

False Claims Act remains a key DOJ enforcement tool, warns new FCA Guide

While the transition to the Biden administration has ushered in many changes—including new policies and initiatives at the U.S. Department of Justice—one thing that remains constant is the DOJ's reliance on the False Claims Act as a key enforcement tool.

Global law firm Hogan Lovells released the "False Claims Act Guide: 2021 and the Road Ahead," which looks at key legal developments and how they are likely to impact FCA enforcement in the coming year. The firm also released a series of podcasts in connection with the FCA Guide.

"The Biden Administration has made it clear that deterring corruption and fraud through aggressive enforcement – including the use of the False Claims Act – is a priority," said partner Anthony Fuller.

Partner Michele Sartori added: "While DOJ renewed its focus on telehealth and cyber-fraud, the courts continued to develop jurisprudence, and sometimes confusion, in the FCA arena."

Key topics covered by the FCA Guide include:

Healthcare digitization – The implementation of electronic health records and rapid expansion of telemedicine bring heightened enforcement risks.

Cybersecurity – DOJ has intensified its scrutiny of the cybersecurity practices of government contractors and grant recipients.

The Cares Act – Following the \$2 trillion in relief provided, we expect to see an uptick in FCA activity as enforcement officials scrutinize the acceptance and use of these funds.

In addition to these topics, the FCA Guide examines legal developments, such as how the evolving standard of materiality is shaping FCA litigation, and the strategic considerations involved in cooperating with the DOJ.

Looking forward, developments on the horizon include the prospect of legislative action.

“Potentially significant amendments to the FCA are being considered in the Senate, which may impact the standard for materiality in FCA cases, and government dismissals, said partner Gejaa Gobena.

Partner David Sharfstein added: “Although the pandemic may again slow some investigations and trials in 2022, we expect the pace of enforcement to pick up on the whole.”

View the FCA Guide here.

Concurrent to the FCA Guide, the firm is launching a series of podcasts featuring discussions with the editors of the Guide:

February 2: Ep. 1 – The Perfect Storm – Moderated by Sartori, and including Gobena and Fuller

February 9: Ep. 2 – Cyber Fraud – Moderated by Sharfstein, and including partner Michael Theis and counsel Stacy Hadeka

February 16: Ep. 3 – Healthcare & Telemedicine – Moderated by Gobena and including Sartori and counsel Allison Caplis

February 23: Ep. 4 – Decisions & Effects – Moderated by Fuller and including partner Jonathan Diesenhaus and counsel Emily Lyons

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