

More Cases and Expanded Data Analytics: A Closer Look at DOJ’s FY 2023 False Claims Act Statistics

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The United States Department of Justice (“DOJ”) recently [announced](#) its statistics for False Claims Act (“FCA”) FY 2023 settlements and judgments. DOJ recovered \$2.68 billion in FY 2023; as usual, the majority of these recoveries (nearly 70 percent, or \$1.8B) came from the healthcare industry. DOJ continues to make use of data analytics to inform its enforcement activity.

Background

Comparing year-to-year variance in the volume of DOJ’s FCA recoveries provides only marginal utility. More telling is the rapid expansion of the non-*qui tam* matters opened during the past two years. In FY 2022, DOJ opened 305 non-*qui tam* matters, representing approximately 186 percent of its prior ten-year average (164). In FY 2023, this increase continued, with DOJ opening 500 non-*qui tam* matters—**305 percent** of the ten-year average over FY 12–21.

Fiscal Year	Non- <i>Qui Tam</i>	<i>Qui Tam</i>
2023	500	712
2022	305	658
2021	212	598
2020	261	676
2019	150	637
2018	133	649
2017	176	681
2016	185	709
2015	129	639
2014	119	716
2013	117	757
2012	158	655
10-yr Avg. Non- <i>Qui Tam</i> (FY 12–21): 164		

Principal Deputy Assistant Attorney General Brian Boynton's [remarks](#) at the 2024 Federal Bar Association's *Qui Tam* Conference underscore DOJ's expanding independent enforcement capacity. Most notably, FY 2023 saw a record 543 separate FCA settlements and judgments, as well as a record 1,504 Civil Investigative Demands.

Mr. Boynton's remarks (and the FY 2023 data) also confirm that DOJ remains focused on healthcare, procurement fraud, cybersecurity compliance, and misused COVID-19 pandemic relief funds.

A few observations from the past year are highlighted below.

Rise in Non-*Qui Tam* Cases, Driven by Increased Use of Data Analytics

Several major recoveries emphasize DOJ's growing power to identify and develop fraud cases using data analytics.

- One company paid more than \$172 million to resolve allegations that it submitted inaccurate diagnosis codes. The lead U.S. Attorney commented that DOJ used "data-driven investigative methods" to assess the propriety of the diagnosis codes across thousands of medical records.
- Another company paid \$85.5 million to resolve allegations that kickback payments were made via above-fair-market supervision fees, including for time spent not actively treating patients for whom reimbursement was sought. DOJ investigators analyzed doctors' locational data together with timekeeping and billing records to establish its case.
- One contractor paid \$377 million to resolve allegations that it improperly allocated indirect costs associated with non-government contracts to its federal contracts and failed to disclose how its systems accounted for costs incurred in support of its commercial and international businesses.

Cybersecurity Compliance

DOJ's [Civil Cyber-Fraud Initiative](#) continues to focus on emerging cyber threats involving sensitive information and critical systems. Mr. Boynton explained that "the department is currently investigating many more cases involving alleged violations of cybersecurity requirements." We expect many new cases to surface in the years ahead. Accordingly, contractors must continue to pay attention to cybersecurity compliance and should be prepared to respond in the event of a compromise or incident. A FY 2023 settlement provides a useful framework for limiting cybersecurity compliance exposure.

Takeaways

- DOJ is increasingly using data analytics to identify and initiate fraud cases, independent of whistleblowers.
- Companies submitting large data sets to the Government should expect that the Government will analyze these submissions to discern potentially fraudulent trends.
- Contractors, as always, should remain responsive to internal complaints in order to reduce the likelihood of whistleblower actions and position themselves for cooperation credit.
- Contractors should focus on cybersecurity compliance and controls.

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