MINTZ

JULY 30, 2026

// MINTZ WEBINAR

# DOJ FRAUD AND HEALTH CARE ENFORCEMENT IN 2026

## New Policies, Priorities, and Practical Compliance Implications

**Presented by: Eóin Beirne, Samantha Kingsbury, Nick LaPalme, and Karen Lovitch**

MINTZ

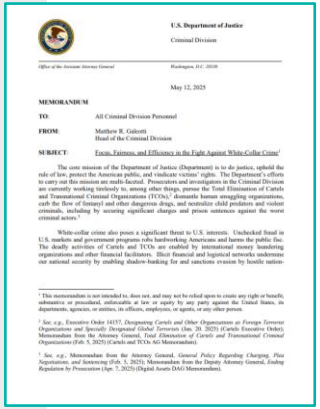
# FRAMING THE MOMENT

## Key Themes

- The Trump administration is reorganizing and claiming to centralize DOJ’s fraud enforcement activities.
- At the same time, white-collar enforcement has decreased, in keeping with the Criminal Division’s 2025 promise to focus on quality in the form of high-impact cases over quantity.
- DOJ’s primary enforcement tool continues to be the False Claims Act, which under the Trump administration has expanded into novel areas, and DOJ is implementing new policies to better manage the large volume of qui tam complaints. But health care fraud remains at the forefront.
- Voluntary self-disclosure, cooperation, and remediation are growing in importance in both criminal and civil matters and are resulting in favorable outcomes for defendants, including health care companies.

# DOJ Memos and Policy Statements

# WHITE-COLLAR ENFORCEMENT PLAN



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General | Washington, D.C. 20530

May 12, 2025

**MEMORANDUM**

**TO:** All Criminal Division Personnel

**FROM:** Matthew R. Galeotti
Head of the Criminal Division

**SUBJECT:** Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime[1]

The core mission of the Department of Justice (Department) is to do justice, uphold the rule of law, protect the American public, and vindicate victims' rights. The Department's efforts to carry out this mission are multi-faceted. Prosecutors and investigators in the Criminal Division are currently working tirelessly to, among other things, pursue the Total Elimination of Cartels and Transnational Criminal Organizations (TCOs),[2] dismantle human smuggling organizations, curb the flow of fentanyl and other dangerous drugs, and neutralize child predators and violent criminals, including by securing significant charges and prison sentences against the worst criminal actors.[3]

White-collar crime also poses a significant threat to U.S. interests. Unchecked fraud in U.S. markets and government programs robs hardworking Americans and harms the public fisc. The deadly activities of Cartels and TCOs are enabled by international money laundering organizations and other financial facilitators. Illicit financial and logistical networks undermine our national security by enabling shadow-banking for and sanctions evasion by hostile nation-

[1] This memorandum is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

[2] *See, e.g.*, Executive Order 14157, *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (Jan. 20, 2025) (Cartels Executive Order); Memorandum from the Attorney General, *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5, 2025) (Cartels and TCOs AG Memorandum).

[3] *See, e.g.*, Memorandum from the Attorney General, *General Policy Regarding Charging, Plea Negotiations, and Sentencing* (Feb. 5, 2025); Memorandum from the Deputy Attorney General, *Ending Regulation by Prosecution* (Apr. 7, 2025) (Digital Assets DAG Memorandum).

*"Focus, Fairness, and Efficiency"* | *May 12, 2025*

## WHAT IT SAYS

Focus enforcement on "high-impact" areas posing significant threats: health care fraud, procurement fraud, trade/customs fraud, sanctions and money laundering, FCPA matters implicating U.S. interests, and digital-asset crimes harming investors/consumers, among select others.

## GOAL

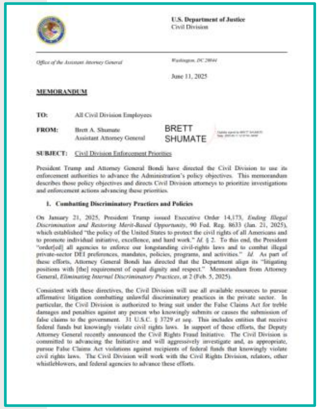
Prioritize identifiable victims, taxpayer losses, and national security considerations. Make outcomes predictable to incentivize self-disclosure, cooperation, and remediation while maximizing efficiency.

## PRACTICE SIGNAL

Framework for the Department-wide Corporate Enforcement Policy and National Fraud Enforcement Division; consistent with health care, PPP, and other government-program fraud actions.

MINTZ

# CIVIL DIVISION ENFORCEMENT PRIORITIES



U.S. Department of Justice
Civil Division

*Office of the Assistant Attorney General*

*Washington, DC 20044*

June 11, 2025

**MEMORANDUM**

**TO:** All Civil Division Employees

**FROM:** Brett A. Shumate, Assistant Attorney General — BRETT SHUMATE

**SUBJECT:** Civil Division Enforcement Priorities

President Trump and Attorney General Bondi have directed the Civil Division to use its enforcement authorities to advance the Administration's policy objectives. This memorandum describes those policy objectives and directs Civil Division attorneys to prioritize investigations and enforcement actions advancing these priorities.

**1. Combatting Discriminatory Practices and Policies**

On January 21, 2025, President Trump issued Executive Order 14,173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), which established "the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work." *Id.* § 2. To this end, the President "order[ed] all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities." *Id.* As part of these efforts, Attorney General Bondi has directed that the Department align its "litigating positions with [the] requirement of equal dignity and respect." Memorandum from Attorney General, *Eliminating Internal Discriminatory Practices*, at 2 (Feb. 5, 2025).

Consistent with these directives, the Civil Division will use all available resources to pursue affirmative litigation combatting unlawful discriminatory practices in the private sector. In particular, the Civil Division is authorized to bring suit under the False Claims Act for treble damages and penalties against any person who knowingly submits or causes the submission of false claims to the government. 31 U.S.C. § 3729 *et seq.* This includes entities that receive federal funds but knowingly violate civil rights laws. In support of these efforts, the Deputy Attorney General recently announced the Civil Rights Fraud Initiative. The Civil Division is committed to advancing the Initiative and will aggressively investigate and, as appropriate, pursue False Claims Act violations against recipients of federal funds that knowingly violate civil rights laws. The Civil Division will work with the Civil Rights Division, relators, other whistleblowers, and federal agencies to advance these efforts.

*June 11, 2025*

## WHAT IT SAYS

Prioritize use of FCA and other tools to focus on prescribed civil priority areas: discriminatory practices and policies, ending antisemitism, gender-affirming care, ending sanctuary jurisdictions, and prioritizing denaturalization.

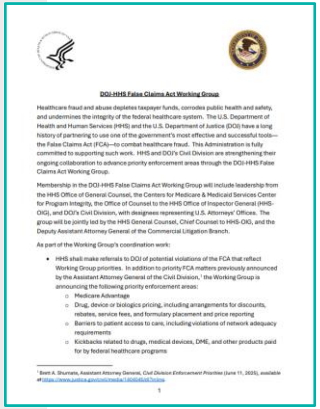
## GOAL

Expand FCA into priority areas tied to federal funding and certifications. Increase pressure on federal-funds recipients.

## PRACTICE SIGNAL

Demonstrates clear willingness to use FCA aggressively against those billing for "impermissible" services and even beyond billing fraud — including false certifications of civil-rights compliance.

# DOJ-HHS FALSE CLAIMS ACT WORKING GROUP



DOJ-HHS False Claims Act Working Group

Healthcare fraud and abuse depletes taxpayer funds, corrodes public health and safety, and undermines the integrity of the federal healthcare system. The U.S. Department of Health and Human Services (HHS) and the U.S. Department of Justice (DOJ) have a long history of partnering to use one of the government's most effective and successful tools—the False Claims Act (FCA)—to combat healthcare fraud. This Administration is fully committed to supporting such work. HHS and DOJ's Civil Division are strengthening their ongoing collaboration to advance priority enforcement areas through the DOJ-HHS False Claims Act Working Group.

Membership in the DOJ-HHS False Claims Act Working Group will include leadership from the HHS Office of General Counsel, the Centers for Medicare & Medicaid Services Center for Program Integrity, the Office of Counsel to the HHS Office of Inspector General (HHS-OIG), and DOJ's Civil Division, with designees representing U.S. Attorneys' Offices. The group will be jointly led by the HHS General Counsel, Chief Counsel to HHS-OIG, and the Deputy Assistant Attorney General of the Commercial Litigation Branch.

As part of the Working Group's coordination work:

- HHS shall make referrals to DOJ of potential violations of the FCA that reflect Working Group priorities. In addition to priority FCA matters previously announced by the Assistant Attorney General of the Civil Division,[1] the Working Group is announcing the following priority enforcement areas:
  - Medicare Advantage
  - Drug, device or biologics pricing, including arrangements for discounts, rebates, service fees, and formulary placement and price reporting
  - Barriers to patient access to care, including violations of network adequacy requirements
  - Kickbacks related to drugs, medical devices, DME, and other products paid for by federal healthcare programs

[1] Brett A. Shumate, Assistant Attorney General, *Civil Division Enforcement Priorities* (June 11, 2025), available at https://www.justice.gov/civil/media/[illegible]

1

*July 2025*

## WHAT IT SAYS

DOJ's Civil Division and HHS formalized a working group to coordinate FCA referrals and to maximize cross-agency collaboration (including through enhanced data mining and assessment of HHS and HHS-OIG report findings).

## GOAL

Increase DOJ-HHS collaboration, accelerate priority FCA matters, and generate higher-quality leads.

## PRACTICE SIGNAL

Priority focus areas identified in the announcement included Medicare Advantage; drug, device, or biologics pricing; barriers to patient access to care; kickbacks; materially defective devices impacting patient safety; manipulation of EHR systems.

MINTZ

# CORPORATE ENFORCEMENT & VOLUNTARY SELF-DISCLOSURE POLICY


Corporate Enforcement and Voluntary Self-Disclosure Policy[1]

**Background**

The Department of Justice (Department) is committed to prosecuting corporate criminal conduct firmly, fairly, and efficiently. To do so, the Department seeks to incentivize responsible corporate behavior, encouraging companies to invest in effective compliance programs, voluntarily self-report potential misconduct, meaningfully cooperate with law enforcement, and make good-faith efforts to rectify wrongdoing. This aligns the Department's interest in swift criminal justice with the interests of companies, shareholders, and other stakeholders in good corporate governance and the public's interest in rooting out fraud and misconduct.

The Department's Corporate Enforcement and Voluntary Self Disclosure Policy (CEP) applies to all corporate criminal matters handled by the Department, except for violations of 15 U.S.C. §§ 1-38.

The CEP draws on decades of experience across the Department and creates incentives for companies[2] to disclose misconduct to the Department, enabling the government to investigate and hold wrongdoers accountable more quickly. This policy is designed to: (1) drive early, voluntary self-disclosure of criminal conduct; (2) promote timely and effective enforcement of criminal laws, including holding culpable individuals accountable; (3) reduce harm; (4) facilitate prompt remedial action, including requiring companies to compensate victims and address corporate deficiencies; (5) help ensure consistency across the Department; and (6) transparently describe the Department's policies and decisionmaking.

All resolutions under this provision must be approved by the Assistant Attorney General for the relevant Division and/or the United States Attorney for the relevant district, or the individual serving in that capacity, in coordination with the Office of the Deputy Attorney General, as required by the Justice Manual (JM), and the Criminal Division where specifically required by JM.[3]

To minimize uncertainty for companies that self-report, prosecutors must endeavor to obtain relevant facts and circumstances about the disclosure in order to make a determination as to eligibility for Part I and Part II of this Policy, and, where appropriate, are encouraged to inform the company as soon as practicable.

**Part I. Declination Under the CEP**

The Department is committed to transparently describing the benefits a company may earn through voluntarily self-disclosing misconduct. The Department will decline to prosecute a

[1] This policy is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any person.
[2] The terms corporation and company apply to all types of business organizations, including but not limited to partnerships, sole proprietorships, government entities, and unincorporated associations. *See* JM § 9-28.200 n.1.
[3] Nothing in the CEP is intended to prohibit the exercise of prosecutorial discretion to decline prosecution consistent with JM §§ 9-2.020, 27.260, & 28.300, *et al.*

*Department-wide | March 10, 2026*

## WHAT IT SAYS

Companies that voluntarily self-disclose, fully cooperate, and timely remediate qualify for a declination absent aggravating circumstances.

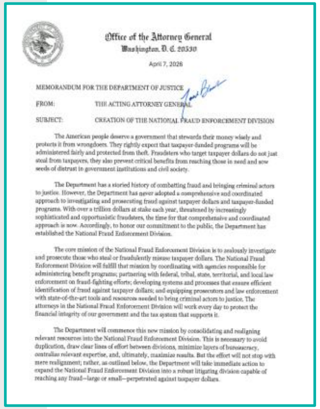
## GOAL

Standardize corporate enforcement across DOJ. Incentivize self-reporting. Focus resources on culpable individuals.

## PRACTICE SIGNAL

Bosch declination (June 2026): NSD declined prosecution in illegal exports case after VSD, cooperation, and remediation. Bosch disgorged ~$11.43M with credit toward a BIS civil fine.

# NATIONAL FRAUD ENFORCEMENT DIVISION



Office of the Attorney General
Washington, D.C. 20530

April 7, 2026

MEMORANDUM FOR THE DEPARTMENT OF JUSTICE

FROM: THE ACTING ATTORNEY GENERAL

SUBJECT: CREATION OF THE NATIONAL FRAUD ENFORCEMENT DIVISION

The American people deserve a government that stewards their money wisely and protects it from wrongdoers. They rightly expect that taxpayer-funded programs will be administered fairly and protected from theft. Fraudsters who target taxpayer dollars do not just steal from taxpayers, they also prevent critical benefits from reaching those in need and sow seeds of distrust in government institutions and civil society.

The Department has a storied history of combatting fraud and bringing criminal actors to justice. However, the Department has never adopted a comprehensive and coordinated approach to investigating and prosecuting fraud against taxpayer dollars and taxpayer-funded programs. With over a trillion dollars at stake each year, threatened by increasingly sophisticated and opportunistic fraudsters, the time for that comprehensive and coordinated approach is now. Accordingly, to honor our commitment to the public, the Department has established the National Fraud Enforcement Division.

The core mission of the National Fraud Enforcement Division is to zealously investigate and prosecute those who steal or fraudulently misuse taxpayer dollars. The National Fraud Enforcement Division will fulfill that mission by coordinating with agencies responsible for administering benefit programs; partnering with federal, tribal, state, territorial, and local law enforcement on fraud-fighting efforts; developing systems and processes that ensure efficient identification of fraud against taxpayer dollars; and equipping prosecutors and law enforcement with state-of-the-art tools and resources needed to bring criminal actors to justice. The attorneys in the National Fraud Enforcement Division will work every day to protect the financial integrity of our government and the tax system that supports it.

The Department will commence this new mission by consolidating and realigning relevant resources into the National Fraud Enforcement Division. This is necessary to avoid duplication, draw clear lines of effort between divisions, minimize layers of bureaucracy, centralize relevant expertise, and, ultimately, maximize results. But the effort will not stop with mere realignment; rather, as outlined below, the Department will take immediate action to expand the National Fraud Enforcement Division into a robust litigating division capable of reaching any fraud—large or small—perpetrated against taxpayer dollars.

*April 7, 2026*

## WHAT IT SAYS

Creates a centralized division for criminal enforcement against fraud involving taxpayer dollars. Interim control over Tax; Health Care Fraud; and Market, Government, and Consumer Fraud Units.

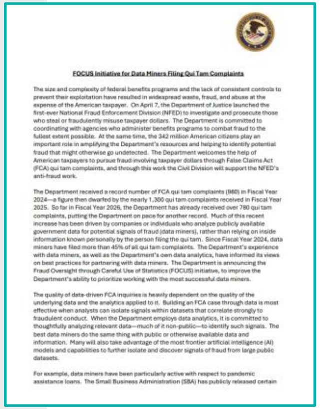
## GOAL

Consolidate fraud resources. Each USAO designates an experienced fraud prosecutor. Focus on data-driven detection.

## PRACTICE SIGNAL

Increased Coordination: AAG McDonald's April 30, 2026 West Coast Health Care Fraud Strike Force; Expanded reliance on Health Care Fraud Fusion Center.

# FOCUS INITIATIVE (DATA-MINER QUI TAMS)



**FOCUS Initiative for Data Miners Filing Qui Tam Complaints**

The size and complexity of federal benefits programs and the lack of consistent controls to prevent their exploitation have resulted in widespread waste, fraud, and abuse at the expense of the American taxpayer. On April 7, the Department of Justice launched the first-ever National Fraud Enforcement Division (NFED) to investigate and prosecute those who steal or fraudulently misuse taxpayer dollars. The Department is committed to coordinating with agencies who administer benefits programs to combat fraud to the fullest extent possible. At the same time, the 342 million American citizens play an important role in amplifying the Department's resources and helping to identify potential fraud that might otherwise go undetected. The Department welcomes the help of American taxpayers to pursue fraud involving taxpayer dollars through False Claims Act (FCA) qui tam complaints, and through this work the Civil Division will support the NFED's anti-fraud work.

The Department received a record number of FCA qui tam complaints (980) in Fiscal Year 2024—a figure then dwarfed by the nearly 1,300 qui tam complaints received in Fiscal Year 2025. So far in Fiscal Year 2026, the Department has already received over 780 qui tam complaints, putting the Department on pace for another record. Much of this recent increase has been driven by companies or individuals who analyze publicly available government data for potential signals of fraud (data miners), rather than relying on inside information known personally by the person filing the qui tam. Since Fiscal Year 2024, data miners have filed more than 45% of all qui tam complaints. The Department's experience with data miners, as well as the Department's own data analytics, have informed its views on best practices for partnering with data miners. The Department is announcing the Fraud Oversight through Careful Use of Statistics (FOCUS) initiative, to improve the Department's ability to prioritize working with the most successful data miners.

The quality of data-driven FCA inquiries is heavily dependent on the quality of the underlying data and the analytics applied to it. Building an FCA case through data is most effective when analysts can isolate signals within datasets that correlate strongly to fraudulent conduct. When the Department employs data analytics, it is committed to thoughtfully analyzing relevant data—much of it non-public—to identify such signals. The best data miners do the same thing with public or otherwise available data and information. Many will also take advantage of the most frontier artificial intelligence (AI) models and capabilities to further isolate and discover signals of fraud from large public datasets.

For example, data miners have been particularly active with respect to pandemic assistance loans. The Small Business Administration (SBA) has publicly released certain

*Fraud Oversight through Careful Use of Statistics | May 2026*

## WHAT IT SAYS

Addresses FCA complaints filed by data miners using public data. Prioritizes quality statistics-driven qui tam filings.

## GOAL

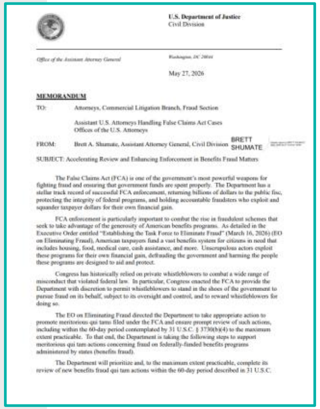
Better data-miner cases with reliable methodology, identifiable fraud mechanisms, and analyses providing strong evidence of real violations.

## PRACTICE SIGNAL

DOJ wants stronger data-miner cases — not eliminating them, but raising the bar on methodology and corroboration.

MINTZ

# EXPEDITED REVIEW OF BENEFITS-FRAUD QUI TAMS


U.S. Department of Justice
Civil Division

Office of the Assistant Attorney General

Washington, DC 20044

May 27, 2026

**MEMORANDUM**

TO: Attorneys, Commercial Litigation Branch, Fraud Section

Assistant U.S. Attorneys Handling False Claims Act Cases
Offices of the U.S. Attorneys

FROM: Brett A. Shumate, Assistant Attorney General, Civil Division BRETT SHUMATE

SUBJECT: Accelerating Review and Enhancing Enforcement in Benefits Fraud Matters

The False Claims Act (FCA) is one of the government's most powerful weapons for fighting fraud and ensuring that government funds are spent properly. The Department has a stellar track record of successful FCA enforcement, returning billions of dollars to the public fisc, protecting the integrity of federal programs, and holding accountable fraudsters who exploit and squander taxpayer dollars for their own financial gain.

FCA enforcement is particularly important to combat the rise in fraudulent schemes that seek to take advantage of the generosity of American benefits programs. As detailed in the Executive Order entitled "Establishing the Task Force to Eliminate Fraud" (March 16, 2026) (EO on Eliminating Fraud), American taxpayers fund a vast benefits system for citizens in need that includes housing, food, medical care, cash assistance, and more. Unscrupulous actors exploit these programs for their own financial gain, defrauding the government and harming the people these programs are designed to aid and protect.

Congress has historically relied on private whistleblowers to combat a wide range of misconduct that violated federal law. In particular, Congress enacted the FCA to provide the Department with discretion to permit whistleblowers to stand in the shoes of the government to pursue fraud on its behalf, subject to its oversight and control, and to reward whistleblowers for doing so.

The EO on Eliminating Fraud directed the Department to take appropriate action to promote meritorious qui tams filed under the FCA and ensure prompt review of such actions, including within the 60-day period contemplated by 31 U.S.C. § 3730(b)(4) to the maximum extent practicable. To that end, the Department is taking the following steps to support meritorious qui tam actions concerning fraud on federally-funded benefits programs administered by states (benefits fraud).

The Department will prioritize and, to the maximum extent practicable, complete its review of new benefits fraud qui tam actions within the 60-day period described in 31 U.S.C.

*May 27, 2026*

## WHAT IT SAYS

Expedited review of new FCA complaints involving "benefits fraud," i.e., fraud against federally funded, state-administered benefits programs.

## GOAL

Move faster to identify high-quality benefits-fraud qui tams. Triage DOJ's heavy docket efficiently.

## PRACTICE SIGNAL

Medicaid/state-administered benefits fraud cases remain attractive to DOJ when facts are strong. The pace of all investigations is likely to accelerate.  Increased reliance on relators' counsel is expected.

MINTZ

# HIGH-LEVEL TAKEAWAYS FROM DOJ POLICIES

| | |
|---|---|
| **Zero Tolerance Message** | DOJ wants to send an unequivocal message that fraud against government-funded programs in priority areas will not be tolerated and fraudsters will face ramifications. |
| **Detection Is Inevitable** | Between new technology, whistleblower awards, and increased attention, fraud will be detected. |
| **Selectivity on Qui Tams** | DOJ is overwhelmed with qui tams and is signaling it wants only the strongest referrals — a mixed message alongside zero tolerance. |
| **Political Dimension** | State-administered programs in Blue states will receive extra scrutiny. |

# Practical Guidance for Companies

Self-Disclosure, Cooperation Credit, and Well-Functioning Compliance Systems

# BENEFITS OF SELF-DISCLOSURE IN FCA RESOLUTIONS

**1.49x – 1.65x**

**Common Multiplier Range Observed (with VSD)**

**Discrete Disclosure Credit Available**

Settlements now credit companies for VSD of discrete issue(s) subject to settlement, maximizing the ability to receive credit.

- Self-disclosure will likely result in reduced multiplier in FCA resolutions
- Even partial disclosure of a discrete issue that DOJ was not previously aware of can have tangible benefits
- This trend maximizes opportunities for companies to benefit from partial disclosures, even where fulsome self-disclosure is not possible

MINTZ

# COOPERATION WITHOUT SELF-DISCLOSURE: STILL REWARDED

**1.49x – 1.80x**

Common Multiplier Range Observed (without VSD)

**2.08x+**

Higher Multipliers Possible in High-Priority Enforcement Areas
(e.g., IBM anti-discrimination resolution)

- Even without self-disclosure, significant cooperation alone drives multipliers well below treble damages
- However, lower multipliers (~1.5x) appear frequently in PPP fraud cases the government may want to resolve quickly
- In trending, high-priority enforcement areas, the multiplier at settlement may be higher

**Strategic Insight:** As DOJ is still seeking to establish the clear benefits associated with self-reporting, VSD may prove particularly beneficial in priority areas, where higher potential multipliers are already at risk.

# WHAT DOJ SEEMINGLY VALUES MOST: SPEED AND EFFICIENCY

The government's cooperation framework has consistently rewarded actions that accelerate resolution and promote individual accountability.

## Core Principles

**Speed**

Factors that allow the government to achieve resolution quickly have been credited at the highest rate.

**Individual Accountability**

Identifying responsible individuals is also heavily prioritized.

## What Gets Rewarded

- Proactive internal investigation and disclosure of facts the government does not know
- Identifying responsible individuals
- Demonstrating that conduct has been remediated
- Seeking to obtain a speedy resolution

MINTZ

# COOPERATION: FREQUENTLY CREDITED EXAMPLES IN RECENT FCA RESOLUTIONS

1. Conducted internal investigation; disclosed findings or facts not already known to government
2. Clear remedial measures (compliance program improvement, training, termination of problematic contracts)
3. Identified responsible individuals and/or evidence of employee discipline
4. Sought to resolve matter expeditiously and/or initiated settlement discussions
5. Acceptance of responsibility
6. Produced materials without subpoena or formal process
7. Conducted or assisted with damages analysis

MINTZ

# CRIMINAL CONTEXT CONSIDERATIONS

## Criminal Enforcement

**VSD is the "gold standard"**
Availability of a declination assuming qualifying factors are met.

**Without VSD**
Clear commitment to cooperation and remediation can still lead to favorable outcomes – including an NPA (with better cooperation) or DPA.

*Same cooperation factors cited on previous slides apply in criminal resolutions.*

*Efficiency is a primary thread connecting civil and criminal DOJ resolutions in the past 14 months.*

## Takeaway

VSD is important and, given DOJ's focus on efficiency, it is rewarded.

Even for companies that do not self-disclose, the government's interest in speed is not diminished.

**Highly favorable resolutions can still be achieved through cooperation and remediation that expedite conclusion of the matter.**

# INVESTIGATION AND SELF-DISCLOSURE DECISION TREE

Recommended approach when an allegation of misconduct or compliance failure surfaces

1. Mobilize rapidly to understand the allegation
2. Preserve documents; suspend routine destruction where appropriate
3. Assess whether the issue involves high-priority DOJ enforcement areas
4. Conduct an expedited and privileged internal investigation proportionate to risk (beware use of AI tools without counsel!)
5. Evaluate presence of aggravating factors (e.g., senior management involvement); assess potential exposure
6. Identify viable remediation measures (e.g., creation of new controls; compliance enhancements) for immediate implementation
7. Make a self-disclosure decision
8. **If not self-disclosing, document the basis for that decision carefully**

# SELF-DISCLOSURE DECISION: A SENSITIVE CALCULATION

### Self-Reporting May Be More Attractive

- Issue already likely to surface through claims data, a qui tam case, or an agency audit
- Obvious or significant financial exposure determined
- DOJ priority enforcement area(s) implicated
- Individual culpability separable from broader institutional conduct
- Company in a position to disclose promptly, is willing to cooperate fully, and remediation steps are clear and practicable

### Not Self-Reporting May Be Defensible

- Issue is immaterial or isolated
- Facts do not support key element of claim (e.g., scienter)
- Company has remediated and refunded any known overpayment through ordinary channels
- Risk of disclosure causing collateral harm outweighs expected benefits from disclosure

# DOCUMENTING THE DECISION NOT TO DISCLOSE

If the company does not self-disclose, preserve a clear record of:

1. What was investigated
2. Who was interviewed
3. What documents were reviewed
4. What facts were found
5. What legal standards were applied
6. Why disclosure was not warranted
7. What remediation occurred
8. What audits or monitoring will continue

*Purpose: Demonstrate good faith, diligence, and legal analysis if the decision is later scrutinized.*

# EFFECTIVE COMPLIANCE SYSTEMS AND ROUTINE INTERNAL AUDITING IS KEY

**Routine internal auditing is not optional in this environment.**

It is the best way to identify issues before relators, data miners, or agencies do.

### Detect Early

Identify issues before they escalate into enforcement actions; ensure detection abilities evolve with the priorities of the Administration

### Preserve Options

Early detection preserves the ability to self-disclose on favorable terms

### Demonstrate Compliance

A well-functioning compliance program is credited in settlement analysis

MINTZ

# DOWNSTREAM EFFECTS OF DOJ EXODUS

## Open Personnel Questions

- Does the DOJ exodus continue?
- Does current hiring offset departures?
- Does the new structure concentrate experienced fraud prosecutors or dilute historical expertise?
- Will the Fraud Division improve consistency or create transition delays?
- Will U.S. Attorneys' Offices retain meaningful autonomy in fraud cases?

## Balanced Prediction

**Short term:**

Reorganization may create uncertainty and personnel disruption.

**Longer term:**

Centralized fraud structures and data analytics could produce more targeted, higher-dollar, and better-coordinated cases.

MINTZ

# CLOSING TAKEAWAYS

1. DOJ is not abandoning fraud enforcement; it is trying to prioritize and reorganize it.
2. Health care and other high-impact fraud areas remain core focus.
3. The FCA is expanding into novel theories; compliance programs should be tailored accordingly.
4. Voluntary self-disclosure can produce tangible benefits. Even when VSD is not possible, clear cooperation and remediation move the needle given DOJ's focus on efficiency.
5. Companies should investigate misconduct promptly, preserve evidence, document disclosure decisions, and improve routine auditing functions.
6. **The safest posture is not passivity — risk ranking, adequately resourced compliance systems, deliberate disclosure analyses, and understanding how to remediate are key.**

MINTZ

# TODAY'S PRESENTERS

## Karen Lovitch

*Member* | **Washington, DC**
+1.202.434.7324
KSLovitch@mintz.com
Biography Link

## Eoin Beirne

*Member* | **Boston**
+ 1.617.348.1707
EPBeirne@mintz.com
Biography Link

## Samantha Kingsbury

*Of Counsel* | **Boston**
+1.617.348.1829
SPKingsbury@mintz.com
Biography Link

## Nick LaPalme

*Associate* | **Boston**
+1.617.348.1706
NALaPalme@mintz.com
Biography Link

# THOUGHT LEADERSHIP


Subscribe here to **Mintz's Health Law Blog** to receive our latest Viewpoints

## SELECT BLOG POSTS

- EnforceMintz Part 1 — Health Care Enforcement Trends & 2026 Outlook
- EnforceMintz Part 2 — False Claims Act Statistical Year In Review
- DOJ's 2026 Health Care Fraud Takedown Signals Heightened Medicaid Scrutiny and Data-Driven Enforcement
- The Clock Is Ticking: DOJ Sets Timeline for FCA Investigations Involving "Benefits Fraud"
- The Trump Administration Is Ramping Up Medicaid Fraud Enforcement Efforts
- DOJ Creates National Fraud Enforcement Division: What Actually Will Change—and What Remains to Be Seen
- DOJ Issues First-Ever Department-Wide Corporate Enforcement Policy: What Companies Need to Know