

DOJ Modifies False Claims Act Enforcement Standards

September 29, 2026

On September 18, 2026, the U.S. Department of Justice (“DOJ” or the “Department”) [announced revisions](#) to the Justice Manual—which sets forth the Department’s internal policies—to limit DOJ’s reliance on agency guidance in enforcement actions and clarify when DOJ will seek dismissal of *qui tam* actions under the False Claims Act (the “FCA”).¹ Associate Deputy Attorney General Paul Perkins stated that the revisions “will help ensure the Department uses its enforcement authority fairly and effectively—holding fraudsters accountable for violations of binding legal or contractual obligations while seeking dismissal of meritless *qui tam* actions that waste taxpayer resources and impose unjustified burdens on businesses.”²

Additionally, on September 23, 2026, the U.S. Attorney’s Office for the District of Columbia announced the creation of a new Fraud and Asset Recovery Division underscoring DOJ’s continued focus on FCA enforcement.³

Limits on Use of Sub-Regulatory Guidance. A 2017 memorandum issued by Attorney General Jeff Sessions prohibited DOJ from issuing sub-regulatory guidance that went beyond restating existing legal requirements or providing nonbinding advice.⁴ In 2018, as a follow-up to the memorandum, Associate Attorney General Rachel Brand issued a policy that prohibited DOJ from using its civil enforcement authority to convert sub-regulatory guidance documents into binding rules.⁵ The policy was rescinded by Attorney General Merrick Garland in 2021.⁶ In 2025, Attorney General Pamela Bondi

¹ U.S. Department of Justice, “DOJ Revises Justice Manual to Strengthen False Claims Act Enforcement,” (Sep. 18, 2026), <https://www.justice.gov/opa/pr/doj-revises-justice-manual-strengthen-false-claims-act-enforcement>.

² *Id.*

³ U.S. Department of Justice, “U.S. Attorney Jeanine Pirro Announces Creation of Fraud and Asset Recovery Division to Strengthen Federal Anti-Fraud Enforcement,” (Sep. 23, 2026), <https://www.justice.gov/usao-dc/pr/us-attorney-jeanine-pirro-announces-creation-fraud-and-asset-recovery-division>.

⁴ Memorandum from Jefferson B. Sessions, Att’y Gen., to All Components, Prohibition on Improper Guidance Documents (Nov. 16, 2017), <https://www.justice.gov/archives/opa/press-release/file/1012271/dl?inline>.

⁵ U.S. Department of Justice, “Associate Attorney General Brand Announces End to Use of Civil Enforcement Authority to Enforce Agency Guidance Documents,” (January 25, 2018), <https://www.justice.gov/archives/opa/pr/associate-attorney-general-brand-announces-end-use-civil-enforcement-authority-enforce-agency>.

⁶ Memorandum from Merrick B. Garland, Att’y Gen., to Heads of All Department Components, Issuance and Use of Guidance Documents by the Department of Justice (July 1, 2021), <https://www.justice.gov/d9/2024->

reinstated the prohibition on binding sub-regulatory guidance by rescinding Attorney General Garland's memorandum.⁷

The September 2026 revisions to the Justice Manual confirm that sub-regulatory guidance documents, which are documents meant to educate on statutes or regulations, cannot impose legal obligations beyond those established by statute or regulation. Accordingly, DOJ cannot treat a party's noncompliance with sub-regulatory guidance as a violation of the applicable statutes or regulations and cannot bring actions based solely on noncompliance with guidance. DOJ can continue to rely on sub-regulatory guidance so long as it does not treat it as binding. The revised Justice Manual provides the following non-exhaustive examples of appropriate uses:

- evidence that a party had the requisite scienter, notice or knowledge of the statute or regulation described in the guidance;
- probative evidence of whether a party has satisfied standards or practices relating to statutory or regulatory requirements;
- support for whether an action or opinion is consistent with generally accepted scientific or technical processes;
- evidence of whether a party complied with the guidance when the guidance itself is relevant to the claims; and
- legal or factual context in filings.

DOJ explained that the revision reflects its commitment to fair notice and rule of law, ensuring that individuals and entities are held accountable for violating binding legal obligations, not nonbinding agency guidance.⁸

Dismissal of *Qui Tam* Actions. DOJ also revised Justice Manual § 4-4.111 to clarify when it will seek dismissal of *qui tam* actions. In evaluating whether to decline to intervene in *qui tam* actions, DOJ will assess whether the government's interests would be served by seeking dismissal. If DOJ does not seek dismissal at the time of declination,

[03/Attorney%20General%20Garland%20Memorandum%20Issuance%20and%20Use%20of%20Guidance%20Documents%20by%20the%20Department%20of%20.pdf](#).

⁷ Memorandum from Pamela Bondi, Att'y Gen., to All Department Employees, Reinstating the Prohibition on Improper Guidance Documents (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388511/dl>.

⁸ U.S. Department of Justice, "DOJ Revises Justice Manual to Strengthen False Claims Act Enforcement," (Sep. 18, 2026), <https://www.justice.gov/opa/pr/doj-revises-justice-manual-strengthen-false-claims-act-enforcement>.

the Justice Manual now permits DOJ to reevaluate whether to seek dismissal as the litigation progresses.

DOJ may consider seeking dismissal if it would:

- curb meritless *qui tam* actions;
- prevent opportunistic and duplicative *qui tam* actions;
- prevent interference with an agency's policies or programs;
- protect DOJ's litigation prerogative;
- safeguard classified information and national security interests;
- preserve government resources; or
- address egregious procedural errors that could frustrate a proper government investigation.⁹

Prior to seeking dismissal, DOJ should obtain the affected agency's recommendation. DOJ should also consider advising relators of any perceived deficiencies in their cases so that they may voluntarily dismiss the action, avoiding the need for a DOJ filing.

DOJ stated that it will continue to exercise its dismissal authority judiciously, with an emphasis on seeking dismissal of *qui tam* actions that lack legal or factual merit, while focusing its resources on matters that advance the interests of the United States.¹⁰

Creation of Fraud and Asset Recovery Division. On September 23, 2026, the U.S. Attorney's Office for the District of Columbia announced the creation of the Fraud and Asset Recovery Division.¹¹ It will be dedicated to investigating and pursuing fraud cases, with a focus on the FCA. U.S. Attorney Jeanine Pirro explained that the new division would "reinforce and consolidate [government] resources to hold fraudsters accountable and recover taxpayer dollars."¹² As recent years have seen increasing FCA recoveries and

⁹ U.S. Dep't of Just., Justice Manual § 4-4.111 (2026).

¹⁰ *Id.*; U.S. Department of Justice, "DOJ Revises Justice Manual to Strengthen False Claims Act Enforcement," (Sep. 18, 2026), <https://www.justice.gov/opa/pr/doj-revises-justice-manual-strengthen-false-claims-act-enforcement>.

¹¹ U.S. Department of Justice, "U.S. Attorney Jeanine Pirro Announces Creation of Fraud and Asset Recovery Division to Strengthen Federal Anti-Fraud Enforcement," (Sep. 23, 2026), <https://www.justice.gov/usao-dc/pr/us-attorney-jeanine-pirro-announces-creation-fraud-and-asset-recovery-division>.

¹² *Id.*

qui tam suits,¹³ the new division indicates DOJ will remain committed to FCA enforcement.

Conclusion. By limiting DOJ's reliance on sub-regulatory guidance and requiring DOJ to assess dismissal whenever it declines to intervene in *qui tam* actions, the revised Justice Manual likely will concentrate enforcement resources on cases grounded in binding legal obligations. For companies facing *qui tam* actions, the revisions present an opportunity. Because DOJ will assess whether to seek dismissal at the time of declination, and may revisit it as litigation progresses, companies should consider affirmatively urging DOJ to seek dismissal, both during the government's investigation and after declination, particularly if one or more of the Justice Manual's dismissal factors applies. Companies facing claims premised on alleged noncompliance with nonbinding guidance should likewise consider whether the revisions support challenging those theories, recognizing that sub-regulatory guidance may nonetheless supply relevant evidence of knowledge, industry standards and falsity.

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¹³ U.S. Department of Justice, "False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025," (Jan. 16, 2026), <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-68b-fiscal-year-2025>.