

False Claims Act ADVISORY

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DOJ Reports Record Number of New False Claims Act Matters, Recoveries for 2023

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The Department of Justice (DOJ) has announced that it recovered \$2.68 billion in False Claims Act (FCA) cases in FY 2023. This amount barely edged out the DOJ's recoveries in FY 2022 (\$2.24 billion) and represents the third-lowest annual haul since 2010. Statistics announced by the DOJ, however, demonstrate that FCA enforcement remains a top department priority and that recoveries will likely increase in the future.

The DOJ announced that 1,212 new False Claims Act matters were initiated in FY 2023, marking the first time the department has passed the thousand-matter threshold for a single year. The DOJ initiated 500 of those cases, shattering its previous record of 340 matters set nearly 40 years ago. Qui tam relators filed the remaining 712 new matters in 2023—nearly a record and the most since 2014.

The DOJ also reported its highest-ever number of FCA settlements and judgments obtained (543).

As DOJ-Initiated Matters Increase, Qui Tam Actions Continue to Drive Recoveries

The DOJ has steadily been filing more FCA cases on its own. From 2000 to 2019, the DOJ never filed more than 200 cases in a year—and usually much less than that. Since 2019, however, the DOJ has filed more than 200 cases each year. Those cases, however, have not yet borne substantial fruit—accounting for about 13% of FCA recoveries in FY 2023. The vast majority of recoveries continue to come from qui tam cases filed by whistleblowers (FY 2021 was the exception, when recoveries in the DOJ-filed cases exceeded qui tam recoveries). DOJ involvement is still critical even in qui tam cases. Over 80% of the DOJ's recoveries in qui tam cases came from matters in which the DOJ intervened.

DOJ Maintains Focus on Health Care Fraud While Shifting Attention to Other Sectors

Traditionally, the DOJ has used the FCA primarily as a mechanism for combatting health care fraud—and that held true in FY 2023. The health care industry paid over \$1.8 billion to the department. Those recoveries were collected from a broad array of health care actors, with particularly notable recoveries stemming from FCA enforcement related to Medicare Advantage, unnecessary or substandard care, the opioid epidemic, and

kickbacks. The DOJ, however, also highlighted key recoveries in other areas such as procurement, pandemic relief, and cybersecurity. During remarks at a recent conference, Principal Deputy Assistant Attorney General Brian M. Boynton confirmed the DOJ's expanding list of FCA enforcement priorities, calling out Medicare Advantage and managed Medicaid, cybersecurity, pandemic fraud, and private equity investors as areas of DOJ interest moving forward.

FCA Enforcement Poised to Continue Trending Upward in FY24

The sharp increase in DOJ-initiated cases in 2023, as well as the DOJ's growing focus on non-health-care sectors, signals the department's intent to leverage the FCA aggressively to achieve its enforcement goals across industries in the coming year and beyond. In the face of increasing scrutiny from the DOJ, companies should continue to prioritize their FCA compliance efforts, diligently investigate internal whistleblower complaints, and remain attentive to guidance from regulators.

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