

## DOJ's False Claims Act Recoveries Jump to \$5.6 Billion in FY 2021

**Update:** *This article was updated on February 9, 2022, in light of new statistics released by the U.S. Department of Justice.*

The U.S. Department of Justice (DOJ) recovered more than \$5.6 billion in civil False Claims Act (FCA) judgments and settlements in fiscal year (FY) 2021, the second largest ever annual total in FCA recoveries and the largest since 2014, DOJ [announced](#) on February 1, 2022.

DOJ's total FCA recoveries for the fiscal year ending September 30, 2021, represent a turnaround from FY 2020, when the government recovered \$2.2 billion in FCA settlements and judgments, the lowest total since 2008. DOJ's announcement highlights that investigations and litigation under the FCA, the government's primary civil remedy to redress fraud against the government, remain robust, with significant consequences for companies in regulated industries. According to DOJ, of the more than \$5.6 billion in settlements and judgments in FY 2021, over \$5 billion relates to matters involving the healthcare industry.

In this update, we provide an overview of DOJ's statistics and their significance for companies and other stakeholders.

### DOJ's FCA Statistics for FY 2021 Highlights

Each year, DOJ obtains billions of dollars in recoveries under the FCA. The government has collected more than \$70 billion under the FCA since 1986, when Congress amended the statute to increase incentives for whistleblowers to file fraud suits on behalf of the government (so-called *qui tam* actions).

DOJ's annual FCA statistics can offer insights into trends in FCA investigations and *qui tam* litigation, but it is important to remember that the aggregate numbers for any given year can be driven by one or more large-dollar settlements. For example, last year's figures include DOJ's October 2020 announcement of an approximately \$3 billion global criminal and civil settlement with Purdue Pharma LP and its owners, the Sackler Family, related to opioid drug products.

DOJ also released a table with data regarding its FCA settlements and judgments for FY 2021. The table discloses, among other things, the number of new cases initiated by DOJ based on government referrals versus cases originating from a *qui tam* lawsuit filed by a whistleblower (also called a "relator"). The table also breaks down the total amount of cases brought and recoveries obtained by category, i.e., healthcare, defense contracting, and others.

Overall, DOJ's announcement and table include some noteworthy items.

- There were 598 *qui tam* suits filed this past fiscal year—a drop compared to prior years. By comparison, there were 672 *qui tam* suits filed in [FY 2020](#) and, from 2011 to 2019, the number of new *qui tam* cases filed annually exceeded 600 and, in some years, 700. Still, 598 cases represent a large volume: an average of more than 11 new cases filed per week.

- By contrast, new DOJ-initiated FCA cases totaled 203, which was a slight drop from FY 2020 (259 DOJ-initiated cases). Nonetheless, this still represents a large number of DOJ-initiated compared to prior fiscal years; FY 1995 was the last time that DOJ-initiated cases exceeded 203.
- Of the \$5.6 billion in total FCA recoveries for FY 2021, DOJ reported settlements and judgments exceeding \$1.6 billion in *qui tam* suits filed by whistleblowers/relators. In FY 2020, DOJ likewise obtained more than \$1.6 billion from *qui tam* cases, although for that year those cases represented a larger portion of the overall total compared to this year.
- During FY 2021, the government paid out \$237 million to *qui tam* relators under the FCA, which allows relators to obtain between 15% and 30% of a judgment or settlement ultimately reached by the government. That total for payouts to relators represents a drop compared to recent years. For example, the total relators' share of awards in FY 2018, FY 2019, and FY 2020 exceeded \$300 million each year, and relator awards were even larger before that.
- The vast majority of new cases and recoveries in FY 2021 involved healthcare fraud. Settlements and judgments involving the U.S. Department of Health & Human Services totaled roughly \$5 billion, far outpacing recoveries involving the U.S. Department of Defense (roughly \$119 million) and other agencies (roughly \$464 million).

## **DOJ Areas of Focus in FY 2021**

DOJ's announcement included examples of various FCA matters it resolved in FY 2021. In healthcare, DOJ cited settlements and judgments resolving FCA allegations against prescription opioid manufacturers, as well as matters related to the Medicare Advantage program, also known as Medicare Part C. DOJ also cited cases involving alleged kickback violations as well as alleged false claims for medically unnecessary services.

DOJ additionally gave examples of FCA cases resolved against government contractors, which involved issues such as alleged falsified pricing data, noncompliance with contract requirements, and kickbacks. Relatedly, DOJ called attention to its Civil Cyber-Fraud Initiative, announced by Deputy Attorney General Lisa Monaco in October 2021, which is focused on bringing FCA cases related to knowing noncompliance with cybersecurity requirements for government contractors. DOJ's announcement stated that it will "pursue misrepresentations by companies" concerning cybersecurity, including in areas related to the government's acquisition of information technology, software, cloud-based storage, and related services.

Finally, DOJ's announcement emphasized its efforts to bring FCA cases involving improper payments under the Paycheck Protection Program (PPP). To date, there have been relatively few FCA settlements and judgments involving allegations of fraud against the PPP, but more such cases are likely to emerge in the coming months and years, given the sheer scale of the program.

## **Takeaways**

DOJ's increased recoveries under the FCA in FY 2021 underscore that enforcement under the statute continues to be a priority, highlighting the risks for a wide range of industries that receive federal dollars through government programs. Increased federal spending on infrastructure and response to the COVID-19 pandemic will likely result in new areas of enforcement activity in the months and years ahead. Increased activity from DOJ's Civil Cyber-Fraud Initiative, along with regulatory activity focused on cybersecurity among government contractors stemming from the president's May 12, 2021, Cybersecurity Executive Order No. 14028, is also expected.

*\*This update was also published on February 17, 2022, [here](#) on NASBP.*

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