhere bemoaned the agency's lack of resources to pursue the “massive amount of misconduct” in the market.\textsuperscript{337}

**Findings**

The size of CFTC’s monetary penalties has diminished significantly under Trump. Out of the twenty largest penalties against corporations during the past three years, only two were completed by the Trump administration. [See Table 9.2.]

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|}
\hline
\textbf{Company} & \textbf{Administration} & \textbf{Penalty Date} & \textbf{Penalty Amount} \\
\hline
Deutsche Bank & Obama & 4/23/2015 & $800,000,000 \\
BC Capital Group & Obama & 1/13/2016 & $490,246,741 \\
Barclays & Obama & 5/20/2015 & $400,000,000 \\
Citibank & Obama & 5/25/2016 & $250,000,000 \\
Citigroup & Obama & 5/25/2016 & $175,000,000 \\
Goldman Sachs & Obama & 12/21/2016 & $120,000,000 \\
Barclays & Obama & 5/20/2015 & $115,000,000 \\
JPMorgan Chase Bank & Obama & 12/18/2015 & $100,000,000 \\
Royal Bank of Scotland & Trump & 2/3/2017 & $85,000,000 \\
Black Diamond Capital Solutions LLC & Obama & 7/31/2015 & $76,000,000 \\
IB Capital FX, LLC & Obama & 11/16/2016 & $35,420,000 \\
Executive Management Advisors LLC & Obama & 10/20/2015 & $31,000,000 \\
North Hills Management LLC & Obama & 3/3/2015 & $26,000,000 \\
Citigroup Global Markets Inc. & Obama & 1/19/2017 & $25,000,000 \\
Chicago Index Partners, L.P. (CIP) and Wilkinson Financial Opportunity Fund, L.P. & Obama & 11/30/2016 & $21,800,000 \\
\hline
\end{tabular}
\end{table}


In Obama’s seventh year, the number of separate enforcements exceeded those in Trump’s first year by only five. However, Obama’s CFTC imposed more than $2.1 billion in penalties against corporate offenders – more than thirteen times the penalties imposed by Trump’s CFTC. In fairness, more than a third of the CFTC penalties in Obama’s seventh year came from an $800 million settlement with Deutsche Bank over alleged interest-rate manipulation.338 However, even excluding this one very large penalty, the remaining $1.3 billion imposed on corporate offenders averaged more than $31 million per penalty. Nevertheless, the Wall Street Journal has reported that the CFTC was expected to initiate at least ten market-manipulation cases in fiscal year 2018. If the cases are filed, it would break the CFTC’s record for the number of this kind of case being filed.339

**CFTC METHODOLOGY**

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=CFTC&order=pen_year&sort=desc. All cases involving penalties against corporations of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.

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10. **Office of the Comptroller of the Currency**

“I like bankers.”

- Comptroller of the Currency Joseph Otting

The number of fines against banks issued by the Office of the Comptroller of the Currency, a federal bank regulator, remained flat in Trump’s first year, while the total dollar amount fell dramatically. [See Table 10.1.]

Public Citizen’s analysis found the OCC:

- Issued 10 enforcement actions with penalties of more than $5,000 during Trump’s first year in office, down from 14 in the prior year and from 15 in 2016.

- Issued nearly $89 million in penalties during Trump’s first year, down from nearly $215 million in the prior year and from $169 million in 2016, though some of this decline can be attributed to the resolution of major cases stemming from the 2008 financial crisis. [See Figure 10.1.]

For section-specific methodological notes, see page 84.

**Table 10.1: Summary of OCC enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Penalties</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>10</td>
<td>$89,316,420</td>
<td>$8,931,642</td>
</tr>
<tr>
<td>Obama 8</td>
<td>14</td>
<td>$214,981,500</td>
<td>$15,355,821</td>
</tr>
<tr>
<td>Obama 7</td>
<td>15</td>
<td>$168,813,650</td>
<td>$11,254,243</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

**Figure 10.1: Summary of OCC penalties against corporations from Jan. 20, 2015, through Jan. 19, 2018, by administration.**

SOURCE: Public Citizen analysis of Violation Tracker database.
Agency Mission

The Office of the Comptroller of the Currency is little known outside Washington, D.C. but is one of the most powerful federal bank regulators. It supervises more than 970 banks with federal charters, 373 federal savings associations and 48 branches of foreign banks. It is structured as an independent bureau of the Treasury Department, and absorbed another regulator, the Office of Thrift Supervision during the aftermath of the financial crisis. Like other federal bank regulators, the OCC is funded through an assessment on the banks it monitors.

Officials at the OCC can exercise discretion based on the severity of the violation and on top officials’ enforcement philosophy. The options include cease and desist orders, fines, formal agreements with banks, complaints that can be litigated before an administrative law judge as well as supervisory orders that require the fixing of problems but no fine.

Personnel and Policy

Under Trump, the regulator has shifted quickly toward taking a softer stance toward the banks it regulates. President Obama’s comptroller, Thomas Curry, stepped down on May 5, 2017 after completing his five-year term. Curry, a longtime bank regulator, had stepped up the OCC’s regulatory and enforcement activities after the 2008 financial crisis. For example, in a 2014 announcement of $950 million in fines against banks for foreign exchange misconduct Curry was stark, saying that his agency “will take forceful action, not only when the institutions we supervise engage in wrongdoing, but when management fails to exercise the oversight necessary to ensure that employees follow laws and regulations intended to protect customers and maintain the integrity of markets.”

Curry was replaced on an acting basis by Keith Noreika, a lawyer who represented banks for Simpson Thacher & Bartlett LLP and previously at Covington & Burling. His clients included JPMorgan Chase, Bank of America, TD Ameritrade and U.S. Bancorp. Noreika, whose office was decorated with a “Make America Great Again” cap, proved to be an anti-regulation crusader pursuing the agenda of banks. Oddly from his OCC perch, Noreika weighed in on other agencies’ actions, fighting against...
the Consumer Financial Protection Bureau’s rule on arbitration, which Congress eventually repealed. He also took steps to make it easier for banks to offer small high-cost loans and made it harder for banks to be penalized for failing to meet lending requirements in low-income neighborhoods.\(^{348}\)

Noreika returned to his former law firm\(^{349}\) after being replaced in November 2017 by Joseph Otting, former CEO of OneWest Bank. This California bank was formed out of the ruins of the former IndyMac Bank, which failed during the financial crisis and was resuscitated by an investor group led by now-Treasury Secretary Steven Mnuchin.\(^{350}\) CIT Group purchased OneWest for $3.4 billion in a deal that closed in August 2015.\(^{351}\)

Otting, who has worked in banking since the 1980s, told an audience of community bankers that “I like bankers” and said the OCC would try to improve improve its “responsiveness to our customers, which are the banks.”\(^{352}\) The Wall Street Journal noted that, in a meeting with reporters, Otting seemed to slip into bank-executive speak, talking about: “how we are going to connect with, provide products, interact with our clients or prospective clients.”\(^{353}\) The Journal also noted that Otting appears to still resent a 2011 enforcement action against OneWest for alleged abusive mortgage foreclosure practices. According to the Journal, Otting said “there was no choice” but to agree with the settlement. “I considered leaving my job over whether I was going to sign that consent order or not,” the Journal quoted him as saying.\(^{354}\)

Otting also expressed sympathy for bankers facing accusations of improper practices, having gone through an enforcement action himself. “I have learned from that process to be thoughtful and to think through the implications of consent orders,” he told reporters, saying that he wishes to ensure “that people are given the right to prove their innocence if they are being accused of something.”\(^{355}\) Meanwhile, foreclosure violations were not the only area where OneWest faced scrutiny. Earlier this year federal allegations faced by OneWest. The company’s former reverse mortgage lending division, now owned by CIT, agreed to pay $89 million to settle Justice Department allegations that it bilked the government in seeking insurance payments from the federal reverse mortgage program.\(^{356}\)

Out of the twenty largest penalties against corporations during the past three years, two were completed by the Trump administration, including a Citigroup penalty that tied for largest during

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354 Ibid.
355 Ibid.
this time with an Obama enforcement against Wells Fargo and a penalty against U.S. Bancorp. [See Table 10.2.]

<table>
<thead>
<tr>
<th>Company</th>
<th>Administration</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wells Fargo</td>
<td>Obama</td>
<td>5/25/2016</td>
<td>$70,000,000</td>
</tr>
<tr>
<td>Citigroup</td>
<td>Trump</td>
<td>1/4/2018</td>
<td>$70,000,000</td>
</tr>
<tr>
<td>JPMorgan Chase</td>
<td>Obama</td>
<td>1/4/2016</td>
<td>$48,000,000</td>
</tr>
<tr>
<td>Citigroup</td>
<td>Obama</td>
<td>7/20/2015</td>
<td>$35,000,000</td>
</tr>
<tr>
<td>HSBC</td>
<td>Obama</td>
<td>4/12/2016</td>
<td>$35,000,000</td>
</tr>
<tr>
<td>Wells Fargo</td>
<td>Obama</td>
<td>9/8/2016</td>
<td>$35,000,000</td>
</tr>
<tr>
<td>HSBC</td>
<td>Obama</td>
<td>1/6/2017</td>
<td>$32,500,000</td>
</tr>
<tr>
<td>Bank of America</td>
<td>Obama</td>
<td>5/29/2015</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>JPMorgan Chase</td>
<td>Obama</td>
<td>7/8/2015</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>Wells Fargo</td>
<td>Obama</td>
<td>9/29/2016</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>U.S. Bancorp</td>
<td>Trump</td>
<td>4/25/2017</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>Citizens Financial Group</td>
<td>Obama</td>
<td>8/10/2015</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>U.S. Bancorp</td>
<td>Obama</td>
<td>2/8/2016</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Banco Santander</td>
<td>Obama</td>
<td>3/26/2015</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Wells Fargo</td>
<td>Obama</td>
<td>6/3/2015</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Banco Santander</td>
<td>Obama</td>
<td>2/8/2016</td>
<td>$3,400,000</td>
</tr>
<tr>
<td>First National Bank of Omaha</td>
<td>Obama</td>
<td>8/18/2016</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Gibraltar Private Bank and Trust</td>
<td>Obama</td>
<td>2/23/2016</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>Citizens Financial Group</td>
<td>Obama</td>
<td>11/10/2015</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>First Niagara Bank</td>
<td>Obama</td>
<td>9/6/2016</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

**OCC METHODOLOGY**

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=OCC&order=pen_year&sort=desc and were verified at the OCC’s search page, available at https://apps.occ.gov/EASearch/. All cases against corporations involving penalties of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.
11. Office of Foreign Assets Control

Enforcement Trends

The Treasury Department’s Office of Foreign Assets Control has broad powers to enforce U.S. sanctions against companies, individuals and countries connected to terrorism, narcotics trafficking, organized crime and weapons trafficking.

Public Citizen’s analysis found that OFAC:

- Completed 13 enforcement actions against businesses in Trump's first year in office, up from 12 in Obama’s last year but still down from 16 in the prior year. [See Table 11.1.]

- Issued about $119 million in corporate penalties during Trump’s first year, up from $22 million in Obama’s last year but down from $677 million in the previous year. [See Table 11.1.]

For section-specific methodological notes, see page 88.

Table 11.1: Summary of OFAC cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Count</th>
<th>Sum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>13</td>
<td>$118,974,240</td>
<td>$9,151,865</td>
</tr>
<tr>
<td>Obama 8</td>
<td>12</td>
<td>$22,152,920</td>
<td>$1,846,077</td>
</tr>
<tr>
<td>Obama 7</td>
<td>16</td>
<td>$677,275,449</td>
<td>$42,329,716</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

OFAC enforces U.S. sanctions programs as well as sanctions imposed by the United Nations. It is able to freeze U.S. assets, prohibit firms and individuals from participating in the financial system and impose fines. Financial institutions are required to comply with OFAC’s regulations. They must block accounts of countries and entities specified by OFAC and reject illegal transactions with specific countries, companies and individuals357 and can face large fines if they don’t. The agency maintains a list of about 5,800 people who are subject to U.S. economic sanctions. 358 By freezing the assets of

illicit actors and cutting them off from the U.S. financial system, the U.S. hopes to force bad actors to modify their behavior. 359

Policy and Personnel

Treasury Secretary Steven Mnuchin says he has taken an active interest in sanctions, saying he spends “probably over 50 percent” of his time on national security issues. 360 The Trump administration in March 2017 named John E. Smith, a longtime Treasury, United Nations and Justice Department official, 361 as OFAC’s director, 362 a position that does not require Senate confirmation. However, Smith, an 11-year veteran of the agency, announced his departure in mid-April. He is being replaced on an acting basis by Andrea Gacki, the agency’s deputy director. 363

Over the past year, the Treasury has added more than 100 people and entities connected to North Korea to its blocked persons list, which bars U.S. companies and individuals from doing business with them. “We have made clear to countries and companies around the world that they can choose to trade with North Korea or the United States, but not both,” Sigal Mandelker, the Treasury’s undersecretary for terrorism and financial intelligence said in a February conference. 364 As an example, Mandelker highlighted the U.S. government’s $890 million settlement with Chinese telecommunications giant ZTE — including a $100 million fine paid to OFAC. In that case, the U.S. government charged ZTE with evading U.S. embargoes by incorporating American products into telecom networks installed in Iran. 365 In April 2018, Commerce Secretary Wilbur Ross announced an order banning American companies from selling parts to ZTE for seven years. 366 In practice, a U.S. attorney said the order would be “a death sentence” for ZTE. 367

Enforcement actions that OFAC and the Commerce Department’s Bureau of Industry and Security 368 brought against ZTE apparently have become bargaining chips in the Trump administration’s trade

359 Ibid.
361 “John Smith,” LinkedIn profile (viewed on April 25, 2018), https://www.linkedin.com/in/john-smith-3375a713b/
negotiations with China. President Trump initially inserted himself in the enforcement matter with a post on Twitter, saying "President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!" Trump’s intervention came less than three days after a developer in Indonesia whose latest project features Trump-branded properties received $500 million in Chinese government loans. As George Washington University political science professor Henry Farrell has written, “Trump’s suggestion that he wants the ZTE sanctions overturned seems to imply that U.S. sanctions are open to being bargained away.”

Of Trump’s involvement in the ZTE enforcement action, a former Obama administration official remarked:

Now we’ve opened up every law enforcement action that the United States takes, where other countries will think, ‘Aha, I can impose this economic pain or this tariff or this market access restriction, and I can use this as a chit to trade off against more favorable treatment with the law enforcement case.

Out of the twenty largest penalties against corporations during the past three years, seven – that is, about a third – were completed by the Trump administration. [See Table 11.2.]

Table 11.2: Top 20 OFAC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.

<table>
<thead>
<tr>
<th>Company</th>
<th>Penalty Date</th>
<th>Administration</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Agricole Corporate and Investment Bank</td>
<td>10/20/2015</td>
<td>Obama</td>
<td>$329,593,585</td>
</tr>
<tr>
<td>Commerzbank AG</td>
<td>3/12/2015</td>
<td>Obama</td>
<td>$258,660,796</td>
</tr>
<tr>
<td>Schlumberger Oilfield Holdings</td>
<td>8/7/2015</td>
<td>Obama</td>
<td>$77,569,452</td>
</tr>
<tr>
<td>Zhongxing Telecommunications Equipment Corporation (ZTE)</td>
<td>3/7/2017</td>
<td>Trump</td>
<td>$100,871,266</td>
</tr>
<tr>
<td>CSE Global Limited and CSE Trans Tel Pte. Ltd.</td>
<td>7/27/2017</td>
<td>Trump</td>
<td>$12,027,066</td>
</tr>
</tbody>
</table>

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370 @realDonaldTrump post on Twitter (11:04 a.m. - May 13, 2018), https://twitter.com/realdonaldtrump/status/995680316458262533

371 S.V. Date, "Trump Orders Help For Chinese Phone-Maker After China Approves Money For Trump Project," HuffPost (May 15, 2018), https://www.huffingtonpost.com/entry/trump-china-zte_us_5af9f701e4b0200b9bab7f6b


374 The total penalty against Schlumberger Oilfield Holdings was $232,708,356, including $155,138,904 in criminal penalties. See https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150807_schlumberger.pdf
<table>
<thead>
<tr>
<th>Company</th>
<th>Date</th>
<th>President</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>PayPal Inc.</td>
<td>3/25/2015</td>
<td>Obama</td>
<td>$7,658,300</td>
</tr>
<tr>
<td>Alcon Laboratories, Inc</td>
<td>7/5/2016</td>
<td>Obama</td>
<td>$7,617,150</td>
</tr>
<tr>
<td>National Oilwell Varco and Dreco Energy Services Ltd.</td>
<td>11/14/2016</td>
<td>Obama</td>
<td>$5,976,028</td>
</tr>
<tr>
<td>PanAmerican Seed Company</td>
<td>9/13/2016</td>
<td>Obama</td>
<td>$4,320,000</td>
</tr>
<tr>
<td>Barclays</td>
<td>2/8/2016</td>
<td>Obama</td>
<td>$2,485,890</td>
</tr>
<tr>
<td>Exxon Mobil</td>
<td>7/20/2017</td>
<td>Trump</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>UBS</td>
<td>8/27/2015</td>
<td>Obama</td>
<td>$1,700,100</td>
</tr>
<tr>
<td>Dentsply Sirona Inc.</td>
<td>12/6/2017</td>
<td>Trump</td>
<td>$1,220,400</td>
</tr>
<tr>
<td>Life For Relief and Development</td>
<td>3/25/2015</td>
<td>Obama</td>
<td>$780,000</td>
</tr>
<tr>
<td>CGG Services S.A</td>
<td>2/22/2016</td>
<td>Obama</td>
<td>$614,250</td>
</tr>
<tr>
<td>Blue Sky Blue Sea, Inc. dba American Export Lines and International Shipping Company</td>
<td>8/17/2017</td>
<td>Trump</td>
<td>$518,063</td>
</tr>
<tr>
<td>Toronto-Dominion Bank</td>
<td>1/13/2017</td>
<td>Obama</td>
<td>$516,105</td>
</tr>
<tr>
<td>United Medical Instruments Inc.</td>
<td>2/28/2017</td>
<td>Trump</td>
<td>$515,400</td>
</tr>
<tr>
<td>COSL Singapore Ltd</td>
<td>8/24/2017</td>
<td>Trump</td>
<td>$415,350</td>
</tr>
<tr>
<td>John Bean Technologies Corporation</td>
<td>6/19/2015</td>
<td>Obama</td>
<td>$391,950</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

**OFAC METHODOLOGY**

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at [https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=OFAC&order=pen_year&sort=desc](https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=OFAC&order=pen_year&sort=desc). All cases against corporations involving penalties of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.
12. Securities and Exchange Commission

“You used to make your name at the agency by trying to get a bigger penalty, a splashy headline,” Tom Sporkin, a former SEC enforcement lawyer, told Bloomberg. “The environment is changing. Now they’re looking for opportunities to point to cooperation more so than bad conduct.” 375

During Trump’s first year in office, the Securities and Exchange Commission (SEC) completed far fewer enforcement actions against corporations than in previous years. [See Table 12.1.] Public Citizen’s analysis found:

- The SEC completed 116 enforcement actions against businesses with penalties of more than $5,000 in Trump’s first year in office, down 44 percent from 207 in Obama’s last year and 193 in the prior year, according to Public Citizen’s analysis of Violation Tracker data.

- The SEC issued about $927 million in penalties against businesses during Trump’s first year, down 68 percent from nearly $2.9 billion a year earlier and about $1.5 billion in the prior year.

For section-specific methodological notes, see page 95.

Table 12.1: Summary of SEC enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.

<table>
<thead>
<tr>
<th>Year</th>
<th>Count</th>
<th>Sum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trump 1</td>
<td>116</td>
<td>$927,377,931</td>
<td>$7,994,637</td>
</tr>
<tr>
<td>Obama 8</td>
<td>207</td>
<td>$2,909,912,692</td>
<td>$14,057,549</td>
</tr>
<tr>
<td>Obama 7</td>
<td>193</td>
<td>$1,504,725,362</td>
<td>$7,796,504</td>
</tr>
</tbody>
</table>

SOURCE: Public Citizen analysis of Violation Tracker database.

Agency Mission

The Securities and Exchange Commission’s mission is to “protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.” 376 The agency says it “strives to promote a market environment that is worthy of the public’s trust.” 377 It can fine companies and mandate as repayment of ill-gotten profits and can seek court orders barring individuals from working as corporate officers or directors. 378 The SEC’s enforcement staff presents findings of its enforcement investigations to the five SEC commissioners, who vote on whether to file a court case or bring an administrative action before an internal SEC hearing officer.

375 Matt Robinson and Benjamin Bain, “When Trump’s SEC Punishes Wall Street, It’s Often Done Quietly” BLOOMBERG NEWS [FEB. 15, 2018], https://bloom.bg/2CTyX0M
377 Ibid.
Personnel and Enforcement Policy

At full capacity, the SEC is led by five commissioners, with no more than three members belonging to the same political party. The president designates one commissioner as SEC chairman, who serves as the agency’s top official.

The SEC is has long been criticized for having a large number of “revolving door” officials who depart for higher-paying jobs defending corporate clients being investigated by the agency. The SEC’s last Obama-appointed chairman, Mary Jo White, rejoined corporate law firm Debevoise & Plimpton after a tenure in which she had to recuse herself from more than four dozen enforcement investigations involving Debevoise as well as her husband’s firm, Cravath, Swaine & Moore.

The pattern of corporate lawyers leading the SEC has continued under Trump’s SEC chairman, Walter “Jay” Clayton, previously a partner with corporate law firm Sullivan & Cromwell. During the financial crisis of a decade ago, Sullivan & Cromwell was a key player representing Wall Street firms. Clayton has represented clients including Goldman Sachs, Deutsche Bank, Barclays and Bear Stearns. Clayton also represented major hedge funds run by Bill Ackman and Paul Tudor Jones and Valeant Pharmaceuticals, a company facing an SEC investigation over accounting practices. Clayton also represented Ally Financial in connection with the $25 billion state-federal settlement related to robo-signing and other foreclosure abuses and advised the Chinese e-commerce company Alibaba Group on its $25 billion initial public offering, at the time, the largest ever IPO. Clayton’s wife, Gretchen Butler Clayton, worked for Goldman Sachs as a wealth management adviser but pledged to leave after her husband’s confirmation.

At Clayton’s confirmation hearing, Sen. Elizabeth Warren (D-Mass.) argued that Clayton’s career at Sullivan & Cromwell could bog down the SEC’s enforcement actions. Warren said enforcement cases could stall if Clayton were to recuse himself from a case involving a Sullivan & Cromwell client, and the four other SEC commissioners split on partisan lines. Sen. Sherrod Brown (D-Ohio) the top

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380 David Dayen, A Corporate Defender at Heart, Mary Jo White Returns to Her Happy Place, The Intercept (Feb. 17, 2017), https://theintercept.com/2017/02/17/a-corporate-defender-at-heart-former-sec-chair-mary-jo-white-returns-to-her-happy-place/
Democrat on the Senate Banking Committee, also said he was concerned about such recusals “at a time when we need a strong, independent SEC chair on the front line of enforcement, not watching from the sideline.”

Between Trump’s inauguration and Clayton’s confirmation, the agency only had two commissioners, resulting in a situation in which either commissioner was able to deny the other a quorum. Clayton was confirmed in the Senate and sworn in on May 4, 2017. Two new SEC commissioners — former New York University law professor Robert Jackson Jr., a Democrat, and Hester Peirce, a former Republican congressional staffer, were sworn into office in January 2018, returning the SEC to five commissioners for the first time since 2015, now with three Republicans and two Democrats.

In public remarks, Clayton has focused on the importance of cracking down on fraud against mainstream investors. “We are taking further steps to find and eliminate from our system pump-and-dump scammers, those who prey on retirees, and increasingly those who use new technologies to lie, cheat, and steal,” he said in a July 2017 speech. Clayton has also been focused on fraud schemes involving digital currencies such as Bitcoin. According to the Wall Street Journal, the SEC has issued subpoenas related to the market for so-called initial coin offerings, in which startup tech firms raise money by creating new virtual currencies and selling them to investors.

Clayton also has expressed a preference for carrying out enforcement against individuals over institutions. “There should be deterrence at the company level,” Clayton said at his confirmation hearing. “But, you know, shareholders do bear those costs, and we have to keep that in mind.... individual accountability drives behavior more than corporate accountability.”

Public Citizen and other consumer advocacy groups strongly support the pursuit of civil and criminal charges against individuals responsible for fraud and deception. But Clayton’s background as a Wall Street lawyer presents ample cause for skepticism. Indeed, some former SEC officials say Clayton’s leadership will mean a relaxation of the agency’s corporate enforcement efforts. “You used to make your name at the agency by trying to get a bigger penalty, a splashy headline,” Tom Sporkin, a former SEC enforcement lawyer, told Bloomberg News. “The environment is changing. Now they’re looking for opportunities to point to cooperation more so than bad conduct.”

While the SEC’s enforcement actions against companies declined significantly under the Trump administration, the agency continues to prosecute cases against individuals at a similar pace. According to statistics compiled by Georgetown Law School professor Urska Velikonja, SEC sanctions

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of individuals dipped by only 5 percent from the first half of fiscal 2017 to the second half. By contrast, the number of companies sanctioned by the SEC fell by 29 percent from the first half of fiscal 2017 to the second half. [See Figure 12.1]

![Figure 12.1: Number of SEC sanctions in fiscal year 2017, by case type.]

Both of Clayton’s lead enforcement officials have worked for many years at corporate law firms. Clayton named Steven Peikin, a former white-collar defense lawyer at Sullivan & Cromwell, and Stephanie Avakian, who had worked at the SEC and spent 14 years at corporate law firm WilmerHale as the co-directors of the commission’s enforcement division.

Peikin and Avakian echo Clayton in stressing that their top enforcement priority will be pursuing misconduct impacting retail investors, such as “accounting fraud, sales of unsuitable products and the pursuit of unsuitable trading strategies, pump and dump frauds, and Ponzi schemes.” The pair have promised to “vigorously pursue” financial institutions, adding that “we do not face a binary choice between protecting Main Street and policing Wall Street.” They argue that pursuing enforcement actions against individuals is more effective than against institutions writing that “common sense and experience teach that individual accountability more effectively deters wrongdoing.”

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394 Stephanie Avakian: Deputy Director, Division of Enforcement at U.S. Securities and Exchange Commission, LinkedIn profile (viewed on May 4, 2018), [https://www.linkedin.com/in/stephanie-avakian-b73bb145/](https://www.linkedin.com/in/stephanie-avakian-b73bb145/)


396 Ibid.

397 Ibid.
Trump himself has been personally skeptical about a specific law enforced by the SEC and Justice Department. This law, the Foreign Corrupt Practices Act, bars corporations from bribing foreign officials. In a 2012 interview, Trump excoriated the law. “Every other country goes into these places, and they do what they have to do,” Trump said. “It’s a horrible law and it should be changed. I mean, we’re like the policeman for the world. It’s ridiculous.”

Clayton, who represented an Italian oil firm in a case alleging Nigerian officials were bribed with suitcases full of cash, has also been critical of the law. He led the drafting of a 2011 paper arguing that the anti-bribery law imposes unreasonable costs on U.S. corporations and puts them at a disadvantage with overseas competitors. “The United States should reevaluate its approach to the problem of foreign corruption,” the paper said.

Findings
Public Citizen’s analysis of enforcement actions of more than $5,000 levied against businesses shows a stark drop in both the number of cases and the amount of penalties levied.

Figure 12.2: Number of SEC enforcement cases against businesses from Jan. 20, 2015, through Jan. 19, 2018, by administration.

SOURCE: Public Citizen analysis of Violation Tracker database.

Eighteen of the 20 largest enforcement cases completed over the past three years were completed under Obama, compared with only two under Trump, according to Public Citizen’s research. However, the largest case of the past three years, a joint U.S.-European settlement of bribery allegations with Swedish phone company Telia AB, was completed under Trump. [See Table 12.2.]

Table 12.2: Top 20 SEC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.

<table>
<thead>
<tr>
<th>Company</th>
<th>President</th>
<th>Penalty Date</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telia Company AB</td>
<td>Trump</td>
<td>9/21/17</td>
<td>$457,000,000</td>
</tr>
<tr>
<td>Merrill Lynch</td>
<td>Obama</td>
<td>6/23/16</td>
<td>$415,000,000</td>
</tr>
<tr>
<td>State Street Bank and Trust Company</td>
<td>Obama</td>
<td>7/26/16</td>
<td>$382,400,000</td>
</tr>
<tr>
<td>JPMorgan Chase &amp; Co.</td>
<td>Obama</td>
<td>12/18/15</td>
<td>$267,000,000</td>
</tr>
<tr>
<td>Teva Pharmaceutical Industries Limited</td>
<td>Obama</td>
<td>12/22/16</td>
<td>$236,000,000</td>
</tr>
<tr>
<td>Och-Ziff Capital Management Group</td>
<td>Obama</td>
<td>9/29/16</td>
<td>$199,045,167</td>
</tr>
<tr>
<td>Computer Sciences Corporation</td>
<td>Obama</td>
<td>6/5/15</td>
<td>$190,000,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company</th>
<th>President</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citigroup</td>
<td>Obama</td>
<td>8/17/15</td>
<td>$180,000,000</td>
</tr>
<tr>
<td>VimpelCom Ltd.</td>
<td>Obama</td>
<td>2/18/16</td>
<td>$167,500,000</td>
</tr>
<tr>
<td>Weatherford International</td>
<td>Obama</td>
<td>9/27/16</td>
<td>$140,000,000</td>
</tr>
<tr>
<td>JPMorgan Chase &amp; Co.</td>
<td>Obama</td>
<td>11/17/16</td>
<td>$130,000,000</td>
</tr>
<tr>
<td>Embraer S.A.</td>
<td>Obama</td>
<td>10/24/16</td>
<td>$98,000,000</td>
</tr>
<tr>
<td>Barclays Capital</td>
<td>Trump</td>
<td>5/10/17</td>
<td>$97,037,659</td>
</tr>
<tr>
<td>Credit Suisse AG</td>
<td>Obama</td>
<td>10/5/16</td>
<td>$90,000,000</td>
</tr>
<tr>
<td>Monsanto Company</td>
<td>Obama</td>
<td>2/9/16</td>
<td>$80,000,000</td>
</tr>
<tr>
<td>Luca International Group, LLC</td>
<td>Obama</td>
<td>7/28/16</td>
<td>$68,300,000</td>
</tr>
<tr>
<td>Braskem S.A.</td>
<td>Obama</td>
<td>12/21/16</td>
<td>$65,000,000</td>
</tr>
<tr>
<td>Standard &amp; Poor's Ratings Services</td>
<td>Obama</td>
<td>1/21/15</td>
<td>$58,000,000</td>
</tr>
<tr>
<td>Focus Media Holding Limited</td>
<td>Obama</td>
<td>9/30/15</td>
<td>$55,600,000</td>
</tr>
<tr>
<td>Deutsche Bank AG</td>
<td>Obama</td>
<td>5/26/15</td>
<td>$55,000,000</td>
</tr>
</tbody>
</table>


SEC METHODOLOGY

Enforcement data were obtained from Violation Tracker database of Good Jobs First, available at [https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=SEC&order=pen_year&sort=desc](https://violationtracker.goodjobsfirst.org/prog.php?agency_sum=SEC&order=pen_year&sort=desc). All cases against corporations involving penalties of at least $5,000 from Jan. 20, 2015, to Jan. 19, 2017, are included.
Appendix A: Individual Cases That Demonstrate Declining Enforcement

The overall decline in enforcement is conveyed by the data compiled in this report. Those data aggregate, but do not highlight, the individual cases that show the injustices from weak enforcement. Of course, even the individual cases where the Trump administration has backed down from enforcement or imposed only slap-on-the-wrist penalties against corporate wrongdoers fail to illustrate two direct consequences of the administration’s enforcement retreat: the cases that are never brought in the first place, and the abuses that occur due to reduced deterrence. Nonetheless, the individual cases are telling, often remarkably and shockingly so, as this survey illustrates.

Aegerion: Judge denounces deferred prosecution and weak penalties

In 2017, Aegerion, a Cambridge, Mass., drug maker, paid $28.8 million to settle a False Claims Act violation, pleaded guilty to misdemeanor violations of the Food Drug and Cosmetic Act and received a deferred prosecution agreement for a felony charge that the company conspired to obtain patients’ private health data. The charges related to Juxtapid, Aegerion’s $295,000-a-year drug for reducing cholesterol for patients who suffered from a genetic disorder, homozygous familial hypercholesterolemia (HoFH), which occurs only in about one out of one million people. Juxtapid (generic name lomitapide) is a high-risk drug that carries an FDA black box warning for liver toxicity. Ninety-three percent (27 out of 29) of the drug’s premarket clinical trial subjects experienced diarrhea, nausea, vomiting, dyspepsia and/or abdominal pain. Public Citizen opposed Juxtapid’s approval. In March 2017, there were 340 patients (232 in the US) who were taking Juxtapid. The manufacturer’s income from the drug’s sales were more than $101 million in 2016.

In settling the case, DOJ stipulated that Aegerion executives and staff repeatedly conspired to obtain private patient information from physicians, in violation of patient privacy rules, which they used to boost drug sales, including marketing of the drug to patients who were not diagnosed with HoFH. Aegerion sales staff forged signatures on patient authorizations, obtained signatures from non-English speakers on disclosure forms written in English, and were instructed to wear surgical scrubs instead of business attire in order to more readily secure patient authorizations. In one case,

Aegerion acquired for marketing purposes the private health information for 280 pediatric patients who had not been diagnosed with the genetic disorder.411

U.S. District Judge William Young in November 2017 rejected the plea agreement Acting U.S. Attorney William Weinreb signed with Aegerion.412 “What is left unexplained is why the government does not simply let Aegerion collapse in disgrace,” Young wrote. “Surely Aegerion is not too big to fail.” Young, criticizing the plea, continued, “Corporate pleas involve well-educated elites talking to other equally well educated elites. Things are said, sanctions imposed, nothing really happens. Prices do not come down. Consumers gain no perceptible benefit. Corporations march on, apparently impervious to government regulation or the law itself.”

Young ultimately approved a sentence that offered financial remedies to patients who were victimized by Aegerion’s illegal marketing scheme.413 Aegerion also entered into a five-year Corporate Integrity Agreement with the HHS Office of the Inspector General and, separately for misleading investors, paid $4.1 million to settle with the SEC.415 Young’s questions as to why the Trump administration refused to prosecute the corporation remain unanswered.

Barclays: Friendly negotiations with the Department of Justice

Many Wall Street firms reached settlements with the Obama-era Department of Justice for allegedly selling mortgage bonds filled with poorly underwritten loans. But Barclays PLC fought back against the government, refusing to settle, and the Justice Department sued the British bank toward the end of the administration, alleging that the bank “systematically and intentionally misrepresented key characteristics” of mortgage loans packaged into bonds and sold to investors.416 Bloomberg News reported that government officials wanted to impose a fine of $5 billion, while the bank would not pay more than $2 billion. Under Attorney General Jeff Sessions, the bank’s wishes of a $2 billion settlement came true.418 Barclays was rewarded for its reluctance to settle, agreeing to pay

413 Ibid.
the original $2 billion settlement it sought. “The settlement came at the bottom end of expectations and much sooner than expected,” one analyst told Bloomberg, calling it a “very happy Easter” for Barclays. Two former executives at the bank also settled with the U.S. government and agreed to pay a combined $2 million to resolve the allegations without admitting wrongdoing.

Unlike other mortgage crisis settlements between the Justice Department and financial firms, the Barclays contained no money for consumer relief. Under a policy adopted by Attorney General Jeff Sessions, the Justice Department now bars corporate settlements requiring payments to third parties not directly involved in legal disputes.419 Sessions has criticized such consumer-relief provisions as benefiting “third-party special interest groups or the political friends of whoever is in power.”

Deutsche Bank, HSBC and UBS Group: Waiving bad actor penalties

Deutsche Bank, HSBC and UBS Group, three European multinational banks based respectively in Germany, Great Britain and Switzerland, were fined in January 2018 by the CFTC for “spoofing.”420

Spoofers create fake contracts that give the appearance of increased demand, which artificially increases the value of the commodity in question. The fake contracts are cancelled before they are completed -- but not before they create a chance for the spoofer to buy low and sell high.

The CFTC imposed financial penalties on the banks – $30 million for Deutsche Bank,421 $1.6 million for HSBC422 and $15 million for UBS423 – but declined to use its stronger enforcement powers. Specifically, the CFTC gave the banks automatic waivers from the "bad actor" provisions of the Dodd-Frank Wall Street reform law.424 The bad actor provisions are an enforcement tool intended to bar penalized financial institutions from engaging in certain kinds of lucrative, high-risk activities. The CFTC had ended the practice of granting automatic waivers in 2015. Erica Elliott Richardson, a CFTC spokesperson, told The New York Times that granting the waivers enabled to reach settlements more quickly.425

425 ibid.
Democratic SEC commissioner Kara Stein said she was “extremely disappointed” by the CFTC’s decision, which also was criticized by Sen. Elizabeth Warren (D-Mass.). Public Citizen, whose Energy Program director Tyson Slocum is a CFTC advisory committee member, sent a letter to CFTC Chairman J. Christopher Giancarlo criticizing the waivers.\textsuperscript{426} The Public Citizen letter called at least for the removal of UBS and Deutsche Bank representatives from the agency’s advisory committees, stating, “It is unseemly to allow representatives involved in a violation of the Commission’s rules to continue providing formal advice, counsel and access to the Commission through service on an Advisory Committee.”

**Farrell-Cooper: Dropped enforcement action against connected coal company leaves property owner without hope**

Allen King, a landowner in Oklahoma, laments that his 30-acre property “is destroyed. I used to have flat grassland. Now I’ve got a mountain so steep you can’t even drive around to keep brush off, and a ditch so deep if a cow fell in you couldn’t get them out of it.” His property was destroyed by Farrell-Cooper, a coal mining company that failed to restore his land after trashing it. The Interior Department had charged the mines with multiple violations under the Obama administration, but the cases have been dismissed under the Trump administration. Reports the Daily Beast: “The recent settlement states that in exchange for nullifying the citations, Farrell-Cooper must abide by the existing permits for the three mines. Since the Interior Department had originally found those permits inadequate, however, that means little will change on the ground.” King says that he’s without recourse if the federal government won’t enforce the law. “If the federal government can’t get anywhere, then how are you going to get anywhere?”\textsuperscript{427}

**Harley Davidson: Reduced penalties due to Attorney General Sessions policies**

Near the end of the Obama administration (August 2016), DOJ and EPA reached a settlement with Harley Davidson over the sale of illegal defeat devices that required the motorcycle company to pay a $12 million penalty and “spend $3 million to mitigate air pollution through a project to replace conventional woodstoves with cleaner-burning stoves in local communities.”\textsuperscript{428} Harley Davidson now will not have to pay that $3 million, thanks to Sessions’ memo forbidding including payments to third parties in settlements.\textsuperscript{429} The $3 million would have funded an American Lung Association initiative – and Bloomberg News reports that DOJ reached back and changed the terms of the


settlement, eliminating Harley Davidson’s obligation to pay $3 million to fund the project. AGs representing ten states that would have benefited from the wood stove project have sued to have the penalties restored.

**Security Finance: Mulvaney gives a 55 percent penalty reduction to predatory lender contributed to his campaign**

According to Reuters, acting CFPB director Mick Mulvaney significantly reduced the bureau’s penalty against Security Finance, an installment lender that the CFPB found uses improper, aggressive collections practices – including physically preventing consumers from leaving their homes. Richard Cordray, Mulvaney’s predecessor, reportedly planned to impose an $11 million penalty against the company. Mulvaney reduced it to $5 million.

Mulvaney in April described how he, as a South Carolina congressman, had a “hierarchy” in his office: “If you’re a lobbyist who never gave us money, I didn’t talk to you. If you’re a lobbyist who gave us money, I might talk to you.”

Security Finance, a South Carolina company, gave $2,000 to Mulvaney’s 2016 campaign, records show.

According to the CFPB’s complaints database, hundreds of consumers have complained about Security Finance’s predatory practices. One consumer, upset about a barrage of debt collection calls, wrote that the company was “calling family, and friends with personal information leaving information on others voicemails. They continue to harass, attempt to embarrass, and call after their open hours (leaving messages not addressing who or why their [sic] calling) despite speaking with me about my situation.”

**Syngenta: Trump administration cuts penalties by nearly 90 percent**

In December 2016, the EPA announced the agency was seeking $4.8 million in penalties against Syngenta Seeds for violating pesticide regulations meant to protect workers. According to the EPA,

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on January 20, 2016, 19 workers entered a Syngenta field in Hawaii recently sprayed with a restricted use organophosphate insecticide. Ten of these workers were taken to a nearby hospital for medical treatment. In February 2018, the EPA told the company its penalty had been lowered to a $150,000 penalty plus $400,000 it was to spend on worker safety training sessions.435

Where the Obama EPA emphasized “enforcing the federal law that protects those who spend long hours in the fields,” the Trump EPA highlighted that the settlement would offer benefits to growers: “This settlement will bring to Hawaii and Pacific Island growers much-needed training to protect agricultural workers.” Judith Enck, who served as a regional EPA administrator under President Barack Obama, called the settlement a “tiny amount of money for a very large company.” While “some reduction” of initial penalty targets is normal in such cases, she added, “to reduce [the penalty] by this amount is quite unusual.”436


## Appendix B: Additional Methodological Information

<table>
<thead>
<tr>
<th>Agency</th>
<th>Trump Official in Office Since</th>
<th>Agency Type</th>
<th>If sub-agency, parent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Justice</td>
<td>2/9/2017</td>
<td>Cabinet</td>
<td>n/a</td>
</tr>
<tr>
<td>Aviation Consumer Protection Division</td>
<td>1/31/2017</td>
<td>Sub-Agency (of Cabinet)</td>
<td>Transportation</td>
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<td>Consumer Product Safety Commission</td>
<td>2/9/2017</td>
<td>Independent</td>
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<td>Equal Employment Opportunity Commission</td>
<td>1/25/2017</td>
<td>Sub-Agency (of Cabinet)</td>
<td>Labor</td>
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<tr>
<td>Federal Communications Commission</td>
<td>1/23/2017</td>
<td>Independent</td>
<td>n/a</td>
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<tr>
<td>Federal Trade Commission</td>
<td>1/25/2017</td>
<td>Independent</td>
<td>n/a</td>
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<tr>
<td>Bureau of Safety and Environmental Enforcement</td>
<td>5/23/2017</td>
<td>Sub-Agency (of Cabinet)</td>
<td>Interior</td>
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<td>Environmental Protection Agency</td>
<td>2/17/2017</td>
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<td>Commodity Futures Trading Commission</td>
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<td>Office of the Comptroller of the Currency</td>
<td>5/3/2017</td>
<td>Sub-Agency (of Cabinet)</td>
<td>Treasury</td>
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<tr>
<td>Office of Foreign Assets Control</td>
<td>3/5/2017</td>
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<tr>
<td>Securities and Exchange Commission</td>
<td>5/4/2017</td>
<td>Independent</td>
<td>n/a</td>
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## Appendix C: Department of Justice Cases Split Between Civil and Criminal Portions

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<thead>
<tr>
<th>Company</th>
<th>Parent Company</th>
<th>Penalty Date</th>
<th>Penalty</th>
<th>Civil/Criminal</th>
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<tbody>
<tr>
<td>Aegerion Pharmaceuticals Inc.</td>
<td>Novelion Therapeutics</td>
<td>9/22/2017</td>
<td>$28,000,000</td>
<td>civil portion</td>
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<td>Aegerion Pharmaceuticals Inc.</td>
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<td>Baxter Healthcare Corporation</td>
<td>Baxter International</td>
<td>1/12/2017</td>
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<td>Baxter International</td>
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<td>Berkshire Power Co.</td>
<td>Ares Management</td>
<td>3/30/2016</td>
<td>$2,750,000</td>
<td>criminal portion</td>
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<td>Berkshire Power Company, LLC</td>
<td>Ares Management</td>
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<td>Biocompatibles Inc.</td>
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<td>Biocompatibles Inc.</td>
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<td>DB Group Services (UK) Limited</td>
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<td>Deutsche Bank</td>
<td>4/23/2015</td>
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<td>HSBC Holdings plc</td>
<td>HSBC</td>
<td>1/18/2018</td>
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<td>Tenet Healthcare Corporation</td>
<td>Tenet Healthcare</td>
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<td>Tenet Healthcare Corporation</td>
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<td>Volkswagen</td>
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<td>Warner Chilcott PLC</td>
<td>Allergan</td>
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<td>$22,940,000</td>
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<td>Zwanger-Pesiri Inc.</td>
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<td>Zwanger-Pesiri Inc.</td>
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<td>11/16/2016</td>
<td>$2,400,000</td>
<td>criminal portion</td>
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</table>

437 Links to press releases on which this analysis is based are available compiled here: [https://docs.google.com/spreadsheets/d/1db1cRVWetWPbdfk4JR6VoJL3AOinRLPGn4iqJTyZexY/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1db1cRVWetWPbdfk4JR6VoJL3AOinRLPGn4iqJTyZexY/edit?usp=sharing)

July 25, 2018