

## DOJ Doubles False Claim Act Civil Monetary Penalties

Article By:

Emma R. Cecil

R. Ross Burris, III

Noam B. Fischman

---

As required by last November's ***Bipartisan Budget Act of 2015***, the Department of Justice on June 30 released an interim final rule making inflationary adjustments to civil monetary penalties under its jurisdiction, including those authorized by the federal ***False Claims Act***, 31 U.S.C. § 3729(a).

The potential impact on civil fraud defendants of the DOJ's rule, which doubles current civil monetary penalty amounts, is difficult to overstate. In health care cases, which frequently involve the submission of thousands and thousands of claims for payment, the effects could be immense. Even if the individual claims for payment are relatively small, FCA penalties, which are assessed on a per-claim basis, can add up, and add up quickly. The result is often a penalty amount that is grossly disproportionate to the amount of actual, proven damages to the government. Consequently, these changes to the per-claim penalty ranges should amplify efforts by defense counsel to mount Eighth Amendment challenges to the constitutionality of False Claims Act penalties, particularly where the penalty amounts far surpass actual economic harm and bear little or no relation to the degree of the defendant's culpability or wrongdoing.

Key takeaways of the rule include:

- [As we predicted in May](#), DOJ's proposed rule, which is based on the Bureau of Labor Statistics' Consumer Price Index for October 2015, increases the minimum and maximum per claim penalties for false claims under the False Claims Act to a staggering \$10,781.40 and \$21,562.80, respectively.
- These amounts will become effective August 1, but will apply only to violations occurring after November 2, 2015.

The DOJ's adjusted penalty amounts apply only to civil penalties that are assessed after August 1 and whose associated violations occurred after November 2, 2015, when the 2015 Amendments were enacted. Violations occurring on or before November 2, 2015, and assessments made prior to this coming August 1, whose associated violations occurred after November 2, 2015, are still subject

to the current penalty amounts set forth in DOJ's existing regulations.

Importantly, DOJ and other federal agencies may, after the initial catch-up adjustment, make automatic annual adjustments without any formal rulemaking process evaluating the need for additional increases, opening up the possibility of challenges under the Administrative Procedures Act (APA).

© Polsinelli PC, Polsinelli LLP in California

---

National Law Review, Volume VI, Number 189

Source URL: <https://natlawreview.com/article/doj-doubles-false-claim-act-civil-monetary-penalties>