

## The Number of False Claims Act Cases Reaches Record High, But DOJ's Recoveries Drop to \$2.2 Billion in Fiscal Year 2022

The U.S. Department of Justice (DOJ) obtained more than \$2.2 billion in civil False Claims Act (FCA) judgments and settlements in fiscal year (FY) 2022, the lowest such annual total since 2008 and a significant drop from a jump in FCA recoveries in the prior year. At the same time, the government and *qui tam* relators filed a total of 948 new cases in FY 2022, a record high.

The DOJ's [announcement](#) of its statistics for FY 2022 FCA settlements and judgments signals that enforcement of the FCA against corporate defendants continues to be vigorous, even if the dollar values are lower. The DOJ highlighted that, in FY 2022, the government and *qui tam* relators obtained 351 FCA settlements and judgments—the second-highest such number in any one year in history. Also, the DOJ initiated a record 296 non-*qui tam* FCA cases in FY 2022, demonstrating that the DOJ is increasingly bringing FCA cases on its own, without relying on relators to trigger investigations by filing suits pursuant to the FCA's *qui tam* provisions.

In this Update, we provide an overview of the DOJ's statistics and their significance.

### Highlights From DOJ's FY 2022 FCA Statistics

Each year, the DOJ recovers billions of dollars from defendants under the FCA, which imposes treble damages and penalties against violators that knowingly present (or cause to present) a false or fraudulent claim for payment to the government. The government has collected more than \$72 billion in FCA settlements and judgments since amendments to the statute in 1986. Many cases are initiated by whistleblowers (relators) under the statute's *qui tam* provisions.

The DOJ's annual FCA statistics can shed light on trends. However, a single year's statistics should be viewed in context: The numbers often vary due to several factors. The total recoveries for any one year can often be affected by one or more large settlements or judgments. Such was the case in FY 2021, when the DOJ obtained large settlements with opioid manufacturers. And in this last fiscal year, a single \$900 million settlement [announced](#) on September 26, 2022—just before the end of the fiscal year—appears to have also driven the numbers. In that case, the defendant paid \$843 million to the United States and \$56 million to 15 states to settle allegations of false claims submitted to Medicare and Medicaid.

With its announcement of its FY 2022 statistics, the DOJ released a table with data regarding its FCA settlements and judgments for FY 2022 and showing past years dating back to 2006.

Below are a few highlights from the data:

- Relators filed 652 new *qui tam* suits this past fiscal year, out of a total of 948 new FCA matters. That is a notable increase from the 598 *qui tam* suits filed in FY 2021, which represented a slight decrease from historical numbers. From FY 2011 to FY 2020, for example, the number of new *qui tam* suits filed each year exceeded more than 600 and, in some years, 700.
- Of the more than \$2.2 billion in total FCA recoveries for FY 2022, more than \$1.9 billion, or 86%, arose out of *qui tam* suits filed by relators. By comparison, in FY 2021, \$1.7 billion of \$5.7 billion, or 30%, of

the total FCA recoveries originated from *qui tam*. This is quite a jump, and likely a reflection of certain large-dollar-value *qui tam* cases resolved last year, such as the \$900 million settlement noted above.

- For the first time since the FCA was amended in 1986, relators' recoveries in cases in which the government declined to intervene totaled more than the total recoveries obtained by the government in intervened cases. In so-called declined cases, relators obtained a total of more than \$1.1 billion in FCA settlements and judgments in FY 2022, whereas the government obtained more than \$776 million in cases in which the government intervened. In each prior year dating to 1986, the government's total settlements and judgments in intervened cases were consistently much larger than in declined cases. It is possible that the \$900 million settlement cited above—a declined case—drove the numbers. That case [reportedly](#) led to a record-breaking \$266 million payment to the relator who pursued the DOJ-declined case to its resolution.
- As in prior years, healthcare remains a focus of FCA enforcement. Of the more than \$2.2 billion in FCA settlements and judgments in FY 2022, more than \$1.7 billion, or 77%, related to the healthcare and life sciences industries. Those figures do not account for recoveries that the DOJ helped deliver to state Medicaid programs, according to the DOJ.
- Significantly, the DOJ initiated 296 new FCA cases during FY 2022. That is the highest number of new DOJ-initiated FCA matters since 1994, and much higher than in past years. For example, the DOJ initiated 212 new cases in FY 2021, 261 new cases in FY 2020, and 150 new cases in FY 2019.
- During FY 2022, the government paid more than \$488 million to *qui tam* relators under the FCA. The statute allows relators to obtain between 15% and 30% of a judgment or settlement, depending upon a variety of factors, including whether the DOJ decides to intervene and take over the case. The total payout to relators in FY 2022 represents a sharp increase from FY 2021, when relators received a total of more than \$263 million, and constitutes the highest single total paid to relators in any one year since 2017.
- The DOJ's total recoveries in U.S. Department of Defense (DOD)-related FCA cases dropped to more than \$103 million in FY 2022, compared to more than \$120 million in FY 2021. But the number of new DOD-related *qui tam* cases brought in FY 2022 (40) represents an increase from FY 2021 (27) and FY 2020 (35) and was consistent with FY 2019 (40).

## Takeaways and the Look Ahead

The lower monetary recoveries for FY 2022 are significant but should not be taken as a sign of any pullback on FCA enforcement. The statistics underscore that FCA investigations and litigation continue to target companies and individuals in a wide range of industries. The DOJ's Civil Cyber-Fraud Initiative, focused on cybersecurity noncompliance by government contractors and grant recipients, will generate new cases. The DOJ's press release highlights its priorities to prosecute fraud involving healthcare insurance programs, cybersecurity, pandemic relief funds, and other areas. The jump in dollars paid to relators in FCA cases in FY 2022 and the increased recoveries in declined cases highlight the powerful incentives of the *qui tam* statute. The record increase in the number of DOJ-initiated FCA cases also underscores that the DOJ is increasingly bringing its own cases using statistical sampling and other mechanisms.

Complicating the picture, the U.S. Supreme Court is set to decide two FCA cases before the end of June—the Court's first FCA cases in years and the first time that several new justices will weigh in on the statute (see our analysis [here](#)). In the *Polansky* case, the Court will decide the scope of the government's authority to dismiss *qui tam* cases in which the government had declined to intervene. And in a pair of consolidated cases called *Schutte* and *Proctor*, the Court will decide the standard for establishing whether a defendant "knowingly" submitted a false claim for payment in circumstances where the governing legal authority was ambiguous. These cases will have significant consequences for corporations and individuals, as well as for relators pursuing *qui tam* suits.

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