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GIBSON DUNN

False Claims Act / Qui Tam Defense Update

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False Claims Act 2024 Year-End Update

Last year witnessed significant developments in False Claims Act enforcement, including a record-breaking number of new FCA cases. In this update, we cover recent developments in FCA jurisprudence, summarize significant enforcement activity, and analyze the most notable legislative, policy, and caselaw developments from the second half of calendar year 2024, picking up where our mid-year 2024 update left off.

Last year, the Department of Justice (DOJ) and *qui tam* relators smashed 2023's all-time record for the number of newly filed False Claims Act (FCA) cases. While monetary recoveries from FCA cases in 2024 remained largely in line with trends over the last decade, 2024's figure was still the highest in three years, coming in just shy of \$3 billion. As in previous years, the lion's share of this figure (approximately \$2.2 billion) came from *qui tam* suits filed by private relators where DOJ subsequently intervened.

Another noteworthy 2024 development threatens to derail this enforcement train. In September 2024, a Florida federal court ruled the FCA's *qui tam* provisions unconstitutional under the Appointments Clause. Ordinarily, that decision, in *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, would seem unlikely to survive the Eleventh Circuit's scrutiny, given the other cases previously holding that *qui tam* suits are constitutional. But *Zafirov* tracks statements by

three Supreme Court Justices last year that they had questions about the constitutionality of the *qui tam* provision. Regardless of the outcome of that case, the robust pace of current enforcement efforts—both DOJ- and relator-led—is likely to continue for the foreseeable future. In this update, we cover both the *Zafirov* decision and other recent developments in FCA jurisprudence, and consider their implications for companies facing FCA matters that have progressed to litigation.

Last year's record statistics also serve as a reminder that, while DOJ's FCA enforcement priorities can shift after a presidential administration transition, it takes far more than a change in the political climate to slow FCA enforcement. In this update, we share our insights on how the second Trump Administration DOJ may distinguish its FCA enforcement efforts from those of the Biden Administration (and the first Trump Administration). And we also assess how relator-led cases are likely to continue to expand potential enforcement theories, forcing DOJ to crystallize its enforcement priorities via its intervention decisions.

This update also summarizes significant enforcement activity and analyzes the most notable legislative, policy, and caselaw developments from the second half of calendar year 2024, picking up where our last update left off. You can find all of Gibson Dunn's publications regarding the FCA on our website, including a detailed discussion of how the FCA operates, industry-specific presentations, and practical guidance for companies seeking to navigate FCA enforcement.

I. FCA ENFORCEMENT ACTIVITY

A. NEW FCA ACTIVITY

In 2024, FCA enforcement reached staggering new heights—higher, even, than the then-record-setting number of new FCA cases in 2023. The government and *qui tam* relators filed 1,402 new cases in 2024, representing an additional 190 additional cases (a jump of about 16%) beyond 2023's previous record total of 1,212 total new cases.

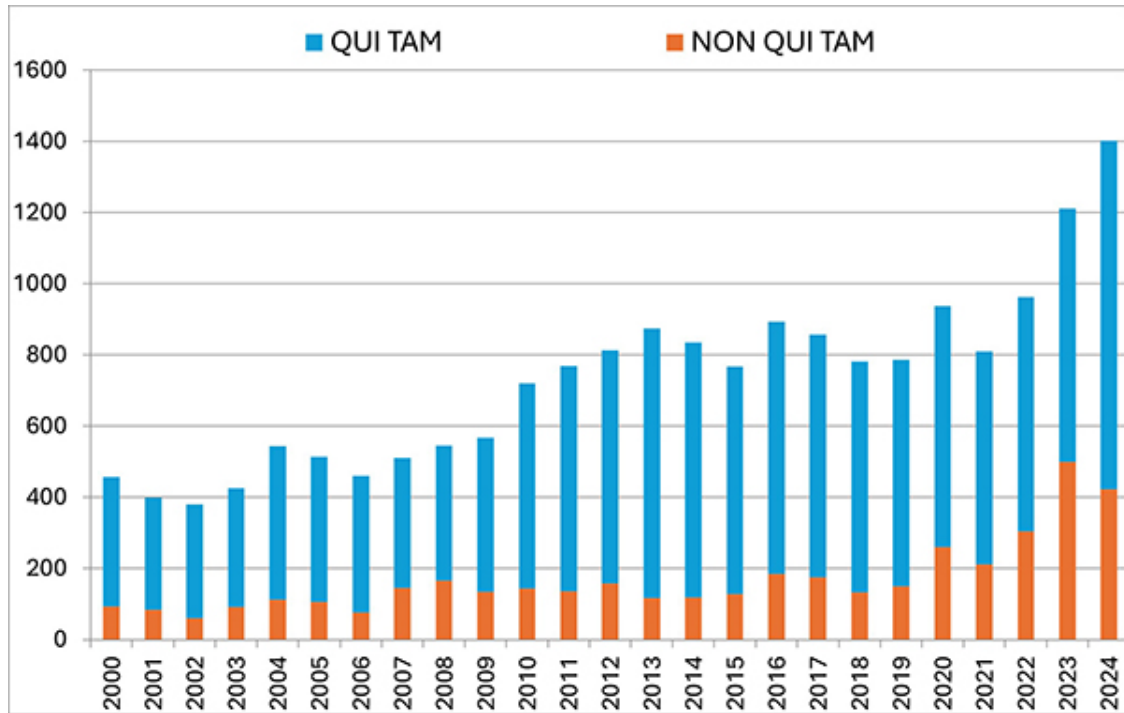
Of these new cases, relators initiated a record 979 *qui tam* actions in FY 2024—a 37% increase over the prior year, and a number far in excess of the prior record of 757 actions brought in 2013. The 979 new *qui tam* cases exceed the total number of FCA actions (both *qui tam* and non-*qui tam*) brought in all years except 2023.

The government, meanwhile, initiated 423 FCA matters in FY 2024. This is the second-highest number since 1986 (surpassed only by last year's total of 505) and reflects DOJ's continued investment in identifying leads for FCA enforcement without the assistance of relators.

For companies trying to anticipate developments in FCA enforcement under the second Trump Administration, FY 2024's record number of new FCA actions highlights an important reality: regardless of the extent to which overall enforcement priorities evolve in the next four

years, the sheer number of pending FCA cases will inevitably shape enforcement dynamics in the near term while these cases wend their way through the investigative and judicial processes. Further, DOJ's intervention decisions in *qui tam* cases filed during the prior administration will go a long way toward revealing enforcement priorities going forward.

Number of FCA New Matters, Including Qui Tam Actions



Source: DOJ "Fraud Statistics – Overview" (Jan. 15, 2025).

Please click on the link below to view the complete update and endnotes on Gibson Dunn's website:

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