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# CORPORATE IMPUNITY

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



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### 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.

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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 violators<sup>1</sup> declined, in many cases quite dramatically.**

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

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 violators<sup>2</sup> declined, in many cases quite dramatically.**

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

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

<sup>1</sup> EPA and FCC penalty sums include non-corporate violators (i.e., individuals and public entities).

<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup> These views are durable, and withstand counter-messaging.<sup>5</sup> Indeed, Americans express overwhelming support for stronger regulatory enforcement.<sup>6</sup>

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.<sup>7</sup> 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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<sup>3</sup> Celinda Lake, Daniel Gotoff and Eric Schoenfeld, "Poll Results Presentation: Enforcement Working Group: Analysis of Findings from Focus Groups and a Nationwide Survey of Likely Voters," Lake Research Partners (2014), <https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf> (page 2-3)

<sup>4</sup> *Ibid.* <https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf> (page 5)

<sup>5</sup> *Ibid.* <https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf> (page 11)

<sup>6</sup> *Ibid.* <https://www.citizen.org/sites/default/files/lrp-enforcement-working-group-poll-findings.pdf> (page 6-7)

<sup>7</sup> 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.<sup>8</sup>
- 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.<sup>9</sup>
- "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."<sup>10</sup>
- 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."<sup>11</sup> Mulvaney would later assert that, under his watch, the agency is ending "regulation by enforcement."<sup>12</sup> 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."<sup>13</sup>

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<sup>8</sup> "FDA and USDA Collaborate to Streamline Produce Safety Requirements," Quality Assurance & Food Safety (June 6, 2018), <http://www.qualityassurancemag.com/article/fda-and-usda-collaborate-to-streamline-produce-safety-requirements/>

<sup>9</sup> Ben Lane, "Carson: HUD working with DOJ on easing enforcement of FHA lending," HousingWire (Oct. 23, 2017), <https://www.housingwire.com/articles/41635-carson-hud-working-with-doj-on-easing-enforcement-of-fha-lending>

<sup>10</sup> 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/>

<sup>11</sup> Mick Mulvaney, "The CFPB Has Pushed Its Last Envelope," The Wall Street Journal (Jan. 23, 2018), <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>

<sup>12</sup> Ryan Smith, "Mulvaney promises to end CFPB 'regulation by enforcement'," (May 18, 2018), <https://www.mpamag.com/news/mulvaney-promises-to-end-cfpb-regulation-by-enforcement-100952.aspx>

<sup>13</sup> "Mulvaney: CFPB to Consider Scale of Violations in Enforcement Actions," ABA Banking Journal (May 29, 2018), <https://bankingjournal.aba.com/2018/05/mulvaney-cfpb-to-consider-scale-of-violations-in-enforcement-actions/>

- “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.”<sup>14</sup> She even called for the agency to display “regulatory humility” in enforcement.<sup>15</sup>
- 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.”<sup>16</sup>
- “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.”<sup>17</sup>
- 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.”<sup>18</sup>

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.<sup>19</sup> (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.

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<sup>14</sup> Maureen K. Ohlhausen, "Antitrust Policy for a New Administration," U.S. Federal Trade Commission (Jan. 24, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1051993/antitrust\\_policy\\_for\\_a\\_new\\_administration.pdf](https://www.ftc.gov/system/files/documents/public_statements/1051993/antitrust_policy_for_a_new_administration.pdf)

<sup>15</sup> *Ibid.*

<sup>16</sup> Eric Lipton, "Trump Rollbacks Target Offshore Rules 'Written With Human Blood'," The New York Times (March 10, 2018), <https://www.nytimes.com/2018/03/10/business/offshore-drilling-trump-administration.html>

<sup>17</sup> James McDonald, Director of the Division of Enforcement, "Perspectives on Enforcement: Self-Reporting and Cooperation at the CFTC," U.S. Commodity Futures Trading Commission (Sept. 25, 2017), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald092517>

<sup>18</sup> Jesse Hamilton, "Trump Watchdog Tells Banks He Really, Really Likes Them," Bloomberg News (April 9, 2018), <https://www.bloomberg.com/news/articles/2018-04-09/trump-picked-watchdog-tells-banks-he-really-really-likes-them>

<sup>19</sup> Press Release, "Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act," U.S. Department of Justice (Nov. 29, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rostenstein-delivers-remarks-34th-international-conference-foreign>

- 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.<sup>20</sup>
- 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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

- 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.”<sup>24</sup>
- 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

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<sup>20</sup> Sarah N. Lynch, "U.S. Justice Department mulls limits on overlapping corporate penalties," Reuters (Nov. 8, 2017), <https://www.reuters.com/article/us-usa-justice-penalties/u-s-justice-department-mulls-limits-on-overlapping-corporate-penalties-idUSKBN1D82VE>

<sup>21</sup> Memorandum for Heads of Civil Litigating Components and United States Attorneys, "Subject: Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases," U.S. Department of Justice, Office of the Associate Attorney General (Jan. 25, 2018), <https://www.justice.gov/file/1028756/download>

<sup>22</sup> Robert Pear, "Administration Imposes Sweeping Limits on Federal Actions Against Companies," The New York Times (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/us/politics/legal-violations-federal-rules.html>

<sup>23</sup> Danielle Ivory, Erica L. Green and Steve Eder, "Education Department Unwinds Unit Investigating Fraud at For-Profits," The New York Times (May 13, 2018), <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html>

<sup>24</sup> Kathleen Smith, Acting Assistant Secretary of the Office of Postsecondary Education and Dr. A. Wayne Johnson, COO, Federal Student Aid, "Letter to CFPB Director Richard Cordray," U.S. Department of Education (Aug. 31, 2017), [https://edworkforce.house.gov/uploadedfiles/2017-09-01\\_signed\\_letter\\_to\\_cfpb.pdf](https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf)



servicers. The attorneys general reacted with outrage.<sup>25</sup> 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.<sup>26</sup>

- 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.<sup>27</sup> 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.<sup>28</sup>
- Department of Education guidance leaked in June 2018<sup>29</sup> reoriented the department’s civil rights protections to scale back identification of systemic issues and wrongdoing that affect whole categories of students.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> A July 2017 memo discouraged the use of fines for each day of a violation, preferring one-time fines for each instance.<sup>33</sup> An October 2017 memo discouraged the use

<sup>25</sup> Danielle Douglas-Gabriel, "Education Dept. opens door for student loan companies to ignore state authority," *The Washington Post* (March 9, 2018), <https://www.washingtonpost.com/news/grade-point/wp/2018/03/09/education-dept-tells-student-loan-companies-to-ignore-state-authority/>

<sup>26</sup> Illinois Attorney General Lisa Madigan, "Letter to Education Secretary Betsy DeVos," Office of the Attorney General - State of Illinois (June 5, 2017), <http://www.mass.gov/ago/docs/press/2017/borrower-defense-multistate-letter.pdf>

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

<sup>28</sup> Hannah Lang, "New Rules Let Ed Department Ignore Disability-Related Complaints," *Disability Scoop* (April 2, 2018), <https://www.disabilityscoop.com/2018/04/02/new-ignore-disability-complaints/24924/> and Hannah Lang, "Ed Department Reconsidering Previously Settled Disability Complaints," *Disability Scoop* (June 7, 2018), <https://www.disabilityscoop.com/2018/06/07/ed-reconsidering-complaints/25163/>

<sup>29</sup> 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>

<sup>30</sup> Erica L. Green, "Education Dept. Says It Will Scale Back Civil Rights Investigations," *The New York Times* (June 16, 2017), <https://www.nytimes.com/2017/06/16/us/politics/education-department-civil-rights-betsy-devos.html>

<sup>31</sup> 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>

<sup>32</sup> Jordan Rau, "Trump Administration Eases Nursing Home Fines in Victory for Industry," *The New York Times*, (Dec. 24, 2017), <https://www.nytimes.com/2017/12/24/business/trump-administration-nursing-home-penalties.html>

<sup>33</sup> 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.<sup>34</sup> In June 2018 came yet another memo discouraging use of monetary fines.<sup>35</sup> 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.”<sup>36</sup>

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,<sup>37</sup> which extended for many months.<sup>38</sup> Mulvaney also stripped enforcement powers from the CFPB’s fair lending office.<sup>39</sup> 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.<sup>40</sup>
- 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

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-37.pdf>

<sup>34</sup> David R. Wright, Director of CMS’s Survey and Certification Group, Memo to State Survey Agency Directors, “Subject: Revised Policies regarding the Immediate Imposition of Federal Remedies- FOR ACTION,” Centers for Medicare & Medicaid Services, (Oct. 27, 2017), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-01.pdf>

<sup>35</sup> David R. Wright, Director of CMS’s Quality, Safety & Oversight Group, Memo to State Survey Agency Directors, “Subject: Final Revised Policies Regarding the Immediate Imposition of Federal Remedies,” Centers for Medicare & Medicaid Services, (June 15, 2018), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-18-NH.pdf>

<sup>36</sup> California Attorney General Xavier Becerra et al., Letter to HHS Secretary Alex Azar and CMS Administrator Seema Verma, “RE: Regulation of Skilled Nursing Facilities,” (May 30, 2018), [https://oag.ca.gov/system/files/attachments/press\\_releases/CMS%20SNF%20regulation%20rollback%20letter%2020180525%20FINAL%20db.pdf](https://oag.ca.gov/system/files/attachments/press_releases/CMS%20SNF%20regulation%20rollback%20letter%2020180525%20FINAL%20db.pdf)

<sup>37</sup> Renae Merle, “Mick Mulvaney is now one of the most powerful bureaucrats in the country,” The Washington Post (Nov. 30, 2017), <https://www.washingtonpost.com/news/business/wp/2017/11/30/mick-mulvaney-is-now-one-of-the-most-powerful-bureaucrats-in-the-country/>

<sup>38</sup> Ken Sweet, “Under Trump and Mulvaney, CFPB has filed no enforcement actions since November,” The Associated Press (April 10, 2018), <https://www.usatoday.com/story/money/economy/2018/04/10/under-trump-mulvaney-cfpb-has-filed-no-enforcement-actions/502451002/>

<sup>39</sup> Renae Merle, “Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases,” The Washington Post (Feb. 1), <https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/>

<sup>40</sup> C. Ryan Barber, “Mulvaney’s CFPB News Releases Embrace Industry’s Yearning for Soft Touch,” The National Law Journal (July 3, 2018), <https://www.law.com/nationallawjournal/2018/07/03/mulvaney-cfpb-news-releases-embrace-industrys-yearning-for-soft-touch/>

fair housing laws, freezing enforcement actions against local governments and businesses, including Facebook, while sidelining officials who have aggressively pursued civil rights cases.”<sup>41</sup>

- In March 2018, the Department of Labor’s Wage and Hour Division announced a new initiative, the Payroll Audit Independent Determination program<sup>42</sup> 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.”<sup>43</sup> 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.”<sup>44</sup>
- 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.”<sup>45</sup> 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.<sup>46</sup>

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

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<sup>41</sup> Glenn Thrush, "Under Ben Carson, HUD Scales Back Fair Housing Enforcement," The New York Times (March 28, 2018), <https://www.nytimes.com/2018/03/28/us/ben-carson-hud-fair-housing-discrimination.html>

<sup>42</sup> "PAID Program," U.S. Department of Labor Wage and Hour Division (accessed July 2, 2018), <https://www.dol.gov/whd/paid/>

<sup>43</sup> Press release, "U.S. DEPARTMENT OF LABOR ANNOUNCES NEW PROGRAM TO EXPEDITE PAYMENT TO AMERICAN WORKERS," U.S. Department of Labor (March 6, 2018), <https://www.dol.gov/newsroom/releases/whd/whd20180306>

<sup>44</sup> New York Attorney General Eric Schneiderman et al., Letter to Labor Secretary Alex Acosta, "RE: Payroll Audit Independent Determination (PAID) Program," (April 11, 2018), [https://ag.ny.gov/sites/default/files/program\\_multistate\\_letter\\_to\\_acosta.pdf](https://ag.ny.gov/sites/default/files/program_multistate_letter_to_acosta.pdf)

<sup>45</sup> Amy Mayer, "Citing Food Safety, USDA Proposes New Hog-Slaughter Rules That Give Industry More Control," Tri States Public Radio (Jan. 29, 2018), <http://tspr.org/post/citing-food-safety-usda-proposes-new-hog-slaughter-rules-give-industry-more-control>

<sup>46</sup> Henry Cutter, "SEC Seeks Right to Cut Whistleblower Bounties," The Wall Street Journal (June 29, 2018), <https://www.wsj.com/articles/sec-proposes-whistleblower-awards-for-smaller-cases-1530212390>

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

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*“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 <sup>47</sup>

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#### 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.

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<sup>47</sup> Jody Godoy, "DOJ Expands Leniency Beyond FCPA, Lets Barclays Off," Law 360 (March 1, 2018), <https://www.law360.com/articles/1017798/doj-expands-lenieny-beyond-fcpa-lets-barclays-off>

For section-specific methodological notes, see page 28.

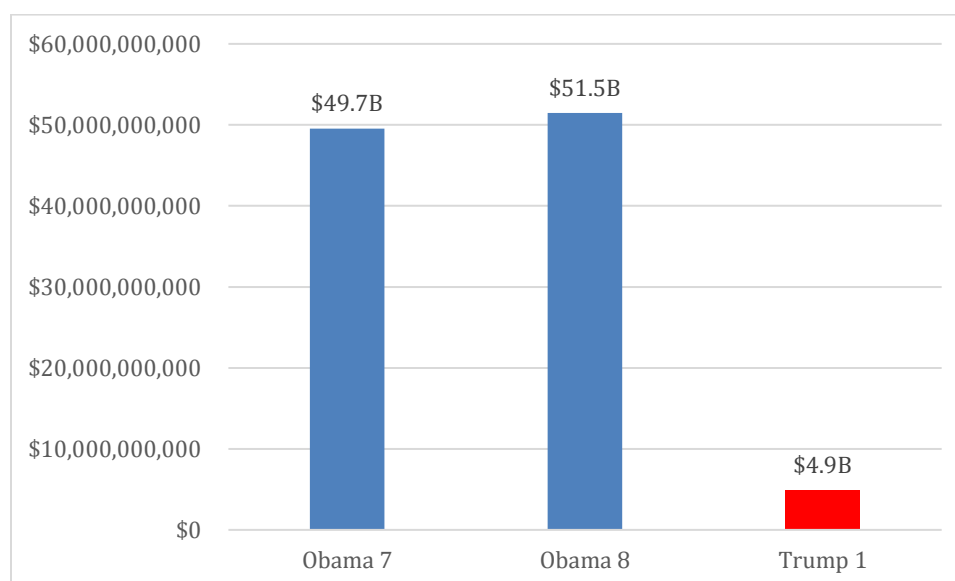
**Table 1.1: Summary of DOJ enforcement cases against and penalties imposed on corporations from Jan. 20, 2015, through Jan. 19, 2018.**

Year	Cases	Penalties	Average
Trump 1	241	\$4,898,284,958	\$20,324,834
Obama 8	308	\$51,506,033,030	\$167,227,380
Obama 7	502	\$49,731,707,030	\$99,067,145

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,<sup>48</sup> 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.<sup>49</sup> Sessions replaced Loretta Lynch, the second attorney general under Obama, who served from April 2015 until January 2017.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

In April 2017, Rod Rosenstein was sworn in as deputy attorney general.<sup>53</sup> Rosenstein's entire career has been within DOJ. Rosenstein's predecessor, Sally Yates, was confirmed in 2015<sup>54</sup> 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.<sup>55</sup>

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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<sup>48</sup> "U.S. Attorneys Listing," U.S. Department of Justice (viewed on April 17, 2018), <https://www.justice.gov/usao/us-attorneys-listing>.

<sup>49</sup> Eric Lichtblau and Matt Flegenheimer, "Jeff Sessions Confirmed as Attorney General, Capping Bitter Battle," The New York Times (Feb. 8, 2017), <https://www.nytimes.com/2017/02/08/us/politics/jeff-sessions-attorney-general-confirmation.html>

<sup>50</sup> "Attorney General: Loretta E. Lynch," U.S. Department of Justice (viewed on April 17, 2018), <https://www.justice.gov/ag/bio/attorney-general-loretta-e-lynch>

<sup>51</sup> Rick Claypool, "Jeff Sessions as Alabama Attorney General: 1995-1997," Public Citizen report (Jan. 5, 2017), <https://www.citizen.org/sites/default/files/sessions-blunders-alabama-ag-report.pdf>

<sup>52</sup> *Ibid.*

<sup>53</sup> "Meet the Deputy Attorney General," U.S. Department of Justice (viewed on April 17, 2018), <https://www.justice.gov/dag/staff-profile/meet-deputy-attorney-general>

<sup>54</sup> Roll Call Vote 114th Congress - 1st Session, "On the Nomination (Confirmation Sally Quillian Yates, of Georgia, to be Deputy Attorney General)," U.S. Senate (May 13, 2015), [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=114&session=1&vote=00177](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=114&session=1&vote=00177)

<sup>55</sup> Michael D. Shear et al. "Trump Fires Acting Attorney General Who Defied Him," The New York Times (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>

## 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.<sup>56</sup> In March 2018,<sup>57</sup> Sessions issued a memo urging prosecutors to seek the death penalty in certain drug-related cases.<sup>58</sup> Additionally, Sessions has called for the detention and criminal prosecution of any immigrant who illegally enters the U.S.<sup>59</sup> 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.<sup>60</sup> And Sessions sent U.S. Attorneys Offices in border states a “zero-tolerance memo”<sup>61</sup> 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.”<sup>62</sup>

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

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<sup>56</sup> Sari Horwitz and Matt Zapotosky, "Sessions issues sweeping new criminal charging policy," The Washington Post (May 12, 2017), [https://www.washingtonpost.com/world/national-security/sessions-issues-sweeping-new-criminal-charging-policy/2017/05/11/4752bd42-3697-11e7-b373-418f6849a004\\_story.html](https://www.washingtonpost.com/world/national-security/sessions-issues-sweeping-new-criminal-charging-policy/2017/05/11/4752bd42-3697-11e7-b373-418f6849a004_story.html)

<sup>57</sup> Memorandum to United States Attorneys, "Subject: Guidance Regarding Use of Capital Punishment in Drug-Related Prosecutions," Office of the Attorney General (March 20, 2018), <https://www.justice.gov/file/1045036/download>

<sup>58</sup> Kevin Breuninger, "Attorney General Jeff Sessions outlines when to use death penalty on drug traffickers," CNBC (March 21, 2018), <https://www.cnbc.com/2018/03/21/attorney-general-jeff-sessions-outlines-death-penalty-use-for-drug-crimes.html>

<sup>59</sup> Sarah N. Lynch, Mica Rosenberg, "U.S. attorney general renews calls to prosecute first-time border crossers," Reuters (March 21, 2018),

<sup>60</sup> Laura Meckler, "New Quotas for Immigration Judges as Trump Administration Seeks Faster Deportations," The Wall Street Journal (April 2, 2018), <https://www.wsj.com/articles/immigration-judges-face-new-quotas-in-bid-to-speed-deportations-1522696158>

<sup>61</sup> Memorandum for Federal Prosecutors Along the Southwest Border, "Subject: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)," U.S. Department of Justice (April 6, 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>

<sup>62</sup> Roque Planas, "Jeff Sessions Wants To Make The Justice Department More Like ICE," HuffPost (April 26, 2018), [https://www.huffpost.com/entry/jeff-sessions-wants-to-make-the-justice-department-more-like-ice\\_us\\_5ae0f3d3e4b02baed1b60aff](https://www.huffpost.com/entry/jeff-sessions-wants-to-make-the-justice-department-more-like-ice_us_5ae0f3d3e4b02baed1b60aff)

<sup>63</sup> 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://tracfed.syr.edu/results/9x705a4d46abc0.html>

<sup>64</sup> Press Release, "Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act," U.S. Department of Justice (Nov. 29, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rostenstein-delivers-remarks-34th-international-conference-foreign>

<sup>65</sup> Henry Cutter, "First Winner Under U.S. Bribery Policy," The Wall Street Journal (April 25, 2018), <https://blogs.wsj.com/riskandcompliance/2018/04/25/the-morning-risk-report-first-winner-under-u-s-bribery-policy/>



payments to third-parties not involved in the immediate litigation.<sup>66</sup> 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.<sup>67</sup> 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”<sup>68</sup> and saying they are indicative of a “piling on problem.”<sup>69</sup> 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.<sup>70</sup>

A March 2018 memo<sup>71</sup> 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.<sup>72</sup> 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,<sup>73</sup> the memo – an 11-page document with nearly 5,000 words – contains zero mentions of the word “climate.”

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<sup>66</sup> Memorandum for all Component Heads and United States Attorneys, "Subject: Prohibition on Settlement Payments to Third Parties," (June 5, 2017), <https://www.justice.gov/opa/press-release/file/971826/download>

<sup>67</sup> Jenny Strasburg, "Barclays to Pay \$2 Billion to Resolve Mortgage-Securities Claims," The Wall Street Journal (March 29, 2018), <https://www.wsj.com/articles/barclays-to-pay-2-billion-to-resolve-mortgage-securities-claims-1522331649>

<sup>68</sup> Sarah N. Lynch, "U.S. Justice Department mulls limits on overlapping corporate penalties," Reuters (Nov. 8, 2017), <https://www.reuters.com/article/us-usa-justice-penalties/u-s-justice-department-mulls-limits-on-overlapping-corporate-penalties-idUSKBN1D82VE>

<sup>69</sup> Tom Schoenberg, "Rod Rosenstein Signals Era of Big Corporate Penalties Is Ending," Bloomberg News (May 9, 2018), <https://www.bloomberg.com/news/articles/2018-05-09/u-s-signals-softer-approach-to-penalties-for-corporate-misdeeds>

<sup>70</sup> Robert Pear, "Administration Imposes Sweeping Limits on Federal Actions Against Companies," The New York Times (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/us/politics/legal-violations-federal-rules.html>

<sup>71</sup> Jeffrey H. Wood, Acting Assistant Attorney General, "Subject: Enforcement Principles and Priorities," U.S. Department of Justice: Environment and Natural Resources Division (March 12, 2018), <https://www.justice.gov/enrd/page/file/1043731/download>

<sup>72</sup> Sean Reilly, "Many recusals for acting chief of DOJ environment section," E&E News (April 25, 2017), <https://www.eenews.net/stories/1060053554>

<sup>73</sup> Umair Irfan, "Climate change" and "global warming" are disappearing from government websites," Vox (Jan. 11, 2018), <https://www.vox.com/energy-and-environment/2017/11/9/16619120/trump-administration-removing-climate-change-epa-online-website>

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.<sup>74</sup> 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"<sup>75</sup> when bringing charges.<sup>76</sup> 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.<sup>77</sup> Holder left the DOJ for private corporate defense practice at the law firm Covington & Burling;<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup>

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.<sup>81</sup> But the conviction had already put Andersen

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<sup>74</sup> Press Release, "Environment and Natural Resources Division Releases Accomplishments Report for FY2017," U.S. Department of Justice (April 30, 2018), <https://www.justice.gov/opa/pr/environment-and-natural-resources-division-releases-accomplishments-report-fy2017>

<sup>75</sup> 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>

<sup>76</sup> Memorandum to All Component Heads and United States Attorneys from the Deputy Attorney General, "Subject: Bringing Criminal Charges Against Corporations," U.S. Department of Justice (June 16, 1999), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/charging-corps.PDF>

<sup>77</sup> William D. Cohan, "Justice Dept. Shift on White-Collar Crime Is Long Overdue," *The New York Times* (Sept. 11, 2015), <https://www.nytimes.com/2015/09/12/business/dealbook/justice-dept-shift-on-white-collar-crime-is-long-overdue.html>

<sup>78</sup> Peter Lattman, "The Holder Memo and Its Progeny," *The Wall Street Journal* (Dec. 13, 2006), <https://blogs.wsj.com/law/2006/12/13/the-holder-memo/>

<sup>79</sup> Thompson, L. D. (2003). Memorandum: Principles of Federal Prosecution of Business Organizations. *Office of the Deputy Attorney General*  
[http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/privilegewaiver/2003jan20\\_privwaiv\\_dojthomp.aucthcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/privilegewaiver/2003jan20_privwaiv_dojthomp.aucthcheckdam.pdf)

<sup>80</sup> See Bartlett Collins Naylor, "Too Big: A Public Citizen Blueprint for Wall Street Reform," Public Citizen report (2016), <https://www.citizen.org/sites/default/files/toobig.pdf>

<sup>81</sup> Linda Greenhouse, "Justices Unanimously Overturn Conviction of Arthur Andersen," *The New York Times* (May 31, 2005), <http://www.nytimes.com/2005/05/31/business/justices-unanimously-overturn-conviction-of-arthur-andersen.html>

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,<sup>82</sup> 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,<sup>83</sup> and Black Elk Energy Offshore Operations, which was convicted in August 2017 for worker safety and Clean Water Act violations.<sup>84</sup>

**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.**

	Obama 7	Obama 8	Trump 1
DPAs	10	22	9
NPAs	91	16	10
Pleas	88	117	50
Convictions	0	2	1

SOURCE: Corporate Prosecution Registry database from the University of Virginia School of Law.<sup>85</sup>

<sup>82</sup> Memorandum from Sally Quillian Yates, "Subject: Individual Accountability for Corporate Wrongdoing," U.S. Department of Justice (Sept. 9, 2015), <https://www.justice.gov/archives/dag/file/769036/download>

<sup>83</sup> Press Release, "Greek Shipping Companies Sentenced to Pay \$2.7 Million for Ocean Pollution," U.S. Department of Justice (Jan. 12, 2017), <https://www.justice.gov/opa/pr/greek-shipping-companies-sentenced-pay-27-million-ocean-pollution>

<sup>84</sup> Press Release, "Black Elk Energy Offshore Operations LLC. Convicted of Worker Safety and Clean Water Act Violations in Connection to Offshore Explosion," U.S. Department of Justice (Aug. 31, 2017), <https://www.justice.gov/opa/pr/black-elk-energy-offshore-operations-llc-convicted-worker-safety-and-clean-water-act>

<sup>85</sup> "Corporate Prosecution Registry," University of Virginia Law Library (viewed April 18, 2018), <http://lib.law.virginia.edu/Garrett/corporate-prosecution-registry/index.html>

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.<sup>86</sup> 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<sup>87</sup> 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.**

Year	Cases	Penalties	Average
Trump 1	52	\$1,812,458,133	\$34,854,964
Obama 8	94	\$7,557,506,520	\$80,399,006
Obama 7	156.5 <sup>88</sup>	\$17,435,316,260	\$111,407,772

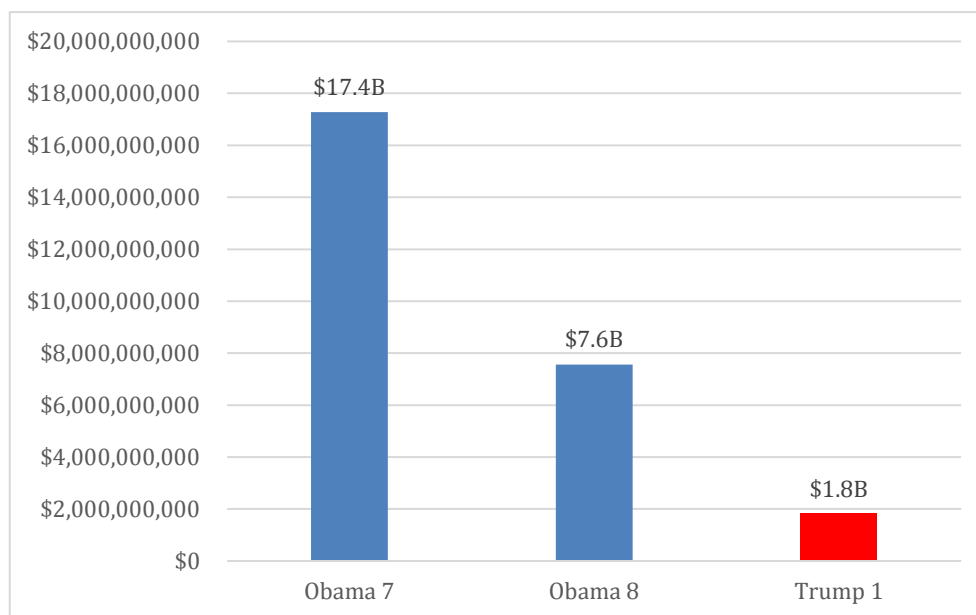
SOURCE: Public Citizen analysis of [Violation Tracker database](#).

<sup>86</sup> "Swiss Bank Program," U.S. Department of Justice (viewed on April 18, 2018), <https://www.justice.gov/tax/swiss-bank-program>

<sup>87</sup> 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.

<sup>88</sup> See footnote 87.

**Figure 1.2: Summary of DOJ criminal penalties against from Jan. 20, 2015, through Jan. 19, 2018, by administration.**



SOURCE: Public Citizen analysis of [Violation Tracker database](#).

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.**

Company	Federal Non-DOJ Partner Agencies	Penalty Date	Criminal Penalties	Administration
BNP Paribas S.A.	Treasury (IRS) <sup>89</sup>	5/1/2015	\$8,973,600,000	Obama
Volkswagen <sup>90</sup>	EPA, DHS (CBP)	1/11/2017	\$2,800,000,000	Obama
Takata Corporation	DOT	1/13/2017	\$1,000,000,000	Obama
Citicorp	CFTC, OCC, SEC, Fed	5/20/2015	\$925,000,000	Obama
General Motors	DOT (NHTSA)	9/17/2015	\$900,000,000	Obama

<sup>89</sup> 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), USPI (United States Postal Inspection Service)

<sup>90</sup> 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>

Deutsche Bank AG	CFTC	4/23/2015	\$775,000,000	Obama
Alstom S.A.	n/a	11/13/2015	\$772,290,000	Obama
Barclays PLC	CFTC, OCC, SEC, Fed	5/20/2015	\$710,000,000	Obama
Commerzbank AG	Treasury (IRS, OFAC), Fed	3/12/2015	\$642,000,000	Obama
Western Union Company	USPIS, Treasury (IRS), DHS (HSI), CFPB, DOL, FTC	1/19/2017	\$586,000,000	Obama
JPMorgan Chase & Co.	CFTC, OCC, SEC, Fed	5/20/2015	\$550,000,000	Obama
Bank Julius Baer & Co. Ltd.	Treasury (IRS), DHS	2/4/2016	\$547,000,000	Obama
ZTE Corporation	Commerce (BIS), Treasury (OFAC)	3/7/2017	\$430,488,798	Trump
Royal Bank of Scotland plc	CFTC, OCC, SEC, Fed	5/20/2015	\$395,000,000	Obama
Kolon Industries Inc.	n/a	4/30/2015	\$360,000,000	Obama
Olympus Corp. of the Americas <sup>91</sup>	HHS	3/1/2016	\$335,200,000	Obama
Teva Pharmaceutical Industries Ltd	SEC	12/22/2016	\$283,177,348	Obama
Telia Company AB	Treasury (IRS), DHS (ICE), SEC	9/21/2017	\$274,603,972	Trump
AmerisourceBergen Specialty Group	FDA, HHS, DOD (DCIS), OPM	9/27/2017	\$260,000,000	Trump
SBM Offshore N.V.	DHS (ICE-HSI), Treasury (IRS)	11/29/2017	\$238,000,000	Trump

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

## 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,<sup>92</sup> the policy Rosenstein announced limiting the degree to which a single corporate violation can trigger multiple enforcement actions<sup>93</sup> and the Brand memo instructed DOJ

<sup>91</sup> 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>

<sup>92</sup> Memorandum for all Component Heads and United States Attorneys, "Subject: Prohibition on Settlement Payments to Third Parties," (June 5, 2017), <https://www.justice.gov/opa/press-release/file/971826/download>

<sup>93</sup> Tom Schoenberg, "Rod Rosenstein Signals Era of Big Corporate Penalties Is Ending," Bloomberg News (May 9, 2018), <https://www.bloomberg.com/news/articles/2018-05-09/u-s-signals-softer-approach-to-penalties-for-corporate-misdeeds>

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.<sup>94</sup>

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.<sup>95</sup> 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.<sup>96</sup>

In late January 2018, Associate Attorney General Rachel Brand released a memo<sup>97</sup> 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.<sup>98</sup> Brand resigned shortly after releasing the memo to take the top legal post at Walmart.<sup>99</sup>

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,”<sup>100</sup> celebrated the policy change,<sup>101</sup> as did corporate defense attorneys.<sup>102</sup> Brand previously served as the U.S. Chamber’s chief counsel for regulatory litigation.<sup>103</sup>

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<sup>94</sup> Robert Pear, "Administration Imposes Sweeping Limits on Federal Actions Against Companies," The New York Times (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/us/politics/legal-violations-federal-rules.html>

<sup>95</sup> Press Release, "Justice Department Recovers Over \$3.7 Billion From False Claims Act Cases in Fiscal Year 2017," U.S. Department of Justice (Dec. 21, 2017), <https://www.justice.gov/opa/pr/justice-department-recovers-over-37-billion-false-claims-act-cases-fiscal-year-2017>

<sup>96</sup> "False Claims Amendments Act of 1986," 31 U.S. Code § 3701, <https://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3153.pdf>

<sup>97</sup> Memorandum for Heads of Civil Litigating Components and United States Attorneys, "Subject: Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases," U.S. Department of Justice, Office of the Associate Attorney General (Jan. 25, 2018), <https://www.justice.gov/file/1028756/download>

<sup>98</sup> Robert Pear, "Administration Imposes Sweeping Limits on Federal Actions Against Companies," The New York Times (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/us/politics/legal-violations-federal-rules.html>

<sup>99</sup> Press Release, "Rachel Brand Joins Walmart as Executive Vice President, Global Governance and Corporate Secretary," WalMart (Feb. 9, 2018), <https://news.walmart.com/2018/02/09/rachel-brand-joins-walmart-as-executive-vice-president-global-governance-and-corporate-secretary>

<sup>100</sup> "False Claims Act (FCA)," U.S. Chamber Institute for Legal Reform (viewed on April 18, 2018), <http://www.instituteforlegalreform.com/issues/false-claims-act>

<sup>101</sup> *Ibid.*

<sup>102</sup> Dana A. Elfin, "DOJ Says Guidance Documents Can't Drive Enforcement Actions," Bloomberg BNA (Jan. 26, 2018), <https://www.bna.com/doj-says-guidance-n73014474751/>

<sup>103</sup> Press Release, "U.S. Chamber's Litigation Center Names Rachel Brand Chief Counsel for Regulatory Litigation and Kate Comerford Todd Chief Counsel for Appellate Litigation," U.S. Chamber of Commerce (May 31, 2011), <https://www.uschamber.com/press-release/us-chamber%E2%80%99s-litigation-center-names-rachel-brand-chief-counsel-regulatory-litigation>

Out of the 748.5<sup>104</sup> 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.<sup>105</sup> 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 1.5: Summary of DOJ False Claims Act cases against corporations, Jan. 20, 2015, through Jan. 19, 2018.**

Year	Cases	Penalties	Average
Trump 1	131	\$2,484,896,845	\$18,968,678
Obama 8	137	\$4,347,931,478	\$31,736,726
Obama 7	251	\$2,865,113,398	\$11,414,794

SOURCE: Public Citizen analysis of [Violation Tracker database](#).<sup>106</sup>

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).<sup>107</sup>

### 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.<sup>108</sup> Five settlements among the largest twenty during Obama's

<sup>104</sup> See footnote 87.

<sup>105</sup> Public Citizen analysis of Violation Tracker data

<sup>106</sup> 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>

<sup>107</sup> Press Release, "Wells Fargo Bank Agrees to Pay \$1.2 Billion for Improper Mortgage Lending Practices," U.S. Department of Justice (April 8, 2016), <https://www.justice.gov/opa/pr/wells-fargo-bank-agrees-pay-12-billion-improper-mortgage-lending-practices>

<sup>108</sup> Press Release, "Residential Mortgage-Backed Securities Working Group Members Announce First Legal Action," U.S. Department of Justice (Oct. 2, 2012), <https://www.justice.gov/opa/pr/residential-mortgage-backed-securities-working-group-members-announce-first-legal-action>



final two years in office and Trump's first – those between DOJ and Deutsche Bank,<sup>109</sup> Credit Suisse,<sup>110</sup> Goldman Sachs,<sup>111</sup> Morgan Stanley<sup>112</sup> and Moody's<sup>113</sup> – 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<sup>114</sup> by Holder's DOJ and HHS under Secretary Kathleen Sebelius. Out of the top twenty settlements in the past three years, the Pfizer,<sup>115</sup> Shire Pharmaceuticals<sup>116</sup> and Tenet Healthcare Corporation<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup> Whether that will be the case, it is too early to tell.

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<sup>109</sup> Press Release, "Deutsche Bank Agrees To Pay \$7.2 Billion For Misleading Investors In Its Sale Of Residential Mortgage-Backed Securities," U.S. Department of Justice (Jan. 17, 2017), <https://www.justice.gov/usao-edny/pr/deutsche-bank-agrees-pay-72-billion-misleading-investors-its-sale-residential-mortgage>

<sup>110</sup> Press Release, "Credit Suisse Agrees to Pay \$5.28 Billion in Connection with its Sale of Residential Mortgage-Backed Securities," U.S. Department of Justice (Jan. 18, 2017), <https://www.justice.gov/opa/pr/credit-suisse-agrees-pay-528-billion-connection-its-sale-residential-mortgage-backed>

<sup>111</sup> Press Release, "Goldman Sachs Agrees to Pay More than \$5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities," U.S. Department of Justice (April 11, 2016), <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>

<sup>112</sup> Press Release, "Morgan Stanley Agrees to Pay \$2.6 Billion Penalty in Connection with Its Sale of Residential Mortgage Backed Securities," U.S. Department of Justice (Feb. 11, 2016), <https://www.justice.gov/opa/pr/morgan-stanley-agrees-pay-26-billion-penalty-connection-its-sale-residential-mortgage-backed>

<sup>113</sup> Press Release, "Justice Department and State Partners Secure Nearly \$864 Million Settlement With Moody's Arising From Conduct in the Lead up to the Financial Crisis," U.S. Department of Justice (Jan. 13, 2017), <https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising>

<sup>114</sup> Press Release, "Justice Department Recovers \$2.4 Billion in False Claims Cases in Fiscal Year 2009; More Than \$24 Billion Since 1986," U.S. Department of Justice (Nov. 19, 2009), <https://www.justice.gov/opa/pr/justice-department-recovers-24-billion-false-claims-cases-fiscal-year-2009-more-24-billion>

<sup>115</sup> *Ibid.*

<sup>116</sup> Press Release, "Shire PLC Subsidiaries to Pay \$350 Million to Settle False Claims Act Allegations," U.S. Department of Justice (Jan. 11, 2017), <https://www.justice.gov/opa/pr/shire-plc-subsidiaries-pay-350-million-settle-false-claims-act-allegations>

<sup>117</sup> Press Release, "Hospital Chain Will Pay over \$513 Million for Defrauding the United States and Making Illegal Payments in Exchange for Patient Referrals; Two Subsidiaries Agree to Plead Guilty," U.S. Department of Justice (Oct. 3, 2016), <https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-513-million-defrauding-united-states-and-making-illegal-payments>

<sup>118</sup> Press Release, "Nearly 500 Hospitals Pay United States More Than \$250 Million to Resolve False Claims Act Allegations Related to Implantation of Cardiac Devices," U.S. Department of Justice (Oct. 30, 2015), <https://www.justice.gov/opa/pr/nearly-500-hospitals-pay-united-states-more-250-million-resolve-false-claims-act-allegations>

<sup>119</sup> Press Release, "Attorney General Sessions Announces New Prescription Interdiction & Litigation Task Force," U.S. Department of Justice (Feb. 27, 2018), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-new-prescription-interdiction-litigation-task-force>

### 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<sup>120</sup> in the prior year. [See Table 1.6.]

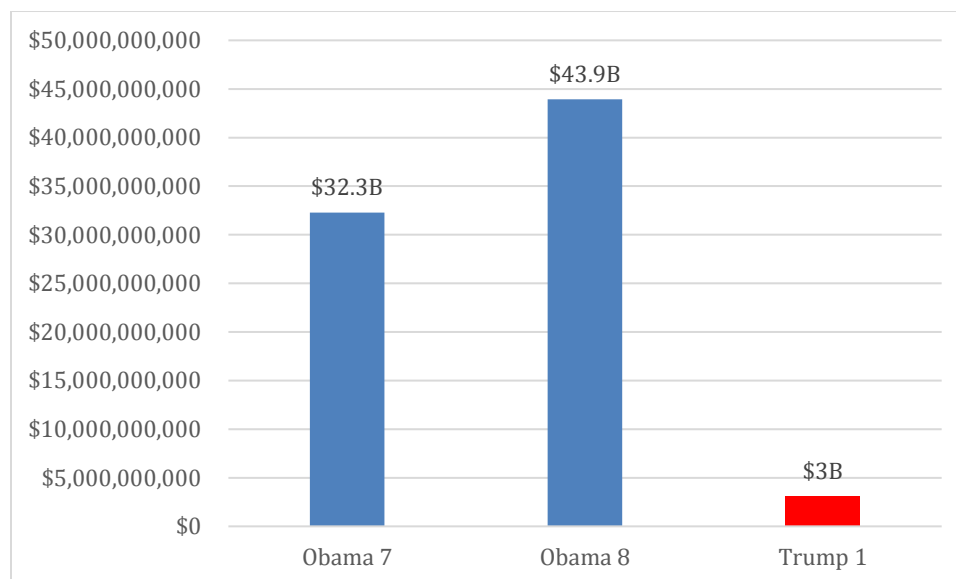
**Table 1.6: Summary of DOJ civil enforcement cases against corporations from Jan. 20, 2015, through Jan. 19, 2018.**

Year	Cases	Penalties	Average
Trump 1	189	\$3,085,826,825	\$16,327,126
Obama 8	214	\$43,948,526,510	\$205,366,946
Obama 7	345.5 <sup>121</sup>	\$32,296,390,770	\$93,477,253

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](#).

<sup>120</sup> See footnote 87.

<sup>121</sup> 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,<sup>122</sup> was completed under Trump. During these years, the Obama administration completed 10 enforcement actions of \$1 billion or more.<sup>123</sup> [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 1.7: Top 20 DOJ civil enforcement cases against corporations from Jan. 20, 2015, through Jan. 19, 2018, by size.**<sup>124</sup>

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

<sup>122</sup> Press Release, "Mylan Agrees to Pay \$465 Million to Resolve False Claims Act Liability for Underpaying EpiPen Rebates," U.S. Department of Justice (Aug. 17, 2017), <https://www.justice.gov/opa/pr/mylan-agrees-pay-465-million-resolve-false-claims-act-liability-underpaying-epipen-rebates>

<sup>123</sup> Press Release, "Acting Manhattan U.S. Attorney Announces Award Of \$296 Million Judgment Against Allied Home Mortgage Entities For Civil Mortgage Fraud," U.S. Attorney's Office for the Southern District of New York (Sept. 19, 2017), <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-award-296-million-judgment-against-allied-home>

<sup>124</sup> 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).

<sup>125</sup> 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>

Wells Fargo Bank, National Association	HUD	4/8/2016	\$1,200,000,000	Obama
Moody's Corporation	n/a	1/13/2017	\$864,000,000	Obama
Pfizer Inc.	HHS	4/27/2016	\$784,600,000	Obama
Bank of New York Mellon	DOL, SEC	3/19/2015	\$714,000,000	Obama
HSBC Bank USA NA	HUD, CFPB, Treasury, FTC, USDA, VA	2/5/2016	\$470,000,000	Obama
Mylan Inc.	HHS	8/17/2017	\$465,000,000	Trump
DaVita Healthcare Partners, Inc.	n/a	6/24/2015	\$450,000,000	Obama
Tesoro Corp.	EPA	7/18/2016	\$425,450,000	Obama
Novartis Pharmaceuticals	HHS	11/20/2015	\$390,000,000	Obama
Tenet Healthcare Corporation <sup>126</sup>	HHS	10/3/2016	\$368,000,000	Obama
Shire Pharmaceuticals LLC	HHS, VA	1/11/2017	\$350,000,000	Obama

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

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<sup>127</sup> 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<sup>128</sup> 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.<sup>129</sup> 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

<sup>126</sup> 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>

<sup>127</sup> See footnote 87.

<sup>128</sup> Press Release, "Attorney General Sessions Announces New Prescription Interdiction & Litigation Task Force," U.S. Department of Justice (Feb. 27, 2018), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-new-prescription-interdiction-litigation-task-force>

<sup>129</sup> Sari Horwitz and Ellen Nakashima, "Sessions says Trump has power to pardon anyone without consulting the Justice Dept.," The Washington Post (April 25, 2018), [https://www.washingtonpost.com/world/national-security/sessions-citing-americas-opioid-epidemic-tells-senate-panel-hes-taking-on-drug-companies/2018/04/25/12b63f6c-489a-11e8-8b5a-3b1697adcc2a\\_story.html](https://www.washingtonpost.com/world/national-security/sessions-citing-americas-opioid-epidemic-tells-senate-panel-hes-taking-on-drug-companies/2018/04/25/12b63f6c-489a-11e8-8b5a-3b1697adcc2a_story.html)

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<sup>130</sup> celebrating a decline in violent crime reported by the FBI.<sup>131</sup> 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.<sup>132</sup> 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.

#### DOJ METHODOLOGY

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 ½ 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.

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<sup>130</sup> 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/>

<sup>131</sup> Josh Gerstein, "Sessions: Crime on decline due to Trump policies," Politico (Jan. 23, 2018), <https://www.politico.com/story/2018/01/23/sessions-attributes-crime-drop-to-trump-360671>

<sup>132</sup> "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:

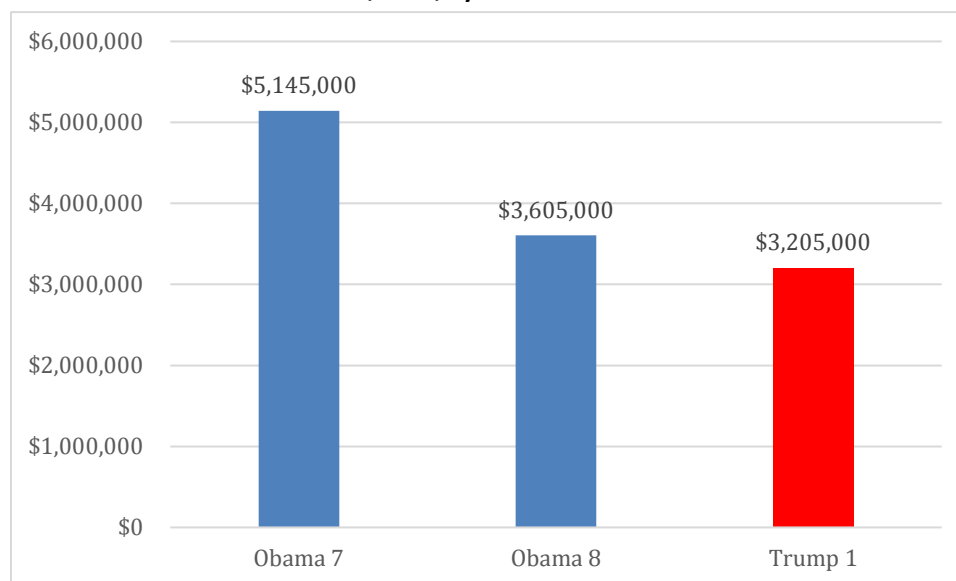
- The office issued 16 percent fewer fines during the first year of the Trump administration than the average for the seventh and eighth years of the Obama administration.
- The cumulative amount of fines issued by the agency fell by 27 percent during the first year of the Trump administration compared 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.**

Period	Cases	Penalties	Average
Trump Year 1	18	\$3,205,000	\$178,056
Obama Year 8	28	\$3,605,000	\$128,750
Obama Year 7	15	\$5,145,000	\$343,000
Obama 7-8 average	21.5	\$4,375,000	\$203,488
% difference Obama 7-8 avg. to Trump 1	-16%	-27%	-12%

**Figure 2.2: Aviation Consumer Protection Division penalties against companies from Jan. 20, 2015, through Jan. 19, 2018, by administration.**



### 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.”<sup>133</sup>

### 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.<sup>134</sup> A video of the episode went viral.<sup>135</sup> 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 be 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

<sup>133</sup> “Aviation Consumer Protection,” U.S. Department of Transportation (viewed on March 8, 2018), <https://www.transportation.gov/airconsumer>

<sup>134</sup> Christopher Elliott, “As airline rules relax under Trump, here’s a survival guide to flying in 2018,” *The Washington Post* (December 28, 2017), [https://www.washingtonpost.com/lifestyle/travel/as-airline-rules-relax-under-trump-heres-a-survival-guide-to-flying-in-2018/2017/12/27/693795ee-e444-11e7-833f-155031558ff4\\_story.html?utm\\_term=.7007bd8d2ddd](https://www.washingtonpost.com/lifestyle/travel/as-airline-rules-relax-under-trump-heres-a-survival-guide-to-flying-in-2018/2017/12/27/693795ee-e444-11e7-833f-155031558ff4_story.html?utm_term=.7007bd8d2ddd)

<sup>135</sup> “All passenger videos of United kicking off Dr. David Dao,” YouTube (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."<sup>136</sup>

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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<sup>136</sup> "Comments of Airlines for America: Part One: Proposals For Fundamental Reform of DOT Economic Regulation and Enforcement" (Dec. 1, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0069-2753>



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

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

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

**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.**

Year	Cases	Penalties	Average
Trump 1	4	\$21,350,000	\$5,337,500
Obama 8	6	\$37,300,000	\$6,216,667
Obama 7	7	\$18,800,000	\$2,685,714

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 delivered<sup>137</sup> 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

<sup>137</sup> "Who We Are - What We Do for You," U.S. Consumer Product Safety Commission, (viewed on April 25, 2018), <https://www.cpsc.gov/Safety-Education/Safety-Guides/General-Information/Who-We-Are---What-We-Do-for-You>

hazardous products — and all were accomplished in a cost-effective manner.”<sup>138</sup> 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.<sup>139</sup> 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<sup>140</sup> and rules to protect drivers from unstable recreational off-highway vehicles.<sup>141</sup>

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.”<sup>142</sup> 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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<sup>138</sup> R. David Pittle, "Re: Nomination of Michael Baroody to be CPSC Chairman," Letter submitted to the Honorable Daniel K. Inouye Chairman, Senate Committee on Commerce, Science, and Transportation (April 25, 2007), <https://www.citizen.org/our-work/government-reform/letter-former-cpsc-head-pittle>

<sup>139</sup> Press Release, "Ann Marie Buerkle Elevated To Serve As Acting Chairman of U.S. Consumer Product Safety Commission," U.S. Consumer Product Safety Commission (Feb. 10, 2017), <https://www.cpsc.gov/content/ann-marie-buerkle-elevated-to-serve-as-acting-chairman-of-us-consumer-product-safety>

<sup>140</sup> Chris Arnold, "Despite Proven Technology, Attempts To Make Table Saws Safer Drag On," National Public Radio (Aug. 10, 2017), <https://www.npr.org/2017/08/10/542474093/despite-proven-technology-attempts-to-make-table-saws-safer-drag-on>

<sup>141</sup> Press Release, "Statement of Commissioner Ann Marie Buerkle on the Proposed Standard for Recreational Off-Highway Vehicles (ROVs)," U.S. Consumer Product Safety Commission (Nov. 4, 2014), <https://www.cpsc.gov/about-cpsc/commissioner/ann-marie-buerkle/statements/statement-commissioner-ann-marie-buerkle-1>

<sup>142</sup> Sheila Kaplan, "Trump Pick to Head Consumer Safety Board Is Seen as Too Close to Industries," The New York Times (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/health/consumer-safety-buerkle-gop.html>

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.<sup>143</sup>

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.<sup>144</sup> Buerkle says she prioritizes voluntary standards over mandatory standards. Voluntary standards are “a better way to go,” Buerkle told ProPublica.<sup>145</sup> “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.”<sup>146</sup>

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.”<sup>147</sup> 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.<sup>148</sup> Buerkle even named portable generator industry lawyer, Patricia Hanz, to be the CPSC’s general counsel.<sup>149</sup> 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.<sup>150</sup> Hanz is also a board member of the Portable Generators Manufacturers Association.

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<sup>143</sup> Press Release, “Statement of Commissioner Ann Marie Buerkle on the Commission’s Growing Civil Penalty Settlements,” U.S. Consumer Product Safety Commission (May 25, 2016), <https://www.cpsc.gov/about-cpsc/commissioner/ann-marie-buerkle/statements/statement-of-commissioner-ann-marie-buerkle-0>

<sup>144</sup> 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)

<sup>145</sup> Jesse Eisinger, “The Trump Administration Is Scuttling a Rule That Would Save People From Dying of Carbon Monoxide Poisoning,” *ProPublica* (Dec. 8, 2017), <https://www.propublica.org/article/the-trump-administration-is-scuttling-a-rule-that-would-save-people-from-dying-of-carbon-monoxide-poisoning>

<sup>146</sup> *Ibid.*

<sup>147</sup> Marietta S. Robinson, “Ann Marie Buerkle’s nomination hurts the Consumer Product Safety Commission,” *The Hill* (March 5, 2018), <http://thehill.com/opinion/white-house/376808-ann-marie-buerkles-nomination-hurts-the-consumer-product-safety>

<sup>148</sup> Jesse Eisinger and ProPublica, “The Deaths That Come When an Industry’s Left to Regulate Itself,” *The Atlantic* (Dec. 8, 2017), <https://www.theatlantic.com/business/archive/2017/12/regulations-portable-generators-cpsc-buerkle/547781/>

<sup>149</sup> Sheila Kaplan, “Trump Pick to Head Consumer Safety Board Is Seen as Too Close to Industries,” *The New York Times* (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/health/consumer-safety-buerkle-gop.html>

<sup>150</sup> *Ibid.*

Buerkle was not confirmed in 2017, but continues as acting chairman and was re-nominated in early 2018.<sup>151</sup> The White House also named Dana Baiocco, a former partner at law firm Jones Day, which has extensive White House ties,<sup>152</sup> to fill one of the two vacancies on the commission. Baiocco has made a career representing corporate defendants<sup>153</sup> 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<sup>154</sup> and describe her as a member of a Jones Day “multidisciplinary legal group prepared to respond in recall or crisis situations.”<sup>155</sup>

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,<sup>156</sup> 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 3.2: All CPSC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.**

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

<sup>151</sup> Press Release, "Nominations Sent to the Senate Today," U.S. White House (Jan. 8, 2018),

<https://www.whitehouse.gov/presidential-actions/nominations-sent-senate-today-2/>

<sup>152</sup> 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), <https://corporatepresidency.org/biglaw/>

<sup>153</sup> Sharon Lerner, "Trump's Consumer Product Safety Nominee Defended Deadly Products," The Intercept (Oct. 31, 2017), <https://theintercept.com/2017/10/31/trump-consumer-product-safety-commission-dana-baiocco/>

<sup>154</sup> "Dana Baiocco," LinkedIn profile (viewed on April 25, 2018), <https://www.linkedin.com/in/dana-baiocco-663215/>

<sup>155</sup> "Dana Baiocco: Partner," Jones Day (viewed on April 25, 2018), <http://www.jonesday.com/dbaiocco/>

<sup>156</sup> Dee DePass, "Polaris hit with \$27.25 million penalty for failing to report vehicle problems," Star Tribune (April 2, 2018), <http://www.startribune.com/polaris-industries-pays-27-25-million-settlement-to-consumer-product-safety-commission/478547013/>

General Electric Co.	2/19/2015	\$3,500,000	Obama
Phil&teds USA	9/10/2015	\$3,500,000	Obama
Office Depot Inc.	5/27/2015	\$3,400,000	Obama
Johnson Health Tech Co. Ltd	8/8/2015	\$3,000,000	Obama
Philips Lighting North America	11/24/2015	\$2,000,000	Obama
LG	7/7/2015	\$1,825,000	Obama
Stanley Black & Decker	4/29/2015	\$1,575,000	Obama

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](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.<sup>157</sup>
- 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.<sup>158</sup> 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.<sup>159</sup>

*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.**

Year	Cases	Penalties	Average
Fiscal Year 2017	125	\$42,000,000	\$336,000
Fiscal Year 2016	171	\$52,000,000	\$304,094
Fiscal Year 2015	171	\$65,000,000	\$380,117

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.<sup>160</sup> The EEOC

<sup>157</sup> EEOC Statistics, "EEOC Litigation Statistics, FY 1997 through FY 2017,"

<https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm> and EEOC Statistics, "EEOC Litigation Statistics, FY 1992 through FY 1996," <https://www.eeoc.gov/eeoc/statistics/enforcement/litigation-a.cfm>

<sup>158</sup> EEOC Statistics, "EEOC Litigation Statistics, FY 1997 through FY 2017,"

<https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm> and EEOC Statistics, "EEOC Litigation Statistics, FY 1992 through FY 1996," <https://www.eeoc.gov/eeoc/statistics/enforcement/litigation-a.cfm>

<sup>159</sup> EEOC Statutes, "Titles I and V of the Americans with Disabilities Act of 1990 (ADA),"

<https://www.eeoc.gov/laws/statutes/ada.cfm>

<sup>160</sup> About EEOC, "Overview," <https://www.eeoc.gov/eeoc/index.cfm>



enforces a litany of laws governing civil rights laws, protections for the disabled, wage discrimination based on gender and age discrimination in the workplace.<sup>161</sup>

### 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.<sup>162</sup> 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.<sup>163</sup> Lipnic has had a long career in government, working on Capitol Hill, the U.S. Postal Service and the Commerce Department.<sup>164</sup> Chair Lipnic has said “more will remain the same than will change” under her tenure at EEOC.<sup>165</sup>

Lipnic has received some pushback from the White House Office of Management and Budget (OMB) over EEOC plans to collect additional pay data.<sup>166</sup> 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*.<sup>167</sup> 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.”<sup>168</sup> The remaining two commissioners, both Democrats, have served on the commission since 2010<sup>169</sup> and 2014.<sup>170</sup>

President Trump's nominees to fill the two vacant positions, Janet Dhillon and Daniel Gade,<sup>171</sup> have not been approved by the U.S. Senate and appear more ideological than Lipnic. If confirmed, Dhillon,

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<sup>161</sup> EEOC Regulations & Guidance, “Laws Enforcement by EEOC,” <https://www.eeoc.gov/laws/statutes/index.cfm>

<sup>162</sup> About EEOC, “The Commission and the General Counsel,” <https://www.eeoc.gov/eeoc/commission.cfm>

<sup>163</sup> About EEOC, “Victoria A. Lipnic, Acting Chair,” <https://www.eeoc.gov/eeoc/lipnic.cfm>

<sup>164</sup> About EEOC, “Victoria A. Lipnic, Acting Chair,” <https://www.eeoc.gov/eeoc/lipnic.cfm>

<sup>165</sup> Malcolm Ingram and Alexander Batoff, “NLRB and EEOC Update: The Latest in Nominations and Confirmations,” *The Legal Intelligencer*, <https://www.law.com/thelegalintelligencer/sites/thelegalintelligencer/2017/10/31/nlr-and-eeoc-update-the-latest-in-nominations-and-confirmations/>

<sup>166</sup> Malcolm Ingram and Alexander Batoff, “NLRB and EEOC Update: The Latest in Nominations and Confirmations,” *The Legal Intelligencer*, <https://www.law.com/thelegalintelligencer/sites/thelegalintelligencer/2017/10/31/nlr-and-eeoc-update-the-latest-in-nominations-and-confirmations/>

<sup>167</sup> Jennifer Calfas, “A \$16 Million Win for #MeToo and Time's Up Was Slipped into Trump's Budget,” *Time Money* (March 29, 2018), <http://time.com/money/5221146/metoo-eeoc-funding-increase/>

<sup>168</sup> Jennifer Calfas, “A \$16 Million Win for #MeToo and Time's Up Was Slipped into Trump's Budget,” *Time Money* (March 29, 2018), <http://time.com/money/5221146/metoo-eeoc-funding-increase/>

<sup>169</sup> About EEOC, “Chai R. Feldblum, Commissioner,” <https://www.eeoc.gov/eeoc/feldblum.cfm>

<sup>170</sup> About EEOC, “Charlotte A. Burrows, Commissioner,” <https://www.eeoc.gov/eeoc/burrows.cfm>

<sup>171</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” *NBC News* (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

a corporate lawyer, would replace Lipnic as EEOC Chair. The bulk of Dhillon's employment and labor experience includes defending corporations in employment matters.<sup>172</sup> Prior to her nomination, Dhillon was general counsel at Burlington Stores, Inc.<sup>173</sup> Earlier in her career, Dhillon ran the legal departments at US Airways and J.C. Penney.<sup>174</sup> Dhillon also helped found<sup>175</sup> the Retail Litigation Center (RLC),<sup>176</sup> 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."<sup>177</sup>

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,"<sup>178</sup> while the National Women's Law Center said she "has no experience working in the public sector or leading a government agency."<sup>179</sup> Daniel Gade, Trump's other nominee for commissioner, is a retired U.S. Army officer,<sup>180</sup> West Point professor and a veteran who lost his right leg during combat in Iraq.<sup>181</sup> Gade wrote in 2011 that allowing women in combat roles was "silly" and "laughable," according to *The Center for Investigative Reporting*.<sup>182</sup> As a result, his nomination has been criticized by some Democrats.<sup>183</sup> 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."<sup>184</sup> 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.<sup>185</sup>

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<sup>172</sup> JoAnna Suriani, "Five Things You Should Know About EEOC Chair Nominee Janet Dhillon," The National Women's Law Center (Sept. 18, 2018), <https://nwc.org/blog/five-things-you-should-know-about-eec-chair-nominee-janet-dhillon/>

<sup>173</sup> JoAnna Suriani, "Five Things You Should Know About EEOC Chair Nominee Janet Dhillon," The National Women's Law Center (Sept. 18, 2018), <https://nwc.org/blog/five-things-you-should-know-about-eec-chair-nominee-janet-dhillon/>

<sup>174</sup> Erin Mulvaney and Mike Scarcella, "Janet Dhillon, Ex-Big Law Turned Longtime GC, Lands Trump Nod for EEOC," The National Law Journal (June 29, 2017), <https://www.law.com/nationallawjournal/almID/1202791866429/Janet-Dhillon-ExBig-Law-Turned-Longtime-GC-Lands-Trump-Nod-for-EEOC/>

<sup>175</sup> Retail Litigation Center, "RLC Files 100th Brief," <https://www.rila.org/enterprise/retailitigationcenter/Pages/100th-Brief.aspx>

<sup>176</sup> Retail Litigation Center, "Board of Directors," <http://www.rila.org/enterprise/retailitigationcenter/Pages/BoardofDirectors3.aspx>

<sup>177</sup> Retail Litigation Center, "About," <http://www.rila.org/enterprise/retailitigationcenter/Pages/default.aspx>

<sup>178</sup> Press Release, "NAACP Statement on Janet Dhillon Nomination as Chair of the Equal Employment Opportunity Commission," National Association for the Advancement of Colored People (Sept. 22, 2017), <http://www.naacp.org/latest/naacp-statement-janet-dhillon-nomination-chair-equal-employment-opportunity-commission/>

<sup>179</sup> JoAnna Suriani, "Five Things You Should Know About EEOC Chair Nominee Janet Dhillon," The National Women's Law Center (Sept. 18, 2018), <https://nwc.org/blog/five-things-you-should-know-about-eec-chair-nominee-janet-dhillon/>

<sup>180</sup> Will Evans, "Trump Civil Right Nominee Called Allowing Women in Combat 'Laughable,'" Reveal News (Sept. 18, 2017), <https://www.revealnews.org/blog/trump-civil-rights-nominee-called-allowing-women-in-combat-laughable/>

<sup>181</sup> DoD News, "America Supports You: Wounded Troops, Families Receive Free Tickets," <http://archive.defense.gov/news/newsarticle.aspx?id=31341>

<sup>182</sup> Will Evans, "Trump Civil Right Nominee Called Allowing Women in Combat 'Laughable,'" Reveal News (Sept. 18, 2017), <https://www.revealnews.org/blog/trump-civil-rights-nominee-called-allowing-women-in-combat-laughable/>

<sup>183</sup> Sean Higgins, "Patty Murray Criticizes EEOC Pick Daniel Gade for Remarks About Women in Military," Washington Examiner (Sept. 19, 2017), <https://www.washingtonexaminer.com/patty-murray-criticizes-eec-pick-daniel-gade-for-remarks-about-women-in-military>

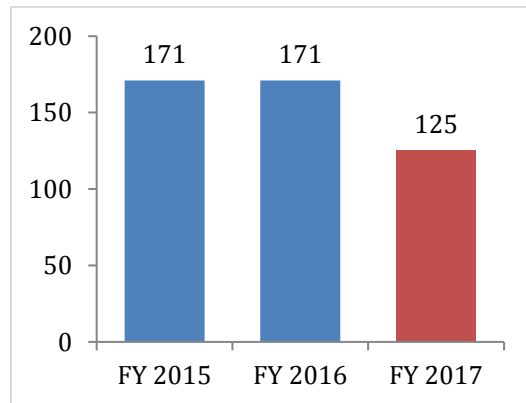
<sup>184</sup> Will Evans, "Trump Civil Right Nominee Called Allowing Women in Combat 'Laughable,'" Reveal News (Sept. 18, 2017), <https://www.revealnews.org/blog/trump-civil-rights-nominee-called-allowing-women-in-combat-laughable/>

<sup>185</sup> Daniel Wiessner, "Trump Taps Solo Practitioner for EEOC General Counsel," Reuters (March 20, 2018), <https://www.reuters.com/article/employment-eec/trump-taps-solo-practitioner-for-eec-general-counsel-idUSL1N1R21U2>

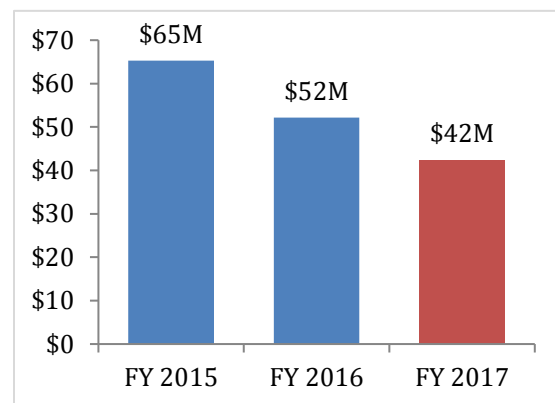
## Findings

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.<sup>186</sup> 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.<sup>187</sup>

**Figure 4.1 – All resolved suits**

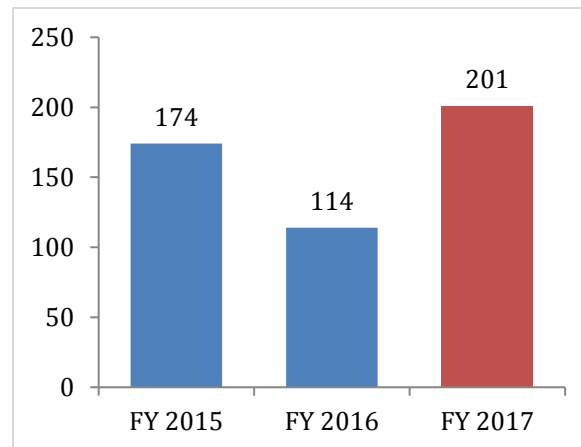


**Figure 4.2 – Monetary benefits**



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.]

**Figure 4.3 – Enforcement suits filed**



<sup>186</sup> EEOC Statistics, “EEOC Litigation Statistics, FY 1997 through FY 2017,”

<https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm> and EEOC Statistics, “EEOC Litigation Statistics, FY 1992 through FY 1996,” <https://www.eeoc.gov/eeoc/statistics/enforcement/litigation-a.cfm>

<sup>187</sup> EEOC Statutes, “Titles I and V of the Americans with Disabilities Act of 1990 (ADA),” <https://www.eeoc.gov/laws/statutes/ada.cfm>

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.<sup>188</sup> In fiscal 2017, the EEOC filed 201 cases – a 76 percent increase from fiscal year 2016<sup>189</sup> 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.<sup>190</sup> Feldblum, the first openly lesbian commissioner of the EEOC,<sup>191</sup> 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.<sup>192</sup>

In 2015, the EEOC ruled that discrimination based on sexual orientation was covered under the Civil Rights Act of 1964.<sup>193</sup> After the ruling, the EEOC began to weigh in on employment cases on behalf of gay and lesbian individuals.<sup>194</sup> 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.<sup>195</sup>

Attorney General Jeff Sessions recently wrote a memo stating that the law “does not prohibit discrimination based on gender identity per se,”<sup>196</sup> 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.<sup>197</sup> 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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<sup>188</sup> EEOC Statistics, “EEOC Litigation Statistics, FY 1997 through FY 2017,”

<https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm> and EEOC Statistics, “EEOC Litigation Statistics, FY 1992 through FY 1996,” <https://www.eeoc.gov/eeoc/statistics/enforcement/litigation-a.cfm>

<sup>189</sup> EEOC Statistics, “EEOC Litigation Statistics, FY 1997 through FY 2017,”

<https://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm>

<sup>190</sup> “Four Nominations Sent to the Senate Today,” The White House (Dec. 11, 2017) <https://www.whitehouse.gov/presidential-actions/four-nominations-sent-senate-today-3/>

<sup>191</sup> About EEOC, “Chai R. Feldblum, Commissioner,” <https://www.eeoc.gov/eeoc/feldblum.cfm>

<sup>192</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” NBC News (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

<sup>193</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” NBC News (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

<sup>194</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” NBC News (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

<sup>195</sup> Alison Frankel, “EEOC Back Gay Employee in Latest Appellate Battle Over Workplace Rights,” Reuters (March 16, 2018), <https://www.reuters.com/article/legal-us-otc-titlevii/eeoc-backs-gay-employee-in-latest-appellate-battle-over-workplace-rights-idUSKCN1GS2M9>

<sup>196</sup> Memorandum to United States Attorneys, “Subject: Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964,” U.S. Department of Justice (Oct. 4, 2017), <https://thinkprogress.org/wp-content/uploads/2017/10/20171005-doj-memo-title-vii.pdf>

<sup>197</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” NBC News (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

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

#### 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>. The section includes “all suits filed,” “all resolutions” and “monetary benefits.” Fiscal years 2015, 2016 and 2017, are included.

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<sup>198</sup> Julie Moreau, Analysis: “Trump Appointments Could Derail LGBTQ Employment Rights,” NBC News (Nov. 1, 2017), <https://www.nbcnews.com/feature/nbc-out/analysis-trump-appointments-could-derail-lgbtq-employment-rights-n815681>

## 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.**

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

Source: FCC Electronic Document Management System, searched by Bureau: "Enforcement Bureau" coupled with Document type: "Forfeiture Order," "Consent Decree," and "Order/Consent Decree."

### 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."<sup>199</sup>

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.

<sup>199</sup> "Purposes of chapter; Federal Communications Commission created," 47 U.S. Code § 151, <https://www.law.cornell.edu/uscode/text/47/151>

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.<sup>200</sup> 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.<sup>201</sup> 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.<sup>202</sup>

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.<sup>203</sup> 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.<sup>204</sup>

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,"<sup>205</sup> the director of the FTC's Bureau of

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<sup>200</sup> Electronic Document Management System (EDOCS), Federal Communications Commission, [https://apps.fcc.gov/edocs\\_public/edocsLink.do?mode=advance&type=n](https://apps.fcc.gov/edocs_public/edocsLink.do?mode=advance&type=n)

<sup>201</sup> "Ajit Pai, FCC Chairman," Federal Communications Commission (viewed on March 8, 2018), <https://www.fcc.gov/about/leadership/ajit-pai>

<sup>202</sup> *Ibid.*

<sup>203</sup> Cecilia Kang, "F.C.C. Repeals Net Neutrality Rules," The New York Times, Dec. 14, 2017, <https://www.nytimes.com/2017/12/14/technology/net-neutrality-repeal-vote.html>

<sup>204</sup> Edward C. Baig, "FCC Chair Ajit Pai defends net neutrality repeal to doubters at Mobile World Congress," USA Today, (Feb. 26, 2018), <https://www.usatoday.com/story/tech/news/2018/02/26/fcc-chair-ajit-pai-defends-net-neutrality-repeal-skeptics-mobile-world-congress/373967002/>

<sup>205</sup> John D. McKinnon and Brent Kendall, "Is FTC Up to the Task of Internet Regulation?" The Wall Street Journal (Dec. 15, 2017), <https://www.wsj.com/articles/is-ftc-up-to-the-task-of-internet-regulation-1513349967>

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.<sup>206</sup>

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,<sup>207</sup> "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.<sup>208</sup>

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.<sup>209</sup> 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.<sup>210</sup>

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

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<sup>206</sup> Jessica Rich, "The false promise behind the FCC's net neutrality repeal plan," The Washington Post, (Dec. 12, 2017), [https://www.washingtonpost.com/opinions/the-false-promise-behind-the-fccs-net-neutrality-repeal-plan/2017/12/12/06471386-dec9-11e7-89e8-edec16379010\\_story.html?utm\\_term=.59bc7de03d19](https://www.washingtonpost.com/opinions/the-false-promise-behind-the-fccs-net-neutrality-repeal-plan/2017/12/12/06471386-dec9-11e7-89e8-edec16379010_story.html?utm_term=.59bc7de03d19)

<sup>207</sup> "Dissenting Statement of Commissioner Mignon L. Clyburn, Re: Verizon New York et al., File No.: EB-IHD-1300010704," (Oct. 17, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-140A3.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-140A3.pdf)

<sup>208</sup> "Statement of Chairman Ajit Pai Re: Verizon New York et al., File No.: EB-IHD-1300010704" (Oct. 17, 2017) [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-64A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-64A2.pdf)

<sup>209</sup> Press release, Federal Communications Commission, "FCC Takes Next Big Steps In Reducing Inmate Calling Rates" (Oct. 22, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335984A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335984A1.pdf)

<sup>210</sup> "Petition To Deny By The Wright Petitioners, Citizen United For Rehabilitation of Errants, Prison Policy Initiative, Human Rights Defense Center, The Center For Media Justice, Working Narratives, United Church Of Christ, Oc Inc. and Free Press in the matter Joint Application of Securus Investment Holdings (Jun 16, 2017), [https://www.freepress.net/sites/default/files/legacy-policy/petition\\_to\\_deny\\_sale\\_of\\_securus\\_technologies.pdf](https://www.freepress.net/sites/default/files/legacy-policy/petition_to_deny_sale_of_securus_technologies.pdf)



to the FCC's Enforcement Bureau.<sup>211</sup> 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.<sup>212</sup>

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."<sup>213</sup>

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.<sup>214</sup>

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.<sup>215</sup> 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.<sup>216</sup>

"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."<sup>217</sup>

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<sup>211</sup> Press release, Federal Communications Commission, "FCC Fines Securus \$1.7, Resolving Investigation Over Submitting Misleading Information To Agency," (Oct. 30, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-347500A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-347500A1.pdf)

<sup>212</sup> "Memorandum Opinion and Order," In the Matter of Joint Application of Securus Investment Holdings, LLC, et al., Federal Communications Commission (Oct. 27, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-141A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-141A1.pdf)

<sup>213</sup> "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), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-140A4.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-140A4.pdf)

<sup>214</sup> Immanuel Jotham, "FCC head Ajit Pai accused of 'clear conflict of interest' in prison phone company deal," International Business Times (Aug. 11, 2017), <http://www.ibtimes.co.uk/fcc-head-ajit-pai-accused-clear-conflict-interest-prison-phone-company-deal-1634573>

<sup>215</sup> David Goldman, "Government's plan to cut sky-high prison phone rates is put on hold," CNN (March 9, 2016), <http://money.cnn.com/2016/03/09/technology/prison-phones/index.html>

<sup>216</sup> Cecilia Kang, "Court Strikes Obama-Era Rule Capping Cost of Phone Calls From Prison," The New York Times (June 13, 2017), <https://www.nytimes.com/2017/06/13/technology/fcc-prison-phone-calls-regulations.html>

<sup>217</sup> Press release, Federal Communications Commission, "Chairman Pai Statement on D.C. Circuit Inmate Calling Decision" (June 13, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-345316A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-345316A1.pdf)

In October, Clyburn and FTC commissioner Terrell McSweeney wrote that Pai had yet to take any actions to address the exorbitant cost of inmates' in-state calls.<sup>218</sup>

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 5.2: Top 20 FCC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.**

Company	Penalty Date	Penalty	Administration
Straight Path	1 /12/2017	\$100,000,000	Obama
Verizon	5 /12/2015	\$90,000,000	Obama
Sprint	5 /12/2015	\$68,000,000	Obama
T-Mobile	10/19/2016	\$48,000,000	Obama
C.T.S. Technology, Co., Limited	5 /25/2016	\$34,912,500	Obama
AT&T	4 /8 /2015	\$25,000,000	Obama
Verizon	10/17/2017	\$17,680,000	Trump
T-Mobile	7 /17/2015	\$17,500,000	Obama
Century Link	4 /6 /2015	\$16,000,000	Obama
Purple Communications	12/18/2015	\$11,937,549	Obama
Purple Communications	2/15/2017	\$9,116,527	Trump
GPSPCS	7 /23/2015	\$9,065,000	Obama
AT&T	8 /8 /2016	\$7,750,000	Obama
Optic Internet Protocol	3 /11/2015	\$7,620,000	Obama
AT&T	4 /29/2015	\$6,900,000	Obama
Birch Communications	12/29/2016	\$6,100,000	Obama
Locus Telecommunication	10/21/2015	\$5,000,000	Obama
Lyca Tel	10/21/2015	\$5,000,000	Obama

<sup>218</sup> Mignon L. Clyburn and Terrell McSweeney, "FCC Shouldn't Give Up On Reforming Inmate Phone Services," Wired (Oct. 19, 2017), <https://www.wired.com/story/fcc-shouldnt-give-up-on-reforming-inmate-phone-services/>

Norba Tel	10/21/2015	\$5,000,000	Obama
Simple Network	10/21/2015	\$5,000,000	Obama

Source: FCC Electronic Document Management System, searched by Bureau: "Enforcement Bureau" coupled with Document type: "Forfeiture Order," "Consent Decree," and "Order/Consent Decree."

#### FCC METHODOLOGY

Enforcement data were obtained by searching the FCC's Electronic Document Management System, available at [https://apps.fcc.gov/edocs\\_public/edocsLink.do?mode=advance&type=n](https://apps.fcc.gov/edocs_public/edocsLink.do?mode=advance&type=n). The search was on items in the "Enforcement Bureau" coupled with Document types "Forfeiture Order," "Consent Decree," and "Order/Consent Decree." All items from Jan. 20, 2015, to Jan. 19, 2017, are included.

## 6. Federal Trade Commission

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*“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 <sup>219</sup>

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### 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.**

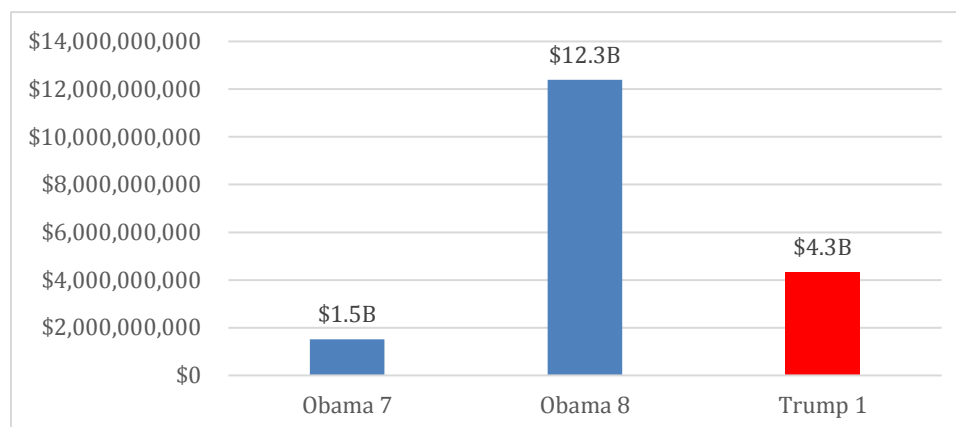
Year	Cases	Penalties	Average
Trump 1	14	\$4,338,996,773	\$309,928,341
Obama 8	27	\$12,387,666,094	\$458,802,448
Obama 7	32	\$1,518,036,459	\$47,438,639

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

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<sup>219</sup> Maureen K. Ohlhausen, "Antitrust Policy for a New Administration," U.S. Federal Trade Commission (Jan. 24, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1051993/antitrust\\_policy\\_for\\_a\\_new\\_administration.pdf](https://www.ftc.gov/system/files/documents/public_statements/1051993/antitrust_policy_for_a_new_administration.pdf)

**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.<sup>220</sup> 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.<sup>221</sup>

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.<sup>222</sup>

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.<sup>223</sup>

<sup>220</sup> "What We Do," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/about-ftc/what-we-do>

<sup>221</sup> "Enforcement," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/enforcement>

<sup>222</sup> "Commissioners," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/about-ftc/commissioners>

<sup>223</sup> "Division of Enforcement," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/our-divisions/division-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.<sup>224</sup>

### Personnel and Policy

The Trump administration's FTC chair, Joseph Simons, and commissioners were not confirmed until April 2018,<sup>225</sup> 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,<sup>226</sup> and less than a week into his presidency, Trump named Republican commissioner Maureen K. Ohlhausen acting chairman.<sup>227</sup> During Trump's first year in office, only two of the five commission seats were occupied: one by Ohlhausen, and one by Terrell McSweeney, a Democratic commissioner who served from 2014<sup>228</sup> through April 2018.<sup>229</sup>

Ohlhausen named Thomas Pahl, a lawyer and deregulation supporter<sup>230</sup> acting director of the Bureau of Consumer Protection.<sup>231</sup> At the Bureau of Competition, Tad Lipsky became acting director.<sup>232</sup> Pahl,<sup>233</sup> Lipsky<sup>234</sup> and Ohlhausen<sup>235</sup> 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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<sup>224</sup> "Inside the Bureau of Competition," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-competition/inside-bureau-competition>

<sup>225</sup> John Hendel, "Senate approves full new slate of FTC commissioners," Politico (April 26, 2018), <https://www.politico.com/story/2018/04/26/ftc-commissioners-senate-approval-1108262>

<sup>226</sup> Press Release, "FTC Chairwoman Edith Ramirez Announces Resignation," U.S. Federal Trade Commission (Jan. 13, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-chairwoman-edith-ramirez-announces-resignation>

<sup>227</sup> Press Release, "Statement of Acting FTC Chairman Ohlhausen on Appointment by President Trump," U.S. Federal Trade Commission (Jan. 25, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/statement-acting-ftc-chairman-ohlhausen-appointment-president>

<sup>228</sup> "Commissioners," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/about-ftc/commissioners>

<sup>229</sup> Press Release, "FTC Commissioner Terrell McSweeney to Resign," U.S. Federal Trade Commission (April 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/04/ftc-commissioner-terrell-mcsweeney-resign>

<sup>230</sup> Thomas Pahl, "The tortoise, not the hare, will win the deregulation race," The Hill (Feb. 2, 2017), <http://thehill.com/blogs/pundits-blog/the-administration/317453-the-tortoise-not-the-hare-will-win-the-deregulation>

<sup>231</sup> Press Release, "FTC Acting Chairman Ohlhausen Names Thomas Pahl Acting Director of the Agency's Bureau of Consumer Protection," U.S. Federal Trade Commission (Feb. 8, 2017), <https://www.ftc.gov/news-events/press-releases/2017/02/ftc-acting-chairman-ohlhausen-names-thomas-pahl-acting-director>

<sup>232</sup> Press Release, "FTC Acting Chairman Ohlhausen Announces Tad Lipsky as Acting Director of Bureau of Competition; Other Staffing Changes," U.S. Federal Trade Commission (Feb. 16, 2017), <https://www.ftc.gov/news-events/press-releases/2017/02/ftc-acting-chairman-ohlhausen-announces-tad-lipsky-acting>

<sup>233</sup> "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)

<sup>234</sup> "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)

<sup>235</sup> Press Release, "Mason alumna Maureen Ohlhausen named acting head of FTC," George Mason University (Jan. 27, 2017), <https://www2.gmu.edu/news/319326>

with the conservative Federalist Society in exchange for influence over the school's hiring practices.<sup>236</sup>

Four days after Trump's inauguration, Ohlhausen gave a speech at the Heritage Foundation, a prominent conservative think tank, outlining her preferred policy and enforcement approach.<sup>237</sup> Ohlhausen expressed serious concerns about the agency's impact on companies, saying, "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." Only a week earlier, Ohlhausen had dissented<sup>238</sup> from the agency's decision to sue Qualcomm for allegedly anticompetitive licensing practices.<sup>239</sup> She called for narrowing the scope of FTC investigations and expressed a desire for the agency to "approach its intervention decisions with a philosophy of regulatory humility."<sup>240</sup>

In April 2017, the FTC issued a press release containing the subhead, "Acting Chairman Ohlhausen is streamlining agency processes and improving transparency."<sup>241</sup> 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."<sup>242</sup>

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<sup>236</sup> 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), <https://www.nytimes.com/2018/05/05/us/koch-donors-george-mason.html>

<sup>237</sup> Maureen K. Ohlhausen, "Antitrust Policy for a New Administration," U.S. Federal Trade Commission (Jan. 24, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1051993/antitrust\\_policy\\_for\\_a\\_new\\_administration.pdf](https://www.ftc.gov/system/files/documents/public_statements/1051993/antitrust_policy_for_a_new_administration.pdf)

<sup>238</sup> Maureen K. Ohlhausen, "Dissenting Statement in the Matter of Qualcomm, Inc." U.S. Federal Trade Commission (Jan. 17, 2017), [https://www.ftc.gov/system/files/documents/cases/170117qualcomm\\_mko\\_dissenting\\_statement\\_17-1-17a.pdf](https://www.ftc.gov/system/files/documents/cases/170117qualcomm_mko_dissenting_statement_17-1-17a.pdf)

<sup>239</sup> Malathi Nayak, "Groups Urge Trump to Pursue FTC-Qualcomm Antitrust Suit," *Bloomberg BNA* (April 24, 2017), <https://www.bna.com/groups-urge-trump-n57982087012/>

<sup>240</sup> Maureen K. Ohlhausen, "Antitrust Policy for a New Administration," U.S. Federal Trade Commission (Jan. 24, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1051993/antitrust\\_policy\\_for\\_a\\_new\\_administration.pdf](https://www.ftc.gov/system/files/documents/public_statements/1051993/antitrust_policy_for_a_new_administration.pdf)

<sup>241</sup> Press Release, "Process Reform Initiatives are Already Underway at the Federal Trade Commission," U.S. Federal Trade Commission (April 17, 2017), <https://www.ftc.gov/news-events/press-releases/2017/04/process-reform-initiatives-are-already-underway-federal-trade>

<sup>242</sup> Press Release, "Latta Pleased to See Process Reforms Well Underway at FTC," U.S. House of Representatives Energy and Commerce Committee (April 17, 2017), <https://energycommerce.house.gov/news/press-release/latta-pleased-see-process-reforms-well-underway-ftc/>

In May 2018, Joseph Simons was sworn in,<sup>243</sup> as were three of Trump's FTC commissioner nominees: Republican Joshua Phillips and Democrats Rebeca Kelly Slaughter and Rohit Chopra.<sup>244</sup> A fifth Republican nominee, Christine Wilson, will take the place of Ohlhausen, who Trump has nominated to serve as a federal claims court judge,<sup>245</sup> after she leaves the agency.

Simons is an antitrust lawyer who served as director of the Bureau of Competition from 2001 to 2003<sup>246</sup> 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.<sup>247</sup>

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.<sup>248</sup>

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,<sup>249</sup> which in 2016 received a \$1.3 billion penalty from the FTC for engaging in an illegal predatory lending scheme.<sup>250</sup> Smith was approved by a 3-2 party line vote among the commissioners.

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<sup>243</sup> Press Release, "Joseph Simons Sworn in as Chairman of the FTC," U.S. Federal Trade Commission (May 1, 2018),

<https://www.ftc.gov/news-events/press-releases/2018/05/joseph-simons-sworn-chairman-ftc>

<sup>244</sup> Press Release, "Phillips, Slaughter, and Chopra Sworn in as FTC Commissioners," U.S. Federal Trade Commission (May 2,

2018), <https://www.ftc.gov/news-events/press-releases/2018/05/phillips-slaughter-chopra-sworn-ftc-commissioners>

<sup>245</sup> Harper Neidig, "Senate confirms full slate of FTC commissioners," The Hill (April 26, 2018),

<http://thehill.com/policy/technology/385096-senate-confirms-full-slate-of-ftc-commissioners>

<sup>246</sup> Press Release, "FTC Bureau of Competition Director Simons Passes Baton," U.S. Federal Trade Commission (July 10, 2003),

<https://www.ftc.gov/news-events/press-releases/2003/07/ftc-bureau-competition-director-simons-passes-baton>

<sup>247</sup> Questionnaire answers submitted by Joseph Jay Simons to the U.S. Senate Committee on Commerce, Science and

Transportation (Oct. 19, 2017), <https://www.commerce.senate.gov/public/index.cfm/nominations>

<sup>248</sup> "Joseph J. Simons," Paul, Weiss, Rifkind, Wharton & Garrison LLP, (viewed on April 24, 2018),

<https://www.paulweiss.com/professionals/partners-and-counsel/joseph-j-simons>

<sup>249</sup> Glenn Thrush and Jack Nicas, "A Lawyer for Payday Lenders Is Confirmed for F.T.C. Job," The New York Times (May 16, 2018),

<https://www.nytimes.com/2018/05/16/us/andrew-smith-payday-lenders-consumer-protection.html>

<sup>250</sup> Press Release, "U.S. Court Finds in FTC's Favor and Imposes Record \$1.3 Billion Judgment Against Defendants Behind AMG

Payday Lending Scheme," U.S. Federal Trade Commission (Oct. 4, 2016), <https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment>



The commissioners unanimously approved the appointees to head the agency's competition and economics bureaus.<sup>251</sup>

### 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.<sup>252</sup>

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

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

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

<sup>251</sup> Diane Bartz, "Democrats on FTC vote no on consumer protection appointee," The New York Times (May 16, 2018), <https://www.reuters.com/article/us-usa-ftc/democrats-on-ftc-vote-no-on-consumer-protection-appointee-idUSKCN1IH36K>

<sup>252</sup> 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.<sup>253</sup> 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.<sup>254</sup> Under the Trump administration, the FTC reached a \$4 billion settlement with Volkswagen customers who had purchased three-liter engine vehicles.<sup>255</sup> 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<sup>256</sup> 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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<sup>253</sup> Jeff S. Bartlett, Michelle Naranjo, and Jeff Plungis, "Guide to the Volkswagen Emissions Recall: An FAQ with everything you need to know about the VW 'Dieselgate'," Consumer Reports (Oct. 23, 2017),

<https://www.consumerreports.org/cro/cars/guide-to-the-volkswagen-dieselgate-emissions-recall->

<sup>254</sup> Press Release, "Billions back to consumers for VW's false 'clean diesel' claims," U.S. Federal Trade Commission (June 28, 2016), <https://www.ftc.gov/news-events/blogs/business-blog/2016/06/billions-back-consumers-vws-false-clean-diesel-claims>

<sup>255</sup> Press Release, "Federal Judge Approves FTC Order for Owners of Certain Volkswagen, Audi, and Porsche 3.0 Liter 'Clean' Diesels to Receive Refunds," U.S. Federal Trade Commission (June 28, 2016), <https://www.ftc.gov/news-events/press-releases/2017/05/federal-judge-approves-ftc-order-owners-certain-volkswagen-audi>

<sup>256</sup> "FTC Annual Reports," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/policy/reports/policy-reports/ftc-annual-reports>

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

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

Source: Federal Trade Commission Annual Highlights reports for fiscal years 2015<sup>257</sup>, 2016<sup>258</sup> and 2017.<sup>259</sup>

#### 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](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.

<sup>257</sup> "Annual Highlights 2015," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/reports/annual-highlights-2015>

<sup>258</sup> "Annual Highlights 2016," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/reports/annual-highlights-2016>

<sup>259</sup> "Annual Highlights 2017," U.S. Federal Trade Commission (viewed on April 24, 2018), <https://www.ftc.gov/reports/annual-highlights-2017>

### III. ENVIRONMENTAL PROTECTION

## 7. Bureau of Safety and Environmental Enforcement

*"Help is on the way."*<sup>260</sup>

–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.]

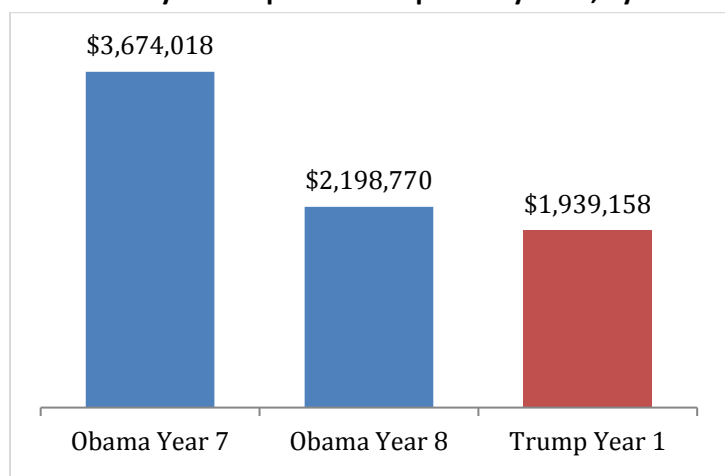
*For section-specific methodological notes, see page 65.*

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

Year	Cases	Penalties	Average
Trump 1	24	\$1,939,158	\$80,798
Obama 8	27	\$2,198,770	\$81,436
Obama 7	42	\$3,674,018	\$87,477

SOURCE: Public Citizen analysis of BSEE data.

<sup>260</sup> Eric Lipton, "Trump Rollbacks Target Offshore Rules 'Written With Human Blood,'" The New York Times (March 10, 2018), <http://nyti.ms/2FF5xJT>

**Figure 7.1: Summary of civil penalties imposed by BSEE, by administration.**

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<sup>261</sup> and emerged from bankruptcy later that year.<sup>262</sup> BSEE found methane gas “bubbling up” from two wells Energy XXI had abandoned.<sup>263</sup> 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.<sup>264</sup>

### 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.<sup>265</sup>

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.”<sup>266</sup> BSEE’s enforcement powers include issuing civil

<sup>261</sup> “Energy XXI Files for Bankruptcy Protection,” Reuters (April 14, 2016), <https://cnb.cx/2qmLSES>.

<sup>262</sup> “Energy XXI Successfully Completes Financial Restructuring,” Energy XXI Gulf Coast, Inc. (Dec. 30, 2016), <http://bit.ly/2Hruian>

<sup>263</sup> Bureau of Safety and Environmental Enforcement, Safety Enforcement, Civil Penalties Fiscal Year 2017, <https://www.bsee.gov/sites/bsee.gov/files/cp-paid-fy2017.pdf>

<sup>264</sup> Eric Lipton, “Trump Rollbacks Target Offshore Rules ‘Written With Human Blood,’” *The New York Times* (March 10, 2018), <http://nyti.ms/2FF5xJT>

<sup>265</sup> Bureau of Safety and Environmental Enforcement, About Us, <https://www.bsee.gov/who-we-are/about-us>

<sup>266</sup> *Ibid.*

penalties as well as referring criminal cases to the Department of the Interior's Office of Inspector General (OIG).<sup>267</sup>

### 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.<sup>268</sup> 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.<sup>269</sup> The country demanded action to ensure no such disaster would ever happen again.

After the disaster, President Obama promised reform.<sup>270</sup> 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,<sup>271</sup> 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.”<sup>272</sup> 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.”<sup>273</sup>

#### **“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.<sup>274</sup> Prior to joining BSEE, Angelle was an elected member Louisiana Public Service Commission, the state's public utility regulator.<sup>275</sup> A native of Louisiana, Angelle is described as a “longtime ally” of the offshore drilling industry.<sup>276</sup>

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*.<sup>277</sup> In 2010, Angelle was appointed interim lieutenant governor of Louisiana – a position he held for six

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<sup>267</sup> Bureau of Safety and Environmental Enforcement, Safety Enforcement, Civil Penalties, <https://www.bsee.gov/what-we-do/safety-enforcement/civil-penalties>

<sup>268</sup> 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>

<sup>269</sup> Joel Achenbach, “BP's Cost Cuts Contributed to Oil Spill Disaster, Federal Probe Finds,” *The Washington Post* (Sept. 14, 2011), <http://wapo.st/2piwQ1A>

<sup>270</sup> Jesse Lee, “President Obama's Oval Office Address on the BP Oil Spill: ‘A Faith in the Future that Sustains us as a People,’” *The White House of President Barack Obama* (June 16, 2010), <http://bit.ly/2pi4pRw>

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> Bureau of Safety and Environmental Enforcement, Director, <https://www.bsee.gov/who-we-are/our-organization/leadership/director>

<sup>275</sup> Bureau of Safety and Environmental Enforcement, Director, <https://www.bsee.gov/who-we-are/our-organization/leadership/director>

<sup>276</sup> Ted Mann, “Longtime Ally of Offshore Drillers Oversees Safety Agency,” *The Wall Street Journal* (Oct. 30, 2017), <http://on.wsj.com/2DxXU2b>

<sup>277</sup> Mark Schleifstein, “Louisiana Politician Scott Angelle Chosen to Head Federal Offshore Oil Safety Agency,” *The Times-Picayune* (May 22, 2017), <http://bit.ly/2GAksCm>

months.<sup>278</sup> The highlight of his short tenure as lieutenant governor – according to his official biography<sup>279</sup> – 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<sup>280</sup> Sunoco Logistics between 2013 and 2016, for which he was paid close to \$1 million.<sup>281</sup> 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.<sup>282</sup> 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.<sup>283</sup> 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<sup>284</sup> to one of Angelle’s political campaign. At least five of those companies have met with Angelle since he assumed office in Washington.<sup>285</sup>

### **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.”<sup>286</sup> 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.”<sup>287</sup>

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.<sup>288</sup> This philosophy contrasts with how the BSEE’s first director, Michael Bromwich, views the agency. The regulator’s

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<sup>278</sup> *Ibid.*

<sup>279</sup> Bureau of Safety and Environmental Enforcement, Director, <https://www.bsee.gov/who-we-are/our-organization/leadership/director>

<sup>280</sup> See <http://www.sunocologistics.com/>

<sup>281</sup> Jack Fitzpatrick, “Interior’s Pick to Lead Offshore Oil Regulator Has Industry Ties,” Morning Consult (May 22, 2017), <http://bit.ly/2Iulvn1>

<sup>282</sup> Louisiana Ethics Administration Program, Campaign Finance Search, Allan Duran Louisiana Rising PAC, Report ID LA-50770, <http://ethics.la.gov/CampaignFinanceSearch/ShowEForm.aspx?ReportID=50770>

<sup>283</sup> Center for Responsive Politics, Louisiana District 03 Race 2016, Top Industries <https://www.opensecrets.org/races/industries?cycle=2016&id=LA03&spec=N>

<sup>284</sup> This includes instances where the CEO, Owner, or President and his or her family contributed directly to Angelle.

<sup>285</sup> 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)

<sup>286</sup> Eric Lipton, “Trump Rollbacks Target Offshore Rules ‘Written With Human Blood,’” The New York Times (March 10, 2018), <http://nyti.ms/2FF5xJT>

<sup>287</sup> *Ibid.*

<sup>288</sup> Ted Mann, “Longtime Ally of Offshore Drillers Oversees Safety Agency,” The Wall Street Journal (Oct. 30, 2017), <http://on.wsj.com/2DxXU2b>

“mission is not to expand domestic production,” Bromwich recently told the *Wall Street Journal*,<sup>289</sup> adding that under Angelle’s leadership, BSEE has become a “cheerleader for the industry.”<sup>290</sup>

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*.<sup>291</sup> In response, Public Citizen wrote in public comments<sup>292</sup> 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.”<sup>293</sup> Many regulations Angelle plans to weaken were designed to fix problems found during the investigation into the Deepwater Horizon disaster.<sup>294</sup>

BSEE has claimed its efforts to roll back safety regulations will save the industry more than \$900 million over the next decade.<sup>295</sup> 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.<sup>296</sup>

### **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*.<sup>297</sup>

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.

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<sup>289</sup> Ted Mann, “Proposed Changes to Offshore Drilling Rules Raise Safety Questions,” *The Wall Street Journal* (Jan. 2, 2018), <http://on.wsj.com/2GyfrKd>

<sup>290</sup> *Ibid.*

<sup>291</sup> Ted Mann, “Regulators Propose Rollbacks to Offshore Drilling Safety Measures,” *The Wall Street Journal* (Dec. 25, 2017), <http://on.wsj.com/2Gxn5F3>.

<sup>292</sup> Shanna Devine, Public Citizen Comments BSEE RIN 1014-AA37, Public Citizen (Jan. 29, 2018), <http://bit.ly/2G8SVu2>.

<sup>293</sup> *Id.*

<sup>294</sup> Eric Lipton, “Trump Rollbacks Target Offshore Rules ‘Written With Human Blood,’” *The New York Times* (March 10, 2018), <http://nyti.ms/2FF5xJT>.

<sup>295</sup> Ted Mann, “Regulators Propose Rollbacks to Offshore Drilling Safety Measures,” *The Wall Street Journal* (Dec. 25, 2017), <http://on.wsj.com/2Gxn5F3>

<sup>296</sup> 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/2HFLIEn>

<sup>297</sup> Eric Lipton, “Trump Rollbacks Target Offshore Rules ‘Written With Human Blood,’” *The New York Times* (March 10, 2018), <http://nyti.ms/2FF5xJT>



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*.<sup>298</sup> 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.**

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

SOURCE: Public Citizen analysis of BSEE data.

<sup>298</sup> Joel Achenbach, “BP’s Cost Cuts Contributed to Oil Spill Disaster, Federal Probe Finds,” *The Washington Post* (Sept. 14, 2011), <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 8.1: Summary of EPA enforcement orders and penalties imposed from Jan. 20, 2015, through Jan. 19, 2018.**

Administration	Cases	Penalties
Trump 1	1,847	\$1.46 B
Obama 8	2,107	\$23.87 B
Obama 7	2,197	\$20.08 B
Total	6,151	\$45.42 B

*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.<sup>299</sup> The EPA is tasked with ensuring compliance with the U.S. environmental laws<sup>300</sup> 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.<sup>301</sup> Pruitt was the attorney general of Oklahoma. Pruitt has questioned the science behind climate change, claiming it is “far from settled,”<sup>302</sup> has denied that carbon dioxide is a “primary contributor” to global warming,<sup>303</sup> and has suggested that global warming may actually be beneficial.<sup>304</sup> As the Oklahoma attorney general, Pruitt sued the EPA over its clean power plan rule<sup>305</sup> and worked closely with the

<sup>299</sup> “EPA History,” Environmental Protection Agency (viewed on March 8, 2018), <https://www.epa.gov/history>

<sup>300</sup> “Laws and Executive Orders,” Environmental Protection Agency (viewed on March 8, 2018), <https://www.epa.gov/laws-regulations/laws-and-executive-orders>

<sup>301</sup> “EPA’s Administrator, Scott Pruitt,” Environmental Protection Agency (viewed on March 8, 2018), <https://www.epa.gov/aboutepa/epas-administrator>

<sup>302</sup> Scott Pruitt, “The Climate-Change Gang,” National Review (May 17, 2017), <https://www.nationalreview.com/2016/05/climate-change-attorneys-general/>

<sup>303</sup> Emily Atkin, “Minutes,” New Republic (March 8, 2017), <https://newrepublic.com/minutes/141238/epa-chief-scott-pruitt-just-went-full-climate-denier>

<sup>304</sup> Dino Grandoni, Brady Dennis and Chris Mooney, “EPA’s Scott Pruitt asks whether global warming ‘necessarily is a bad thing’” Washington Post (Dec. 8, 2018), [https://www.washingtonpost.com/news/energy-environment/wp/2018/02/07/scott-pruitt-asks-if-global-warming-necessarily-is-a-bad-thing/?utm\\_term=.2949f823d044](https://www.washingtonpost.com/news/energy-environment/wp/2018/02/07/scott-pruitt-asks-if-global-warming-necessarily-is-a-bad-thing/?utm_term=.2949f823d044)

<sup>305</sup> Press release, Oklahoma Office of the Attorney General, “AG Pruitt Sues EPA for Unlawful Clean Power Plan Rule” (July 1, 2015), [https://www.ok.gov/triton/modules/newsroom/newsroom\\_article.php?id=258&article\\_id=16092](https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=16092)

fossil fuel industry.<sup>306</sup> 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.

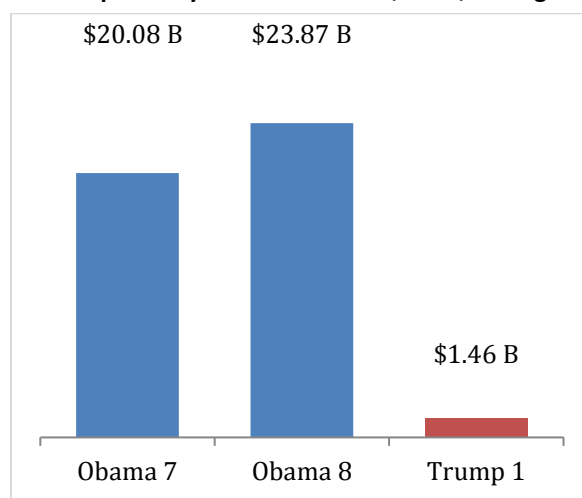
The president's attitude towards the EPA only reinforced this belief. As a candidate, Donald Trump pledged to get rid of the EPA "in almost every form," and leave only "little tidbits" of the agency intact, according to the *Washington Post*.<sup>307</sup>

### 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.<sup>308</sup> 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.**



<sup>306</sup> Eric Lipton, "A Window Into a Secret Alliance: Attorneys General and the Energy Industry," *The New York Times* (Dec. 6, 2014), <https://www.nytimes.com/interactive/2014/12/07/us/politics/documents-attorneys-general-and-the-energy-industry.html> & Eric Lipton, "Energy Firms in Secretive Alliance With Attorneys General," *The New York Times* (Dec. 6, 2014), [https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html?\\_r=0](https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html?_r=0)

<sup>307</sup> Brady Dennis and Juliet Eilperin, "Trump's budget takes a sledgehammer to the EPA," *The Washington Post* (March 16, 2017), [https://www.washingtonpost.com/national/health-science/budget-reflects-trumps-vow-to-cut-epa-in-almost-every-form/2017/03/15/0611db20-09a5-11e7-a15f-a58d4a988474\\_story.html?utm\\_term=.f90697b29f42](https://www.washingtonpost.com/national/health-science/budget-reflects-trumps-vow-to-cut-epa-in-almost-every-form/2017/03/15/0611db20-09a5-11e7-a15f-a58d4a988474_story.html?utm_term=.f90697b29f42)

<sup>308</sup> EPA Data Downloads, "ICIS-FE&C Download Summary and Data Element Dictionary," <https://echo.epa.gov/tools/data-downloads/icis-fec-download-summary>

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

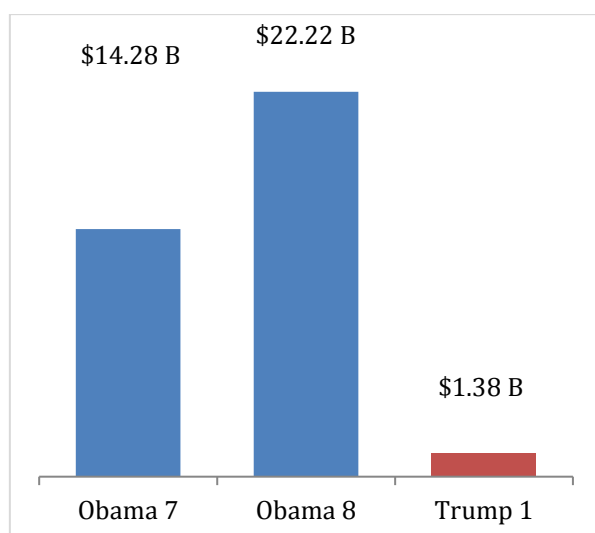
The EPA's database of enforcement actions list several categories of penalties, including "federal penalties," which are essentially fines for violating the law, and "compliance action costs," which defendants pay to remediate environmental offenses. As noted above, this report collectively refers to 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.

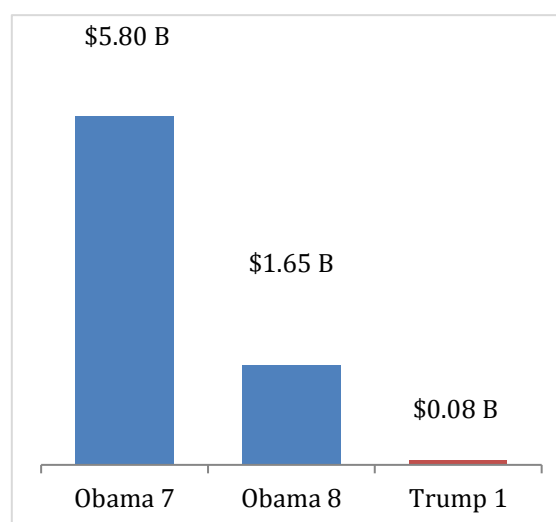
Total compliance action costs for enforcement orders issued in Trump's first year plummeted by 94 percent compared to Obama's eighth year and by 90 percent compared to Obama's seventh year. [Figure 8.2]

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]

**Figure 8.2: Total EPA compliance action costs**



**Figure 8.3: Total federal penalties**

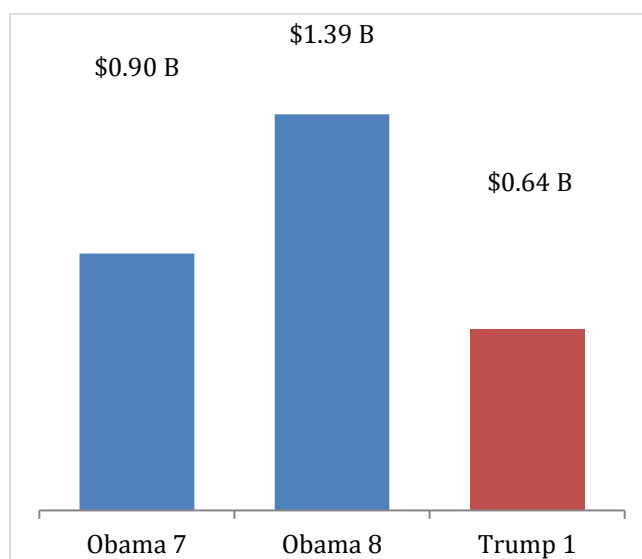


### Breakdown: Administrative Actions and Judicial Actions

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.**



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

**Table 8.2: Total compliance action costs related to administrative enforcement orders**

Administration	Number of Administrative Orders With Compliance Costs	Total Compliance Action Costs Relating to Administrative Orders	Average Compliance Action Costs for Administrative Orders
Trump 1	1,317	\$593,190,834	\$450,411
Obama 8	1,500	\$1,338,680,908	\$892,454
Obama 7	1,592	\$857,342,353	\$538,532
Total	4,409	\$2,789,214,094	\$632,618

In Trump's first year, federal penalties assessed in administrative enforcement orders fell by 15 percent. [Table 8.3]

**Table 8.3: Total federal penalties related to administrative enforcement orders**

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

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.<sup>309</sup>

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Judicial enforcement orders involve lawsuits filed<sup>310</sup> against companies or individuals that fail to comply with one or more of laws enforced by the EPA.<sup>311</sup> Judicial enforcement orders also can occur if an entity fails to comply with an EPA administrative order<sup>312</sup> or if an entity or individual fails to pay the EPA what it is owed for cleanup work.<sup>313</sup>

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

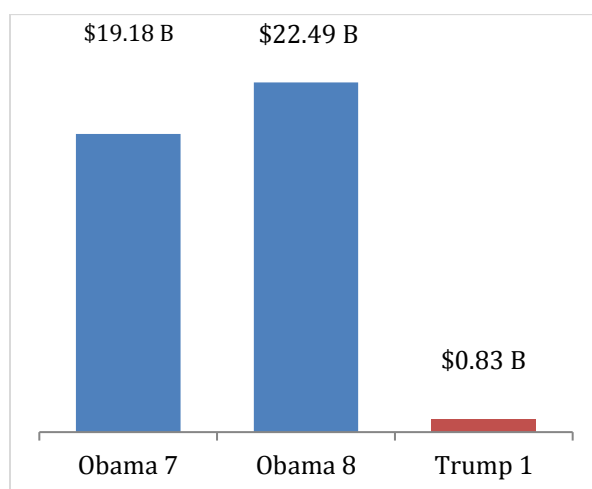
<sup>309</sup> For reference: for Obama year seven, less than one percent of the administrative enforcement orders we entered after April 2016. For Obama year eight, three percent of the administrative enforcement orders we entered after April 2017. As Public Citizen downloaded the EPA data on April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

<sup>310</sup> EPA Enforcement Basics, "Enforcement Basic Information," <https://www.epa.gov/enforcement/enforcement-basic-information>

<sup>311</sup> EPA Data Downloads, "ICIS-FE&C Download Summary and Data Element Dictionary," <https://echo.epa.gov/tools/data-downloads/icis-fec-download-summary>

<sup>312</sup> EPA Enforcement Basics, "Enforcement Basic Information," <https://www.epa.gov/enforcement/enforcement-basic-information>

<sup>313</sup> *Ibid.*

**Figure 8.5: Judicial enforcement orders total penalties**

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**

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

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**

Administration	Number of Judicial Orders Concluded With Federal Penalties	Total Federal Penalties	Average Federal Penalty
Trump 1	49	\$35,909,241	\$732,842
Obama 8	82	\$1,605,115,660	\$19,574,581
Obama 7	84	\$5,757,845,574	\$68,545,781
Total	215	\$7,398,870,475	\$34,413,351



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.<sup>314</sup>

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

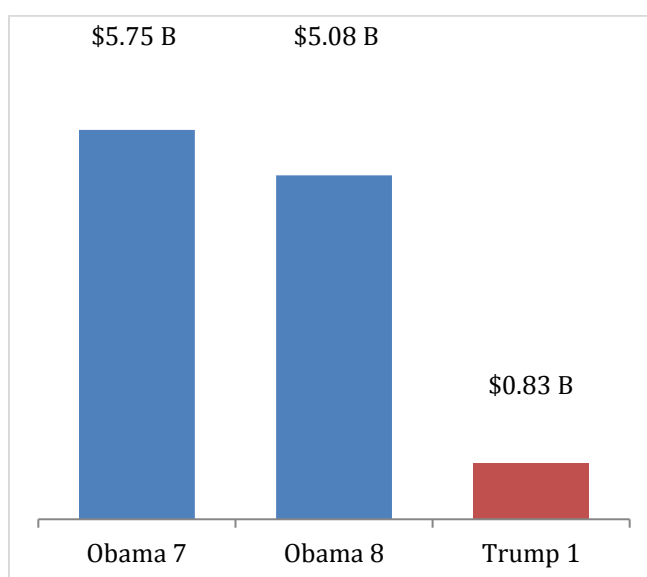
Two extraordinary enforcement orders were issued in the final years of the Obama administration. These involved actions against BP concerning the record-breaking 2010 Deepwater Horizon oil spill off the coast of Gulf of Mexico, and against Volkswagen for selling diesel vehicles that emitted pollutants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

**Figure 8.6: Judicial enforcement orders total penalties (Volkswagen and BP enforcement orders excluded)**



<sup>314</sup> 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)**

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

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)**

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

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.**

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

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.<sup>315</sup> 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.<sup>316</sup> "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.

<sup>315</sup> Eric Lipton and Danielle Ivory, "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers," *The New York Times* (Dec. 10, 2017),

<https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html>

<sup>316</sup> EPA News Release, "EPA Announces 2017 Annual Environmental Enforcement Results,"

<https://www.epa.gov/newsreleases/epa-announces-2017-annual-environmental-enforcement-results>

## EPA Methodology

This report relies on the EPA's downloadable<sup>317</sup> Federal Enforcement and Compliance (FE&C) data, taken from the agency's Integrated Compliance Information System (ICIS).<sup>318</sup>

The dataset includes all EPA civil enforcement orders.<sup>319</sup> 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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<sup>317</sup> EPA Data Downloads, "ICIS-FE&C Download Summary and Data Element Dictionary," <https://echo.epa.gov/tools/data-downloads/icis-fec-download-summary>

<sup>318</sup> <https://echo.epa.gov/tools/data-downloads>

<sup>319</sup> EPA Data Downloads, "ICIS-FE&C Download Summary and Data Element Dictionary," <https://echo.epa.gov/tools/data-downloads/icis-fec-download-summary>

## 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:

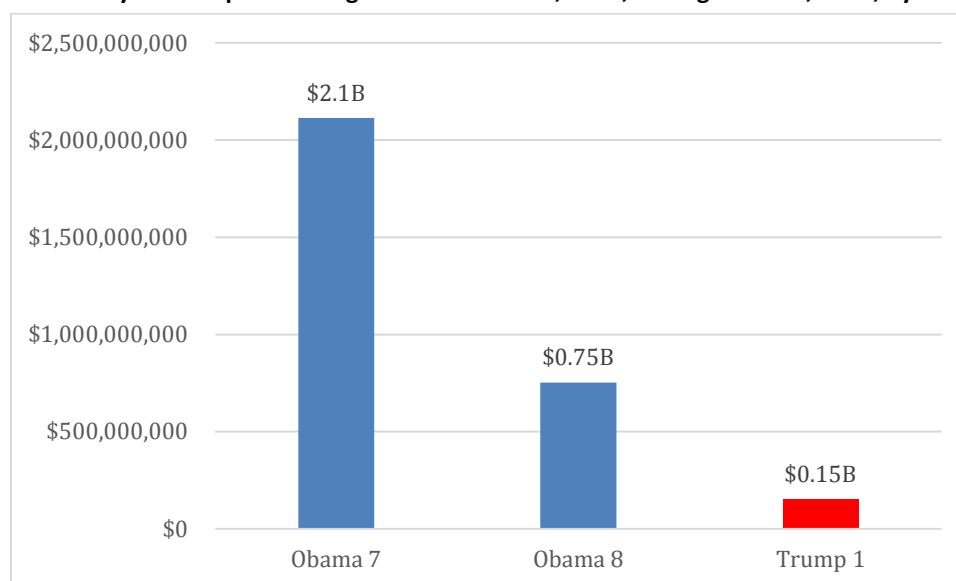
- Completed 36 enforcement actions against corporations, in Trump's first year in office, down from 51 in Obama's last year.
- Issued about \$153 million in penalties during Trump's first year, down from more than \$751 million a year earlier and about \$2.1 billion in the prior year. [See Figure 9.1.]

*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.**

Year	Cases	Penalties	Average
Trump 1	36	\$153,469,100	\$4,263,031
Obama 8	51	\$751,793,192	\$14,741,043
Obama 7	43	\$2,113,852,436	\$49,159,359

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.<sup>320</sup>

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.<sup>321</sup> 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,<sup>322</sup> 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.<sup>323</sup> Gensler did turn out to be a polarizing figure, but among corporate defense lawyers rather who criticized Gensler's CFTC as "hyper-aggressive."<sup>324</sup> Advocates for stronger enforcement, meanwhile, praised

<sup>320</sup> "Commissioners," U.S. Commodity Futures Trading Commission, (viewed on April 24, 2018),

<http://www.cftc.gov/About/Commissioners/index.htm>

<sup>321</sup> "Enforcement: Office of the Director," U.S. Commodity Futures Trading Commission, (viewed on April 24, 2018),

<https://www.cftc.gov/LawRegulation/Enforcement/OfficeofDirectorEnforcement.html>

<sup>322</sup> "Former Commissioners: Chairman Gary Gensler," U.S. Commodity Futures Trading Commission (viewed on April 25, 2018),

<https://www.cftc.gov/About/Commissioners/FormerCommissioners/ggensler.html>

<sup>323</sup> "Sen. Sanders Blocking Vote to Confirm Obama Nominee Who Worked to Deregulate Credit Default Swaps," Democracy Now! (March 25, 2009), [https://www.democracynow.org/2009/3/25/sen\\_sanders\\_blocking\\_vote\\_to\\_confirm](https://www.democracynow.org/2009/3/25/sen_sanders_blocking_vote_to_confirm)

<sup>324</sup> Richard Hill, "Narrowing CFTC Enforcement Possible Under Trump, Lawyers Say," Bloomberg BNA (Dec. 8, 2016), <https://www.bna.com/narrowing-cftc-enforcement-n73014448244/>

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."<sup>325</sup>

After Gensler departed the agency, a Treasury Department official under Obama and former corporate lawyer, Timothy Massad<sup>326</sup> took the reins. On the first day of Donald Trump's presidency, Massad stepped down from his chairmanship, and Christopher Giancarlo, a former swaps executive<sup>327</sup> and Republican member of the CFTC since 2014, was designated acting chairman.<sup>328</sup> 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.<sup>329</sup>

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,<sup>330</sup> left the agency early in Trump's presidency<sup>331</sup> and was replaced by James McDonald, most recently a federal prosecutor in New York.<sup>332</sup> 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."<sup>333</sup>

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.<sup>334</sup> Former CFTC Enforcement Director Goelman, now an attorney with Zuckerman Spaeder,<sup>335</sup> agreed in an interview with *The New York Times* that

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<sup>325</sup> Russell Mokhiber, "Public Citizen's Bartlett Naylor on Too Big to Fail and Too Big to Jail," Corporate Crime Reporter (April 14, 2015), <https://www.corporatecrimereporter.com/news/200/public-citizens-bartlett-naylor-on-too-big-to-fail-too-big-to-jail-and-too-big-to-manage/>

<sup>326</sup> "Commissioner Timothy G. Massad," U.S. Commodity Futures Trading Commission (viewed on April 25, 2018), <http://www.cftc.gov/About/Commissioners/ChairmanTimothyG.Massad/index.htm>

<sup>327</sup> Benjamin Bain and Robert Schmidt, "Trump Picks Former Swaps Executive Giancarlo to Lead CFTC," Bloomberg News (March 14, 2017), <https://www.bloomberg.com/news/articles/2017-03-15/former-swaps-executive-giancarlo-picked-by-trump-to-lead-cftc>

<sup>328</sup> "Chairman J. Christopher Giancarlo," U.S. Commodity Futures Trading Commission (viewed on April 25, 2018), <http://www.cftc.gov/About/Commissioners/JChristopherGiancarlo/index.htm>

<sup>329</sup> Benjamin Bain, "Ex-CFTC Counsel Is Likely Pick for Democratic Slot, Sources Say," Bloomberg News (Feb. 20, 2018), <https://www.bloomberg.com/news/articles/2018-02-20/ex-cftc-counsel-is-said-to-be-pick-for-agency-s-democratic-slot>

<sup>330</sup> Press Release, "CFTC Chairman Massad Announces the Appointment of Aitan Goelman as Director of Enforcement," U.S. Commodity Futures Trading Commission (June 10, 2014), <https://www.cftc.gov/PressRoom/PressReleases/pr6946-14>

<sup>331</sup> Press Release, "Enforcement Director Aitan Goelman to Leave CFTC," U.S. Commodity Futures Trading Commission (Jan. 19, 2017), <http://www.cftc.gov/PressRoom/PressReleases/pr7517-17>

<sup>332</sup> *Ibid.*

<sup>333</sup> James McDonald, Director of the Division of Enforcement, "Perspectives on Enforcement: Self-Reporting and Cooperation at the CFTC," U.S. Commodity Futures Trading Commission (Sept. 25, 2017), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald092517>

<sup>334</sup> *Ibid.*

<sup>335</sup> Press Release, "Former CFTC Enforcement Chief Aitan Goelman Returns to Zuckerman Spaeder," Zuckerman Spaeder (June 1, 2017), <https://www.zuckerman.com/news/press-release/former-cftc-enforcement-chief-aitan-goelman-returns-zuckerman-spaeder>

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.<sup>336</sup> Goelman, shortly after leaving the CFTC, elsewhere bemoaned the agency’s lack of resources to pursue the “massive amount of misconduct” in the market.<sup>337</sup>

### 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.]

**Table 9.2: Top 20 CFTC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.**

Company	Administration	Penalty Date	Penalty Amount
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

<sup>336</sup> David Enrich, "Regulator Wants Financial Industry to Self-Report Wrongdoing," The New York Times (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/business/cftc-commodity-futures-trading-commission.html>

<sup>337</sup> Karen Freifeld, "Misconduct rife in derivatives - ex-CFTC enforcement chief," Reuters (March 24, 2017), <https://www.reuters.com/article/us-cftc-enforcement-goelman/misconduct-rife-in-derivatives-ex-cftc-enforcement-chief-idUSKBN16V1D0>



U.S. Bank National Association	Obama	2/4/2015	\$18,000,000
DG Wealth Management	Obama	7/5/2016	\$17,499,623
EJS Capital Management	Obama	1/9/2017	\$11,600,000
4X Solutions Inc.	Obama	2/8/2016	\$10,980,904
Cargill Inc.	Trump	11/6/2017	\$10,000,000

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

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.<sup>338</sup> 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.<sup>339</sup>

#### 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](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.

<sup>338</sup> Press Release, "Deutsche Bank to Pay \$800 Million Penalty to Settle CFTC Charges of Manipulation, Attempted Manipulation, and False Reporting of LIBOR and Euribor," U.S. Commodity Futures Trading Commission (April 23, 2015), <http://www.cftc.gov/PressRoom/PressReleases/pr7159-15>

<sup>339</sup> Gabriel T. Rubin, "CFTC Steps Up Enforcement Against Fraud, Market Manipulation," *The Wall Street Journal* (Feb. 27, 2018), <https://www.wsj.com/articles/cftc-steps-up-enforcement-against-fraud-market-manipulation-1519727401>

## 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.]

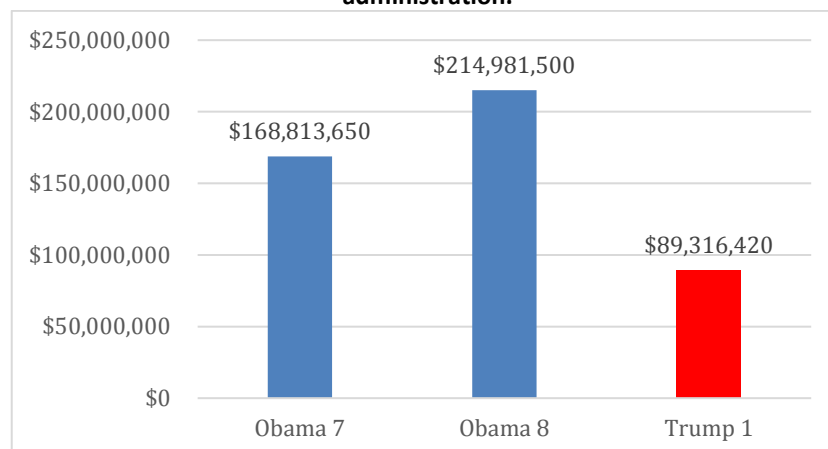
*For section-specific methodological notes, see page 84.*

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

Year	Cases	Penalties	Average
Trump 1	10	\$89,316,420	\$8,931,642
Obama 8	14	\$214,981,500	\$15,355,821
Obama 7	15	\$168,813,650	\$11,254,243

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.<sup>340</sup> It is structured as an independent bureau of the Treasury Department,<sup>341</sup> 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.<sup>342</sup>

## 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<sup>343</sup> 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."<sup>344</sup>

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.<sup>345</sup> His clients included JPMorgan Chase, Bank of America, TD Ameritrade and U.S. Bancorp.<sup>346</sup> 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<sup>347</sup>

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<sup>340</sup> "Congressional Budget Justification and Annual Performance Report and Plan: FY 2018," U.S. Office of the Comptroller of the Currency, (March 31, 2017), <https://www.treasury.gov/about/budget-performance/CJ18/24.%20OCC%20-%20FY%202018%20CJ.pdf>

<sup>341</sup> "About the OCC," U.S. Office of the Comptroller of the Currency, (viewed on April 25, 2018), <https://www.occ.treas.gov/about/what-we-do/mission/index-about.html>

<sup>342</sup> "Enforcement Actions Types," U.S. Office of the Comptroller of the Currency, (viewed on April 25, 2018), <https://www.occ.gov/topics/laws-regulations/enforcement-actions/enforcement-actions-types.html>

<sup>343</sup> Ben Protess and Jessica Silver-Greenberg, "Under Trump, Banking Watchdog Trades Its Bite for a Tamer Stance," The New York Times (Nov. 15, 2017), <https://www.nytimes.com/2017/11/15/business/bank-regulation.html>

<sup>344</sup> Press Release, "OCC Fines Three Banks \$950 Million for FX Trading Improprieties," U.S. Office of the Comptroller of the Currency (Nov. 12, 2014), <https://www.occ.treas.gov/news-issuances/news-releases/2014/nr-occ-2014-157.html>

<sup>345</sup> Press Release, "Thomas J. Curry to Step Down May 5, Keith A. Noreika to Serve as Acting Comptroller of the Currency," U.S. Office of the Comptroller of the Currency (May 3, 2017), <https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-52.html>

<sup>346</sup> David Dayen, "Swamp Watch: Trump's Top Banking Regulator Heads Back to His Wall Street Clients," SWAMP WATCH: TRUMP'S TOP BANKING REGULATOR HEADS BACK TO HIS WALL STREET CLIENTS," The Intercept (Nov. 15, 2017), <https://theintercept.com/2018/01/09/keith-noreika-occ-trump-simpson-thacher/>

<sup>347</sup> Keith Noreika, "Senate should vacate the harmful consumer banking arbitration rule," The Hill (Oct. 13, 2017), <http://thehill.com/opinion/finance/355274-cfpb-rule-increases-consumer-costs-and-makes-banks-less-safe>

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.<sup>348</sup>

Noreika returned to his former law firm<sup>349</sup> 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.<sup>350</sup> CIT Group purchased OneWest for \$3.4 billion in a deal that closed in August 2015.<sup>351</sup>

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 its "responsiveness to our customers, which are the banks."<sup>352</sup> 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."<sup>353</sup> 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.<sup>354</sup>

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."<sup>355</sup> 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.<sup>356</sup>

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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<sup>348</sup> Ben Protess and Jessica Silver-Greenberg, "Under Trump, Banking Watchdog Trades Its Bite for a Tamer Stance," *The New York Times* (Nov. 15, 2017), <https://www.nytimes.com/2017/11/15/business/bank-regulation.html>

<sup>349</sup> Jeff Bater, "Noreika Returns to Simpson Thacher After OCC Stint," *Bloomberg BNA* (Jan. 8, 2018), <https://www.bna.com/noreika-returns-simpson-n73014473909/>

<sup>350</sup> Victoria Guida and Zachary Warmbrodt, "Trump's choice of Mnuchin ally as bank cop leaves Democrats fuming," *Politico* (June 7, 2017), <https://www.politico.com/story/2017/06/07/joseph-otting-trump-bank-regulator-239248>

<sup>351</sup> James F. Peltz, "CIT Group closes \$3.4-billion purchase of OneWest Bank in Pasadena," *Los Angeles Times* (Aug. 3, 2015), <http://www.latimes.com/business/la-fi-onewest-cit-20150804-story.html>

<sup>352</sup> Jesse Hamilton, "Trump Watchdog Tells Banks He Really, Really Likes Them," *Bloomberg News* (April 9, 2018), <https://www.bloomberg.com/news/articles/2018-04-09/trump-picked-watchdog-tells-banks-he-really-really-likes-them>

<sup>353</sup> Ryan Tracy, "OCC's Otting to Make Simplifying Bank Rules One of Top Priorities," *The Wall Street Journal* (Dec. 20, 2017), <https://www.wsj.com/articles/occs-otting-to-make-simplifying-bank-rules-one-of-top-priorities-1513786825>

<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.*

<sup>356</sup> Karen Freifeld, "Mnuchin's former bank in \$89 million settlement over reverse mortgages," *Reuters* (May 16, 2017), <https://www.reuters.com/article/us-financial-freedom-settlement/mnuchins-former-bank-in-89-million-settlement-over-reverse-mortgages-idUSKCN18C2FL>

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

**Table 10.2: Top 20 OCC corporate enforcement cases from Jan. 20, 2015, through Jan. 19, 2018, by size.**

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

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](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.**

Year	Count	Sum	Average
Trump 1	13	\$118,974,240	\$9,151,865
Obama 8	12	\$22,152,920	\$1,846,077
Obama 7	16	\$677,275,449	\$42,329,716

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 individuals<sup>357</sup> 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.<sup>358</sup> By freezing the assets of

<sup>357</sup> "Office of Foreign Assets Control—Overview," Bank Secrecy Act Anti-Money Laundering Examination Manual (viewed on April 25, 2018), [https://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/olm\\_037.htm](https://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_037.htm)

<sup>358</sup> Press Release, "Testimony of John E. Smith Director of the Office of Foreign Assets Control U.S. Department of the Treasury House Committee on Financial Services Subcommittee on Monetary Policy and Trade Thursday, November 30, 2017," U.S. Department of the Treasury (Nov. 30, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0226.aspx>

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

### 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.<sup>360</sup> The Trump administration in March 2017 named John E. Smith, a longtime Treasury, United Nations and Justice Department official,<sup>361</sup> as OFAC’s director,<sup>362</sup> 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.<sup>363</sup>

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.<sup>364</sup> 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.<sup>365</sup> In April 2018, Commerce Secretary Wilbur Ross announced an order banning American companies from selling parts to ZTE for seven years.<sup>366</sup> In practice, a U.S. attorney said the order would be “a death sentence” for ZTE.<sup>367</sup>

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

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<sup>359</sup> *Ibid.*

<sup>360</sup> Madeline Conway, “Mnuchin: Honeymoon plane request was ‘not about convenience,’” Politico (Sept. 14, 2017), <https://www.politico.com/story/2017/09/14/mnuchin-honeymoon-plane-request-was-about-national-security-not-about-convenience-242735>

<sup>361</sup> “John Smith,” LinkedIn profile (viewed on April 25, 2018), <https://www.linkedin.com/in/john-smith-3375a713b/>

<sup>362</sup> Samuel Rubinfeld, “U.S. Treasury Appoints OFAC Director Without Fanfare,” The Wall Street Journal (May 17, 2017), <https://blogs.wsj.com/riskandcompliance/2017/03/17/u-s-treasury-appoints-ofac-director-without-fanfare/>

<sup>363</sup> Samuel Rubinfeld, “U.S. Sanctions Official to Leave Treasury Department,” The Wall Street Journal (April 12, 2018), <https://blogs.wsj.com/riskandcompliance/2018/04/12/u-s-sanctions-official-to-leave-treasury-department/>

<sup>364</sup> Press Release, “U.S. Department of the Treasury Under Secretary Sigal Mandelker Speech before the Securities Industry and Financial Markets Association Anti-Money Laundering & Financial Crimes Conference,” U.S. Department of the Treasury (April 25, 2018), <https://home.treasury.gov/news/press-release/sm0286>

<sup>365</sup> Aruna Viswanatha, Eva Dou and Kate O’Keeffe, “ZTE to Pay \$892 Million to U.S., Plead Guilty in Iran Sanctions Probe,” The Wall Street Journal (March 7, 2017), <https://www.wsj.com/articles/zte-to-pay-892-million-to-u-s-plead-guilty-in-iran-sanctions-probe-1488902019>

<sup>366</sup> Press Release, “Secretary Ross Announces Activation of ZTE Denial Order in Response to Repeated False Statements to the U.S. Government,” U.S. Department of Commerce (April 16, 2018), <https://www.commerce.gov/news/press-releases/2018/04/secretary-ross-announces-activation-zte-denial-order-response-repeated>

<sup>367</sup> Anne Marie Roantree, “China’s ZTE slams U.S. ban, says company’s survival at risk,” Reuters (April 19, 2018), <https://www.reuters.com/article/us-usa-china-zte/chinas-zte-slams-u-s-ban-says-companys-survival-at-risk-idUSKBN1HR085>

<sup>368</sup> Press Release, “Secretary Ross Announces Activation of ZTE Denial Order in Response to Repeated False Statements to the U.S. Government,” U.S. Department of Commerce (April 16, 2018), <https://www.commerce.gov/news/press-releases/2018/04/secretary-ross-announces-activation-zte-denial-order-response-repeated>

negotiations with China.<sup>369</sup> 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!”<sup>370</sup> 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.<sup>371</sup> 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.”<sup>372</sup> 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.’<sup>373</sup>

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.**

Company	Penalty Date	Administration	Penalty Amount
Credit Agricole Corporate and Investment Bank	10/20/2015	Obama	\$329,593,585
Commerzbank AG	3/12/2015	Obama	\$258,660,796
Schlumberger Oilfield Holdings	8/7/2015	Obama	\$77,569,452 <sup>374</sup>
Zhongxing Telecommunications Equipment Corporation (ZTE)	3/7/2017	Trump	\$100,871,266
CSE Global Limited and CSE Trans Tel Pte. Ltd.	7/27/2017	Trump	\$12,027,066

<sup>369</sup> Damian Paletta, Ellen Nakashima, Steven Mufson and Tony Romm, "Penalties against China telecom giant ZTE become a bargaining chip as White House, Chinese officials discuss potential trade deal," The Washington Post (May 13, 2018), <https://www.washingtonpost.com/news/the-switch/wp/2018/05/13/trump-pledges-to-help-chinese-phone-maker-zte-get-back-into-business/>

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

<sup>371</sup> 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\\_5af9f701e4b0200bcab7fa66](https://www.huffingtonpost.com/entry/trump-china-zte_us_5af9f701e4b0200bcab7fa66)

<sup>372</sup> Henry Farrell and Abraham Newman, "Trump’s U-turn on Chinese mega-firm ZTE damages U.S. power and credibility," The Washington Post (May 14, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/14/trumps-u-turn-on-chinese-mega-firm-zte-damages-u-s-power-and-credibility/>

<sup>373</sup> Damian Paletta, Ellen Nakashima, Steven Mufson and Tony Romm, "Penalties against China telecom giant ZTE become a bargaining chip as White House, Chinese officials discuss potential trade deal," The Washington Post (May 13, 2018), <https://www.washingtonpost.com/news/the-switch/wp/2018/05/13/trump-pledges-to-help-chinese-phone-maker-zte-get-back-into-business/>

<sup>374</sup> 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](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150807_schlumberger.pdf)



PayPal Inc.	3/25/2015	Obama	\$7,658,300
Alcon Laboratories, Inc	7/5/2016	Obama	\$7,617,150
National Oilwell Varco and Dresco Energy Services Ltd.	11/14/2016	Obama	\$5,976,028
PanAmerican Seed Company	9/13/2016	Obama	\$4,320,000
Barclays	2/8/2016	Obama	\$2,485,890
Exxon Mobil	7/20/2017	Trump	\$2,000,000
UBS	8/27/2015	Obama	\$1,700,100
Dentsply Sirona Inc.	12/6/2017	Trump	\$1,220,400
Life For Relief and Development	3/25/2015	Obama	\$780,000
CGG Services S.A	2/22/2016	Obama	\$614,250
Blue Sky Blue Sea, Inc. dba American Export Lines and International Shipping Company	8/17/2017	Trump	\$518,063
Toronto-Dominion Bank	1/13/2017	Obama	\$516,105
United Medical Instruments Inc.	2/28/2017	Trump	\$515,400
COSL Singapore Ltd	8/24/2017	Trump	\$415,350
John Bean Technologies Corporation	6/19/2015	Obama	\$391,950

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

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*“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.”<sup>375</sup>*

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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.**

Year	Count	Sum	Average
Trump 1	116	\$927,377,931	\$7,994,637
Obama 8	207	\$2,909,912,692	\$14,057,549
Obama 7	193	\$1,504,725,362	\$7,796,504

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.<sup>376</sup> The agency says it “strives to promote a market environment that is worthy of the public’s trust.”<sup>377</sup> 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.<sup>378</sup> 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.

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<sup>375</sup> 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>

<sup>376</sup> “About the SEC,” U.S. Securities and Exchange Commission (viewed on April 27, 2018), <https://www.sec.gov/about.shtml>

<sup>377</sup> *Ibid.*

<sup>378</sup> “About the Division of Enforcement,” U.S. Securities and Exchange Commission (viewed on April 27, 2018), <https://www.sec.gov/enforce/Article/enforce-about.html>

## 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.<sup>379</sup> The SEC's last Obama-appointed chairman, Mary Jo White, rejoined corporate law firm Debevoise & Plimpton<sup>380</sup> 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.<sup>381</sup>

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.<sup>382</sup> Clayton has represented clients including Goldman Sachs, Deutsche Bank, Barclays and Bear Stearns.<sup>383</sup> 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<sup>384</sup> and advised the Chinese e-commerce company Alibaba Group on its \$25 billion initial public offering, at the time, the largest ever IPO.<sup>385</sup> Clayton's wife, Gretchen Butler Clayton, worked for Goldman Sachs as a wealth management adviser but pledged to leave after her husband's confirmation.<sup>386</sup>

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.<sup>387</sup> Sen. Sherrod Brown (D-Ohio) the top

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<sup>379</sup> Ben Protess and Susanne Craig, SEC's Revolving Door Hurts Its Effectiveness, Report Says, New York Times (Feb. 11, 2013), <https://dealbook.nytimes.com/2013/02/11/s-e-c-s-revolving-door-hurts-its-effectiveness-report-says/>

<sup>380</sup> 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/>

<sup>381</sup> Peter Eavis and Ben Protess, She Runs SEC, He's a Lawyer, Recusals and Headaches Ensur New York Times (Feb 23, 2015), <https://www.nytimes.com/2015/02/24/business/dealbook/sec-hamstrung-by-its-leaders-legal-ties.html>

<sup>382</sup> Leslie Picker, Donald Trump Nominates Wall Street Lawyer to Head S.E.C. -New York Times (Jan 4, 2017), <https://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html>

<sup>383</sup> Ben Protess and Matthew Goldstein, Trump's SEC Nominee Disclosure Offers Rare Glimpse of Clients and Conflicts, New York Times, (March 8 2017), <https://www.nytimes.com/2017/03/08/business/dealbook/sec-nominee-jay-clayton-client-list-conflicts-interest.html>

<sup>384</sup> David Dayen, Trump's SEC Nominee Has a Major Conflict-of-Interest Problem The Nation (March 23, 2017), <https://www.thenation.com/article/trumps-sec-nominee-has-a-major-conflict-of-interest-problem/>

<sup>385</sup> Leslie Picker, Donald Trump Nominates Wall Street Lawyer to Head S.E.C. - The New York Times (Jan 4, 2017), <https://www.nytimes.com/2017/01/04/business/dealbook/donald-trump-sec-jay-clayton.html>

<sup>386</sup> Andrew Ramonas, "SEC Nominee's Wife to Leave Goldman Upon His Confirmation," Bloomberg BNA (Jan. 26, 2017), <https://www.bna.com/sec-nominees-wife-n73014450287/>

<sup>387</sup> Renae Merle, “Democrats Skeptical About SEC Nominee's Ties to Wall Street,” Washington Post, (March 23,2017) <http://wapo.st/2BFxBcX>

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<sup>388</sup> in January 2018, returning the SEC to five commissioners for the first time since 2015,<sup>389</sup> now with three Republicans and two Democrats.<sup>390</sup>

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.<sup>391</sup> 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.<sup>392</sup>

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.”<sup>393</sup>

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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<sup>388</sup> Press Release, “Robert Jackson and Hester Peirce Sworn In as SEC Commissioners,” U.S. Securities and Exchange Commission (Jan. 11, 2018), <https://www.sec.gov/news/press-release/2018-5>

<sup>389</sup> Dave Michaels, “Senate Confirms Robert Jackson, Hester Peirce to Join SEC,” *The Wall Street Journal*, (Dec. 22, 2017), <https://on.wsj.com/2Jdn2OK>

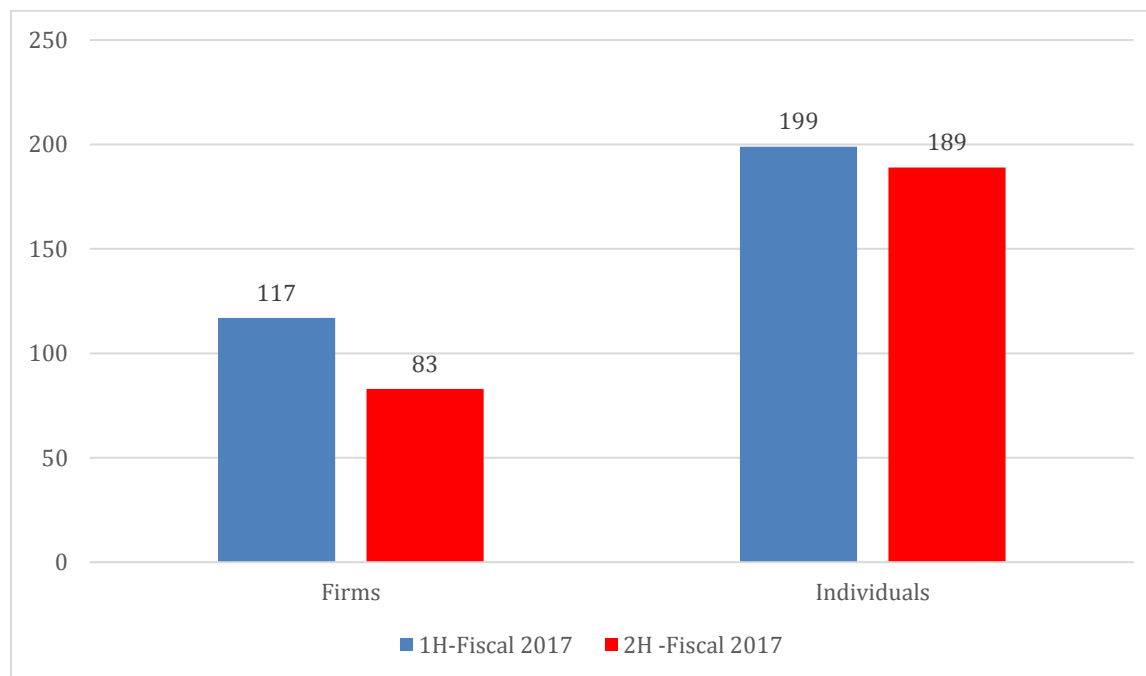
<sup>390</sup> Commissioner Michael S. Piowar, “Remarks at FINRA and Columbia University Market Structure Conference,” U.S. Securities and Exchange Commission (Jan. 11, 2018), <https://www.sec.gov/news/speech/speech-piowar-2017-10-26>

<sup>391</sup> SEC Chairman Jay Clayton, “Remarks at the Economic Club of New York,” U.S. Securities and Exchange Commission (July 12, 2017), <https://www.sec.gov/news/speech/remarks-economic-club-new-york>

<sup>392</sup> Jean Eaglesham and Paul Vigna, “Cryptocurrency Firms Targeted in SEC Probe,” *The Wall Street Journal* (Feb. 28, 2018), <https://www.wsj.com/articles/sec-launches-cryptocurrency-probe-1519856266>

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.**



SOURCE: Database of SEC Penalties compiled by Georgetown Law School professor Urska Velikonja

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<sup>394</sup> 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."<sup>395</sup> 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."<sup>396</sup> 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."<sup>397</sup>

<sup>394</sup> 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/>

<sup>395</sup> "Division of Enforcement Annual Report: A Look Back at Fiscal Year 2017," U.S. Securities and Exchange Commission (Nov. 15, 2017), <https://www.sec.gov/files/enforcement-annual-report-2017.pdf>

<sup>396</sup> *Ibid.*

<sup>397</sup> *Ibid.*

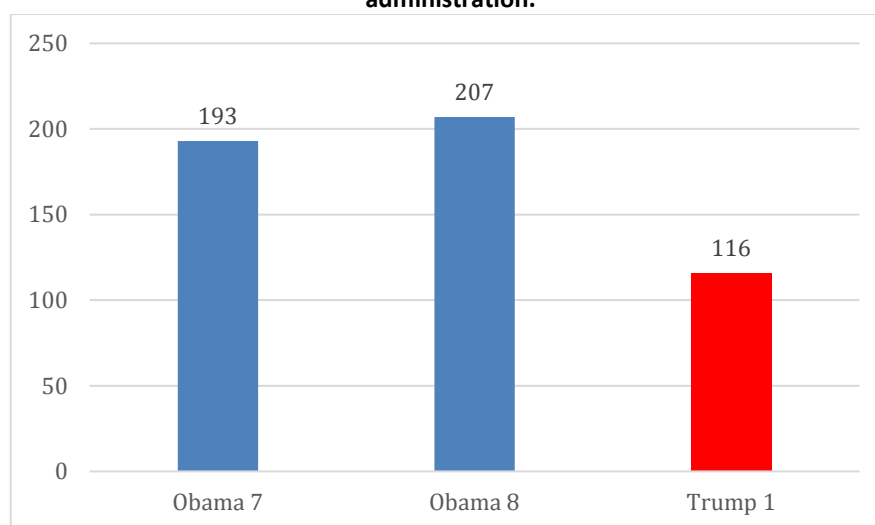
Trump himself has been personally skeptical about a specific law enforced by the SEC and Justice Department. This law, the Foreign Corrupt Practices Act, bars corporations from bribing foreign officials. In a 2012 interview, Trump excoriated the law. “Every other country goes into these places, and they 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.”<sup>398</sup>

Clayton, who represented an Italian oil firm<sup>399</sup> in a case alleging<sup>400</sup> Nigerian officials were bribed with suitcases full of cash, has also been critical of the law. He led the drafting of a 2011 paper<sup>401</sup> arguing that the anti-bribery law imposes unreasonable costs on U.S. corporations and puts them at a disadvantage with overseas competitors.<sup>402</sup> “The United States should reevaluate its approach to the problem of foreign corruption,” the paper said.<sup>403</sup>

### 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](#).

<sup>398</sup> Meredith Mandell and Ari Melber, "Law Trump Hated Could Ensnare Manafort," NBC NEWS (Sept 28, 2017), <https://www.nbcnews.com/politics/white-house/law-trump-hated-could-ensnare-manafort-n805726>

<sup>399</sup> Steve Goldstein, "Trump Pick for SEC Chief May Target Foreign Bribery Enforcement," MARKETWATCH (Jan, 4, 2017) <https://www.marketwatch.com/story/new-sec-chief-may-have-interest-in-reforming-foreign-bribery-enforcement-2017-01-04>

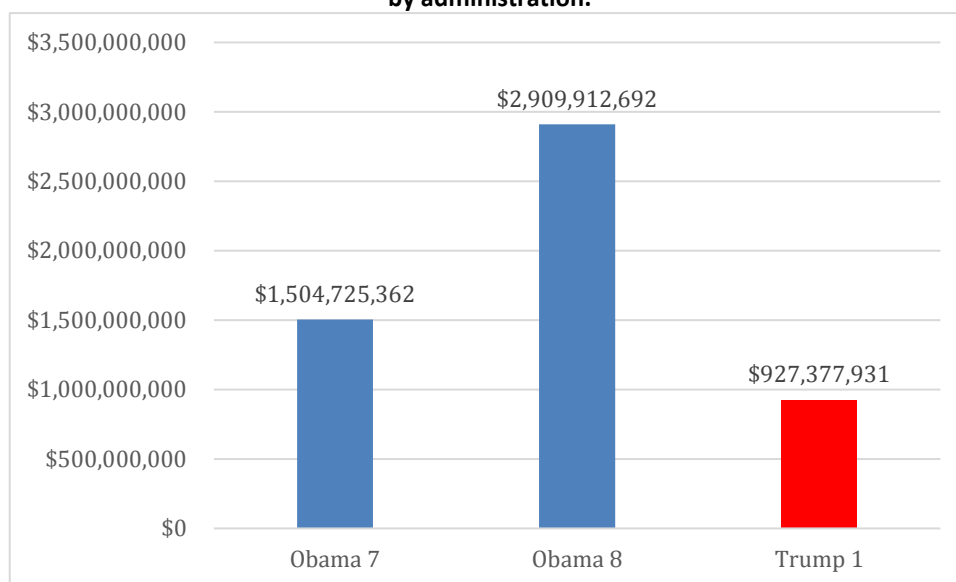
<sup>400</sup> Press Release, "Securities and Exchange Commission v. ENI, S.p.A. and Snamprogetti Netherlands, B.V., Case No. 4:10-cv-02414, S.D. Tex. (Houston)," U.S. Securities and Exchange Commission (July 7, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21588.htm>

<sup>401</sup> "The FCPA and Its Impact on International Business Transactions," New York city Bar Association (Dec. 2011), <https://www2.nycbar.org/pdf/report/uploads/FCPAImpactonInternationalBusinessTransactions.pdf>

<sup>402</sup> Jacob Schlesinger, "SEC Chairman Pick Clayton Criticized 'Zealous' Foreign Bribery Law Enforcement," WALL STREET JOURNAL (Jan. 4, 2017), <https://www.wsj.com/articles/sec-chairman-pick-clayton-criticized-zealous-foreign-bribery-law-enforcement-1483547345>

<sup>403</sup> "The FCPA and Its Impact on International Business Transactions," New York city Bar Association (Dec. 2011), <https://www2.nycbar.org/pdf/report/uploads/FCPAImpactonInternationalBusinessTransactions.pdf>

**Figure 12.3: Dollar Value of SEC enforcement actions 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 18 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<sup>404</sup>, 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.**

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

<sup>404</sup> Jonathan Stempel, “Telia settles U.S., European bribery probes for \$965.8 million,” REUTERS (September 21, 2017), <https://www.reuters.com/article/us-telia-settlement/telia-settles-u-s-european-bribery-probes-for-965-8-million-idUSKCN1BW1XL>

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

SOURCE: Public Citizen analysis of [Violation Tracker database](#).

### 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.<sup>405</sup> 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.<sup>406</sup> 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.<sup>407</sup> 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.<sup>408</sup>

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.<sup>409</sup> 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.<sup>410</sup> In one case,

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<sup>405</sup> Deferred Prosecution Agreement with Aegerion Pharmaceuticals, Inc., U.S. District Court of Massachusetts (Sept. 22, 2017), <https://www.justice.gov/opa/press-release/file/998176/download>

<sup>406</sup> Information: United States of America v. Aegerion Pharmaceuticals, Inc., U.S. District Court of Massachusetts (Sept. 22, 2017), <https://www.justice.gov/opa/press-release/file/998171/download>

<sup>407</sup> "Lomitapide: A Risky Drug for Lowering Cholesterol," Worst Pills, Best Pills (Nov. 2013) [https://www.worstpills.org/member/newsletter.cfm?n\\_id=876](https://www.worstpills.org/member/newsletter.cfm?n_id=876)

<sup>408</sup> Novilion Therapeutics, 2017 Annual Report (March 15, 2017), [http://files.shareholder.com/downloads/AMDA-75YS1U/5275457122x0x933133/69355E29-8DDE-4B11-B668-C3F75FAF6911/NVLN\\_4Q\\_FY\\_2016\\_Earnings\\_Deck\\_Final.pdf](http://files.shareholder.com/downloads/AMDA-75YS1U/5275457122x0x933133/69355E29-8DDE-4B11-B668-C3F75FAF6911/NVLN_4Q_FY_2016_Earnings_Deck_Final.pdf)

<sup>409</sup> Press release, "Drug Maker Aegerion Agrees to Plead Guilty; Will Pay More Than \$35 Million to Resolve Criminal Charges and Civil False Claims Allegations," U.S. Department of Justice (Sept. 22, 2017), <https://www.justice.gov/opa/pr/drug-maker-aegerion-agrees-plead-guilty-will-pay-more-35-million-resolve-criminal-charges-and>

<sup>410</sup> Deferred Prosecution Agreement with Aegerion Pharmaceuticals, Inc., U.S. District Court of Massachusetts (Sept. 22, 2017), <https://www.justice.gov/opa/press-release/file/998176/download>

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

U.S. District Judge William Young in November 2017 rejected the plea agreement Acting U.S. Attorney William Weinreb signed with Aegerion.<sup>412</sup> “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.<sup>413</sup> Aegerion also entered into a five-year Corporate Integrity Agreement with the HHS Office of the Inspector General<sup>414</sup> and, separately for misleading investors, paid \$4.1 million to settle with the SEC.<sup>415</sup> 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.<sup>416</sup> Bloomberg News reported<sup>417</sup> 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.<sup>418</sup> Barclays was rewarded for its reluctance to settle, agreeing to pay

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<sup>411</sup> Nate Raymond, "Doctor admits disclosing patient info to drugmaker Aegerion," Reuters (Feb. 28, 2018), <https://www.reuters.com/article/us-novelion-therape-court/doctor-admits-disclosing-patient-info-to-drugmaker-aegerion-idUSKCN1GC30Z>

<sup>412</sup> Nate Raymond, "U.S. judge sentences Novelion's Aegerion in drug marketing case," Reuters (Jan. 30, 2018), <https://www.reuters.com/article/us-novelion-therape-settlement/u-s-judge-sentences-novelions-aegerion-in-drug-marketing-case-idUSKBN1FJ2ZG>

<sup>413</sup> *Ibid.*

<sup>414</sup> Corporate Integrity Agreement Between the Office of Inspector General of the Department of Health and Human Services and Aegerion Pharmaceuticals, U.S. Department of Health and Human Services (Sept. 22, 2017), [https://oig.hhs.gov/fraud/cia/agreements/Aegerion\\_Pharmaceuticals\\_Inc\\_09222017.pdf](https://oig.hhs.gov/fraud/cia/agreements/Aegerion_Pharmaceuticals_Inc_09222017.pdf)

<sup>415</sup> Press release, "Pharmaceutical Company Paying Penalty for Misleading Investors about Sales Metric," U.S. Securities and Exchange Commission (Sept. 22, 2017), <https://www.sec.gov/litigation/litreleases/2017/lr23942.htm>

<sup>416</sup> Jenny Strasburg, "Barclays to Pay \$2 Billion to Resolve Mortgage-Securities Claims," The Wall Street Journal (March 29, 2018), <https://www.wsj.com/articles/barclays-to-pay-2-billion-to-resolve-mortgage-securities-claims-1522331649>

<sup>417</sup> Zeke Faux and Hugh Son, "Why Barclays CEO Staley Opted for War When Dimon Chose Surrender," Bloomberg (Dec. 23, 2016), <https://www.bloomberg.com/news/articles/2016-12-23/why-barclays-ceo-staley-opted-for-war-when-dimon-chose-surrender>

<sup>418</sup> Stephen Morris and Gavin Finch, "Barclays Wins Its DOJ Gamble With \$2 Billion Mortgage Settlement," Bloomberg (March 29, 2018), <https://www.bloomberg.com/news/articles/2018-03-29/barclays-agrees-to-pay-2-billion-to-settle-u-s-rmbs-suit>

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.<sup>419</sup> 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."<sup>420</sup>

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,<sup>421</sup> \$1.6 million for HSBC<sup>422</sup> and \$15 million for UBS<sup>423</sup> – 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.<sup>424</sup> 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.<sup>425</sup>

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<sup>419</sup> Press release, "Attorney General Jeff Sessions Ends Third Party Settlement Practice," U.S. Department of Justice (June 7, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

<sup>420</sup> Press release, "CFTC Files Eight Anti-Spoofing Enforcement Actions against Three Banks (Deutsche Bank, HSBC & UBS) & Six Individuals," U.S. Commodity Futures Trading Commission (Jan. 29, 2018), <https://www.cftc.gov/PressRoom/PressReleases/pr7681-18>

<sup>421</sup> Press release, "CFTC Orders Deutsche Bank to Pay \$30 Million Penalty for Manipulation, Attempted Manipulation, and Spoofing In the Precious Metals Futures Markets," U.S. Commodity Futures Trading Commission (Jan. 29, 2018), <https://www.cftc.gov/PressRoom/PressReleases/pr7684-18>

<sup>422</sup> Press release, "CFTC Orders HSBC Securities (USA) Inc. Pay \$1.6 Million Penalty for Spoofing In the Precious Metals Futures Markets," U.S. Commodity Futures Trading Commission (Jan. 29, 2018), <https://www.cftc.gov/PressRoom/PressReleases/pr7684-18>

<sup>423</sup> Press release, "CFTC Orders UBS to Pay \$15 Million Penalty for Attempted Manipulation and Spoofing In the Precious Metals Futures Markets," U.S. Commodity Futures Trading Commission (Jan. 29, 2018), <https://www.cftc.gov/PressRoom/PressReleases/pr7683-18>

<sup>424</sup> Emily Flitter, "Settlements for 3 Wall Street Banks Hold a Silver Lining," *The New York Times* (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/business/banks-settlements-waiver-cftc-sec.html>

<sup>425</sup> *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.<sup>426</sup> 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?”<sup>427</sup>

### **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.”<sup>428</sup> Harley Davidson now will not have to pay that \$3 million, thanks to Sessions’ memo forbidding including payments to third parties in settlements.<sup>429</sup> 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

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<sup>426</sup> Tyson Slocum, “Letter to U.S. Commodity Futures Trading Commission Chairman J. Christopher Giancarlo,” Public Citizen (Feb. 5, 2018), <https://www.citizen.org/sites/default/files/letter-cftc-bad-actor-waiver-february-2018.pdf>

<sup>427</sup> Laura Peterson, “Ryan Zinke’s Interior Department Gives Law-Breaking Coal Company a Pass,” The Daily Beast (June 25, 2018), <https://www.thedailybeast.com/ryan-zinkes-interior-department-gives-law-breaking-coal-company-a-pass>

<sup>428</sup> Press release, “Harley-Davidson to Stop Sales of Illegal Devices That Increased Air Pollution from the Company’s Motorcycles,” U.S. Department of Justice (Aug. 18, 2016), <https://www.justice.gov/opa/pr/harley-davidson-stop-sales-illegal-devices-increased-air-pollution-company-s-motorcycles>

<sup>429</sup> Press release, “Attorney General Jeff Sessions Ends Third Party Settlement Practice,” U.S. Department of Justice (June 7, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

settlement, eliminating Harley Davidson's obligation to pay \$3 million to fund the project.<sup>430</sup> AGs representing ten states that would have benefited from the wood stove project have sued to have the penalties restored.<sup>431</sup>

### **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,<sup>432</sup> 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.<sup>433</sup> 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.<sup>434</sup> According to the EPA,

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<sup>430</sup> Tom Schoenberg, "Smoky Stoves Aren't Harley's Problem Now, Thanks to Sessions," Bloomberg (July 20, 2017), <https://www.bloomberg.com/news/articles/2017-07-20/harley-davidson-emissions-settlement-reduced-by-3-million>

<sup>431</sup> David Shepardson, "10 U.S. states object to EPA reducing Harley-Davidson emissions penalty," Reuters (Feb. 1, 2018), <https://www.reuters.com/article/us-harley-davidson-emissions/10-u-s-states-object-to-epa-reducing-harley-davidson-emissions-penalty-idUSKBN1FL67P>

<sup>432</sup> Patrick Rucker, "Mulvaney-led U.S. CFPB slashes payday lender penalty: sources," Reuters (June 28, 2018), <https://www.reuters.com/article/us-usa-cfpb-payday/mulvaney-led-u-s-cfpb-slashes-payday-lender-penalty-sources-idUSKBN1JO17J>

<sup>433</sup> Consumer Complaint Database, U.S. Consumer Financial Protection Bureau (accessed June 30, 2018), <https://www.consumerfinance.gov/data-research/consumer-complaints/>

<sup>434</sup> Press release, "EPA files complaint against Syngenta for farmworker safety violations on Kauai," U.S. Environmental Protection Agency (Dec. 15, 2016), <https://19january2017snapshot.epa.gov/newsreleases/epa-files-complaint-against-syngenta-farmworker-safety-violations-kauai.html>

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.<sup>435</sup>

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.”<sup>436</sup>

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<sup>435</sup> Press release, “EPA reaches agreement with Syngenta for farmworker safety violations on Kauai,” U.S. Environmental Protection Agency (Feb. 12, 2018), <https://www.epa.gov/newsreleases/epa-reaches-agreement-syngenta-farmworker-safety-violations-kauai>

<sup>436</sup> Tom Philpott, “Trump’s EPA Just Made a ‘Highly Unusual’ Concession to a Big Pesticide Company,” Mother Jones (Feb. 16, 2018), <https://www.motherjones.com/food/2018/02/trumps-epa-just-made-a-highly-unusual-concession-to-a-big-pesticide-company/>

## Appendix B: Additional Methodological Information

Agency	Trump Official in Office Since	Agency Type	If sub-agency, parent
Department of Justice	2/9/2017	Cabinet	n/a
Aviation Consumer Protection Division	1/31/2017	Sub-Agency (of Cabinet)	Transportation
Consumer Product Safety Commission	2/9/2017	Independent	n/a
Equal Employment Opportunity Commission	1/25/2017	Sub-Agency (of Cabinet)	Labor
Federal Communications Commission	1/23/2017	Independent	n/a
Federal Trade Commission	1/25/2017	Independent	n/a
Bureau of Safety and Environmental Enforcement	5/23/2017	Sub-Agency (of Cabinet)	Interior
Environmental Protection Agency	2/17/2017	Cabinet	n/a
Commodity Futures Trading Commission	1/20/2017	Independent	n/a
Office of the Comptroller of the Currency	5/3/2017	Sub-Agency (of Cabinet)	Treasury
Office of Foreign Assets Control	3/5/2017	Sub-Agency (of Cabinet)	Treasury
Securities and Exchange Commission	5/4/2017	Independent	n/a

## Appendix C: Department of Justice Cases Split Between Civil and Criminal Portions<sup>437</sup>

Company	Parent Company	Penalty Date	Penalty	Civil/Criminal
<b>Aegerion Pharmaceuticals Inc.</b>	Novelion Therapeutics	9/22/2017	\$28,000,000	civil portion
<b>Aegerion Pharmaceuticals Inc.</b>	Novelion Therapeutics	9/22/2017	\$7,200,000	criminal portion
<b>Baxter Healthcare Corporation</b>	Baxter International	1/12/2017	\$2,158,000	civil portion
<b>Baxter Healthcare Corporation</b>	Baxter International	1/12/2017	\$16,000,000	criminal portion
<b>Berkshire Power Co.</b>	Ares Management	3/30/2016	\$2,750,000	criminal portion
<b>Berkshire Power Company, LLC</b>	Ares Management	3/23/2017	\$750,000	civil portion
<b>Biocompatibles Inc.</b>	n/a	11/7/2016	\$25,000,000	civil portion
<b>Biocompatibles Inc.</b>	n/a	11/7/2016	\$11,000,000	criminal portion
<b>DB Group Services (UK) Limited</b>	Deutsche Bank	3/28/2017	\$150,000,000	criminal portion
<b>Deutsche Bank</b>	Deutsche Bank	4/23/2015	\$625,000,000	criminal portion
<b>HSBC Holdings plc</b>	HSBC	1/18/2018	\$38,400,000	civil portion
<b>HSBC Holdings plc</b>	HSBC	1/18/2018	\$63,100,000	criminal portion
<b>Olympus Corp. of the Americas</b>	Olympus	3/1/2016	\$310,800,000	civil portion
<b>Olympus Corp. of the Americas</b>	Olympus	3/1/2016	\$335,200,000	criminal portion
<b>Tenet Healthcare Corporation</b>	Tenet Healthcare	10/3/2016	\$368,000,000	civil portion
<b>Tenet Healthcare Corporation</b>	Tenet Healthcare	10/3/2016	\$145,000,000	criminal portion
<b>Volkswagen</b>	Volkswagen	1/11/2017	\$1,500,000,000	civil portion
<b>Volkswagen</b>	Volkswagen	1/11/2017	\$2,800,000,000	criminal portion
<b>Warner Chilcott PLC</b>	Allergan	10/29/2015	\$102,060,000	civil portion
<b>Warner Chilcott PLC</b>	Allergan	10/29/2015	\$22,940,000	criminal portion
<b>Zwanger-Pesiri Inc.</b>	n/a	11/16/2016	\$8,153,727	civil portion
<b>Zwanger-Pesiri Inc.</b>	n/a	11/16/2016	\$2,400,000	criminal portion

<sup>437</sup> Links to press releases on which this analysis is based are available compiled here

<https://docs.google.com/spreadsheets/d/1db1cRVWetWPbdFk4JR6VoJL3AOinRLPGn4iqiTyZexY/edit?usp=sharing>