

ALERT

DOJ Announces Larger FCA Recoveries and More Whistleblower Cases Filed in 2024

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On January 15, 2025, the U.S. Department of Justice (DOJ) announced \$2.9 billion in total False Claims Act (FCA) recoveries for FY 2024, a slight increase from 2023. In addition to growing recoveries, DOJ announced a new record number of *qui tam* cases filed. At the same time, original actions fell short of 2023's record, as the Biden Administration prepares to hand over the FCA enforcement reins. While the incoming Trump Administration may shift priorities and guidance for pursuing FCA cases, enforcement is unlikely to yield. Pam Bondi, President-elect Trump's choice to lead the Department in his second term, said on Wednesday during her Senate confirmation hearing that she would "of course" defend the constitutionality of the FCA and that she understands the role the FCA plays in "bring[ing] money back to our country."

In 2024, health care remained the largest source for FCA recoveries, accounting for 57%, or over \$1.67 billion. Still, this is a departure from historic norms and a notable drop from 2023, where health care-related recoveries comprised 67% of the total money for DOJ. As has been the case over the last few years, a sizable segment of health care recoveries are related to opioid settlements – although it remains to be seen exactly how sizable that portion truly is this year as two of the "large" opioid settlements highlighted in this year's report involved unsecured claims against bankruptcy estates (to the tune of \$875 million). It is unclear how much DOJ actually recovered, as these unsecured claims lack priority, and most are never fully recovered.

DOJ also continued to prioritize enforcement against unnecessary medical services and substandard care, the Medicare Advantage program, and kickbacks. For example, DOJ recovered over \$27

Authors

Roderick L. Thomas
Partner
202.719.7035
rthomas@wiley.law

Brandon J. Moss
Partner
202.719.7554
bmoss@wiley.law

Corey J. Hauser
Associate
202.719.4436
chauser@wiley.law

Kahlil H. Epps
Associate
202.719.4661
kepps@wiley.law

Practice Areas

Civil Fraud, False Claims, *Qui Tam* and Whistleblower Actions

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million from the owner and operator of medical testing companies for collecting kickbacks in exchange for having his companies perform unnecessary Medicare-funded cancer tests. The Department also secured a \$345 million settlement from a health network for allegedly recruiting physicians to capture their “lucrative ‘downstream referrals.’” Finally, DOJ touted a \$60 million recovery in the Medicare Advantage space concerning allegations of kickbacks to third-party insurance agents for recruiting senior citizens to primary care facilities.

Outside the health care space, DOJ’s enforcement priorities and recoveries remained diverse, encompassing government contractors, individuals, and recipients of COVID-19 relief funds, among others. FCA enforcement related to Department of Defense (DOD) contracts slowed from 2023. Contrary to overall trends, original action (26) and *qui tam* (34) case filings declined in 2024. Recoveries in the defense space dropped sharply in 2024, with settlements and judgments in original actions falling over 85% and *qui tams* sliding nearly 82% year-over-year. While DOD recoveries were down, procurement fraud more generally remained a key source of recoveries. DOJ continued to pursue bread-and-butter overcharging and worthless goods/services cases in 2024. For example, a \$70 million settlement resolved allegations that a contractor overcharged the U.S. Navy for equipment needed to repair and maintain aircraft. Another resolution focused on goods supplied to the U.S. Navy that did not meet required military specifications.

Since the Civil Cyber-Fraud Initiative’s 2021 announcement, DOJ has warned contractors and grant recipients of its focus on cyber-fraud enforcement in practically every public discussion of FCA priorities. While slow out of the blocks, cases involving companies and individuals who allegedly misrepresented their cybersecurity capabilities, compliance, and practices are starting to become public at a regular pace. Indeed, 2024 saw DOJ file a complaint in intervention against a university alleged to have misrepresented its cybersecurity capabilities, as well as a settlement with a university that allegedly failed to develop and implement a DOD-required system security plan and submitted a false cybersecurity assessment score. The Department also pursued multiple contractors who purportedly failed to protect patient health information. With DOD’s new CMMC 2.0 regulations, which require annual compliance affirmations by covered contractors and subcontractors, comes additional opportunities for fraud and a reasonable expectation that future FCA reports will continue highlighting enforcement actions involving cybersecurity misrepresentations.

DOJ also continued pursuing individuals and companies for pandemic-related fraud claims in 2024—settling or obtaining judgments in over 250 pandemic-related cases and recovering more than \$250 million. There was also a notable increase in per-case recoveries from prior years, highlighting DOJ’s shifting focus from individuals engaged in small-dollar fraud to companies receiving more considerable amounts of COVID relief. Many of the settlements that DOJ announced in this space involved overbilling related to medically unnecessary testing. The government has also begun to bring more significant Paycheck Protection Program (PPP) enforcement actions. While prior years’ COVID-related recoveries were mainly comprised of hundreds of small recoveries against individuals, this year’s pandemic recoveries included larger resolutions against companies alleged to have falsely certified eligibility for PPP draws.

Finally, while not explicitly touted, DOJ's 2024 report highlights more cases brought against individuals than in prior years, some of which were high-dollar cases. A doctor, for example, entered into a consent judgment requiring him to pay \$4.7 million for allegedly issuing prescriptions without legitimate medical reasons. Executives were also pursued alongside their companies in several other resolutions profiled in this year's report.

All in, 2024 proved to be another successful year of FCA enforcement. While total recoveries increased only slightly year-over-year, the significant increase in newly filed *qui tams* indicates that DOJ has plenty of potential actions in the pipeline. Of course, given a recent successful challenge to the FCA's *qui tam* provision, we may see temporary turbulence in litigated, non-intervened cases. Regardless of whether *qui tam* actions survive this latest challenge, FCA cases are not going away, and DOJ will continue its vigorous FCA enforcement.

As we await the Trump Administration's enforcement priorities, we expect a continued diversity in enforcement targets, with health care most likely continuing to lead the pack. After a solid run, large pandemic fraud cases will likely begin winding down over the next few years. However, it is less clear if opioid cases have run their course and are ready to go the way of the 2010 mortgage fraud cases. DOJ is expected to continue focusing on Medicare Part C, which totals over 50% of all reimbursement claims. Taking cues from the prior Trump Administration, FCA cases related to patient harm will likely continue to garner substantial attention. For contractors, we anticipate that DOJ will continue monitoring cybersecurity requirements and related certifications, especially if breaches compromise U.S. systems or data. We also expect DOJ to prioritize claims involving harm to the warfighter. In short, wherever Congress allocates funds, DOJ will follow closely.

Wiley's White Collar Defense & Government Investigations 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; 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.