

ALERT

DOJ Affirms Aggressive False Claims Act Enforcement, Highlights Use Against Illegal Trade Practices

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The head of the U.S. Department of Justice (DOJ) branch that oversees False Claims Act (FCA) investigations affirmed the Trump Administration's commitment to pursue civil fraud cases as part of its focus on achieving governmental efficiency and eliminating fraud, waste, and abuse. Speaking at a national conference last week, Deputy Assistant Attorney General Michael Granston confirmed that DOJ plans to continue enforcing the False Claims Act "aggressively" under the new Administration. In particular, he highlighted the statute as a "powerful" enforcement mechanism against entities that try to evade new import tariffs.

The False Claims Act, 31 U.S.C. § 3729 *et seq.*, is one of the primary tools used by the government to recover funds paid out as a result of fraud. The statute imposes civil liability on any person who knowingly presents a false claim for payment of government funds or makes a false statement that is material to a claim for payment of government funds. In what's known as a "reverse false claim," it imposes liability on anyone who uses false statements or records to avoid or decrease payments owed to the government, such as federal customs duties. In such situations, the statute empowers the government to recover treble damages plus penalties for each violation. The statute also enables whistleblowers (or "relators") to file *qui tam* actions on behalf of the government and receive a share of any money recovered in the litigation.

False Claims Act investigations have been on the rise in recent years. DOJ reported a record number of *qui tam* actions filed in 2024 – almost 1,000, which was a 37% increase over the prior year and a

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60% increase over 2019 filings. The government also reported 423 investigations originated by the government, the second-highest number ever and almost three times as many as the government originated five years ago. And the government recovered almost \$3 billion in settlements and judgments last year, a slight increase from the \$2.8 billion it recovered in 2023. It appears those trends will continue.

Although federal health care program benefits (e.g., Medicare, Medicaid, VA, and TRICARE) and government agency procurements (e.g., DOD, HHS, and GSA) are the most common subjects of FCA investigations, the statute has a broad reach. As the U.S. Supreme Court recently ruled in *Wisconsin Bell, Inc. v. United States ex rel. Heath*, the FCA extends to “claims” for any type of funds that the government provides, even when the government only provides a portion of the funds or does so through an agent.

DOJ has used the FCA several times in recent years to enforce customs duties. For example, in 2023, one company paid almost \$23 million to settle FCA allegations that it misclassified its products under the Harmonized Tariff Schedule to avoid paying customs duties and failed to pay back duties owed after correcting historical misclassifications. Another company paid \$22 million to settle FCA allegations that it misrepresented the nature, classification, and valuation of imported construction supplies, as well as the applicability of free trade agreements. A third company paid \$45 million to resolve allegations that it misrepresented the country of origin on documents presented to U.S. Customs and Border Protection to avoid paying antidumping and countervailing duties on imports that originated in China and India but had undergone a finishing process in other countries. And, of course, DOJ has a long history of using the FCA to enforce trade-related provisions in federal procurement contracts, such as compliance with the Trade Agreements Act and the Buy American Act.

In his speech, Granston explained that the FCA could be a powerful tool against those who use false statements and other fraudulent schemes to avoid paying customs duties. With the Trump Administration recently imposing new tariffs on a broad range of imported goods and announcing plans for even more, Granston said enforcement against illegal foreign trade practices would be a priority for DOJ going forward.

He also recognized the agency’s increased reliance on data and analytics in its efforts to detect fraud. The Commercial Litigation Branch Civil Fraud Section, which leads the DOJ’s efforts to investigate and litigate FCA cases, now has an in-house data analytics team, as do individual federal agencies.

Granston additionally pointed to the newly renamed and strengthened Administrative False Claims Act, 31 U.S.C. § 3801 *et seq.* Congress amended the statute at the end of 2024 to allow federal agencies to investigate and pursue false claims on their own up to \$1 million per claim, without much involvement from DOJ, albeit with statutory authority to collect double, not treble, damages. Granston said the new statute would allow the government to leverage the investigative and legal teams of smaller agencies, creating a more robust approach to countering fraud.

Granston acknowledged that the Department faces significant challenges to enforcement actions as fraud schemes continue to evolve. He cited, for example, the complex network of subcontractors that are sometimes used to obscure the source of products sold to the government – a challenge when investigating compliance

in procurement fraud cases, such as enforcement of statutes requiring products to be manufactured in the United States.

The speech echoed testimony from Attorney General Pam Bondi, who testified during her recent confirmation hearing that she understood the role the FCA plays in “bring[ing] money back to our country” and that she would “of course” defend the constitutionality of the FCA.

With the rise in *qui tam* actions and DOJ signaling its intention to continue “aggressively” enforcing the FCA, the number of such cases is expected to keep rising, and the range of industries affected by FCA investigations is expected to broaden. Companies doing business with the government or importing goods into the United States should ensure they have a robust compliance program in place to limit potential exposure. And if companies do learn of potential issues, they should promptly review and address those concerns to avoid becoming the target of FCA investigations and whistleblower allegations.

Wiley's White Collar Defense & Government Investigations, Government Contracts, Health Care, International Trade, and FCA practices have unparalleled experience counseling clients on their compliance with federal regulations that are common sources for FCA allegations, including federal and state government contracting, such as compliance with the Trade Agreement Act and Buy American Act; customs duties; the allocation of commissions, rebates, and discounts; health care compliance; and compliance with federal communications regulations. If you have any questions, please contact one of the authors listed on this alert.

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