



Alert

White Collar Defense and Investigations
Client Service Group

To: Our Clients and Friends

September 30, 2014

Nowhere to Hide: DOJ Criminal Prosecutors to Scrutinize All False Claims Act *Qui Tam* Complaints

The Department of Justice (“DOJ”) announced that its Criminal Division will review all complaints filed under the *qui tam* provisions of the federal False Claims Act (“FCA”) going forward. This announcement follows two years of record civil recoveries for the government under the FCA, nearly \$5 billion in fiscal year 2012 and more than \$3.8 billion in fiscal year 2013, and indicates a likely increase in the number of criminal prosecutions resulting from complaints filed by whistleblowers.

During a recent speech before the Taxpayers Against Fraud Education Fund, Assistant Attorney General for the Criminal Division Leslie Caldwell introduced a new policy committing further resources to the investigation of *qui tam* complaints. Under the new procedure, all *qui tam* complaints received by DOJ’s Civil Division will be reviewed by Criminal Division prosecutors to determine whether it will open a parallel criminal investigation. This is a departure from DOJ’s prior policy, under which the Criminal Division had the discretion but was not required to review *qui tam* complaints. AAG Caldwell also encouraged whistleblowers and their counsel to reach out to criminal authorities in conjunction with civil authorities in preparing and filing such complaints.

In her remarks, AAG Caldwell highlighted three industries to which the Criminal Division will devote particular attention: healthcare, defense procurement, and financial services. Two of these industries already have seen increased scrutiny from DOJ with respect to the FCA. In fiscal year 2013 alone, DOJ recovered \$2.6 billion for health care fraud violations and brought healthcare fraud-related prosecutions against 345 individuals. During the same period, procurement fraud accounted for another \$890 million in recoveries, which was a record in that area.

The new DOJ policy follows AAG Stuart Delery’s statement that DOJ has “made it a priority to continue to use the FCA to encourage the adoption of, and consistent adherence to, best practices.” AAG Delery noted that the a new record has been set in each of the past five years for the number of whistleblower complaints filed under the FCA’s *qui tam* provisions. The number of complaints filed is likely to continue to increase as the DOJ and other government agencies continue to tout larger and larger recoveries, which are often accompanied by significant awards for whistleblowers.

Given this stated additional scrutiny and potential for increase penalties and jail terms for individuals, companies should increase their diligence in reporting and billing as well as continue to ensure that they

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have vigorous compliance programs in place to prevent and detect potential false claims or billing violations, and to mitigate penalties that may result from inadvertent violations.

As a general compliance tool for companies, Bryan Cave has compiled a [Whistleblower Litigation Mitigation Checklist](#) of proactive steps a company can take to avoid becoming subject to a whistleblower complaint.

For more information about this update, or if you have any questions regarding Bryan Cave's White Collar Defense and Investigations Group, please contact [Mark Srere](#) or [Jennifer Mammen](#) in Washington, D.C., at 1.202.508.6000; [Cliff Stricklin](#), [Michael Hofmann](#) or [Andrew Mohraz](#) in Denver, CO, at 1.303.861.7000; or [Joey Burby](#) in Atlanta, GA, at 1.404.572.6600. To learn more about our White Collar Defense and Investigations Group, please visit our website at www.bryancave.com.