



PROGRAM MATERIALS

Program #36106

May 20, 2026

False Claims Act

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False Claims Act



May 20, 2026

By Wojciech Z. Kornacki, Esq.

Lecturer

Not Legal Advice / For Educational Purposes Only

False Claims Act

Agenda:

False Claims Act – Risks, Liabilities, Penalties, and Enforcement Areas

Qui Tam Lawsuits

Best Compliance Policies

Federal Acquisition Regulation: Claims and Requests for Equitable Adjustment

Sources:

The False Claims Act, 31 U.S.C. §§ 3729 – 3733

Federal cases interpreting the False Claims Act and *qui tam* actions

Department of Justice False Claims Act – Primer

Department of Justice Fraud Statistics Reports

Department of Justice Fact Sheet Settlements and Judgments



The False Claims Act

(a) Liability for certain acts.

(1) In general. Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, transmit money or property to the Government,

The False Claims Act

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person.

United States v. Greenberg, 237 F. Supp. 439 (1965)

There is no connection between penalties and the actual damages

United States v. Sazama, 88 F. Supp. 2d 1270 (2000)

There is no double jeopardy

United States v. Samuel Dunkel & Co., 61 F. Supp. 697 (D.N.Y. 1945)

There is no need for any contractual relationship

United States v. Mackby, 261 F.3d 821 (2000)

111 claims x \$ 5,000 = \$ 555,000; \$58,151.64 x 3 = \$ 174,454.92

The False Claims Act

(b) Definitions. For purposes of this section—

(1) the terms “**knowing**” and “**knowingly**”—

(A) mean that a person, with respect to information—

(i) has **actual knowledge** of the information;

(ii) acts in **deliberate ignorance** of the truth or falsity of the information; or

(iii) acts in **reckless disregard** of the truth or falsity of the information; and

(B) **require no proof of specific intent to defraud;**



The False Claims Act

(1) the (2) the term “**claim**”—

(A) means **any request or demand**, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to **an officer, employee, or agent of the United States**; or

(ii) is made to a **contractor, grantee, or other recipient, if the money or property** is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) **does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual’s use of the money or property;**



The False Claims Act

(3) the term “**obligation**” means an **established duty, whether or not fixed**, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “**material**” means **having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.**



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(2) Reduced damages. If the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with **all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;**

(B) such person **fully cooperated with any Government investigation of such violation;** and

(C) at the time such person furnished the United States with the information about the violation, **no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,** the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

The False Claims Act

The False Claims Act and Contract Disputes Act

Daewoo Eng'g & Constr. Co. v. United States, 557 F.3d 1332 (Fed. Cir. 2009)

By submitting false claims, contractor may forfeit legitimate claims

No Automatic Divestment

Boards for Contract Appeals do not lose jurisdiction when Department of Justice initiates False Claims Act action

Universal Health Servs. v. United States ex rel. Escobar, 579 U.S. 176 (2016)

Does Not Cover All Non-Compliance Issues

The False Claims Act

Enforcement Focus: Settlements and Judgments

Health Care Fraud (Medicare, Medicaid, and TRICARE)

Invalid diagnosis codes – close to \$100,000,000 settlement – Independent Health

False diagnosis codes – \$60,000,000 settlement – Seoul Medical Group

Improper Co-Pays – \$425,000,000 settlement – Teva Pharmaceuticals USA

Invalid Prescriptions – damages close to \$950,000,000 – Omnicare and its parent CVS

Improper Honoraria – \$176,000,000 – Gilead Sciences Inc.

Unnecessary Services – \$45,000,000 – Vohra Wound Physicians Management

<https://www.justice.gov/opa/media/1424126/dl>

The False Claims Act

Most Recent False Claims Act Settlements and Judgments

Procurement, Loans, and Grant Fraud

False cost and pricing data – \$428,000,000 – Raytheon Company

Defective pricing – close to \$30,000,000 – Lockheed Martin Corp.

Inflated Subcontractor Charges – \$21,000,000 – DynCorp International LLC

<https://www.justice.gov/opa/media/1424126/dl>

The False Claims Act

Most Recent False Claims Act Settlements and Judgments

Cybersecurity Fraud

False cybersecurity certifications – about \$11,000,000 – Health Net Federal Services Inc.

Products with inadequate cybersecurity protections – close to \$10,000,000 – Illumina

Improper cybersecurity plans – \$1,250,000 – Pennsylvania State University

<https://www.justice.gov/opa/media/1424126/dl>

The False Claims Act

Most Recent False Claims Act Settlements and Judgments

Pandemic Fraud

False information about employee rosters to obtain loans - \$20,000,000 – different companies

Exceeded Payroll Support Program limits – \$8,100,000 – Delta Air Lines Inc.

False medical evaluations – \$11,000,000 – different companies

<https://www.justice.gov/opa/media/1424126/dl>

The False Claims Act

Most Recent False Claims Act Settlements and Judgments

Tariff and Customs Avoidance

Trade Agreements Act violations – \$12,400,000 – Allied Stone Inc.

Mislabeled imported items – \$4,900,000 – Grosfillex, Inc.

Failing to pay duties – \$50,000,000 – Ceratizit, Inc.

<https://www.justice.gov/opa/media/1424126/dl>

The False Claims Act

Qui Tam Lawsuits

The relator must do the following to initiate a *qui tam* suit:

file the **civil complaint under seal** with the court (the defendant is not served at this time);

and **serve a copy of the complaint** and a "written disclosure of substantially all material evidence and information" possessed by the relator on both the Attorney General and the United States Attorney (USA) pursuant to Fed. R. Civ. P. 4. or Rule 4 of the Federal Rules of Civil Procedure.

The **government must then decide whether to take over the case as its own**. If it does not notify the court that it is taking over the case, it becomes the relator's to litigate.

The False Claims Act

Qui Tam Lawsuits, 31 USC § 3730

(d) Award to *qui tam* plaintiff.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least **15 percent** but not more than **25 percent of the proceeds**

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than **25 percent** and not more than **30 percent of the proceeds** of the action or settlement and shall be paid out of such proceeds.

The False Claims Act

Qui Tam Lawsuits, Defenses

31 USC § 3730(e)

No jurisdictions over actions brought by former service members or Members of Congress (specific circumstances)

Public knowledge

31 USC § 3730(h)

A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred. (retaliation)

Shaw v. AAA Eng'g & Drafting, Inc., 213 F.3d 519 (10th Cir. 2000)

Government's Knowledge (sometimes)

United States ex rel. Landis v. Tailwind Sports Corp., 2015 U.S. Dist. LEXIS 17212 (D.D.C. 2015)

Realtor wrongdoing

Another *qui tam* action pending
Settlement with the Government



The False Claims Act

FRAUD STATISTICS - OVERVIEW

October 1, 1986 - September 30, 2025

Civil Division, U.S. Department of Justice

FY	NEW MATTERS ^o		SETTLEMENTS AND JUDGMENTS ¹					RELATOR SHARE AWARDS ²		
	NON QUI TAM	QUI TAM	NON ³ QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
2010	144	576	649,300,368	2,279,140,248	109,778,613	2,388,918,862	3,038,219,230	379,518,436	30,915,991	410,434,427
2011	136	634	241,365,995	2,656,802,414	173,888,703	2,830,691,117	3,072,057,112	525,035,022	49,041,606	574,076,628
2012	158	655	1,612,212,862	3,379,683,169	90,248,343	3,469,931,512	5,082,144,374	440,672,456	24,861,743	465,534,199
2013	117	757	188,376,772	2,825,162,362	203,992,659	3,029,155,021	3,217,531,794	514,475,128	51,197,091	565,672,219
2014	119	716	1,677,608,226	4,390,679,739	91,136,701	4,481,816,440	6,159,424,665	703,127,381	17,615,475	720,742,857
2015	129	639	738,442,487	1,905,454,763	516,875,695	2,422,330,458	3,160,772,945	345,537,532	139,015,177	484,552,709
2016	184	710	1,929,806,062	2,929,387,222	108,298,069	3,037,685,292	4,967,491,353	525,546,823	29,658,600	555,205,423
2017	176	682	298,514,800	2,555,280,735	602,682,052	3,157,962,787	3,456,477,586	412,076,224	135,360,010	547,436,234
2018	133	650	783,996,453	1,999,330,585	210,796,053	2,210,126,638	2,994,123,091	328,352,091	37,505,357	365,857,449
2019	150	641	858,030,132	1,912,589,545	305,554,613	2,218,144,158	3,076,174,290	290,613,360	75,143,367	365,756,728
2020	261	679	544,724,942	1,566,964,401	193,883,475	1,760,847,877	2,305,572,819	285,973,891	51,274,154	337,248,044
2021	212	598	4,016,918,820	1,210,916,864	482,504,272	1,693,421,136	5,710,339,956	201,302,446	62,812,398	264,114,843
2022	305	660	250,337,200	807,419,063	1,199,211,531	2,006,630,594	2,256,967,793	149,231,533	350,990,454	500,221,987
2023	506	712	369,285,408	2,029,079,863	499,637,944	2,528,717,807	2,898,003,215	387,935,256	98,318,770	486,254,025
2024	425	980	504,097,394	2,317,992,077	311,728,929	2,629,721,006	3,133,818,400	393,046,308	86,158,558	479,204,866
2025	401	1,297	1,548,089,931	3,051,734,829	2,288,271,506	5,340,006,336	6,888,096,266	286,054,233	44,303,986	330,358,218

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...is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990

Adjustment of Civil Monetary Penalties for Inflation

PUBLISHED DOCUMENT: 2026-01688 (91 FR 3665)

U.S.C. section(s)	CFR ¹	HHS agency	Description ²	Date of last penalty figure or adjustment ³	2024 Maximum adjusted penalty (\$)	2025 Maximum adjusted penalty (\$) ⁴
			food adjudicated in a single proceeding			
333(f)(3)(A)		FDA	Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C. 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D)	2024	14,724	15,107
333(f)(3)(B)		FDA	Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected	2024	14,724	15,107
333(f)(4)(A)(i)		FDA	Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355-1 (REMS)	2024	368,137	377,701
		FDA	Penalty for aggregate of all such above violations in a single proceeding	2024	1,472,546	1,510,803
333(f)(4)(A)(ii)		FDA	Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation	2024	368,137	377,701

<https://www.federalregister.gov/documents/2026/01/28/2026-01688/annual-civil-monetary-penalties-inflation-adjustment>

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The False Claims Act

The False Claims Act Defenses

Hindo v. University of Health Sciences, 65 F.3d 608 (7th Cir. 1995)

Innocent Mistakes Are Not Actionable

United States v. Van Oosterhout, 96 F.3d 1491 (1996)

Statute of Limitations

United States v. Basin Elec. Power Coop., 248 F.3d 781 (8th Cir. 2001)

Improper Contract Interpretation

United States v. Southland Mgmt. Corp., 307 F.3d 352 (2002)

Representations Are Not Material To The Payment

Universal Health Servs. v. United States ex rel. Escobar, 579 U.S. 176 (2016)

Does Not Cover All Non-Compliance Issues

United States ex rel. Folliard v. Gov't Acquisitions, Inc., 764 F.3d 19, (D.C. Cir. 2014)

Reasonable Reliance on Third Party Representations

United States ex rel. Kraemer v. United Dairies, L.L.P., 82 F.4th 595 (8th Cir. 2023)

Established Business Practices Are Not Fraud

The False Claims Act

The False Claims Act - Best Compliance Policies

Compliance Training

Internal Reporting

Compliance Reviews

Mandatory Disclosure

Full Cooperation and Disclosure

The Yates Memorandum (2015)

Thank you!



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31 USC 3729: False claims

Text contains those laws in effect on May 10, 2026

From Title 31-MONEY AND FINANCE

SUBTITLE III-FINANCIAL MANAGEMENT

CHAPTER 37-CLAIMS

SUBCHAPTER III-CLAIMS AGAINST THE UNITED STATES GOVERNMENT

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[Effective Date](#)

§3729. False claims

(a) LIABILITY FOR CERTAIN ACTS.-

(1) IN GENERAL.-Subject to paragraph (2), any person who-

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410 ¹), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) REDUCED DAMAGES.-If the court finds that-

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) **COSTS OF CIVIL ACTIONS.-**A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) DEFINITIONS.-For purposes of this section-

(1) the terms "knowing" and "knowingly"-

(A) mean that a person, with respect to information-

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"-

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that-

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government-

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) EXEMPTION FROM DISCLOSURE.-Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.-This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978 ; Pub. L. 99-562, §2, Oct. 27, 1986, 100 Stat. 3153 ; Pub. L. 103-272, §4(f)(1)(O), July 5, 1994, 108 Stat. 1362 ; Pub. L. 111-21, §4(a), May 20, 2009, 123 Stat. 1621 .)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3729	31:231.	R.S. §3490.

In the section, before clause (1), the words "a member of an armed force of the United States" are substituted for "in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States" and "military or naval service" for consistency with title 10. The words "is liable" are substituted for "shall forfeit and pay" for consistency. The words "civil action" are substituted for "suit" for consistency in the revised title and with other titles of the United States Code. The words "and such forfeiture and damages shall be sued for in the same suit" are omitted as unnecessary because of rules 8 and 10 of the Federal Rules of Civil Procedure (28 App. U.S.C.). In clauses (1)-(3), the words "false or fraudulent" are substituted for "false, fictitious, or fraudulent" and "Fraudulent or fictitious" to eliminate unnecessary words and for consistency. In clause (1), the words "presents, or causes to be presented" are substituted for "shall make or cause to be made, or present or cause to be presented" for clarity and consistency and to eliminate unnecessary words. The words "officer or employee of the Government or a member of an armed force" are substituted for "officer in the civil, military, or naval service of the United States" for consistency in the revised title and with other titles of the Code. The words "upon or against the Government of the United States, or any department of the United States, or any department or officer thereof" are omitted as surplus. In clause (2), the word "knowingly" is substituted for "knowing the same to contain any fraudulent or fictitious statement or entry" to eliminate unnecessary words. The words "record or statement" are substituted for "bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition" for consistency in the revised title and with other titles of the Code. In clause (3), the words "conspires to" are substituted for "enters into any agreement, combination, or conspiracy" to eliminate unnecessary words. The words "of the United States, or any department or officer thereof" are omitted as surplus. In clause (4), the words "charge", "or other", and "to any other person having authority to receive the same" are omitted as surplus. In clause (5), the words "document certifying receipt" are substituted for "certificate, voucher, receipt, or other paper certifying the receipt" to eliminate unnecessary words. The words "arms, ammunition, provisions, clothing, or other", "to any other person", and "the truth of" are omitted as surplus. In clause (6), the words "arms, equipments, ammunition, clothes, military stores, or other" are omitted as surplus. The words "member of an armed force" are substituted for "soldier, officer, sailor, or other person called into or employed in the military or naval service" for consistency with title 10. The words "such soldier, sailor, officer, or other person" are omitted as surplus.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2009-Subsecs. (a), (b). Pub. L. 111–21, §4(a)(1), (2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to liability for certain acts and defined "knowing" and "knowingly", respectively.

Subsec. (c). Pub. L. 111–21, §4(a)(4), substituted "subsection (a)(2)" for "subparagraphs (A) through (C) of subsection (a)".

Pub. L. 111–21, §4(a)(2), (3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Prior to amendment, text read as follows: "For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded."

Subsecs. (d), (e). Pub. L. 111–21, §4(a)(3), redesignated subsecs. (d) and (e) as (c) and (d), respectively.

1994-Subsec. (e). Pub. L. 103–272 substituted "1986" for "1954".

1986-Subsec. (a). Pub. L. 99–562, §2(1), designated existing provisions as subsec. (a), inserted subsec. heading, and substituted "Any person who" for "A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of \$2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person" in introductory provisions.

Subsec. (a)(1). Pub. L. 99–562, §2(2), substituted "United States Government or a member of the Armed Forces of the United States" for "Government or a member of an armed force".

Subsec. (a)(2). Pub. L. 99–562, §2(3), inserted "by the Government" after "approved".

Subsec. (a)(4). Pub. L. 99–562, §2(4), substituted "control of property" for "control of public property" and "by the Government" for "in an armed force".

Subsec. (a)(5). Pub. L. 99–562, §2(5), substituted "by the Government" for "in an armed force" and "true;" for "true; or".

Subsec. (a)(6). Pub. L. 99–562, §2(6), substituted "an officer or employee of the Government, or a member of the Armed Forces," for "a member of an armed force" and "property; or" for "property."

Subsec. (a)(7). Pub. L. 99–562, §2(7), added par. (7).

Subsecs. (b) to (e). Pub. L. 99–562, §2(7), added subsecs. (b) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–21, §4(f), May 20, 2009, 123 Stat. 1625, provided that: "The amendments made by this section [amending this section and sections 3730 to 3733 of this title] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment, except that-

"(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a) (1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) that are pending on or after that date; and

"(2) section 3731(b) [probably should be section 3731] of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to cases pending on the date of enactment."

INCREASED PENALTIES FOR FALSE CLAIMS IN DEFENSE PROCUREMENT

Pub. L. 99–145, title IX, §931(b), Nov. 8, 1985, 99 Stat. 699, provided that: "Notwithstanding section 3729 of title 31, United States Code, the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of \$2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action."

[Section 931(c) of Pub. L. 99–145 provided that section 931(b) is applicable to claims made or presented on or after Nov. 8, 1985.]

¹ So in original. Probably should be "101–410".

The False Claims Act: A Primer

The False Claims Act (FCA), 31 U.S.C. §§ 3729 - 3733 was enacted in 1863 by a Congress concerned that suppliers of goods to the Union Army during the Civil War were defrauding the Army. The FCA provided that any person who knowingly submitted false claims to the government was liable for double the government's damages plus a penalty of \$2,000 for each false claim. Since then, the FCA has been amended several times. In 1986, there were significant changes to the FCA, including increasing damages from double damages to treble damages and raising the penalties from \$2,000 to a range of \$5,000 to \$10,000. The FCA has been amended three times since 1986. Over the life of the statute it has been interpreted on hundreds of occasions by federal courts (which sometimes issue conflicting interpretations of the statute). The purpose of this primer is not to explain how the FCA evolved over the decades or to discuss judicial interpretations of its provisions. Rather, in this primer we simply explain the most significant elements of the FCA to give one new to the statute an introductory understanding of the FCA and how it works. The complete text of the False Claims Act is provided at the end of this primer.

Liability

The statute begins, in § 3729(a), by explaining the conduct that creates FCA liability. In very general terms, §§ 3729(a)(1)(A) and (B) set forth FCA liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. Section 3729(a)(1)(G) is known as the reverse false claims section; it provides liability where one acts improperly – not to get money from the government, but to avoid having to pay money to the government. Section 3729(a)(1)(C) creates liability for those who conspire to violate the FCA. Sections 3729(a)(1)(D), (E), and (F) are rarely invoked.

Damages and penalties

After listing the seven types of conduct that result in FCA liability, the statute provides that one who is liable must pay a civil penalty of between \$5,000 and \$10,000 for each false claim (those amounts are adjusted from time to time; the current amounts are \$5,500 to \$11,000) and treble the amount of the government's damages. Where a person who has violated the FCA reports the violation to the government under certain conditions, the FCA provides that the person shall be liable for not less than double damages.

The knowledge requirement

A person does not violate the False Claims Act by submitting a false claim to the government; to violate the FCA a person must have submitted, or caused the submission of, the false claim (or made a false statement or record) with knowledge of the falsity. In § 3729(b)(1), knowledge of false information is defined as being (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information.

Definition of a claim

The FCA also defines what a claim is and says that it is a demand for money or property made directly to the Federal Government or to a contractor, grantee, or other recipient if the money is to spent on the government's behalf and if the Federal Government provides any of the money demanded or if the Federal Government will reimburse the contractor or grantee.

Tax claims exclusion

In § 3729(d), the FCA states that the statute does not apply to tax claims under the Internal Revenue Code.

The *qui tam* provisions

The FCA allows private persons to file suit for violations of the FCA on behalf of the government. A suit filed by an individual on behalf of the government is known as a “*qui tam*” action, and the person bringing the action is referred to as a “relator.”

a. Filing a *qui tam* complaint

The *qui tam* provisions begin at § 3730(b) of the FCA; § 3730(b)(1) states that a person may file a *qui tam* action. Section 3730(b)(2) provides that a *qui tam* complaint must be filed with the court under seal. The complaint and a written disclosure of all the relevant information known to the relator must be served on the U.S. Attorney for the judicial district where the *qui tam* was filed and on the Attorney General of the United States.

b. Government investigation

The *qui tam* complaint is initially sealed for 60 days. The government is required to investigate the allegations in the complaint; if the government cannot complete its investigation in 60 days, it can seek extensions of the seal period while it continues its investigation. The government must then notify the court that it is proceeding with the action (generally referred to as “intervening” in the action) or declining to take over the action, in which case the relator can proceed with the action.

c. Rights of the parties in a *qui tam* action

If the government intervenes in the *qui tam* action it has the primary responsibility for prosecuting the action. § 3730(c)(1). It can dismiss the action, even over the objection of the relator, so long as the court gives the relator an opportunity for a hearing (§ 3730(c)(2)(A)) and it can settle the action even if the relator objects so long as the relator is given a hearing and the court determines that the settlement is fair. § 3730(c)(2)(B). If a relator seeks to settle or dismiss a *qui tam* action, it must obtain the consent of the government. § 3730(b)(1). When the case is proceeding, the government (§ 3730(c)(2)(C)) and the defendant (§ 3730(c)(2)(D)) can ask the court to limit the relator's participation in the litigation.

d. Award to the relator

If the government intervenes in the *qui tam* action, the relator is entitled to receive between 15 and 25 percent of the amount recovered by the government through the *qui tam* action. If the government declines to intervene in the action, the relator's share is increased to 25 to 30 percent. Under certain circumstances, the relator's share may be reduced to no more than ten percent. If the relator planned and initiated the fraud, the court may reduce the award without limitation. The relator's share is paid to the relator by the government out of the payment received by the government from the defendant. If a *qui tam* action is successful, the relator also is entitled to legal fees and other expenses of the action by the defendant. All of these provisions are in § 3730(d) of the FCA. The FCA also provides that if the government chooses to obtain a recovery from the defendant in certain types of proceedings other than the relator's FCA suit, this is known as an alternate remedy and the relator is entitled to the same share of the recovery as if the recovery was obtained through the relator's FCA suit. §3730(c)(5).

e. Statutory bars to *qui tam* actions

The FCA provides several circumstances in which a relator cannot file or pursue a *qui tam* action:

1. The relator was convicted of criminal conduct arising from his or her role in the FCA violation. § 3730(d)(3).
2. Another *qui tam* concerning the same conduct already has been filed (this is known as the "first to file bar"). §3730(b)(5).
3. The government already is a party to a civil or administrative money proceeding concerning the same conduct. §3730(e)(3).
4. The *qui tam* action is based upon information that has been disclosed to the public through any of several means: criminal, civil, or administrative hearings in which the government is a party, government hearings, audits, reports, or investigations, or through the news media (this is known as the "public disclosure bar.") §3730(e)(4)(A). There is an exception to the public disclosure bar where the relator was the original source of the information.

We repeat that this primer does not discuss every section of the False Claims Act and is not intended to provide legal advice or take formal positions. It is intended only to provide a general introduction to the False Claims Act to those new to the area.

Below is the complete text of the False Claims Act:

§ 3729. False claims

(a) LIABILITY FOR CERTAIN ACTS.—

- (1) IN GENERAL.—Subject to paragraph (2), any person who—
 - (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent;
 - (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
 - (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
 - (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

- (2) REDUCED DAMAGES.—If the court finds that—
- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
 - (B) such person fully cooperated with any Government investigation of such violation; and
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

- (3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

- (b) DEFINITIONS.—For purposes of this section—

- (1) the terms “knowing” and “knowingly”—
 - (A) mean that a person, with respect to information—
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information;; and
 - (B) require no proof of specific intent to defraud;
- (2) the term “claim”—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

- (i) is presented to an officer, employee, or agent of the United States; or
- (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government —
 - (I) provides or has provided any portion of the money or property requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

- (a) **RESPONSIBILITIES OF THE ATTORNEY GENERAL.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
- (b) **ACTIONS BY PRIVATE PERSONS.**—
- (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.
 - (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
 - (3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.
 - (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—
 - (A) proceed with the action, in which case the action shall be conducted by the Government; or
 - (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

- (5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—

- (1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
- (2)
 - (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
 - (B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
 - (C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—
 - (i) limiting the number of witnesses the person may call;
 - (ii) limiting the length of the testimony of such witnesses;
 - (iii) limiting the person's cross-examination of witnesses; or
 - (iv) otherwise limiting the participation by the person in the litigation.

- (D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
- (3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.
- (4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.
- (5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.—

- (1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the

violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

- (4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) CERTAIN ACTIONS BARRED.—

- (1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.
- (2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).
- (3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.
- (4) (A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--
 - (i) in a Federal criminal, civil, or administrative hearing; in which the Government or its agent is a party;
 - (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation: or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

- (B) For purposes of this paragraph, “original source” means an individual who either (1) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.
- (f) **GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.**—The Government is not liable for expenses which a person incurs in bringing an action under this section.
- (g) **FEES AND EXPENSES TO PREVAILING DEFENDANT.**—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.
- (h) **RELIEF FROM RETALIATORY ACTIONS.**—
- (1) **IN GENERAL.**—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.
- (2) **RELIEF.**—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpoena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

(a) **ACTIONS UNDER SECTION 3730.**—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) **CLAIMS UNDER STATE LAW.**—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local

government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) SERVICE ON STATE OF LOCAL AUTHORITIES.—With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

§ 3733. Civil investigative demands

(a) IN GENERAL.—

- (1) ISSUANCE AND SERVICE.—Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—
 - (A) to produce such documentary material for inspection and copying,
 - (B) to answer in writing written interrogatories with respect to such documentary material or information,
 - (C) to give oral testimony concerning such documentary material or information, or
 - (D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney

General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) CONTENTS AND DEADLINES.—

- (A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.
- (B) If such demand is for the production of documentary material, the demand shall—
 - (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
 - (ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and
 - (iii) identify the false claims law investigator to whom such material shall be made available.
- (C) If such demand is for answers to written interrogatories, the demand shall—
 - (i) set forth with specificity the written interrogatories to be answered;
 - (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and
 - (iii) identify the false claims law investigator to whom such answers shall be submitted.
- (D) If such demand is for the giving of oral testimony, the demand shall—
 - (i) prescribe a date, time, and place at which oral testimony shall be commenced;
 - (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom

the transcript of such examination shall be submitted;

- (iii) specify that such attendance and testimony are necessary to the conduct of the investigation;
- (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
- (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) PROTECTED MATERIAL OR INFORMATION.—

- (1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

- (A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or
 - (B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.
 - (2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.
- (c) SERVICE; JURISDICTION.—
- (1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.
 - (2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.
- (d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—
- (1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—
 - (A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general

agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

- (B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or
- (C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

- (A) delivering an executed copy of such demand or petition to the person; or
- (B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) DOCUMENTARY MATERIAL.—

(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

- (A) in the case of a natural person, the person to whom the demand is directed, or
- (B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

- (2) **PRODUCTION OF MATERIALS.**—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) **INTERROGATORIES.**—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

- (1) in the case of a natural person, the person to whom the demand is directed, or
- (2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) **ORAL EXAMINATIONS.**—

- (1) **PROCEDURES.**—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer

and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

- (2) **PERSONS PRESENT.**—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.
- (3) **WHERE TESTIMONY TAKEN.**—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.
- (4) **TRANSCRIPT OF TESTIMONY.**—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.
- (5) **CERTIFICATION AND DELIVERY TO CUSTODIAN.**—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true

record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

- (6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.
- (7) CONDUCT OF ORAL TESTIMONY.—
 - (A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.
 - (B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [18 USCS §§ 6001 et seq.].
- (8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—

(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any

other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

- (D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—
 - (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and
 - (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.
- (3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.
- (4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—
 - (A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or
 - (B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all

documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

- (5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—
- (A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and
 - (B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) JUDICIAL PROCEEDINGS.—

- (1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.
- (2) PETITION TO MODIFY OR SET ASIDE DEMAND.—

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

- (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
- (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside

those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

- (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
- (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

- (4) **PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—**At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.
- (5) **JURISDICTION.—**Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.
- (6) **APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—**The Federal Rules of Civil Procedure shall apply to any petition under

this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) DEFINITIONS.—For purposes of this section—

- (1) the term “false claims law” means—
 - (A) this section and sections 3729 through 3732; and
 - (B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;
- (2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;
- (3) the term “false claims law investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;
- (4) the term “person” means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;
- (5) the term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;
- (6) the term “custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);
- (7) the term “product of discovery” includes—

- (A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
 - (B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and
 - (C) any index or other manner of access to any item listed in subparagraph (A); and
- (8) the term “official use” means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

Fact Sheet

False Claims Act Settlements and Judgments

FY2025

Representative examples of False Claims Act matters pursued by the government and whistleblowers this past fiscal year are discussed below.

HEALTH CARE FRAUD

Health care fraud remained a leading source of False Claims Act settlements and judgments. These recoveries restore funds to federal programs such as Medicare, Medicaid, and TRICARE, the health care program for service members and their families. The Department continued and expanded its success in three major areas: Managed Care, Prescription Drugs, and Medically Unnecessary Care.

Managed Care

The Justice Department continued to pursue cases alleging false claims in managed care, particularly the Medicare Advantage (or Medicare Part C) program. As Medicare Part C is now the largest component of Medicare, both in terms of federal dollars spent and the number of beneficiaries impacted, the work of the Justice Department in this area is of critical importance.

[Independent Health Association and its affiliate, Independent Health Corporation \(collectively, Independent Health\)](#) agreed to pay up to \$98 million to resolve false claims allegations of unsupported and invalid diagnosis codes submitted for Medicare Advantage Plan enrollees to increase payments that Independent Health received from Medicare. The United States alleged that an Independent Health subsidiary retrospectively searched medical records and queried physicians for information to add improper diagnoses for enrollees.

[Seoul Medical Group Inc. and its subsidiary Advanced Medical Management Inc.](#), and its former president and owner agreed to pay over \$60 million to resolve allegations that they caused the submission of false diagnosis codes for spinal conditions that patients did not have in order to increase payments from the Medicare Advantage program. [Renaissance Imaging Medical Associates Inc.](#), a radiology group that worked with Seoul Medical, agreed to pay \$2.35 million for allegedly conspiring with Seoul Medical Group to create radiology reports that appeared, falsely, to support the diagnosis for one of the spinal conditions.

The Justice Department intervened in a qui tam against national insurers [Aetna Inc., Elevance Health Inc., and Humana Inc.](#), as well as three insurance brokers [eHealth Inc., GoHealth, Inc., and Select Quote Inc.](#) The Department alleged that the insurers agreed to pay hundreds of millions of dollars in illegal kickbacks to the brokers in exchange for steering Medicare beneficiaries to enroll into the insurers' Medicare Advantage plans, regardless of the suitability of those plans for the beneficiaries. The complaint further alleged that the brokers incentivized their employees and agents to sell plans based on the insurers' kickbacks and, at times, refused to sell plans of insurers that did not pay them kickbacks. With respect to Aetna and Humana, the Department alleged that they each conspired with the brokers to avoid enrollment of Medicare beneficiaries with disabilities, which the insurers perceived to be less profitable for them. It is alleged that Aetna and Humana did this by threatening to withhold kickbacks to pressure brokers to enroll fewer disabled Medicare beneficiaries in their plans.

The Justice Department also filed suit against Local Initiative Health Authority for Inland Empire Health Plan, doing business as [Inland Empire Health Plan](#) (IEHP). The Government alleged that IEHP made false statements to Medi-Cal, California's Medicaid program, and retained surplus Medi-Cal Expansion funding that should ultimately have been returned to the federal government. It is further alleged IEHP misspent Medi-Cal Expansion funding for impermissible purposes, including simply giving away federal funding in exchange for no value in return. To make this spending seem legitimate, the complaint alleged that IEHP made false statements about the nature, timing, and purposes of its payments.

The Justice Department also continued to litigate matters against other major health insurance companies [UnitedHealthCare](#), [Kaiser](#), and [Anthem](#), alleging that they added improper diagnoses to increase reimbursement from the Medicare Advantage program.

Prescription Drugs

The Justice Department continued its pursuit of entities that engaged in misconduct related to drug pricing, drug dispensing, and illegal kickbacks that risk injecting improper financial motivations into the drugs prescribed to beneficiaries. These include matters that hold accountable those actors that contributed to and exacerbated the opioid crisis.

[Teva Pharmaceuticals USA Inc.](#), the largest generic drug manufacturer in the country, agreed to pay \$425 million to resolve allegations that it violated the False Claims Act by paying copays for Medicare patients for the multiple sclerosis drug Copaxone while steadily raising the drug's price. Teva further agreed to pay \$25 million to resolve allegations that it conspired with other generic drug manufacturers to fix prices for certain drugs and that the benefits Teva received under its price fixing scheme constituted illegal kickbacks.

A unanimous jury found [Omnicare](#), the country's largest long-term care pharmacy, and its parent CVS liable for fraudulently dispensing drugs without valid prescriptions to elderly and disabled people in assisted living facilities and other residential long-term care facilities. After a four-week trial, the jury found that Omnicare and CVS billed Medicare, Medicaid, and TRICARE for over three million false claims. In August 2025, the court entered a judgment including treble damages and penalties for a total amount of \$948.8 million.

[Medisca Inc. \(Medisca\)](#) agreed to pay \$21.75 million to resolve allegations concerning the establishment of false and inflated Average Wholesale Prices (AWPs) for two ingredients used in compound prescriptions. Compounding pharmacies purchase ingredients or chemicals from ingredient suppliers, such as Medisca, to prepare and fill compound prescriptions for patients who require a specially made prescription that is not generally available in the marketplace. The United States alleged that Medisca knowingly inflated the AWPs for ingredients to increase the reimbursement that its pharmacy customers received from the federal healthcare programs, often by thousands of dollars per prescription.

[Gilead Sciences, Inc.](#) agreed to pay \$176 million for offering and paying kickbacks in the form of honoraria payments, meals, and travel expenses to healthcare practitioners who spoke at or attended Gilead speaker events to induce them to prescribe certain Gilead HIV drugs. As part of the settlement, Gilead admitted it paid many high-volume prescribers of HIV drugs tens or hundreds of thousands of dollars in honoraria payments to prepare and present as HIV speakers.

[Biohaven Pharmaceutical Holding Company Ltd. \(Biohaven\)](#), a Pfizer subsidiary, agreed to pay \$59.7 million to resolve allegations that, prior to Pfizer's acquisition of the company, Biohaven paid kickbacks to health care providers to induce prescriptions. The government alleged that Biohaven selected and paid certain health care providers with the intent that the speaker honoraria and meals would induce them to prescribe its drug. The government further alleged that certain prescribers who attended multiple programs on the same topic received no educational benefit from attending repeat programs and that certain Biohaven speaker programs were attended by individuals with no educational need to attend, such as the speakers' spouses, family members, friends, or colleagues.

[QOL Medical LLC and its co-owner and CEO, Frederick Cooper](#), agreed to pay \$47 million to resolve allegations that they offered kickbacks in the form of free breath testing services to induce claims for QOL's drug Sucraid. QOL, with the CEO's approval, distributed free breath test kits to health care providers and asked providers to give the kits to patients with common gastrointestinal symptoms, claiming that the test could "rule in or rule out" the condition for which it was approved. In fact, the test did not specifically diagnose the condition and other conditions could cause a patient to test "positive."

The United States pursued several pharmacies for filling prescriptions for controlled substances that lacked a legitimate medical purpose, were not valid and/or were not issued in the usual course of professional practice. In those matters, the government alleged that the prescriptions included those for dangerous and excessive quantities of opioids, prescriptions for early refills of opioids and prescriptions for the especially dangerous and abused combination of drugs known as the "trinity," which is made up of an opioid, a benzodiazepine and a muscle relaxant. The government filed a complaint against [CVS and various subsidiaries](#) asserting such allegations. The government also filed a complaint against [Walgreens](#) and various subsidiaries, which [Walgreens resolved](#), agreeing to pay up to \$350 million. The government also resolved such claims against K-VA-T Food Stores, Inc., doing business as [Food City](#), for \$8.48 million. In addition, in a case that was the first of its kind, the Department held consultant [McKinsey & Co., Inc. United States \(McKinsey\)](#) accountable for its role providing advice to drug company Purdue Pharma L.P. that caused the submission of false and fraudulent claims to federal healthcare programs for medically unnecessary prescriptions of OxyContin, as well as allegedly failing to disclose to the U.S. Food and Drug Administration conflicts of interest arising from McKinsey's concurrent work for Purdue. McKinsey agreed to pay \$323 million to resolve the allegations.

Relators, too, were successful in pursuing actions against entities in the prescription drug arena, most notably in two trials that returned favorable verdicts for claims asserted by relators on behalf of the United States: U.S. ex rel. Penelow v. Janssen Products LP, resulting in a \$1.6 billion verdict arising from allegations that prescription drug claims to federal healthcare programs were induced by false and misleading claims about the safety and efficacy of the drugs Prezista and Intelence; and U.S. ex rel. Behnke v. CVS Caremark Corp., resulting in a \$289 million verdict for causing two Medicare Part D plans to report false and inflated prices for generic drugs.

Unnecessary Services and Substandard Care

The Justice Department also pursued and resolved matters in which providers billed federal health care programs for medically unnecessary services and substandard care that puts at risk the health and safety of vulnerable patient populations.

The United States filed a complaint against [Vohra Wound Physicians Management LLC \(Vohra\)](#) and its founder and majority owner, [Dr. Ameet Vohra](#), for allegedly causing the submission of false claims to Medicare for overbilled and medically unnecessary wound care services. The United States alleged that the defendants engaged in a nationwide scheme to falsely bill Medicare for surgical debridements – procedures to remove dead or unhealthy tissue that could impede wound healing – to maximize revenue. The defendants subsequently agreed to pay \$45 million to [settle](#) this matter.

[Oroville Hospital](#) agreed to pay \$10.25 million to resolve allegations that it billed Medicare and Medicaid for medically unnecessary inpatient hospital admissions, billing for more expensive inpatient hospital admissions when observation status or outpatient care was appropriate. The government further alleged that the hospital illegally incentivized inpatient admissions by paying financial bonuses to doctors who worked full time at the hospital and were in a position to influence whether patients were admitted to the hospital.

[American Health Foundation and three affiliated nursing homes](#) agreed to pay \$3.61 million to resolve allegations relating to billing Medicare and Medicaid for grossly substandard skilled nursing services. The United States alleged that the nursing homes failed to follow appropriate infection control protocols and did not maintain adequate staffing levels. The United States further alleged that Cheltenham Nursing & Rehabilitation Center, one of the nursing homes named, housed its residents in a dirty, pest-infected building, gave its residents unnecessary medications, subjected residents to verbal abuse, and failed to safeguard their possessions. The United States alleged that two of the facilities also failed to create and maintain crucial resident care plans and assessments.

The Justice Department filed claims against [ProMedica Health System, Inc.](#), affiliated entity HCR ManorCare, and four nursing homes owned and controlled by ProMedica. The complaint alleged that ManorCare owned and operated the nursing homes prior to ProMedica's acquisition of ManorCare. The complaint further alleged that the nursing homes provided non-existent, grossly substandard skilled nursing facility care, including failing to provide adequate wound care, maintain residents' hygiene and provide showers when required, and provide residents with appropriate assistance with feeding. In addition, the complaint alleged that defendants falsely documented that care and services had been provided to residents when it had not been.

PROCUREMENT, LOAN, AND GRANT FRAUD

The government continued its pursuit of fraud matters involving the purchase of goods and services by the government, including fraud in military procurements, violations of critical cybersecurity requirements in federal contracts and grants, and misuse of pandemic relief program funds.

Military Procurement Fraud

The Department pursued multiple matters involving the submission of false and inflated cost and pricing data to the U.S. military for contracts for essential defense systems and equipment. In the Department's second-largest procurement fraud case in history, [Raytheon Company](#) agreed to pay \$428 million to resolve allegations that it knowingly provided false cost and pricing data when negotiating with the Department of War for numerous government contracts and double billed on a weapons maintenance contract, leading to Raytheon receiving profits in excess of negotiated

rates. [L3 Technologies Inc.](#) agreed to pay \$62 million to resolve allegations that it failed to disclose accurate, current and complete cost or pricing data relating to labor, material and other costs for communications equipment. [Lockheed Martin Corp.](#) agreed to pay \$29.74 million to resolve allegations of defective pricing on contracts for F-35 military aircraft.

[Booz Allen Hamilton Holding Corporation](#) agreed to pay \$15.875 million to resolve allegations that its subsidiary, Booz Allen Hamilton Engineering Services LLC (BES) submitted fraudulent claims to the United States in connection with a General Services Administration task order to supply computer military training simulators and systems. The United States alleged that BES employees improperly used confidential government contracting and budget information, a competitor's confidential bid or proposal information, and source selection information to influence the agency to award the task order to BES.

[DRI Relays Inc.](#) agreed to pay \$15.7 million to resolve allegations that it supplied military parts that did not meet military specifications. DRI's parent company disclosed to the government that DRI failed to conduct certain required tests on relays and sockets but invoiced for military grade electrical relays and sockets when it knew those parts had not met testing requirements to be deemed military grade.

[DynCorp International LLC](#) agreed to pay \$21 million to resolve ongoing litigation with the government in which it alleged that DynCorp inflated subcontractor charges under a State Department contract to train Iraqi civilian police forces. The United States alleged that one of DynCorp's subcontractors charged excessive, uncompetitive, and unsubstantiated rates for hotel lodging and guard, translator, driver, and supervisor services and that DynCorp, contrary to its obligations as a government prime contractor, knowingly passed on those charges to the State Department for reimbursement.

Cybersecurity Fraud

In the cybersecurity arena, the Department continued its success in bringing matters to resolution and highlighting the importance of compliance with essential contract terms to ensure the security of government information. In this year alone, the Department has recovered over \$52 million in nine cybersecurity fraud settlements and civil cybersecurity fraud settlements have more than tripled in each of the past two years.

[Health Net Federal Services Inc. \(HNFS\) and its corporate parent, Centene Corporation](#), agreed to pay \$11.2 million to resolve allegations that HNFS falsely certified compliance with cybersecurity requirements in a contract to administer health benefits for servicemembers and their families. The United States alleged that it failed to timely scan for known vulnerabilities and remedy security flaws and ignored reports from third-party security auditors and its internal audit department of cybersecurity risks.

[Illumina Inc.](#) agreed to pay \$9.8 million to resolve allegations that it sold to federal agencies certain genomic sequencing systems with cybersecurity vulnerabilities and lacked an adequate security program and sufficient quality systems to identify and address those vulnerabilities. The United States alleged that Illumina failed to incorporate cybersecurity in its product's software design, development, installation, and on-market monitoring, failed to properly support and resource product security, failed to adequately correct design features that introduced cybersecurity vulnerabilities, and falsely represented that the software adhered to cybersecurity standards.

[MORSECORP Inc.](#) agreed to pay \$4.6 million to resolve allegations that it failed to comply with cybersecurity requirements in its government contracts. MORSECORP used a third-party company to host emails without requiring and ensuring that the third party met contract security requirements, failed to implement all required cybersecurity controls, and lacked a system security plan for its covered information systems. MORSECORP submitted an inaccurate score for its implementation of required security controls and when a third-party cybersecurity consultant notified MORSECORP that the score was wrong, MORSECORP did not promptly update it or notify the government.

The Department also obtained settlements with the [Pennsylvania State University \(Penn State\)](#) and [Georgia Tech Research Corporation \(GTRC\)](#). Penn State agreed to pay \$1.25 million to resolve allegations that it failed to comply with cybersecurity requirements in certain government contracts by failing to implement required cybersecurity controls and adequately develop and implement action plans to correct identified deficiencies. GTRC agreed to pay \$875,000 to resolve allegations that it failed to meet cybersecurity requirements in connection with certain Air Force and Defense Advanced Research Projects Agency contracts. The United States alleged, among other things, that GTRC failed to install, update or run anti-virus or anti-malware tools on desktops, laptops, servers and networks at Georgia Tech's Astrolavos Lab while the lab conducted sensitive cyber-defense projects for the government.

Pandemic Fraud

In response to the COVID-19 crisis, Congress authorized historic levels of emergency funding for federal agencies to provide direct financial assistance to individuals, businesses, and state, local, and Tribal governments. The Department's enforcement efforts in this area have included the pursuit of cases involving improper payments under the Paycheck Protection Program (PPP), administered by the U.S. Small Business Administration (SBA), and alleged fraud affecting Medicare and other federal healthcare programs for services related to COVID-19 testing and treatment. During fiscal year 2025, the Department obtained more than 200 False Claims Act settlements and judgments, which collectively exceeded more than \$230 million, resolving allegations of pandemic-related fraud. To date, the Department has collected over \$820 million in civil settlements and judgments relating to alleged fraud or improper payments in connection with pandemic relief programs.

For example, the Department pursued cases against borrowers for alleged false information about employee rosters and payrolls when seeking a PPP loan, such as a \$20 million consent judgment with [Patrick Walsh and 10 companies he owned or operated](#). It also pursued matters involving other pandemic-era programs, such as an \$8.1 million settlement with [Delta Air Lines Inc.](#), to resolve allegations that the company awarded compensation that exceeded limits Delta agreed to as part of its participation in the Treasury Department's Payroll Support Program. As part of the Department's efforts to hold accountable individuals for their role in these schemes, it filed a complaint against [three former executives of Kabbage Inc.](#), a now bankrupt financial technology company, alleging they submitted false claims for loan forgiveness, loan guarantees and processing fees to the SBA in connection with Kabbage's role in the PPP.

The Department also pursued cases against medical providers who sought to defraud pandemic-related healthcare programs, such as a \$3.5 million settlement against [Dr. Samad Khan](#) to resolve allegations that he billed for medical evaluations that were not performed at COVID-19 testing sites, and an \$8 million settlement with [Vault Medical Services, P.A. and Vault Medical Services](#)

[of New Jersey, P.C.](#), to resolve allegations that Vault billed a federal healthcare program designed for uninsured patients for COVID-19 services provided to patients with active health insurance. In addition, the Department obtained an \$8.2 million settlement with [Covid Test DMV LLC](#) to resolve allegations that the company billed the government for COVID-19 tests that were not provided to Medicare beneficiaries.

TARIFF AND CUSTOMS AVOIDANCE

Those who import and sell foreign-made goods in the United States must comply with all trade laws. The government relies on honest representations to levy and collect duties on imported merchandise. The Department had continued its efforts to root out and hold accountable actors that seek to evade tariffs and other duties.

For example, this past fiscal year, the Department obtained settlements against those who attempted to misrepresent the type of goods imported from the People’s Republic of China (China) in order to avoid antidumping and other duties, such as a \$12.4 million settlement with [Allied Stone Inc. and its president, Jia “Jerry” Lim](#). The Department pursued matters involving companies misrepresenting an item’s country of origin in order to avoid duties, as in an \$8.1 million settlement with [Evolution Flooring Inc. and its owners, Mengya Lin and Jin Qian](#), and a \$6.8 million settlement with [Global Plastics LLC and Marco Polo International LLC](#). The Department also pursued matters involving attempts to disguise items in order to evade duties, as in the \$4.9 million settlement with [Grosfillex Inc.](#) to resolve allegations that the company attempted to camouflage aluminum extrusions by packaging the parts as sham furniture “kits.”

The Justice Department filed claims against [Barco Uniforms Inc., Kenny Chan, David Chan](#), and companies operated and controlled by the Chans, alleging that they underpaid customs duties owed on imported apparel. The complaint alleges that defendants conspired to avoid or decrease customs duties owed by undervaluing imported garments Barco purchased from foreign suppliers. The complaint further alleges that certain of the defendants provided false entry summaries to Customs that undervalued imported goods, thereby reducing the duties paid on the merchandise, and also continued to underpay duties even after a third-party auditor recommended that Barco double-check its duty calculations relating to its foreign suppliers.

In addition the settlements, judgments, and suits from the last fiscal year, the Department recently announced a record-breaking settlement with [Ceratzit USA LLC](#), a distributor of tungsten carbide products, which agreed to pay \$54.4 million to resolve allegations that it violated the False Claims Act by knowingly and improperly failing to pay duties owed on such products imported from the People’s Republic of China. This is the largest customs fraud resolution ever under the False Claims Act.

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Except where indicated, the government’s claims in the matters described above are allegations only and there has been no determination of liability. The numbers contained in this press release may differ slightly from the original press releases due to accrued interest.




The Deputy Attorney General

Washington, D.C. 20530

September 9, 2015

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION
THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THE ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND
NATURAL RESOURCES DIVISION
THE ASSISTANT ATTORNEY GENERAL, NATIONAL
SECURITY DIVISION
THE ASSISTANT ATTORNEY GENERAL, TAX DIVISION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
TRUSTEES
ALL UNITED STATES ATTORNEYS

FROM:

Sally Quillian Yates 
Deputy Attorney General

SUBJECT:

Individual Accountability for Corporate Wrongdoing

Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens. These are principles that the Department lives and breathes—as evidenced by the many attorneys, agents, and support staff who have worked tirelessly on corporate investigations, particularly in the aftermath of the financial crisis.

One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system.

There are, however, many substantial challenges unique to pursuing individuals for corporate misdeeds. In large corporations, where responsibility can be diffuse and decisions are made at various levels, it can be difficult to determine if someone possessed the knowledge and criminal intent necessary to establish their guilt beyond a reasonable doubt. This is particularly true when determining the culpability of high-level executives, who may be insulated from the day-to-day activity in which the misconduct occurs. As a result, investigators often must reconstruct what happened based on a painstaking review of corporate documents, which can number in the millions, and which may be difficult to collect due to legal restrictions.

These challenges make it all the more important that the Department fully leverage its resources to identify culpable individuals at all levels in corporate cases. To address these challenges, the Department convened a working group of senior attorneys from Department components and the United States Attorney community with significant experience in this area. The working group examined how the Department approaches corporate investigations, and identified areas in which it can amend its policies and practices in order to most effectively pursue the individuals responsible for corporate wrongs. This memo is a product of the working group's discussions.

The measures described in this memo are steps that should be taken in any investigation of corporate misconduct. Some of these measures are new, while others reflect best practices that are already employed by many federal prosecutors. Fundamentally, this memo is designed to ensure that all attorneys across the Department are consistent in our best efforts to hold to account the individuals responsible for illegal corporate conduct.

The guidance in this memo will also apply to civil corporate matters. In addition to recovering assets, civil enforcement actions serve to redress misconduct and deter future wrongdoing. Thus, civil attorneys investigating corporate wrongdoing should maintain a focus on the responsible individuals, recognizing that holding them to account is an important part of protecting the public fisc in the long term.

The guidance in this memo reflects six key steps to strengthen our pursuit of individual corporate wrongdoing, some of which reflect policy shifts and each of which is described in greater detail below: (1) in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; (2) criminal and civil corporate investigations should focus on individuals from the inception of the investigation; (3) criminal and civil attorneys handling corporate investigations should be in routine communication with one another; (4) absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; (5) Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should

memorialize any declinations as to individuals in such cases; and (6) civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.¹

I have directed that certain criminal and civil provisions in the United States Attorney's Manual, more specifically the Principles of Federal Prosecution of Business Organizations (USAM 9-28.000 *et seq.*) and the commercial litigation provisions in Title 4 (USAM 4-4.000 *et seq.*), be revised to reflect these changes. The guidance in this memo will apply to all future investigations of corporate wrongdoing. It will also apply to those matters pending as of the date of this memo, to the extent it is practicable to do so.

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.

In order for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor pursuant to USAM 9-28.700 *et seq.*² Once a company meets the threshold requirement of providing all relevant facts with respect to individuals, it will be eligible for consideration for cooperation credit. The extent of that cooperation credit will depend on all the various factors that have traditionally applied in making this assessment (*e.g.*, the timeliness of the cooperation, the diligence, thoroughness, and speed of the internal investigation, the proactive nature of the cooperation, etc.).

This condition of cooperation applies equally to corporations seeking to cooperate in civil matters; a company under civil investigation must provide to the Department all relevant facts about individual misconduct in order to receive any consideration in the negotiation. For

¹ The measures laid out in this memo are intended solely to guide attorneys for the government in accordance with their statutory responsibilities and federal law. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States.

² Nor, if a company is prosecuted, will it support a cooperation-related reduction at sentencing. *See* U.S.S.G. USSG § 8C2.5(g), Application Note 13 (“A prime test of whether the organization has disclosed all pertinent information” necessary to receive a cooperation-related reduction in its offense level calculation “is whether the information is sufficient ... to identify ... the individual(s) responsible for the criminal conduct”).

example, the Department’s position on “full cooperation” under the False Claims Act, 31 U.S.C. § 3729(a)(2), will be that, at a minimum, all relevant facts about responsible individuals must be provided.

The requirement that companies cooperate completely as to individuals, within the bounds of the law and legal privileges, *see* USAM 9-28.700 to 9-28.760, does not mean that Department attorneys should wait for the company to deliver the information about individual wrongdoers and then merely accept what companies provide. To the contrary, Department attorneys should be proactively investigating individuals at every step of the process – before, during, and after any corporate cooperation. Department attorneys should vigorously review any information provided by companies and compare it to the results of their own investigation, in order to best ensure that the information provided is indeed complete and does not seek to minimize the behavior or role of any individual or group of individuals.

Department attorneys should strive to obtain from the company as much information as possible about responsible individuals before resolving the corporate case. But there may be instances where the company’s continued cooperation with respect to individuals will be necessary post-resolution. In these circumstances, the plea or settlement agreement should include a provision that requires the company to provide information about all culpable individuals and that is explicit enough so that a failure to provide the information results in specific consequences, such as stipulated penalties and/or a material breach.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.

Both criminal and civil attorneys should focus on individual wrongdoing from the very beginning of any investigation of corporate misconduct. By focusing on building cases against individual wrongdoers from the inception of an investigation, we accomplish multiple goals. First, we maximize our ability to ferret out the full extent of corporate misconduct. Because a corporation only acts through individuals, investigating the conduct of individuals is the most efficient and effective way to determine the facts and extent of any corporate misconduct. Second, by focusing our investigation on individuals, we can increase the likelihood that individuals with knowledge of the corporate misconduct will cooperate with the investigation and provide information against individuals higher up the corporate hierarchy. Third, by focusing on individuals from the very beginning of an investigation, we maximize the chances that the final resolution of an investigation uncovering the misconduct will include civil or criminal charges against not just the corporation but against culpable individuals as well.

3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.

Early and regular communication between civil attorneys and criminal prosecutors handling corporate investigations can be crucial to our ability to effectively pursue individuals in

these matters. Consultation between the Department's civil and criminal attorneys, together with agency attorneys, permits consideration of the full range of the government's potential remedies (including incarceration, fines, penalties, damages, restitution to victims, asset seizure, civil and criminal forfeiture, and exclusion, suspension and debarment) and promotes the most thorough and appropriate resolution in every case. That is why the Department has long recognized the importance of parallel development of civil and criminal proceedings. *See* USAM 1-12.000.

Criminal attorneys handling corporate investigations should notify civil attorneys as early as permissible of conduct that might give rise to potential individual civil liability, even if criminal liability continues to be sought. Further, if there is a decision not to pursue a criminal action against an individual – due to questions of intent or burden of proof, for example – criminal attorneys should confer with their civil counterparts so that they may make an assessment under applicable civil statutes and consistent with this guidance. Likewise, if civil attorneys believe that an individual identified in the course of their corporate investigation should be subject to a criminal inquiry, that matter should promptly be referred to criminal prosecutors, regardless of the current status of the civil corporate investigation.

Department attorneys should be alert for circumstances where concurrent criminal and civil investigations of individual misconduct should be pursued. Coordination in this regard should happen early, even if it is not certain that a civil or criminal disposition will be the end result for the individuals or the company.

4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.

There may be instances where the Department reaches a resolution with the company before resolving matters with responsible individuals. In these circumstances, Department attorneys should take care to preserve the ability to pursue these individuals. Because of the importance of holding responsible individuals to account, absent extraordinary circumstances or approved departmental policy such as the Antitrust Division's Corporate Leniency Policy, Department lawyers should not agree to a corporate resolution that includes an agreement to dismiss charges against, or provide immunity for, individual officers or employees. The same principle holds true in civil corporate matters; absent extraordinary circumstances, the United States should not release claims related to the liability of individuals based on corporate settlement releases. Any such release of criminal or civil liability due to extraordinary circumstances must be personally approved in writing by the relevant Assistant Attorney General or United States Attorney.

5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.

If the investigation of individual misconduct has not concluded by the time authorization is sought to resolve the case against the corporation, the prosecution or corporate authorization memorandum should include a discussion of the potentially liable individuals, a description of the current status of the investigation regarding their conduct and the investigative work that remains to be done, and an investigative plan to bring the matter to resolution prior to the end of any statute of limitations period. If a decision is made at the conclusion of the investigation not to bring civil claims or criminal charges against the individuals who committed the misconduct, the reasons for that determination must be memorialized and approved by the United States Attorney or Assistant Attorney General whose office handled the investigation, or their designees.

Delays in the corporate investigation should not affect the Department's ability to pursue potentially culpable individuals. While every effort should be made to resolve a corporate matter within the statutorily allotted time, and tolling agreements should be the rare exception, in situations where it is anticipated that a tolling agreement is nevertheless unavoidable and necessary, all efforts should be made either to resolve the matter against culpable individuals before the limitations period expires or to preserve the ability to charge individuals by tolling the limitations period by agreement or court order.

6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

The Department's civil enforcement efforts are designed not only to return government money to the public fisc, but also to hold the wrongdoers accountable and to deter future wrongdoing. These twin aims – of recovering as much money as possible, on the one hand, and of accountability for and deterrence of individual misconduct, on the other – are equally important. In certain circumstances, though, these dual goals can be in apparent tension with one another, for example, when it comes to the question of whether to pursue civil actions against individual corporate wrongdoers who may not have the necessary financial resources to pay a significant judgment.

Pursuit of civil actions against culpable individuals should not be governed solely by those individuals' ability to pay. In other words, the fact that an individual may not have sufficient resources to satisfy a significant judgment should not control the decision on whether to bring suit. Rather, in deciding whether to file a civil action against an individual, Department attorneys should consider factors such as whether the person's misconduct was serious, whether

it is actionable, whether the admissible evidence will probably be sufficient to obtain and sustain a judgment, and whether pursuing the action reflects an important federal interest. Just as our prosecutors do when making charging decisions, civil attorneys should make individualized assessments in deciding whether to bring a case, taking into account numerous factors, such as the individual's misconduct and past history and the circumstances relating to the commission of the misconduct, the needs of the communities we serve, and federal resources and priorities.

Although in the short term certain cases against individuals may not provide as robust a monetary return on the Department's investment, pursuing individual actions in civil corporate matters will result in significant long-term deterrence. Only by seeking to hold individuals accountable in view of all of the factors above can the Department ensure that it is doing everything in its power to minimize corporate fraud, and, over the course of time, minimize losses to the public fisc through fraud.

Conclusion

The Department makes these changes recognizing the challenges they may present. But we are making these changes because we believe they will maximize our ability to deter misconduct and to hold those who engage in it accountable.

In the months ahead, the Department will be working with components to turn these policies into everyday practice. On September 16, 2015, for example, the Department will be hosting a training conference in Washington, D.C., on this subject, and I look forward to further addressing the topic with some of you then.