

DOJ Intends to “Aggressively” Enforce the False Claims Act During Second Trump Administration

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Deputy Assistant Attorney General Michael Granston laid out the Department of Justice’s (“DOJ”) priorities over the next four years at the Federal Bar Association’s annual *qui tam* conference in Washington, D.C. last week. In his keynote address, Granston dispelled any notions that False Claims Act (“FCA”) enforcement would be curtailed, saying that DOJ “plans to continue to aggressively enforce the False Claims Act” consistent with the new administration’s focus on achieving government efficiency and rooting out waste, fraud and abuse.

What are DOJ’s priorities?

Granston went on to identify several key priorities for FCA enforcement in the coming years, including:

- *Tariff Evasion/Customs Fraud.* Granston stated that the FCA is a “powerful tool” for fighting against efforts to avoid paying customs duties on imported goods. Given the Administration’s focus on trade issues, “reverse false claims” actions challenging goods classifications under the Harmonized Tariff Schedule, country of origin, or product value, and similar FCA claims may increase significantly in the coming months and years.
- *Pharmaceutical Price Inflation and Drug Rebate Retention.* Artificial inflation of pharmaceutical prices for government healthcare programs (including Medicare, Medicaid, FEHB, and TRICARE) resulting in increased costs to the federal government, such as through manipulating the reported “Average Wholesale Price” (AWP), may create FCA liability. Similarly, Part D Plan Sponsors, or pharmacy benefit managers, are obliged to pass on certain savings, including discounts and rebates, to the federal government. These savings are also reported, creating the risk for FCA liability in the obligation to pass savings through and the reporting requirements.
- *Procurement Fraud.* DOJ has made it clear this will be another area of focus. Government contract awards based on false premises or promises in a proposal or bid, false certifications, bid rigging, collusive behavior, and other similar alleged conduct are expected to be a focus over the next year. In a similar vein, the U.S. Attorney’s Office for the Northern District of Ohio last month announced it would be

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“spearheading a new, interagency Supply Chain Oversight and Procurement Enforcement (SCOPE) Task Force . . . to ensure supply chain integrity and prevent procurement fraud.”

- *Medicare Part C/Medicare Advantage.* Medicare Part C, also known as Medicare Advantage, constitutes about half of all expenditures for the Medicare program and affects millions of beneficiaries. Granston indicated that DOJ intends to ramp up enforcement of Part C fraud, which may include claims of provision of substandard or unnecessary care, “upcoding” schemes, and false certifications.
- *Pandemic Relief.* Over recent years, DOJ has dramatically increased its enforcement related to pandemic relief, including Paycheck Protection Program (PPP) based fraud. According to Granston, this is likely to continue for the foreseeable future.

The Administration has offered broader signals of its own, particularly given the high-profile activities of the Department of Government Efficiency, and multiple broad-reaching Executive Orders focused on institutions of higher education and research institutions. Federal grants compliance, particularly as to DEI/DEIA initiatives (see related discussion [here](#) and [here](#)) and the interaction between certifications of compliance and the FCA may be a major focus for DOJ and private relators.

How should organizations prepare?

If you or your organization are receiving federal funds or could be obligated to make non-tax payments to the federal government (such as tariffs), mitigation of the risk of FCA liability and related investigations are prudent.

- *Review current practices with an eye to the FCA.* With DOJ signaling that “aggressive” enforcement of the FCA is ahead, organizations making payments to or receiving payments from the federal government for anything from paying import duties to submitting claims for medical services, should review current practices and policies to identify areas of risk and bolster their culture of compliance.
- *Analyze your federal-facing data.* From import records to healthcare claims payments, many organizations knowingly or unknowingly provide the federal government with treasure troves of information. Knowing what your own data says about your organization can help you get ahead of any potential federal investigation.
- *Consult with counsel.* The best time to get ahead on FCA issues is before they arise. Proactive assessments, mitigation, and even self-disclosure with the help of experienced counsel can significantly reduce FCA exposure. Certainly, if a Civil Investigative Demand drops on your desk, pick up the phone and get some expert help.