

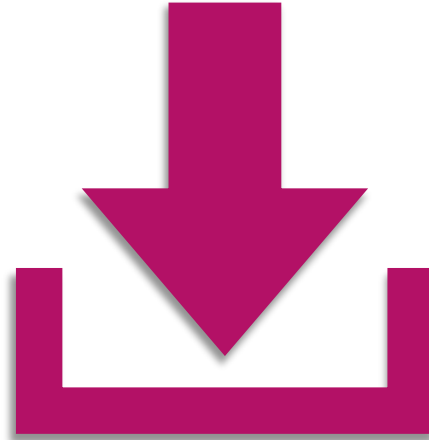
Investment Adviser Exams

NASAA 2023
Exam Results &
SEC 2024 Exam
Priorities



Download Our Slides

<https://www.ria-compliance-consultants.com/SEC-FY2024-Exam-Priorities>



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RCC Has Not Yet Submitted
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If Approved, RCC Will
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Login – You must be logged in during the live presentation under your email address.

View Entire Live Presentation – You are required to watch the entire live presentation the course. If you do not watch the entire live presentation, you will have to watch the recorded version in its entirety.

Attendance Codes - As you watch the live presentation, you will receive two attendance codes, each containing three alphanumeric characters. Save these codes. You will need to enter the full six-character attendance code prior to accessing the final quiz.

Purchase CE Course – If the course is approved by NASAA for IAR CE, you will then need to purchase the course at <https://www.CE4Advisers.com> .

IAR Acknowledgement – Sign the IAR CE Acknowledgement & Attestation.

Final Quiz - You must complete each lesson and receive a score of **70%** on the final quiz (within 3 times) to receive IAR CE credit (assuming the course has been approved by NASAA).

Live Course Requirements

Content Questions & Technical Help

If you have questions about the content of this course or need technical help, please contact us via the email address below:

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Your Instructor



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Bryan has over 28 years of experience working with investment advisers, broker-dealers and investors as a compliance consultant, attorney and executive.

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- ▶ Investment Adviser Certified Compliance Professional®
- ▶ Masters of Arts in Management



Course Overview

- ▶ NASAA 2023 Investment Adviser Coordinated Exams
- ▶ SEC's FY 2024 Exam Priorities for Investment Advisers
- ▶ Questions

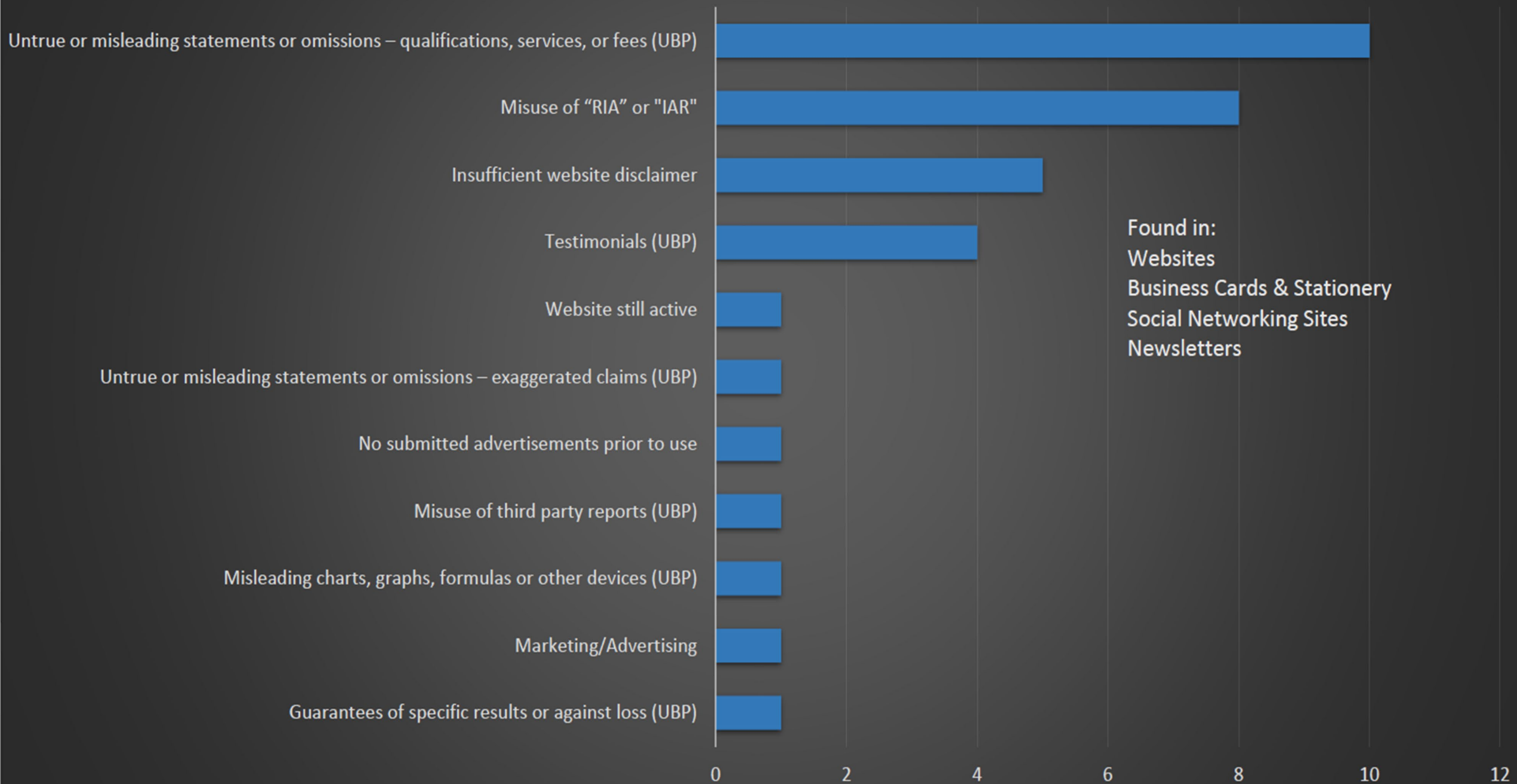
Regulatory Resources

- ▶ **NASAA: 2023 Investment Adviser Coordinated Exams**
<https://www.nasaa.org/wp-content/uploads/2023/09/2023-Investment-Adviser-Coordinated-Exams.pdf>
- ▶ **SEC Division of Examinations: 2024 Examination Priorities (10/16/2023)**
<https://www.sec.gov/files/2024-exam-priorities.pdf>
- ▶ **SEC Risk Alert: Assessing Risks, Scoping Examinations, and Requesting Documents (9/6/2023)**
<https://www.sec.gov/files/risk-alert-ia-risk-and-requesting-documents-090623.pdf>
- ▶ **SEC Risk Alert: Exams Focused on Additional Areas of the Adviser Marketing Rule (6/8/2023)**
<https://www.sec.gov/files/risk-alert-marketing-rule-announcement-phase-3-060823.pdf>
- ▶ **Safeguarding Customer Records and Information at Branch Offices (4/26/2023)**
<https://www.sec.gov/files/risk-alert-safeguarding-info-branch-offices-042623.pdf>
- ▶ **Observations from Examinations of Newly-Registered Advisers (3/27/2023)**
<https://www.sec.gov/files/risk-alert-newly-registered-ias-032723.pdf>

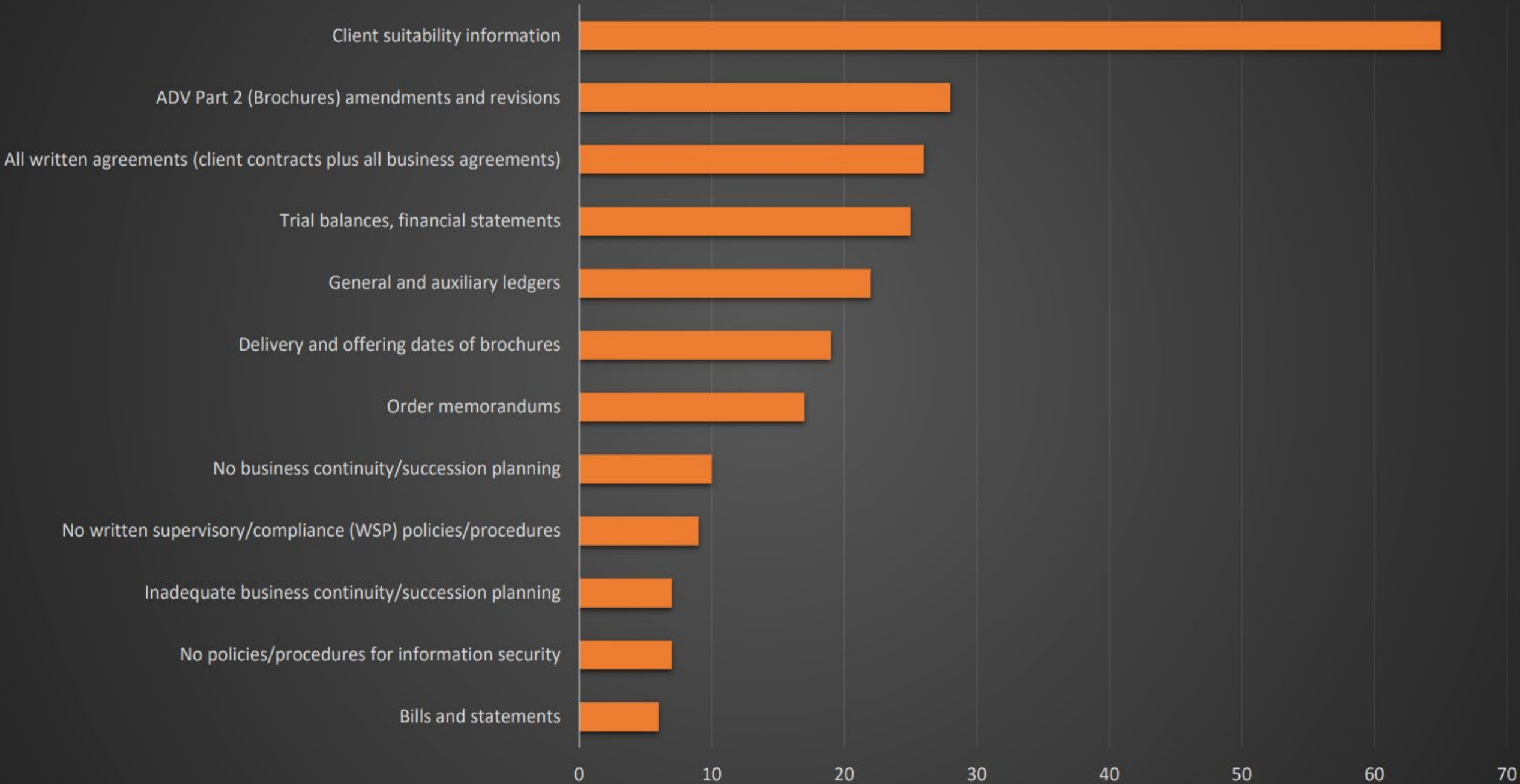
NASAA Coordinated Exams Background

- ***Purpose:*** Every 2 Years State Securities Regulators Coordinate Investment Adviser Examinations to Identify Common Deficiencies & Trends
- ***Time Frame:*** From January 1 – July 31, 2023
- ***Number of Firms Examined:*** 683
- ***Limitations***
 - *First Time Exam for 232 of the Investment Advisers (32%)*
 - *Only State-Registered Investment Advisers*
 - *Most Common OBAs Included Insurance (50) and Accounting (24)*
 - *92% of Investment Advisers Examined Had 1 to 2 IARs*

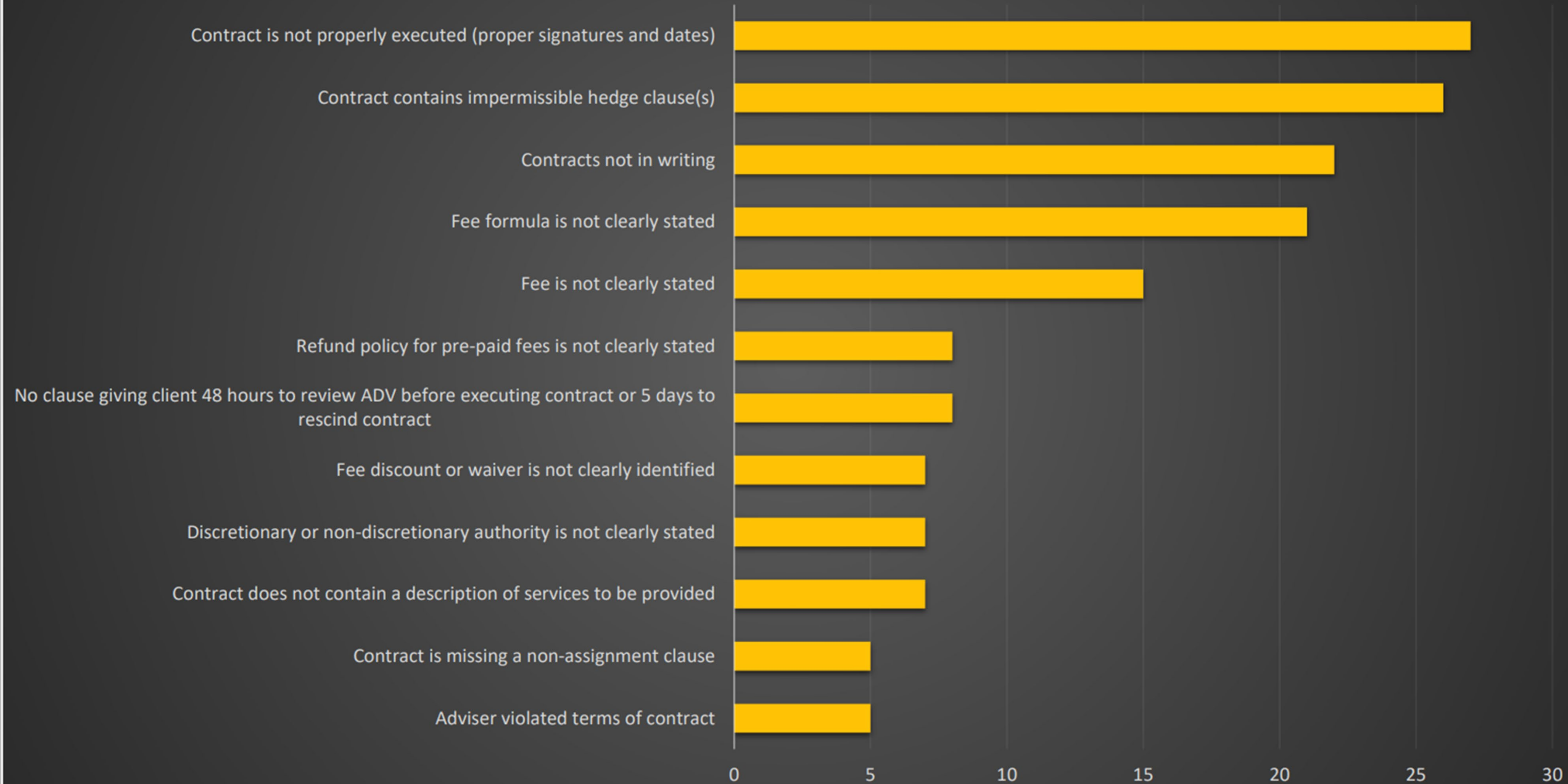
Advertising Violations



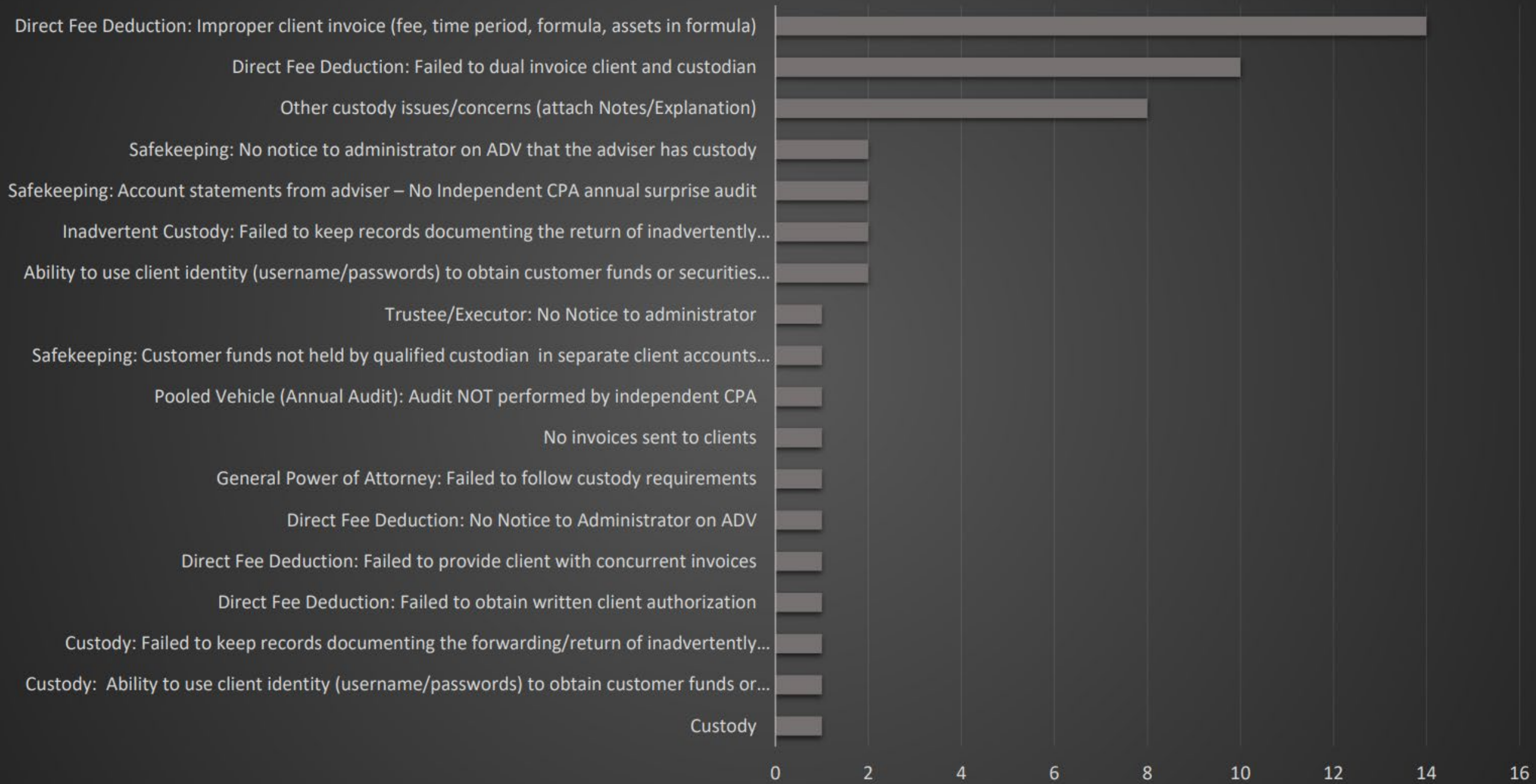
Books & Records Violations



Contract Violations



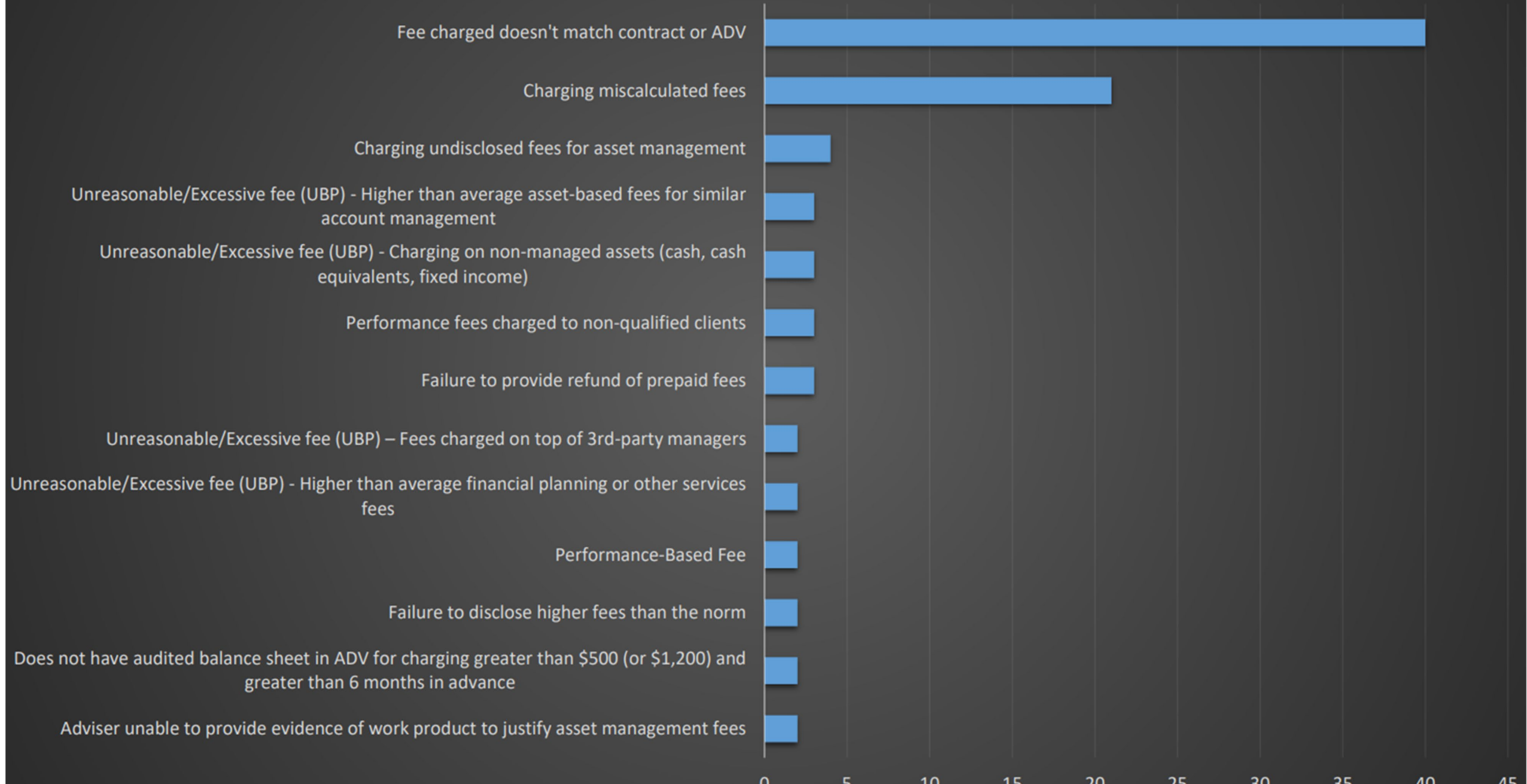
Custody Violations



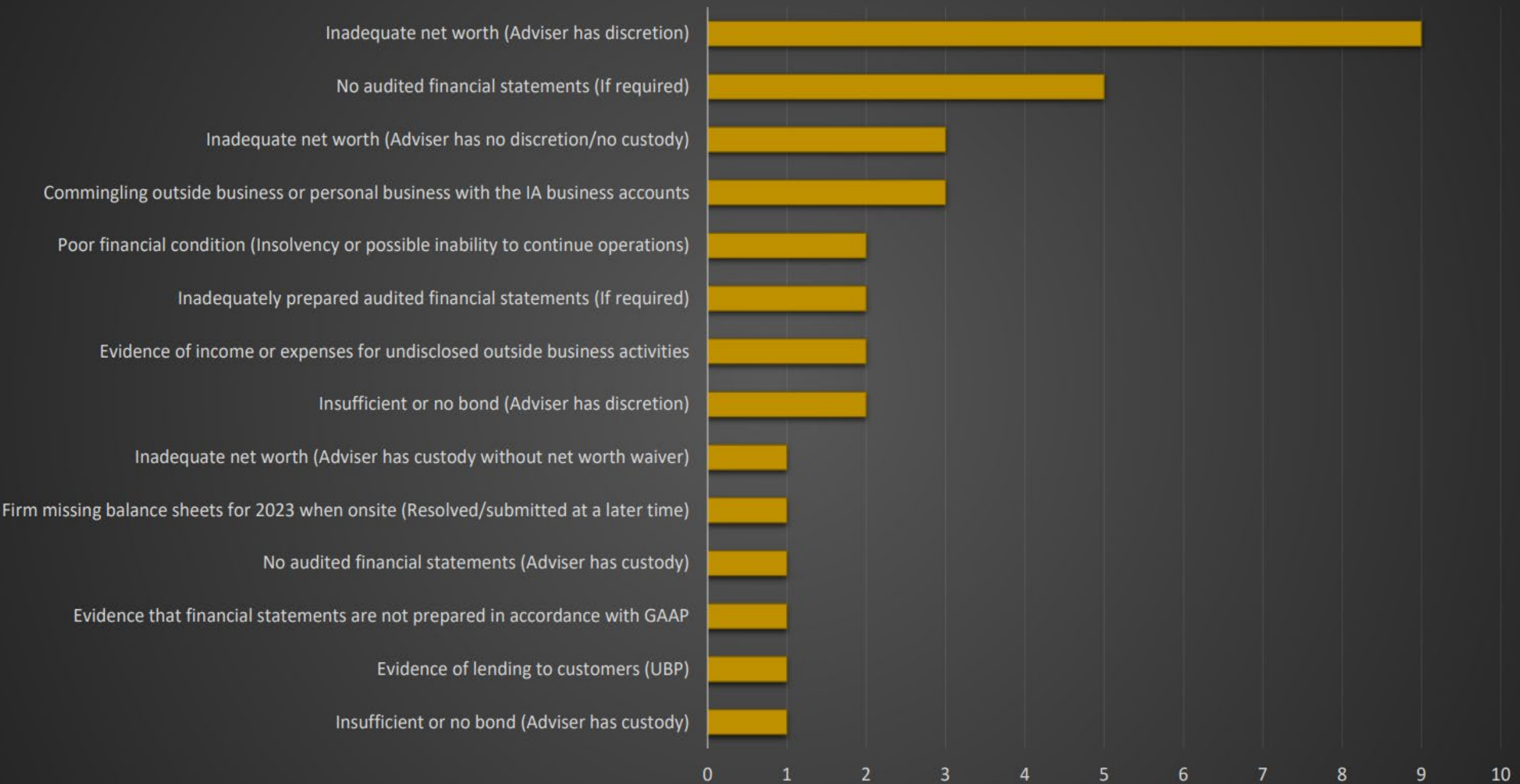
Cybersecurity Violations



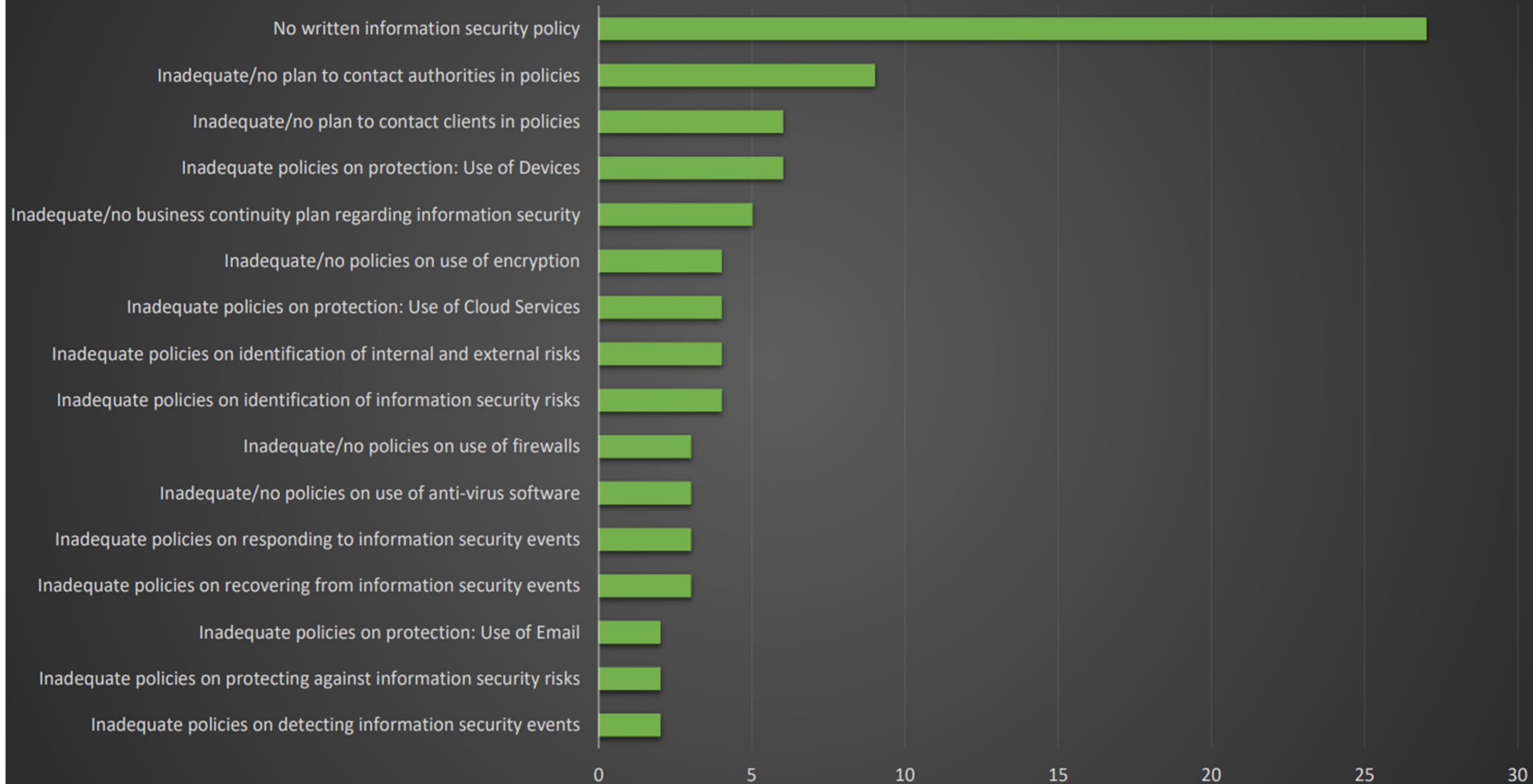
Fee Violations



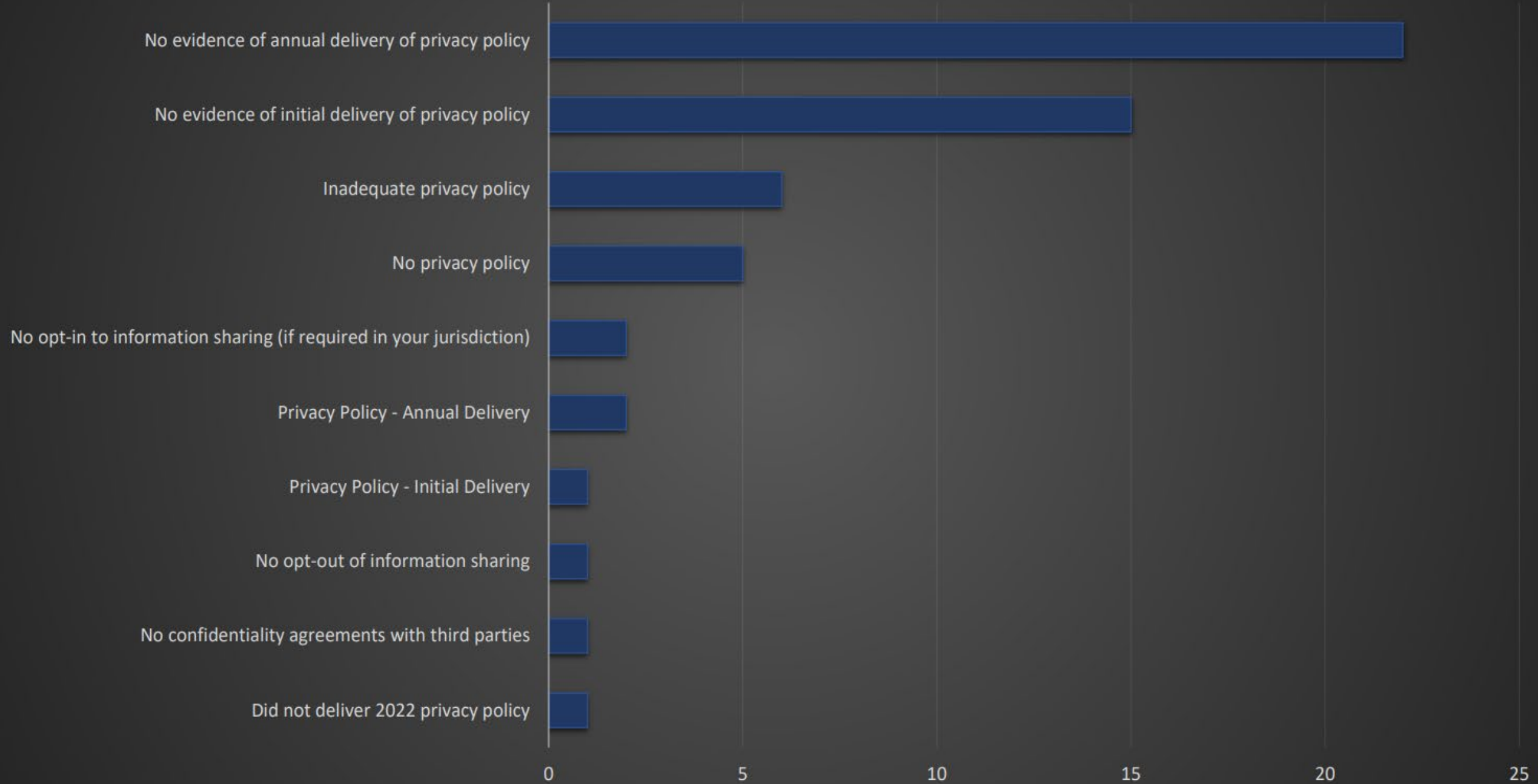
Financial Matters Violations



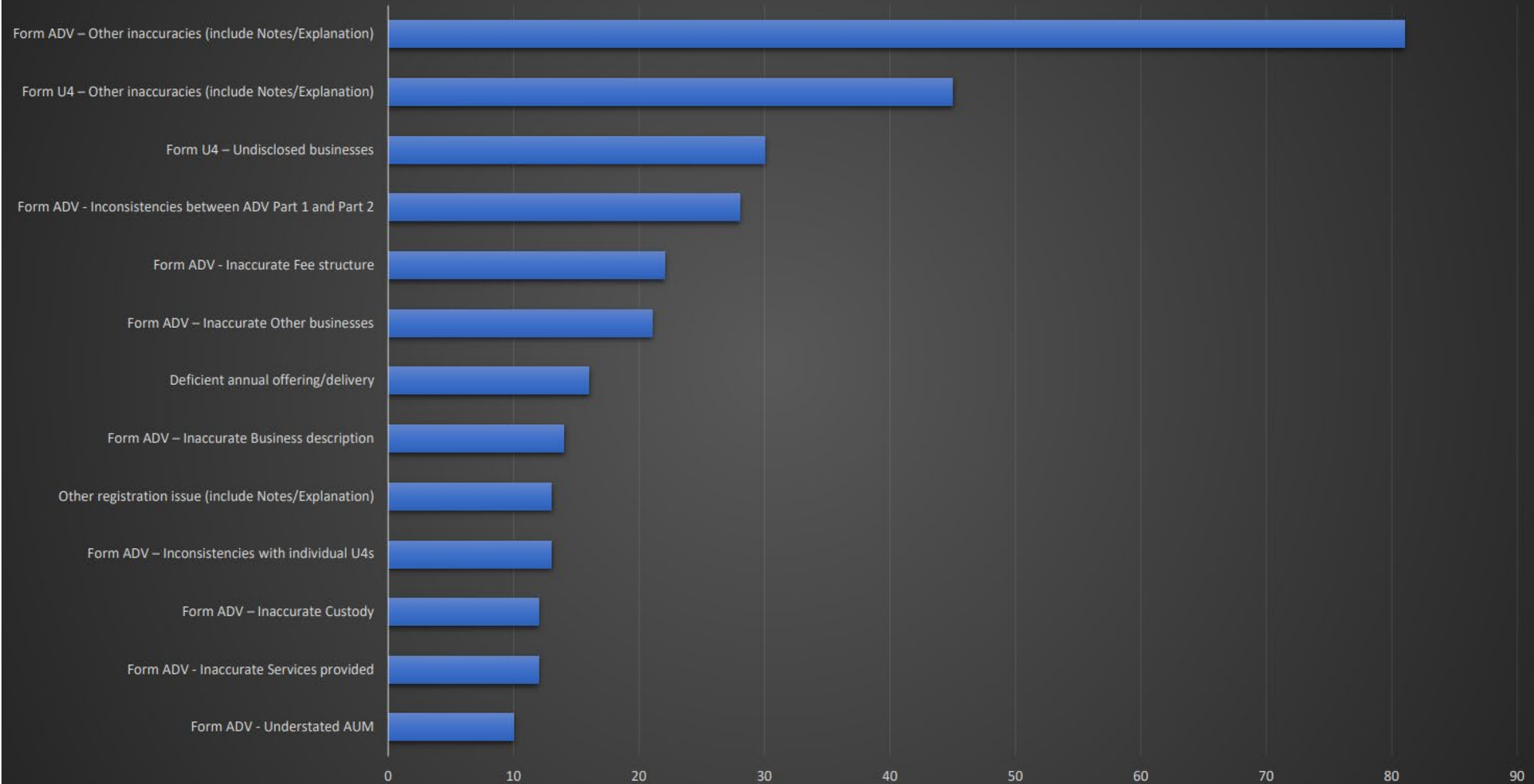
Information Security Violations



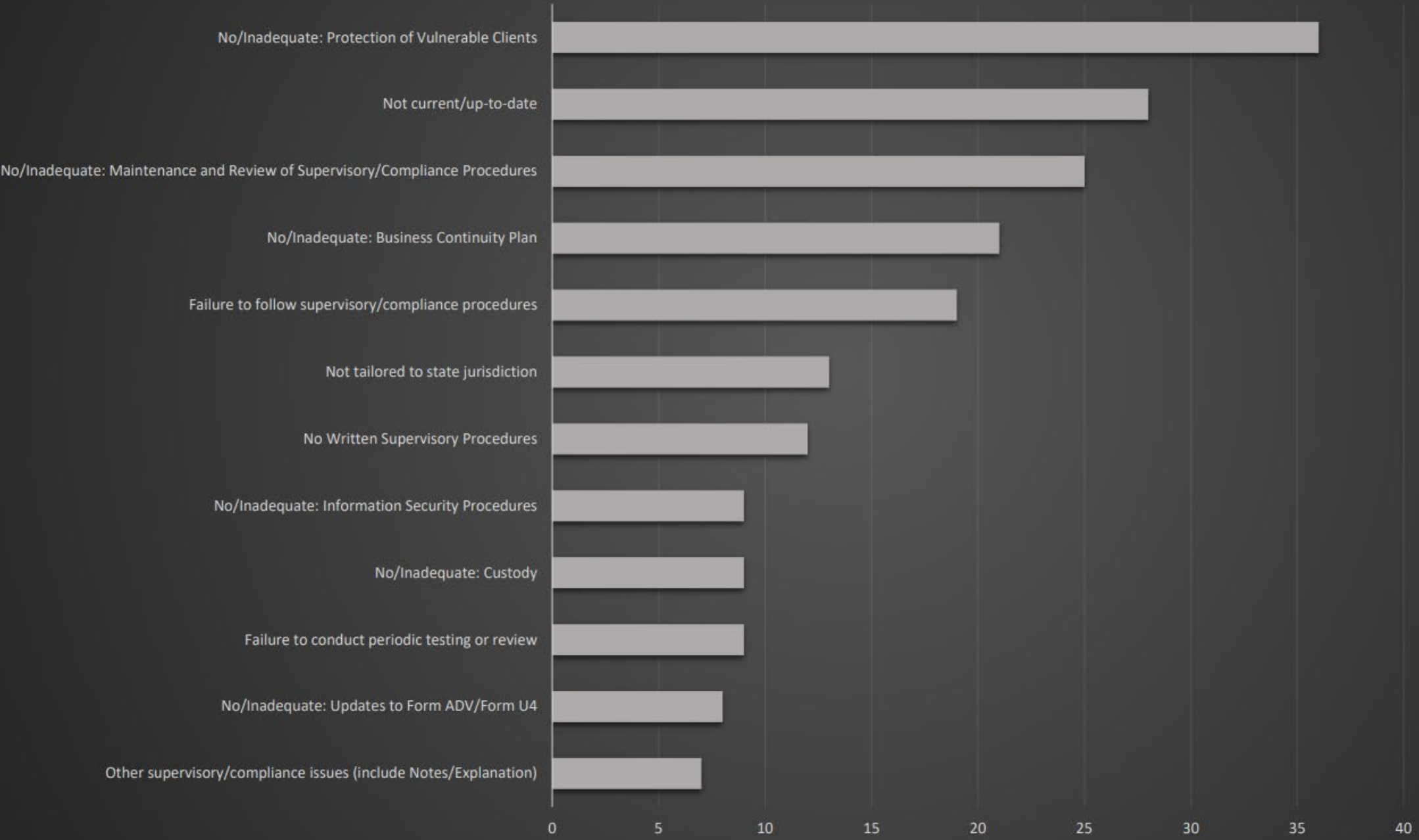
Privacy Violations



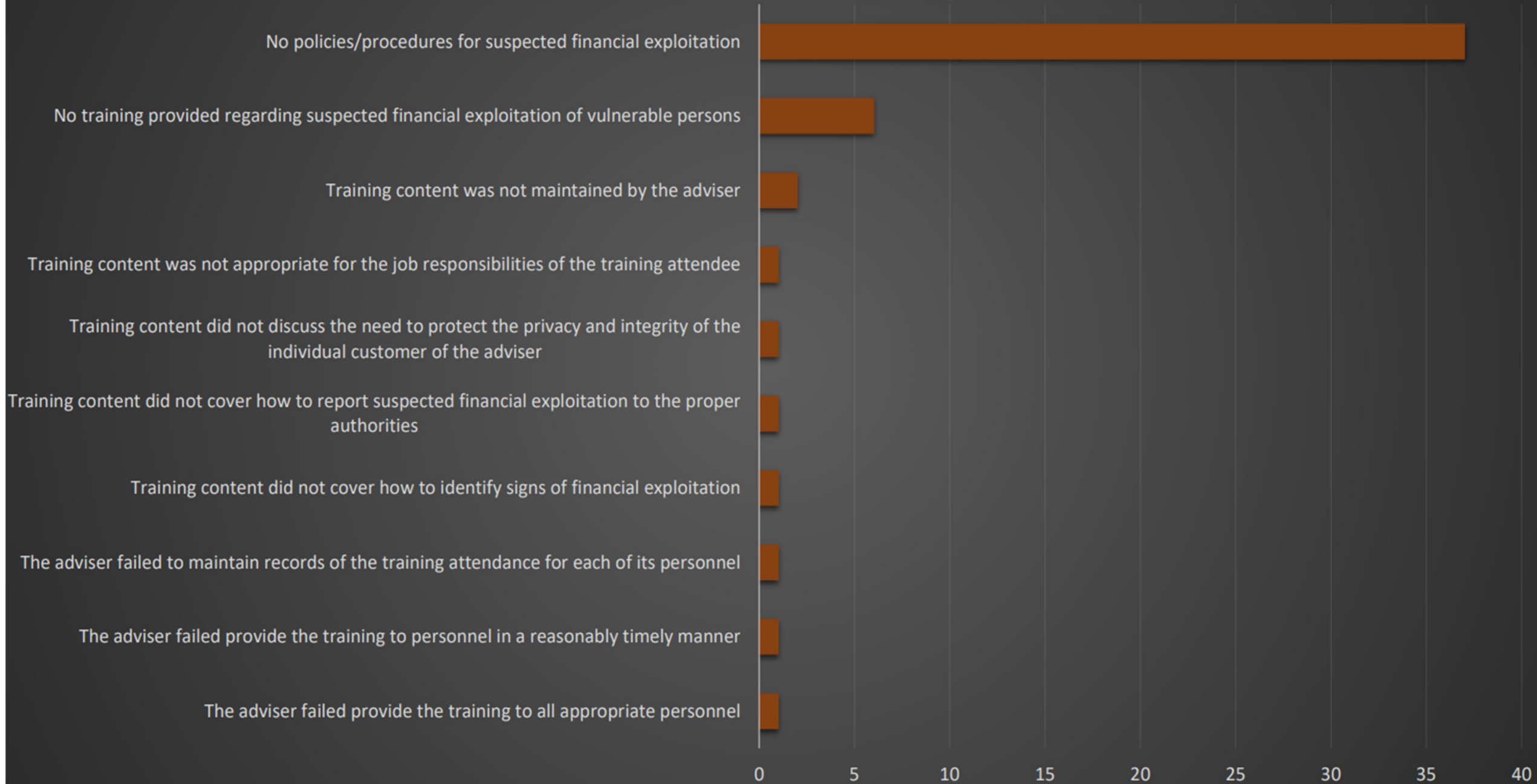
Registration Violations



Supervision & Compliance Violations



Vulnerable Persons Violations



NASAA Coordinated Exams Best Practices

- ▶ Review and revise Form ADV and disclosure brochure annually to reflect current and accurate information.
- ▶ Review and update all contracts. **Be aware of e-communications hedge clauses.**
- ▶ Prepare and maintain all required records, including financial records. Back-up electronic data and protect records. Document checks forwarded.
- ▶ Prepare and maintain client profiles or other client suitability information. Maintain due diligence file for recommended products or strategy.
- ▶ Prepare a written compliance and supervisory procedures manual relevant to the type of business (including business continuity plan and information security policies/procedures). Each Policy Needs the Following: (1) Policy; (2) Who; (3) Does What; (4) How often; and (5) How Evidenced.

SEC Exam
Priority:

Fiduciary Duty

Investment Advice:

- ▶ Complex Products - Derivatives & Leveraged ETFs
- ▶ High Cost & Illiquid Products – Variable Annuities & Non-Traded REITS
- ▶ Unconventional Strategies – Such As Based Upon Rising Interest Rates
- ▶ Advice to Retirement Savers & Retirees

SEC Exam Priority – Fiduciary Duty

Process For Determining Advice In Client's Best Interest:

- Making Initial & Ongoing Suitability Determinations
- Seeking Best Execution
- Evaluating Costs & Risks
- Addressing Conflicts (Fees v. Commissions or Proprietary vs. Non-Proprietary)

SEC Exam
Priority:

Fiduciary Duty

Economic Incentives To Make Recommendations:

- Dually Registered Adviser/B-D
- Reps Serving Both Advisory And Brokerage Clients
- Revenue Sharing & Mark-Ups
- Using Affiliates To Perform Client Services
- Advice To Purchase Investments or Utilize Accounts When Lower Cost Options Are Available
- Advice Regarding Proprietary Products And Affiliated Service Providers That Result In Additional Or Higher Fees

**SEC Exam
Priority:
Fiduciary
Duty**

Whether a
Conflict Disclosure
Is Sufficient to
Allow Informed
Consent

SEC Exam Priority:

Compliance Program

- Portfolio Management Processes
- Disclosures Made To Investors And Regulators
- Proprietary Trading By The Adviser And The Personal Trading Activities Of Supervised Advisory Personnel
- Safeguarding Of Client Assets From Conversion Or Inappropriate Use By Advisory Personnel
- Accurately Creating Required Records And Securely Maintaining Records From Unauthorized Alteration Or Use And Untimely Destruction
- Safeguarding Privacy Of Client Records And Information
- Trading Practices
- Marketing Advisory Services
- Processes To Value Client Holdings And Assess Fees Based On Those Valuations
- Business Continuity Plans

SEC Exam Priority – Marketing

- Adoption & Implementation of Written Policies And Procedures
- Disclosure Marketing Info On Form ADV
- Evidence of Marketing Review Including Assessment Of Whether
 - Any Untrue Statements Of A Material Fact
 - Materially Misleading Or Are Otherwise Deceptive
 - Compliance With Applicable Requirements For Performance (Including Hypothetical And Predecessor Performance), Third-Party Ratings, And Testimonials And Endorsements

SEC Exam Priority: Compensation Arrangements

Fiduciary Obligations Of Advisers To Their Clients Particularly With Respect To The Advisers' Receipt Of Compensation For Services Or Other Material Payments Made By Clients And Others

Alternative Ways That Advisers Try To Maximize Revenue (Bank Deposit Sweep Programs)

Fee Breakpoint Calculation Processes Particularly When Fee Billing Systems Are Not Automated

SEC Exam
Priority:
Valuation

Valuation Of Illiquid &
Difficult-To-Value
Assets (Commercial
Real Estate, Private
Placements)



Multiple Investment Advisers
Share Office Location



Significant IAR Turnover



Use Expert Networks

SEC Exam
Priority:

Safeguarding
Client's Material
Non-Public
Personal
Information

SEC Exam
Priority:

Accuracy of
Regulatory
Filings

Form CRS

Inadequate Or
Misleading Disclosures

Registration Eligibility

SEC Exam
Priority:

Policies &
Procedures



Selecting And Using Third-Party
And Affiliated Service Providers



Overseeing Branch Offices When
Advisers Operate From Numerous
Or Geographically Dispersed
Offices



Obtaining Informed Consent
From Clients When Advisers
Implement Material Changes To
Advisory Agreements

SEC Exam
Priority:

Emerging
Technology

Automated Investment
Tools

Artificial Intelligence
And Trading Algorithms
Or Platforms

SEC Exam Priority – Crypto

- ▶ Initial And Ongoing Understanding Of Crypto Product
- ▶ Routinely Review, Update, And Enhance Compliance Practices (Including Crypto Asset Wallet Reviews, Custody Practices, Bank Secrecy Act Compliance Reviews, And Valuation Procedures), Risk Disclosures, And Operational Resiliency Practices (Data Integrity And Business Continuity Plans)
- ▶ Compliance With Custody Requirements Under Rule 206(4)-2 If Crypto Is A Security Or Funds

SEC Exam Priority – Private Fund Adviser

- ▶ Portfolio Management Risks When Exposed To Recent Market Volatility And Higher Interest Rates:
 - Poor Performance, Significant Withdrawals And Valuation Issues
 - Private Funds With More Leverage And Illiquid Assets
- ▶ Adherence To Contractual Requirements
 - Limited Partnership Advisory Committees
 - Contractual Notification And Consent Processes
- ▶ Accurate Calculation And Allocation Of Private Fund Fees And Expenses
 - Valuation Of Illiquid Assets, Calculation Of Post Commitment Period Management Fees, Adequacy Of Disclosures, And Potential Offsetting Of Such Fees And Expenses

SEC Exam Priority – Private Fund Adviser

- ▶ Due Diligence Practices For Consistency With Policies, Procedures, And Disclosures
 - Particularly With Respect To Private Equity And Venture Capital Fund Assessments Of Prospective Portfolio Companies
- ▶ Conflicts, Controls, And Disclosures Regarding Private Funds Managed Side-by-side With Registered Investment Companies And Use Of Affiliated Service Providers
- ▶ Disclosure of Custody on Form ADV, Timely Completion Of Private Fund Audits By A Qualified Auditor And Distribution Of Private Fund Audited Financial Statements
- ▶ Policies And Procedures For Reporting On Form PF

SEC Exam Priority – OFAC

*“Also, the [SEC’s Division of Examinations] will review whether broker-dealers and **advisers** are monitoring Office of Foreign Assets Control sanctions and ensuring compliance with such sanctions.”*

OFAC Sanctions Search List:

<https://sanctionssearch.ofac.treas.gov/>

SEC Exam Priority – Cybersecurity & BCP

“The [SEC’s Division of Examinations] will continue to review ... advisers’ practices to prevent interruptions to mission-critical services and to protect investor information, records, and assets. Operational disruption risks remain elevated due to the proliferation of cybersecurity attacks, firms’ dispersed operations, intense weather-related events, and geopolitical concerns.”

SEC Exam Priority – Cybersecurity & BCP

- ▶ Policies And Procedures
- ▶ Internal Controls
- ▶ Oversight Of Third-party Vendors
- ▶ Governance Practices
- ▶ Incident Responses
- ▶ ID Theft Training
- ▶ Third-Party Service Providers

Best Practices for Cybersecurity

User Security & Access

- Multi-Factor Authentication & Password Expiration/Reset
- Limit Access & Information to Individuals on Need to Know/Use Basis
- Secure Remote Access
- Regularly Monitor for Unauthorized Users
- Monitor for Unauthorized Login Attempts, Lock-Outs, and User ID/Password Changes

Ongoing Monitoring of Threats and Vulnerabilities

- Review Network and Application Vulnerabilities
 - Limit Mobile Devices Approved for Remote Access
 - Monitor All Files on End Point Like Mobile Telephone
 - Scans of Networks for Threats
 - Patch & Updates Manager for All Computers/Devices

SEC Exam
Priority

New Firms

Not Recently
Examined
Firms

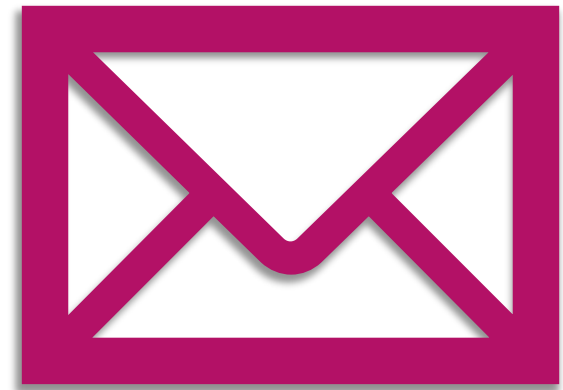
Best Practices for Never/Not Recently Examined

- ▶ Re-Review & Update (If Necessary) Compliance Manual
 - Check with Your Compliance Consultant for Any Section Updates
- ▶ Study Most Recent SEC Exam Priorities & Relevant Risk Alerts
- ▶ If Not Recently Examined, Review & Correct Prior Deficiencies from Last Exam
- ▶ Obtain an Information/Document Request List Used Recently in an Exam
 - Check with Your Compliance Consultant for Applicable Examples
- ▶ **Complete an Annual Review of Compliance Program or Mock Exam**
 - Check with Your Compliance Consultant for DIY Spreadsheet/Tool or a Consultant-Led Review
- ▶ Review Best Practices Checklist & Recorded Webinar on How to Interact with Exam Staff

Questions

Please submit any question online or email with any questions about the content of this course.

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Thank You

