

# DOJ's FOCUS on Data-Mining Whistleblowers

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The U.S. Department of Justice's (DOJ or the Department) Civil Division recently announced the Fraud Oversight through Careful Use of Statistics (FOCUS) initiative, which is designed to allow the Division to prioritize the most promising False Claims Act (FCA) *qui tam* actions brought by data-miner whistleblowers. The announcement comes against the backdrop of last year's record-shattering number of *qui tam* actions filed and signals 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 FCA, 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 (or "relators") 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 DOJ. The Department then investigates the claims before ultimately determining whether to intervene and take over the case.

DOJ explained that the FOCUS 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 so-called "data miners" – individuals or entities that analyze publicly available government data for potential indicators of fraud. According to DOJ, the initiative is intended to allow the Department to more effectively and efficiently identify actionable cases and prioritize its enforcement resources accordingly.

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## Practice Areas

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

Internal Investigations and False Claims Act

White Collar Defense & Government Investigations

Under the initiative, DOJ encourages data miners to proactively engage with the Civil Fraud Section – typically before filing a complaint (though such a meeting is not a pre-filing requirement) – to explain their analytical methods and demonstrate why their findings reliably correlate with actual fraud. In its announcement of the initiative, DOJ further sets forth guidance directed to potential data-miner relators and their counsel outlining the characteristics it views as indicative of higher-quality filings.

## Analysis

- The Timing of the Initiative Is Notable: The initiative comes just several months after DOJ touted the highest number of *qui tam* actions filed in the FCA's history (nearly 1,300) – a figure that dwarfed FY 2024's then-record high of 980 suits and more than doubled the number of *qui tam* suits filed just four years prior. DOJ also notes in its announcement 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 FY 2025's all-time high.
- The New Initiative Highlights the Strain on DOJ Resources: The sheer volume of *qui tam* actions has undoubtedly 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 DOJ has previously encountered and expects relators to steer clear of going forward.
- DOJ's Carrot Comes With an Inherent Stick: DOJ has largely cast the FOCUS 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 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.
- The FOCUS Initiative Demonstrates a Growing Shift in the Type of Relator and FCA Case Companies Are Likely to Encounter: DOJ highlights that, since FY 2024, 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 (PPP, Economic Injury Disaster Loans, etc.), 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, DEI, and cybersecurity.

## Key Takeaways for Industry

At bottom, DOJ's FOCUS initiative serves as a reminder to government contractors, health care 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 DOJ to learn from data miners' techniques to enhance its own ability to analyze non-public government data and pursue potential fraud. While it remains to be seen 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.

Now is thus 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 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.