

DOJ's FY 2022 False Claims Act Report: Smaller Dollars but More Cases and Enforcement Priorities

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On February 7, 2023, the Department of Justice (DOJ) announced that FY 2022 yielded just \$2.2 billion in spoils from False Claims Act (FCA) judgments and settlements—the smallest haul since 2008 and a precipitous drop from 2021's \$5.7 billion bounty. But it would be a mistake to stop at that headline and conclude the FCA is on the wane. Indeed, potentially the most meaningful statistics in yesterday's announcement for those who do business with the Government were the near-record number of FCA resolutions in 2022 – 351 cases (second all time) – and the substantial number of *qui tams* filed – 652. While there may not have been as many blockbuster resolutions in 2022 as in 2021, the sheer number of resolutions gives teeth to the DOJ's consistent assertion that the FCA is the Government's primary civil tool to fight fraud against Government programs, a refrain that was substantively echoed hours later in President Biden's State of the Union Address.

Beyond the numbers, the Civil Division's long-awaited announcement provided additional insight into current and future enforcement priorities. As has historically been the case, the healthcare industry continues to dominate the FCA landscape. DOJ highlighted recoveries in fraud and abuse cases in the Medicaid program, billing for medically unnecessary or substandard services, and kickbacks. It also went out of its way to emphasize its commitment to fighting fraud in the Medicare Advantage program and drug pricing, even though it could only tout unresolved actions brought on those theories. Actions against government contractors also featured prominently in the report, with the Government highlighting three cases and reiterating

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its commitment to fighting fraud that “not only squanders government funds but also potentially puts service members and first responders at risk.”

DOJ's description of its use of the FCA to fight COVID-related fraud illustrates FY 2022's “more cases but smaller returns” theme. Specifically, DOJ reported that it recovered \$6.8M by resolving 35 FCA cases brought against borrowers that improperly received duplicate or inflated Paycheck Protection Program (PPP) loans, or were otherwise ineligible for PPP loans. The report also repeated DOJ's commitment to pursuing lenders who improperly disburse PPP funds, giving the distinct impression that its sole lender resolution (albeit for less than \$20,000) may be just the beginning.

As expected, the report reemphasized the Department's commitment to using the FCA to combat new and emerging cyber threats, and touted the first settlement under its Civil Cyber-Fraud Initiative. It also provided a reminder that the FCA is not just for companies in the health care and Government contracting spaces by highlighting a handful of FCA resolutions involving individuals and other industries—including airlines and telecom companies.

Beyond DOJ's own enforcement priorities, *qui tam* actions continue to drive FCA recoveries. A whopping 90% of the \$2.2B recovered in FY 2022 came from actions brought by whistleblowers. And those whistleblowers personally recovered more than \$500M for their efforts—an eyepopping number sure to incentivize future relators.

While FY 2022's FCA returns were low compared to FY 2021 – an outlier year built on a handful of high-dollar settlements – they remain in line with recent trends (\$2.23B in FY 2021, \$3B in FY 2020, and \$2.9B in FY 2019). When assessed alongside the near-record number of resolutions, DOJ's continued expansion of enforcement priorities, and an enthusiastic relators' bar, a clear picture emerges: The FCA shows no signs of slowing.