Patterson Belknap

White Collar Defense and Investigations Alert
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DOJ Revises Justice Manual to Strengthen False Claims Act Enforcement

On September 18, 2026, the Department of Justice announced two revisions to the Justice Manual aimed at strengthening False Claims Act ("FCA") enforcement. The first revision reinforces DOJ's longstanding position that sub-regulatory guidance cannot impose legal obligations beyond those established by statute or regulation. The second—and, for companies facing qui tam litigation exposure, the more consequential—directs DOJ attorneys to consider exercising the government's dismissal authority when it declines to intervene in a qui tam action. In particular, where the government does not seek immediate dismissal, the new guidance calls for DOJ to revisit that assessment as the litigation progresses. In other words, when DOJ declines to join a whistleblower lawsuit, its attorneys are now encouraged to affirmatively dismiss unmeritorious complaints. While DOJ has long had this authority, the new guidance appears to reflect a meaningful shift in emphasis, and companies facing qui tam exposure should take notice.

The Two Justice Manual Revisions

Sub-Regulatory Guidance in FCA Litigation. The first revision reinstates and builds upon DOJ's 2017 policy that sub-regulatory guidance documents—such as agency memoranda, policy statements, and FAQs—cannot be used to impose legal obligations beyond those established by statute or regulation. This means DOJ will focus its FCA enforcement on violations of binding legal or contractual obligations, not on alleged noncompliance with informal agency guidance that lacks the force and effect of law. This is a positive step, as such informal guidance documents do not require the more rigorous process of regulatory lawmaking, including notice and comment, and it is appropriate not to expose companies to potential liability on that basis.

Dismissal of Declined Qui Tam Actions. The second revision makes clear that DOJ should affirmatively consider seeking dismissal of qui tam cases that the government has declined to join and that lack legal or factual merit. DOJ emphasized that it will continue to exercise this authority "judiciously," with a focus on actions that do not serve the interests of the United States. Assistant Attorney General Brett Shumate noted that "[e]valuating qui tam cases for potential dismissal ensures our enforcement efforts remain aligned with [the government's] interests and promotes the efficient use of government resources."

Prior DOJ Guidance Regarding Qui Tam Litigation

DOJ's position that meritless qui tam lawsuits should be dismissed is not new, but it is now officially codified with greater emphasis in the Justice Manual. For background, in January 2018, DOJ issued an internal memorandum—known as the "Granston Memo"—that encouraged DOJ attorneys to consider filing motions to dismiss qui tam actions under 31 U.S.C. § 3730(c)(2)(A) when doing so would serve the government's interests. The Granston Memo identified seven factors supporting dismissal, including facial lack of merit, interference with agency programs, and the need to safeguard the government's litigation prerogatives.

For a detailed discussion of the Granston Memo and how companies can use it to their advantage, *see* A. Fair and H. Sandick, *How Cos. Can Take Advantage Of DOJ False Claims Act Memo*, Law360 (January 26, 2018), available at https://www.law360.com/articles/1005739/how-cos-can-take-advantage-of-doj-false-claims-act-memo.

The current Justice Manual provides that if one or more of these seven factors are found to exist, DOJ should consider moving to dismiss the case:

1. Curbing meritless qui tams
2. Preventing parasitic or opportunistic qui tam actions that duplicate a pre-existing government investigation and add no useful information to the investigation

3. Preventing interference with an agency's policies or the administration of its programs
4. Controlling litigation brought on behalf of the United States, in order to protect the Department's litigation prerogatives
5. Safeguarding classified information and national security interests
6. Preserving government resources, particularly where the government's costs (including the opportunity costs of expending resources on other matters) are likely to exceed any expected gain
7. Addressing egregious procedural errors that could frustrate the government's efforts to conduct a proper investigation

In June 2023, the Supreme Court further emphasized DOJ's dismissal authority. In *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023), the Court held that the government may intervene in and move to dismiss a qui tam action at any point during the life of the case—not just during the initial sealed phase. The Court further held that the government's motion to dismiss should be evaluated under the permissive standard of Federal Rule of Civil Procedure 41(a), which requires a court to grant the motion absent "extraordinary circumstances." The *Polansky* decision was a strong endorsement of DOJ's right to affirmatively dismiss FCA litigation, and a clear signal that courts should afford substantial deference to DOJ's judgment on whether a qui tam case serves the government's interests. This new release suggests that DOJ will take greater advantage of its authority under *Polansky*. For a detailed discussion of the *Polansky* decision, *see* PBWT's White Collar Defense and Investigations Alert, dated June 26, 2023.

Practical Takeaway

These revisions to the Justice Manual strengthen the informal guidance set forth in the Granston Memo, backed by existing judicial endorsement (*Polansky*), and reaffirm this as official DOJ policy for its attorneys. These revisions should give meaningful encouragement to companies that are targets of qui tam FCA complaints—particularly complaints in which the government has declined to intervene. DOJ now has explicit, official internal guidance directing its attorneys to take a hard look at declined qui tam cases and dismiss those that lack merit. When DOJ decides not to intervene in a given case based on the lack of factual or legal merit, defense attorneys should advocate that DOJ follow its newly emphasized policy and dismiss the action, lest companies that have already been cleared by the government be forced to spend legal fees unnecessarily to defend meritless actions brought by relator's counsel. This revised policy gives real hope that DOJ will exercise its authority to prevent this type of injustice.

Please contact the firm if you have specific questions about the False Claims Act or this recent development.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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