

DOJ's False Claims Act Recoveries Drop to \$2.2 Billion in FY 2020—But the Decrease May Be Short-Lived

The U.S. Department of Justice (DOJ) recovered more than \$2.2 billion in settlements and judgments from civil cases under the False Claims Act (FCA) in the fiscal year ending September 30, 2020. This is a drop of more than 25% from fiscal year 2019, when DOJ recovered more than \$3 billion.

According to DOJ's statistics [released](#) on January 14, 2021, of the total recoveries, more than \$1.8 billion related to matters involving healthcare. Lawsuits filed by *qui tam* whistleblowers continue to generate the bulk of DOJ's recoveries, producing \$1.6 billion in recoveries in the last fiscal year. But DOJ initiated a relatively large number of its own cases, too.

DOJ's total recoveries in FCA settlements and judgments in FY 2020 were lower than in any one year since 2008. The dip is notable but should not be construed as a downward trend by any means. There are reasons to expect that FCA enforcement activity will be robust in the months ahead. Also, the statistics do not include DOJ's global criminal and civil [settlement](#) with Purdue Pharma LP and its owners (the Sackler family). Under that settlement, announced in October 2020, Purdue agreed to pay \$2.8 billion and the Sackler family agreed to pay \$225 million to resolve alleged civil violations of the FCA related to opioid drug products.

This update provides an overview of DOJ's statistics and their significance for companies and other stakeholders.

DOJ's FCA Statistics for FY 2020: Highlights

Each year, DOJ releases aggregate statistics that reflect the total values of civil settlements and judgments obtained by DOJ in the prior fiscal year involving allegations of fraud and false claims against the government. All told, the government has collected more than \$64 billion under the FCA since 1986, when Congress amended the FCA in significant respects.

Among the highlights of the newly released statistics:

- **Healthcare Cases Decreased.** DOJ's \$1.8 billion-plus in civil settlements and judgments in healthcare-related cases under the FCA represents a significant decrease from FY 2019, when DOJ recovered more than \$2.6 billion in such cases. Still, as in prior years, the healthcare and life sciences industries continue to be a focus of FCA investigations and litigation.
- **Procurement Fraud Cases Also Produced Smaller Recoveries.** DOJ's recoveries in the procurement fraud area also decreased sharply in FY 2020, according to DOJ's statistics. DOJ recovered just over \$75 million in FCA cases related to the U.S. Department of Defense (DoD), compared to \$253 million in FY 2019. The FY 2020 figure was the smallest annual recovery in DoD cases under the FCA since FY 2014.
- **A Slight Increase in FCA Recoveries in Other Cases.** DOJ's settlements and judgments in non-DoD/non-healthcare cases increased in FY 2020, reflecting that the FCA continues to affect broad ranges of industries beyond healthcare and government contracting. DOJ obtained more than \$296 million in such cases in the last fiscal year, compared to more than \$207 million in FY 2019 and \$261 million in FY 2018.

- **A Slight Increase in *Qui Tam*.** *Qui tam* whistleblowers (relators) filed 672 suits under the FCA in fiscal year 2020, a slight increase compared to FY 2018 (648) and FY 2019 (638). The government paid out \$309 million to relators during this period, compared to \$365 million in FY 2019. The numbers reflect that the volume of *qui tam* cases continues to be significant.
- **DOJ Brought More Cases on Its Own.** The statistics show a sharp increase in the number of FCA investigations originated by the government without a *qui tam* case that ultimately resulted in a monetary payout. DOJ initiated 250 such matters under the FCA in FY 2020, which is the largest number of non-*qui tam* matters brought by the government in any one year since 1994. Of the 250 DOJ-initiated matters, 117 involved healthcare, 29 involved defense contracting, and 104 involved other areas.
- **Cases Against Drug and Medical Device Manufacturers Produced Settlements.** Of the \$1.8 billion in healthcare-related civil settlements and judgments collected by DOJ, the largest recoveries came from the drug industry, according to DOJ. They included a \$591 million settlement with a drug manufacturer to resolve allegations that it paid kickbacks to doctors to induce them to prescribe its drugs as well as settlements involving opioid-related cases, which has been a priority area for the Department. DOJ cited a \$145 million settlement reached with a health information technology company to resolve allegations related to the company's electronic health records software.

Takeaways

A few observations can be made based on the statistics:

- **FCA Enforcement Continues to Be Robust.** Despite the aggregate drop in FCA recoveries in FY 2020, enforcement activity under the statute continues to be relatively robust, as indicated by the increased number of *qui tam* cases filed in FY 2020. The inclusion of the \$2.8 billion Purdue Pharma settlement in next year's statistics is among the indications that last year's drop may be short-lived.
- **COVID-19 Fraud Cases Are Likely.** One area that the statistics do not reflect is the impact of trillions of dollars in government stimulus spending related to COVID-19, which is likely to create a wave of FCA investigations and litigation. DOJ has brought numerous fraud-related criminal charges against borrowers who applied for loans under the \$659 billion Paycheck Protection Program (PPP). And on January 12, 2021, the U.S. Attorney's Office for the Eastern District of California [announced](#) a civil settlement with a PPP borrower and its CEO to resolve allegations that they made false statements to banks and caused false claims to be made to the government in violation of the FCA and the Financial Institutions Reform, Recovery, and Enforcement Act—the first PPP-related FCA civil settlement. Other cases are likely to emerge in 2021.
- **Whistleblower Suits Are Not the Only Source of Cases.** The increase in DOJ-initiated FCA cases demonstrates that although *qui tam* lawsuits are a key source of cases in this area, they are not the only source, and the FCA remains a powerful tool to combat fraud against the government even in situations in which whistleblowers are uninvolved.

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