

DOJ's FCA Data-Miner Focus Raises Compliance Stakes

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A recent initiative from the U.S. Department of Justice's Civil Division is designed to allow the division to prioritize the most promising False Claims Act qui tam actions brought by data miner whistleblowers.[1]

Announced April 30 against the backdrop of last year's record-shattering number of qui tam actions filed, according to the DOJ, the department's Fraud Oversight through Careful Use of Statistics, or FOCUS, initiative signals the DOJ's growing need to separate the stronger cases from the weaker ones.

The Initiative

The FOCUS initiative operates within the broader framework of the False Claims Act, one of the government's most potent tools for combating fraud.

The FCA 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.

The FCA also enables private whistleblowers to file qui tam actions on behalf of the government and receive a share of any money recovered in the litigation. Under the qui tam provisions, a relator files a complaint under seal and serves the DOJ.

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

Internal Investigations and Compliance Programs

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The department then investigates the claims before ultimately determining whether to intervene and take over the case.

The DOJ explained that the initiative serves as a response to the marked increase in qui tam filings in recent years, many of which are generated not by traditional insider whistleblowers, but by data miners – individuals or entities that analyze publicly available government data for potential indicators of fraud.

According to the DOJ, the initiative is intended to allow the department to more effectively and efficiently identify actionable cases and prioritize its enforcement resources accordingly.

Under the initiative, the DOJ encourages data miners to proactively engage with the Civil Fraud Section to explain their analytical methods and demonstrate why their findings reliably correlate with actual fraud. This engagement is typically expected before filing a complaint. However, such a meeting is not a pre-filing requirement.

In its announcement of the initiative, the DOJ further set forth guidance directed to potential data miner relators and their counsel outlining the characteristics it views as indicative of higher-quality filings.

Notable Timing

The initiative came just several months after the DOJ touted the highest number of qui tam actions filed in the FCA's history – nearly 1,300. That figure dwarfed the 2024 fiscal year's then-record high of 980 suits and more than doubled the number of qui tam suits filed just four years prior.

The DOJ's announcement also noted that since the start of the current fiscal year, there have already been 780 qui tam actions filed, putting the department on pace to exceed the 2025 fiscal year's all-time high.

A Strain on DOJ Resources

The sheer volume of qui tam actions has likely put a strain on the Civil Fraud Section's resources – since every case must be investigated – creating an urgent need for the department to more readily identify the most viable cases and weed out those lacking merit.

It is thus unsurprising that the DOJ-issued guidance accompanying the announcement reads less like a road map for potential data-miner relators and more like a list of deficiencies the DOJ has previously encountered and expects relators to steer clear of going forward.

DOJ's Carrot and Stick

The DOJ has largely cast the initiative as an incentive-based program through which the department will prioritize potential relators who proactively engage with the department before filing suit and are able to articulate a sophisticated, legally grounded approach to their data mining activities.

Inherent in that framework, however, is that the DOJ's limited resources will be diverted from relators who cannot demonstrate comparable analytical rigor or are simply unwilling to share their data mining strategies with the department.

Demonstration of Case Type

The DOJ highlights that, since the 2024 fiscal year, data miners have accounted for more than 45% of all qui tam complaints. That figure represents a significant shift from prior years, when such cases were more commonly brought by true insiders and, in some instances, industry competitors.

To date, pure outsider data-miner FCA cases using publicly available data have typically been brought in areas including pandemic relief programs, such as Paycheck Protection Program and Economic Injury Disaster loans; Medicare and Medicaid billing and Medicare Advantage risk adjustment; government procurement and contracting; trade customs and tariff data; and occasionally financial or mortgage-related filings tied to federal guarantees.

Looking ahead, we anticipate relators may be filing in areas prioritized by the current administration, such as immigration; diversity, equity and inclusion; and cybersecurity.

Key Takeaways for the Industry

At bottom, the DOJ's FOCUS initiative serves as a reminder to government contractors, healthcare companies, and others doing business with the government that an army of would-be relators is out there and more empowered than ever.

What's more, the initiative will allow the DOJ to learn from data miners' techniques to enhance its own ability to analyze nonpublic government data and pursue potential fraud.

While we don't know yet what effect the new initiative will have on the rate of DOJ intervention and the number of original FCA actions, one thing is certain: Qui tam cases, and particularly those promulgated by data miners, will continue to drive FCA enforcement.

Therefore, now is as good a time as any for companies to double down on compliance on the front end to ensure the accuracy of certifications and to also make sure that relevant documentation is retained should questions arise. Meanwhile, on the back end, companies ought to be prepared to move quickly once they learn of a potential allegation of fraud.

An early and robust investigation is critical to persuading the DOJ that the allegations lack factual or legal substance. Finally, given the department's sustained focus on data culling, compliance officers may wish to implement internal data analytics tools to detect potential fraud before a potential relator accepts the government's invitation to come forward.

[1] <https://www.justice.gov/opa/pr/civil-division-announces-focus-initiative-data-miners-filing-qui-tam-complaints>.