



Fraud By The Numbers

A project of Taxpayers Against Fraud



2022

Foreword

We struggle to understand fraud's massive impact on our economy, health system, and way of life. When our brain hears "millions of dollars" or "billions of dollars," it reductively labels both as "a lot of money." The nightly news tells the tale of the billion-dollar corporate fraud in the same vein as the million-dollar bank robber. They are not in the same universe.

Indeed, if we were to count one million dollars, it would take us eleven days. If we were to count one billion dollars, it would take us 32 years. Needless to say, the adage that "time is money" hits home when you imagine an extra four decades of round-the-clock money counting.

This is the reality of fraud.

When corporate fraud drains billions of dollars from the financial markets, it steals more than dollars and cents—it steals years of life from its victims. To the mastermind, the ill-gotten gains are a windfall; but to the victims, the lost money is years of work, time away from family, and unmet dreams. When fraudsters target our healthcare dollars, it can be a matter of life and death.

The purpose of this Fraud By The Numbers publication is to shine a revealing truthlight on fraud. By taking an objective, numbers-based approach, we aim to illuminate the true breadth, scope, and impact of fraud in all of its various forms. To that end, this publication is composed of thirty sections, with each spotlighting a different facet of modern-day fraud. We encourage the reader to share this publication broadly.

This special publication was a team effort by some of the leading voices of our fraud-fighting community. Visionary Kate Scanlan led this project from idea to completion. She enlisted the help of the prolific Tony Munter to be her righthand man. The content was created by an all-star cast of volunteer writers, including Gina Poserina, Renée Brooker, Eva Gunasekera, Julia-Jeane Lighten, Jillian Estes, Molly Knobler, Mary Inman, Noah Rich, Matthew Beddingfield, Liz Soltan, Charlie Wysong, Margaret Truesdale, and Jacklyn DeMar. Finally, we relied on in-house superstar James King to coordinate publication.

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Fraud By The Numbers 2022 Introduction

September 1, 2022 By Kate Scanlan of Keller Grover LLP

In Spring 2021 we identified a need to re-sensitize all of us so we remember how big the fraud problem **actually** is, and to highlight the invaluable role that whistleblowers play in fighting all kinds of fraud. We realized this would involve more than a single podcast or blog post, and it also didn't fit into the traditional model of a scholarly publication. We landed on the idea of a coordinated series of posts and our merry little band of volunteers worked tirelessly through the dog days of Summer 2021 to craft diverse content that could become a cite-worthy resource for those who are prosecuting fraud, while celebrating those who want to stop it. Since we launched our first post on September 1, 2021, [Fraud by the Numbers](#) has exceeded our expectations. The 2021 series has been viewed, tweeted, re-tweeted, cited in briefs and relied on in the Senate Judiciary Committee hearing on Amendments to the False Claims Act.



Senator Chuck Grassley (R-Iowa) uses materials from *Fraud By The Numbers 2021* ([The Billions Lost to Healthcare Fraud](#)) to support the [False Claims Amendments Act of 2021](#) in the Senate Judiciary Committee ([timestamp 1:03:28](#)) on October 28, 2021.

We're back this year to build on that success. Each day in September, there will be a new blog post at noon with facts about fraud whistleblowing in America. We will continue to supplement and enhance the Department of Justice's annual summary of False Claims Act settlements and judgments, update some of the numbers we brought you in 2021 and roll out a lot of new numbers and statistics in our ongoing effort to help illustrate the scope of the fraud problem.

We hope these posts will be helpful to whistleblower lawyers and lawyers for the government, but they are intended to be read and shared by non-lawyers, potential whistleblowers, and anyone interested in the fight against fraud.

We're picking up right where we left off because numbers don't lie; fraudsters do.

Fraud By the Numbers was a massive undertaking, and we'd like to thank the following contributors for making the project a success:

- Taxpayers Against Fraud staff, Jeb White ([President & CEO](#)), Jacklyn DeMar ([Director of Legal Education](#)), and James King ([Director of Communications & Digital](#)), Julia-Jeane Lighten ([Public Interest Advocacy Fellow](#)) and Alex Cala (Legal Research Intern).
- TAF Public Education Committee Members Tony Munter ([Price Benowitz, LLP](#)), Regina Poserina ([Cohen Milstein Sellers & Toll PLLC](#)) and Renee Brooker ([Tycko & Zavareei LLP](#))

- TAF members Molly Knobler ([DiCello Levitt](#)), Noah Rich ([Baron & Budd, P.C.](#)), Liz Soltan ([Constantine Cannon](#)), Matthew Beddingfield ([Zerbe, Miller, Fingeret, Frank, Jadav, & Hunziker LLP](#)), Jill Estes ([Morgan Verkamp](#)) and Mary Inman ([Constantine Cannon](#)).
- In addition, we'd like to thank our interns: Cameron Duddingston ([Halunen Law](#)) and Colleen Brugger ([Morgan Verkamp](#)).

Weeding Between the Lines of DOJ's Statistics on False Claims Act Fraud Recoveries

September 1, 2022 By Kate Scanlan of Keller Grover LLP

Weeds, in the most generous definition, are plants in the wrong place. Anyone with aspiration to be a green thumb knows how the joy of planting seeds and watching them grow quickly becomes an ongoing battle to keep the weeds out of a treasured pot, bed, or field. Keeping the weeds at bay so that your chosen crop can flourish requires constant vigilance.

Fraud is a weed. Unfortunately, keeping the fraud weed out of government contracting also requires constant vigilance in **every government contract**. Unless and until we pull the fraud weed out entirely and make sure its seeds don't scatter, it's going to pop up in another place and become a nuisance wherever it lands.

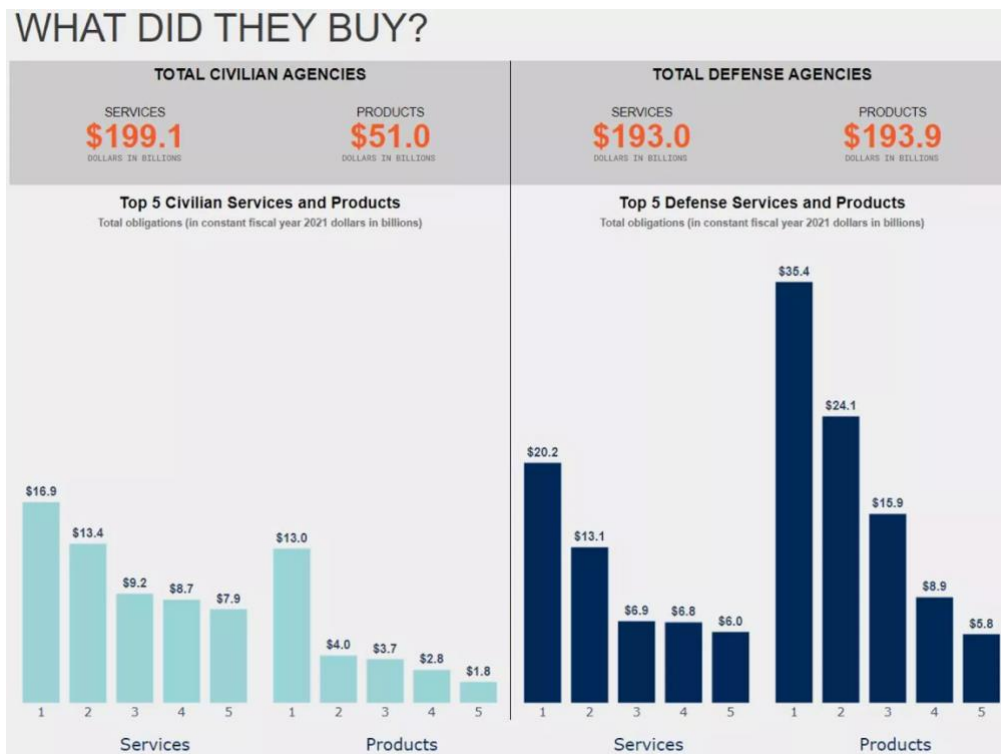
The Department of Justice is the federal agency with primary responsibility to weed out fraud in all government programs, from healthcare and defense to the litany of other programs and initiatives funded by taxpayer dollars. For more than 30 years the government's primary weed whacker has been the False Claims Act, and each year DOJ reports on its False Claims Act settlements and recoveries.

We start Fraud by the Numbers 2022 with a look at [DOJ's statistics for 2021](#) and the work that's still to be done if we're going to get ahead of the fraud weed and let good government flourish.

In 2021 DOJ recovered more than a [reported](#) \$5.6 billion in settlements and judgments from civil cases involving fraud and false claims, the second largest fraud recovery ever. Standing alone, that's a big number. But what a \$5.6 billion recovery says about how well we are doing in our fight against fraud depends a lot on perspective. If you are an average American, finding yourself with \$5.6 billion would land you on the Forbes [list of billionaires](#) (tied for 471st place). From that perspective, \$5.6 billion is pretty great! If you are the US government, \$5.6 billion buys you less than [half an aircraft carrier](#). Less great.

Another important take-away from the impressive \$5.6 billion recovered in 2021 is that just \$600 million was attributed to settlements and judgments in civil cases involving non-healthcare contracting. Non-healthcare contracting is just as susceptible to fraud as other programs. For example, later this month we will talk about the [billions lost to COVID-19 fraud](#), including through the Paycheck Protection Program, where self-certification procedures may have increased risk of fraud.

In order to evaluate the fraud risk, therefore, it's imperative to understand what the government contracts to buy. And, according to the Government Accounting Office, the [federal government buys a lot more than healthcare](#) each year.



So what's the takeaway from the 2021 statistics? Every recovery – and every whistleblower who made a recovery possible for the government—helps the cause. But just like pulling weeds in the garden, none of us should be satisfied with the fraud weeds that have been pulled when there are more out there still growing amuck. In the days and weeks ahead, we will describe all the places where the fraud weed is flourishing notwithstanding billions in recoveries secured by DOJ with ongoing support by whistleblowers.

We hope the series is instructive and inspiring.

Written by Kate Scanlan of Keller Grover LLP. Edited by Regina Poserina of Cohen Milstein Sellers & Toll PLLC and Liz Soltan of Constantine Cannon. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

2022 Update: Federal False Claims Act Recoveries v. Federal Budget

September 2, 2022 By Jacklyn DeMar of Taxpayers Against Fraud

Last year on Fraud By the Numbers, we examined how many dollars were recovered under the False Claims Act compared with the amount that the government is spending. It's time for an update!

In fiscal year 2021, the federal budget was a whopping \$6.82 trillion – the highest dollar amount ever – up from \$6.55 trillion in 2020, which was the previous record. That's an increase of about \$27 billion – over four times the reported \$5.6 billion total recovered under the FCA in 2021.

That there was tremendous government spending should not be surprising: the country and the planet were still reeling from COVID-19, and the government spent an unprecedented amount of money on assistance for struggling businesses, development of treatments and vaccines, support for hospitals and medical professionals fighting the pandemic, and gear to protect them and others, amongst other things.

Where there is massive government spending, there is massive fraud, and 2021 was no exception. You hear about additional fraud schemes being uncovered every day, particularly with respect to Paycheck Protection Program fraud, but the schemes you hear about in the news only scratch the surface – and only barely!

The government recovered \$5.6 billion under the FCA during 2021, which is a big jump from the \$2.2 billion recovered in 2020 – however, a large chunk of the \$5.6 billion are attributable to a couple of very large cases. \$5.6 billion is only 0.09% percent of the federal budget, while fraud accounts for a loss of around 7% of the federal budget per year, which means that there is another \$444.8 billion being lost to fraud that the government is not recovering.

For that amount, you could buy Twitter ten times over and have some change leftover! Or, even better, we could raise the salaries for each of the approximately 3.1 million public school teachers in the U.S. by \$50,000 AND spend the estimated \$197 billion in improved infrastructure and maintenance for our nation's schools to bring them up to a level that the Department of Education considered "good," and still only clock in around \$352 billion.

Clearly, we have work to do. Tomorrow we will take a look at the cases being filed by whistleblowers and the government under the FCA in relation to the total civil cases brought by the government.

Written by Jackie DeMar of Taxpayers Against Fraud. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

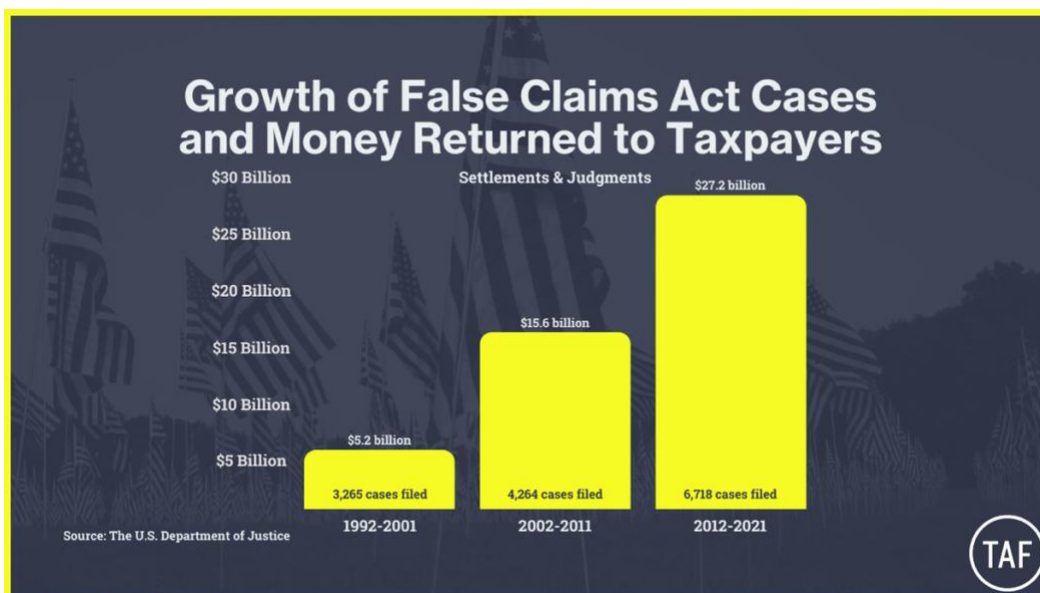
While Healthcare Fraud Cases Grow, Defense Fraud Cases Decline

September 3, 2022 By Tony Munter of Price Benowitz

The modern success of the False Claim Act stems largely from whistleblowers filing cases involving healthcare fraud. That success stands in contrast to a decline in cases filed alleging fraud committed in the defense industry.

The Department of Justice attributes more than \$48 billion in settlements and judgements to cases whistleblowers have filed since the False Claims Act was amended in 1986. Those amendments effectively restored the right of whistleblowers to file cases on the government's behalf. This \$48 billion comprises the majority of funds collected by Civil Fraud Actions in the modern era of the Act.

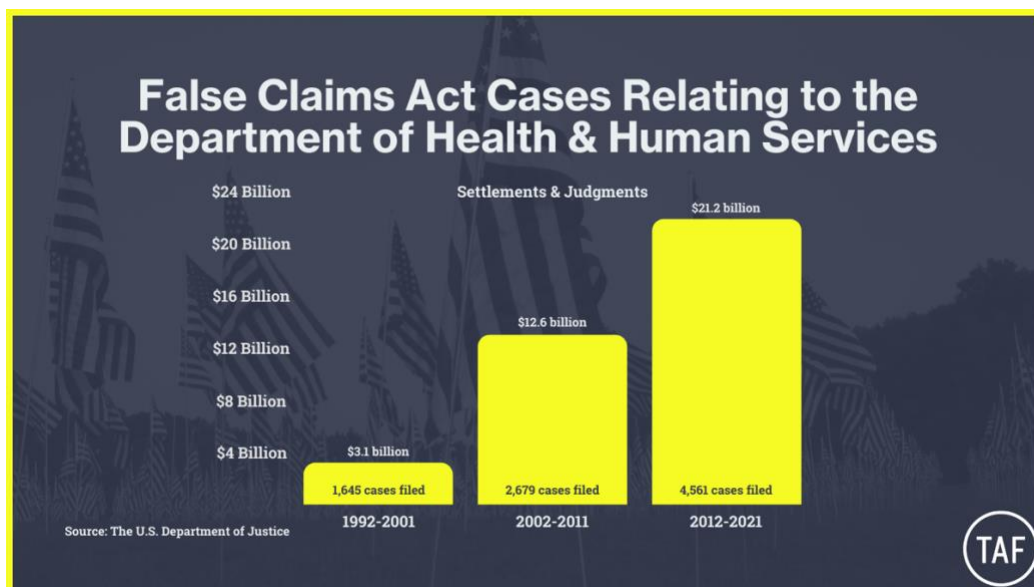
The overall growth in False Claims Act cases brought by whistleblowers and the collections associated with those cases is substantial. Here are the numbers from the last 30 years showing growth both in money returned to the taxpayers and in cases filed:



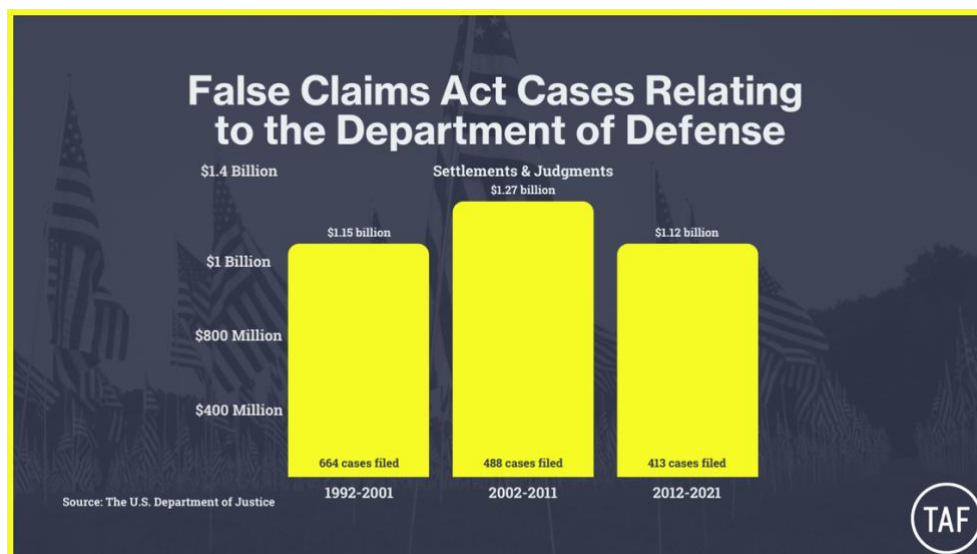
DOJ reports new cases filed and recoveries on the same line per year. Recoveries actually come in for the year for cases filed in previous years, so a correlation requires looking at broad periods of time. Inflation is a factor in amounts collected over a long period of time, which is not accounted for here.

Healthcare related cases predominate the field. Historically, claims filed for fraud committed against the Department of Health and Human Services account for 76.7% of the funds recovered by cases filed by whistleblowers, and that figure may understate the true impact of healthcare cases.¹

Here's how whistleblower activity for HHS cases has grown over time:



By contrast, whistleblowers have not been as successful in addressing fraud on the Department of Defense. The numbers reveal a *decline* in cases filed and relatively little monetary recoveries resulting from matters involving the DOD over time:



The last ten years of recoveries from the defense industry as a result of cases brought by whistleblowers is equal to slightly more than one tenth of a percentage of the \$1.1 trillion FY 2021 Defense Budget, and both recoveries and cases filed have declined.

Although, the False Claims Act was enacted and amended in order to address DOD fraud, the numbers demonstrate that it has not been deployed often or with much success to fight defense industry fraud in recent years.

Written by Tony Munter of Price Benowitz. Edited by Jacklyn DeMar of Taxpayers Against Fraud and Regina Poserina of Cohen Milstein Sellers & Toll PLLC. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud. Graphics made by James M. King of Taxpayers Against Fraud.

1. 76.7% of the total recoveries in whistleblower cases reported since the Act was amended is attributed to Health and Human Services cases by DOJ. \$36,999,895.627 of \$48,221,339,535. But other agencies also collect for healthcare cases. For example, Tricare cases are reported by the Department of Defense. So, the total share of healthcare claims is likely even higher than DOJ and HHS report, and the amount of defense contracting fraud collected is less than the DOD collections reported.

To Combat Customs Fraud, Whistleblowers Remain Crucial

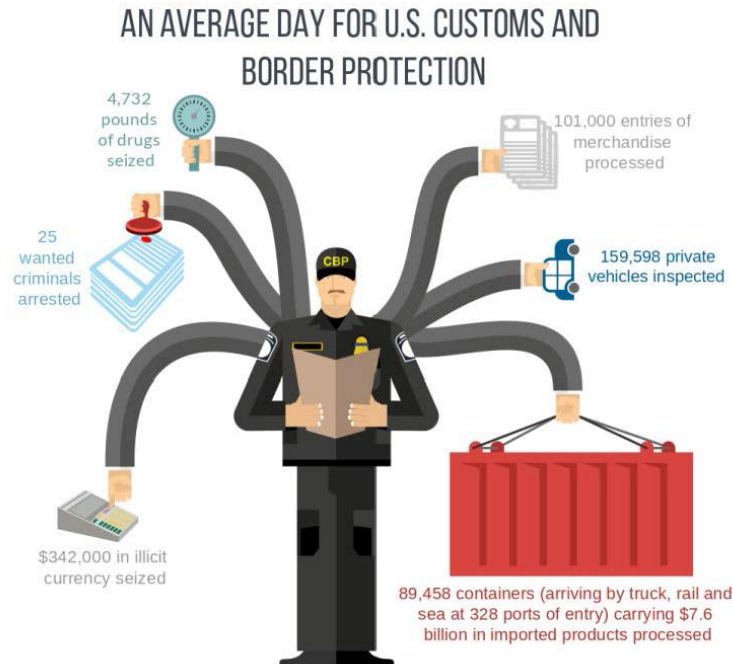
September 4, 2022 By Noah Rich of Baron & Budd

U.S. Customs and Border Protection (“CBP”) is the nation’s largest federal law enforcement agency. As part of their broad mission to secure the nation’s borders, CBP employees juggle myriad responsibilities, including intercepting terrorists and criminals, keeping illegal weapons out of the United States, and managing the flow of visitors and migrants.

Amid these numerous priorities, CBP is also responsible for screening the trillions of dollars of cargo that enter the United States each year. Many of these goods are subject to customs duties, which are intended to protect the United States economy by ensuring that American manufacturers can compete on a fair basis with foreign manufacturers.

From FY 2019 through FY 2021, CBP received and processed an average of more than 35 million entry summaries each year, relating to goods worth an average of \$2.63 trillion annually. On a single average day in FY 2021, CBP processed 89,458 containers arriving by truck, rail, and sea at 328 ports of entry, carrying \$7.6 billion worth of imported products.

Even while addressing this deluge of imports, CBP still managed to inspect an average of 159,598 private vehicles, seize 4,732 pounds of drugs and \$342,000 in illicit currency, and arrest 25 wanted criminals every single day.



Graphic made by Mica Powers of Phillips & Cohen LLP

When an importer brings goods into the United States, the importer is required to file paperwork with CBP describing the goods, their country of origin, and their applicable duty rates. CBP processes an average of 101,000 entries of merchandise every day—many of which are dozens of pages long. Amid a torrent of international trade, criminal activity, migration, and numerous other responsibilities, CBP cannot possibly scrutinize every entry summary. Although most importers abide by the honor system, fraudsters sometimes are able to take advantage of CBP's limited resources to avoid paying what they owe. Fortunately, whistleblowers can help fill the gap by revealing the fraudulent schemes these importers use to avoid paying their fair share.

Now more than ever, whistleblowers are essential to assist CBP in enforcing customs laws. In recent years, punitive trade measures, largely against China, have disrupted nearly every industry that relies on international trade. Most importers have willingly complied with the law, paying the additional customs duties and tariffs associated with their goods or shifting their operations away from China and to other countries that are not subject to punitive trade measures. However, not everyone plays by the rules, and unscrupulous importers have defrauded the government out of billions of dollars. For example, in August 2021, CBP reported that importers owed \$3.54 billion in unpaid antidumping and countervailing duties on goods from China as of FY 2020.

This figure—which represents only the unpaid bills that CBP knows about—only scratches the surface of the true extent of customs fraud. As fraudsters develop increasingly sophisticated schemes to disguise their products' countries of origin and duty classifications, whistleblowers will remain one of the government's most important tools in the fight against fraud.

Written by Noah Rich of Baron & Budd. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

“A Small Group of Thoughtful, Committed Individuals”

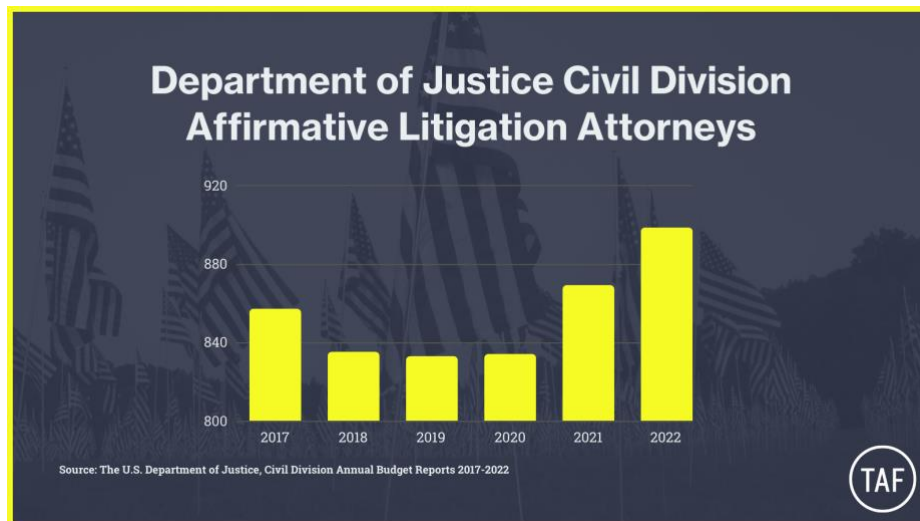
September 5, 2022 By Jillian Estes of Morgan Verkamp, LLC

“Never doubt that a small group of thoughtful, committed individuals can change the world. In fact, it’s the only thing that ever has.”
~ Margaret Mead

Last Labor Day, Fraud by the Numbers paid homage to the powerful group of government and private attorneys who, together with a corps of investigative agents, are the front-line protectors of America’s treasury. In FY2022, roughly 15% of the work by the Department of Justice’s Civil Division’s 896 attorneys in its “Main Justice” office in Washington, D.C. focused on affirmative litigation, or bringing new cases on behalf of the Government. And an even smaller group, only 39 attorneys and 9 staff members, are in the Civil Fraud division – the unit of lawyers who oversee False Claims Act litigation and work hand-in-hand with qui tam counsel, whistleblowers, and counterparts in the local U.S. Attorney’s Offices.

The small but mighty combination of lawyers from Main Justice, local U.S. Attorney’s Offices, and whistleblowers’ counsel achieved outsized results in FY2021, with the Civil Division reporting \$5.6 billion in False Claims Act settlements and judgments.

The number of attorneys working on behalf of US taxpayers has been relatively consistent since at least FY2017 when 849 attorneys were budgeted to the Civil Division, as shown in the chart below.



Source: DOJ Civil Division budget reports. The number of full-time equivalent affirmative litigation attorneys is calculated by multiplying the total number of Civil Division attorneys by the percentage of affirmative litigation at the outset of the corresponding fiscal year.

The FY2023 budget request for the Civil Division saw the largest increase in years, seeking to add 63 new attorneys, though only 7 of those would be added to the Civil Fraud section. While any increase in fraud investigators is a positive step for fraud enforcement, the numbers pale in comparison to the concurrent massive increase in federal spending. In FY2017, the United States’ actual spending totaled \$3.99 trillion; just five years later in FY2021, that amount had leapt to \$6.82 trillion. The more government spending increases, the more opportunities there are for fraud on the national fisc, and the more need there is for robust anti-fraud enforcement.

But help is on the horizon. On March 3, 2022, Attorney General Merrick Garland announced that Congress’s FY2022 budget would add 120 new criminal division attorneys to fight pandemic-related fraud, along with 900 new FBI agents in the White-Collar Crime Program. The new criminal attorneys, plus the massive tranche of new FBI agents, amplify the Civil Division’s

continuing efforts to bring billions lost to fraud back into the Government's coffers. The supercharged, coordinated efforts will be crucial to address the fraud epidemic that followed the COVID-19 pandemic.

The Department of Justice's attorneys – civil or criminal, new or established – will also continue to be aided at every step by the 425 active members of Taxpayers Against Fraud who bring False Claims Act cases in virtually every district in America. TAF members, and the whistleblowers they represent, are vital force-multipliers who expand the government's fraud fighting ability and help return billions to the government every year. Together, this small group of thoughtful, committed individuals is changing the world every day.

Written by **Jillian Estes** of Morgan Verkamp. A special thank you to Colleen Brugger, Summer Law Clerk at Morgan Verkamp for her research assistance on this post.

Edited by Kate Scanlan of Keller Grover and Regina Poserina of Cohen Milstein Sellers & Toll PLLC. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

Following the Money: Where Are the \$4.85 Trillion in State and Local Funds Being Spent?

September 6, 2022 By Jacklyn DeMar of Taxpayers Against Fraud

When we think about government spending and where fraud may be prevalent, we tend to focus on the federal fisc. However, state and local governments spend trillions of dollars each year in service of their citizens.

In FY 2021, total state spending reached **\$2.65 trillion** (including DC), up from \$2.28 trillion in fiscal 2020 – an increase of 16.2 percent! Additionally, local governments within those states spent another estimated \$2.2 trillion for a total of **\$4.85 trillion** in spending in the states for FY2021.

As you might expect, much of that increase is due to increased spending to combat and recover from the COVID-19 pandemic. There was an increase of about 5.1 percent in state spending of their own funds, but a **whopping 35.7 percent increase** in spending of federal funds by the states.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed in 2020, and the subsequent American Rescue Plan Act of 2021 (ARPA), signed into law in March of 2021, infused the states with money to spend on COVID-19 relief through the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF).

The funds allocated to the states through this legislation were spent in a variety of ways, including COVID-19 vaccination, testing, and other response costs; prevention in congregate settings; mental health services; household assistance; unemployment insurance; public health programs; housing assistance; emergency management; economic relief; aid to local governments; and broadband and other technology upgrades.

However, Medicaid is still one of the largest state-funded program, accounting for 27.2% of state expenditures – an 11.5% increase from FY2020. Due to funding from the CARES Act and ARPA, state expenditures of federal funds increased 15.9%, while the states' own spending increased 3.3%.

As we mentioned **our post** last year, at least 30 states and the District of Columbia have passed their own **state False Claims Acts** to recover money lost to fraud. Of these laws, 7 only cover Medicaid. Of the state False Claims Acts that cover all state government spending, the U.S. Department of Health and Human Services judges only 12 to be as strong as the Federal False Claims Act.

However, there is strong support for strengthening existing and passing new state False Claims Acts. For instance, in June, the Colorado's Governor Jared Polis signed the Colorado False Claims Act into law – expanding the scope of the previous False Claims Act to cover fraud beyond Medicaid.

Strong False Claims enforcement at all levels, and whistleblowers who bring fraud to light, are integral to protecting the trillions of dollars in taxpayer dollars spent each year on vital state and local government programs.

Written by Jacklyn DeMar of Taxpayers Against Fraud. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

On Clean Air Day, Whistleblowers Needed to Ensure IRA Implementation

September 7, 2022 By Molly Knobler of DiCello Levitt

Today, the world's Fourth Annual Clean Air Day, we celebrate the United States' historic investment in protecting our climate. Just three weeks ago, President Biden signed the Inflation Reduction Act of 2022 into law. The Act tackles many major issues, including drug prices for seniors and funding for IRS enforcement, but chief among them is climate change.

The law invests \$369 billion in energy and climate reform, making it the largest federal clean energy investment in U.S. history. In 2021, President Biden set a goal of reducing U.S. greenhouse gas emissions to 50% below 2005 levels by 2030 (i.e., to about 3.3 billion metric tons annually). The IRA almost gets us there.

It does so primarily by offering billions of dollars in tax credits—to industry to produce more renewable energy and to American households to transform their energy use and consumption. For example, the law provides for \$260 billion in tax credits to incentivize generation of solar, wind, hydropower, and other sources of renewable energy. These subsidies are available for both the production of renewable energy and the manufacturing of specific parts essential to renewable projects, such as wind turbines or solar panels.

The overall goal is to make it cheaper to build new green energy production sites than fossil fuel plants. Similarly, the law provides for \$80 billion in rebates for consumers—to provide incentives for the purchase of electric vehicles, more-efficient heat pumps and water heaters, and installation of solar panels.

Experts estimate that the IRA's \$369 billion in investments could drive emissions from about 5.6 billion tons annually (2021 levels) to 3.8 billion by 2030. But these goals will only be met if these investments actually go towards renewable energy production, electric vehicles, and solar panels.

As we explored earlier this year, experience during the COVID pandemic has shown that well-intentioned federal spending programs, without appropriate safeguards, are ripe targets for fraud and abuse.

Renewable energy programs are no exception. In fact, existing programs to promote production and use of renewable energy are already known hotbeds for fraud. For example, in 2020, the Department of Justice secured the conviction of California businessman Lev Dermen for his role in a \$1 billion renewable fuel tax credit scheme to claim Renewable Fuel Standard (RFS) credits issued by the EPA and IRS tax credits for biodiesel fuel that did not exist, thereby defrauding taxpayers out of hundreds of millions of dollars and undermining these important climate protection programs. Dermen's conviction followed the entry of guilty pleas by four others in relation to the scheme.

Several individuals blew the whistle on Dermen's fraud and offered important testimony in shutting down this flagrant scheme.

With this increased spending on renewable energy, energy alternatives, and subsidies for consumers, whistleblowers are necessary and will play a vital role in defending IRA-funded climate programs.

Written by Molly Knobler of DiCello Levitt. Edited by Regina Poserina of Cohen Milstein Sellers & Toll and Tony Munter of Price Benowitz. Fact checked by Julia-Jeana Lighten of Taxpayers Against Fraud

The Need for Whistleblowers in Combating COVID-19 Related Healthcare Fraud

September 8, 2022 By Julia-Jeane Lighten of Taxpayers Against Fraud

Over the next few days, we will highlight the ways in which the COVID-19 pandemic has added another layer to existing healthcare fraud. Last year, we put into perspective some of the largest sources of government funding, which include, among other government-sponsored healthcare programs, Medicare and Medicaid. Further, we discussed the projected growth of Medicare and the importance of continued efforts to combat Medicare fraud. These efforts remain important in 2022, as pandemic relief funding for healthcare has opened more opportunities for fraudsters to exploit government resources.

As of July 30, 2022, the Department of Health and Human Services (“HHS”) budgetary resources totaled \$2.82 trillion. With respect to COVID-19 spending specifically, data through July 31, 2022, show that HHS budgetary resources total \$484,027,721,045. HHS resources were distributed to its thirteen departments, and the Centers of Medicare and Medicaid received the most, with \$1.69 trillion in outlays.

Funding for healthcare-related COVID-19 relief can be traced to these laws:

1. The Families First Coronavirus Response Act (116-127)(“FFCR”);
2. The Coronavirus Aid, Relief, and Economic Security Act (116-136)(“CARES”);
3. Paycheck Protection Program and Healthcare Enhancement Act (116-139) (“PPP & HCE”);
4. The Coronavirus Response and Relief Supplemental Appropriations Act (116-260)(“CRRSA”)
5. American Rescue Plan Act of 2021 (117-2)(“ARP”). In total, the aforementioned pieces of legislation prompted the distribution of \$351.4B to healthcare companies, hospitals, and other providers.

As of September 2021, the funds allocated to healthcare account for 6.72% of all pandemic relief funding. Those healthcare funds also went towards:

1. The Provider Relief Fund
2. Vaccines
3. Substance abuse and mental health services
4. Federal employee health & safety
5. Nursing homes
6. Healthcare research and development.

Criminal cases regarding the exploitation of the pandemic assistance for healthcare have already begun to arise. Considering the amount of time a False Claims Act case can remain under seal, we can expect that our knowledge of False Claims Act cases related to COVID-19 healthcare fraud will increase as time progresses. Since pandemic relief funding began

in recent years, there is limited public information on FCA cases concerning the misuse of the funds. But recent criminal cases have already exposed alleged fraudulent activity.

For example, the Department of Justice (“DOJ’s”) announcement of a coordinated law enforcement action against COVID-19 related healthcare fraud earlier this year noted that **21 defendants across 9 federal districts** allegedly caused over \$149 million in pandemic-related false billings to the government and “theft from federally-funded pandemic assistance programs.” Some of the misconduct includes the alleged improper use of confidential patient information collected during COVID-19 testing to submit false and fraudulent claims to Medicare.

Defendants also allegedly targeted the HHS and the Centers for Disease Control and Prevention by manufacturing and distributing fake COVID-19 vaccination cards. In addition, there were cases in which the owners of medical clinics purportedly submitted claims **overstating the length of patients’ office visits when they went for COVID-19 testing.** These are just a few examples of the alleged misuse/theft of the resources allocated to healthcare during the pandemic.

The DOJ’s coordinated law enforcement efforts against COVID-19 related healthcare fraud this year are a **continuation** of those **announced in May** of last year. At that time, the DOJ brought criminal charges against 14 defendants including a telemedicine company executive, a physician, marketers, and medical business owners for over \$143 million in false billings.

These cases show the ways in which fraudsters can take advantage of the pandemic relief funds provided to government-sponsored healthcare programs, which constitute some of the largest sources of government funding. While there is currently limited information on FCA cases concerning fraudulent pandemic related misconduct, **the DOJ reiterated that it relies on the public’s reporting fraudulent activity.** Whistleblowers’ role in reporting healthcare fraud is crucial in the efforts to prevent the exploitation of pandemic relief funding.

Written by Julia-Jeane Lighten of Taxpayers Against Fraud. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

Explosion of Telehealth Usage Makes it a Target for Fraudsters

September 9, 2022 By Raymond M. Sarola and Regina D. Poserina of Cohen Milstein Sellers & Toll

The Covid-19 pandemic has caused a dramatic increase in the use of telehealth services, and this higher usage is likely to continue in the future.

In 2019, before the pandemic, 840,000 Medicare telehealth services were received by 910,000 unique Medicare telemedicine beneficiaries. From March 2020 to February 28, 2021:

- 52.7 million Medicare telehealth services were received by 28.2 million unique Medicare telemedicine users.
- 53% of Medicare users used telehealth.
- 44% of Medicare’s telehealth services are provided in rural areas, and
- 55% of Medicare’s telehealth services are provided in urban areas.

Increased use of telehealth creates a situation that is ripe for fraud. The unique nature of telehealth services presents a high risk that providers may bill Medicare or Medicaid for unreasonable, unnecessary, or otherwise non-covered services.

The United States Department of Justice (“DOJ”) and the Centers for Medicare and Medicaid Services (“CMS”) are concerned about misuse of telehealth services, and actively investigate and pursue those who abuse the programs. And there are big numbers in those fraud pursuits:

- **National Law Review**: DOJ charged 50 medical professionals in 11 judicial districts with \$1.1 billion in telemedicine fraud.
- **Dept. of Justice**: A Brooklyn physician was charged in a \$10 million telemedicine fraud scheme.
- **Dept. of Justice**: A Florida telemedicine provider was charged with committing a \$784 million fraud.
- **Dept. of Justice**: Four people were indicted in an international kickback and telemedicine scheme.

An individual who learns of telehealth fraud should speak with an experienced whistleblower attorney to analyze the situation and consider whether his or her information would support a whistleblower lawsuit under the False Claims Act.

*Written by **Regina Poserina** and **Raymond M. Sarola** of **Cohen Milstein Sellers & Toll**. Edited by **Matthew Beddingfield** of **Zerbe, Miller, Fingeret, Frank & Jadav** and **Tony Munter** of **Price Benowitz**. Fact checked by **Julia-Jeane Lighten** of **Taxpayers Against Fraud**.*

How Two States Are Recovering Tens of Millions Otherwise Lost to Fraud

September 10, 2022 By Margaret Truesdale and Charlie Wysong of Hughes Socol Piers Resnick & Dym

The federal and state False Claims Acts empower whistleblowers to fight fraud against the government. But fraud targets private insurers too, and every American pays for the high cost of this fraud through higher insurance premiums every day. Private insurance fraud costs the public over **\$100 billion** per year and takes an estimated **\$1,400** per year from the average family through excess insurance premiums.¹ This is as much as the average household will pay for water (**\$1,000**) or electricity (**\$1,464**) each year.

Whistleblowers can help fight this private insurance fraud too. Illinois and California are on the cutting edge of confronting this problem.

They have *qui tam* laws—which operate like the False Claims Act—to enable whistleblowers to expose fraud on *private insurers* and recover stolen funds.

Illinois adopted the Illinois Insurance Claims Fraud Prevention Act², to empower whistleblowers to “alleviat[e] the social costs of increased insurance rates due to fraud.”

California adopted the California Insurance Fraud Prevention Act³, to reduce “insurance premiums,” observing that “fraudulent activities account for **billions of dollars** annually in added health care costs nationally,” and “fraudulent activities account for **15 to 20 percent** of all auto insurance payments.”

These laws protect huge insurance markets worth trillions of dollars. Private health insurance is estimated to cost the public **\$1.1 trillion** every year. And these laws protect all variety of other insurance markets including the mandatory auto insurance that every driver must buy (a **\$300 billion** market), property insurance (a **\$715 billion** market), the workers compensation system (a **\$40 billion** market), and every other type of insurance paid for by individuals and businesses.

The laws work. Actions under the Illinois and California laws have recovered **tens of millions of dollars** in settlements over the last decade. For example, in 2015, pharmaceutical company Warner Chilcott paid **\$23.2 million**, in 2016, pharmaceutical manufacturer Bristol Myers Squibb paid **\$30 million**,^[6] and in 2020, drugmaker AbbVie paid **\$24 million**—

all to settle claims related to *private* insurance fraud. Other litigation under these laws fights fraud in auto insurance, workers compensation, and vision insurance.

Fraud knows no limits. Whistleblowers have long protected government funds, and these laws can protect the public's pocketbooks directly too. The more whistleblowers that come forward, resources available to investigate and prosecute these claims, and states that follow the lead of Illinois and California, the more the public can save on insurance.

Written by Margaret Truesdale and Charlie Wyson of Hughes Socol Piers Resnick & Dym. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. Johnny Parker, *Detecting and Preventing Insurance Fraud: State of the Nation in Review*, 52 Creighton L. Rev. 293, 294 (2019)
2. 740 ILCS 92/1 *et seq*
3. Cal. Ins. Code § 1871

No Defense for Defense Spending Fraud

September 11, 2022 By Renée Brooker and Eva Gunasekera of Tycko & Zavareei

In FY 2021, the Department of Defense's (DOD) budget was **\$703.7 billion**.

This is more money in absolute terms than any other Country spends on Defense. It is also more than any other NATO country spends *per person* on defense at **\$2,186 per American**. Therefore, every American has a stake in ensuring that money is spent well.

The False Claims Act is an established and proven way to fight fraud, and the original purpose of the False Claims Act was to combat fraud in government contracting. It was first enacted in response to reports of fraud in the supply of goods and services to the military. But while there are examples of how the Act has worked in the past, the False Claims Act is not being deployed much now or with much success to combat defense fraud.

For 2021, the Department of Justice (DOJ) reported total settlements and recoveries of **\$119.6** million in Department of Defense related matters, including cases filed by whistleblowers and cases initiated by the government itself. That is approximately 17 thousands of a percent of the Defense budget. (0.0017%)

Cases related to fraud on the DoD have also become increasingly rare. Only 52 False Claims Act cases were filed last fiscal year alleging fraud on the DoD – 27 initiated by whistleblowers and 25 by the government. In comparison, during the same time, more than 9 times as many new cases were filed alleging healthcare fraud – 388 initiated by whistleblowers and 97 by the government.¹

Is it possible this relative inaction in the False Claims Act is because there is no fraud, at the Department of Defense?

Anything is possible, but no one, including the Government Accountability Office (GAO), believes that to be the case. In a report from August 2021, GAO reiterated that “[t]he scope and scale of [DOD’s procurement] activity makes DOD procurement inherently susceptible to fraud.”

Like military service itself, Whistleblowing is a volunteer opportunity, and Uncle Sam needs defense contracting whistleblowers to protect both military operations and the public fisc.

Written by Renée Brooker and Eva Gunasekera of Tycko & Zavareei LLP. Edited by James King of Taxpayers Against Fraud. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. Note: False Claims Act cases classified as related to DoD fraud may still be related to “healthcare” to the extent the fraud is perpetrated against DoD’s extensive healthcare operations, including through Tricare and the VA.

Housing Market May Be Cooling but Mortgage Fraud is Still a Hot Issue

September 12, 2022 By Julia-Jeane Lighten and Alex Cala of Taxpayers Against Fraud

In November 2009, the **Financial Fraud Enforcement Task Force** (“FFETF”) was established to address a financial crisis to which mortgage fraud contributed. The following year, FFETF, together with DOJ and the FBI, announced its first enforcement action: **Operation Stolen Dreams**.

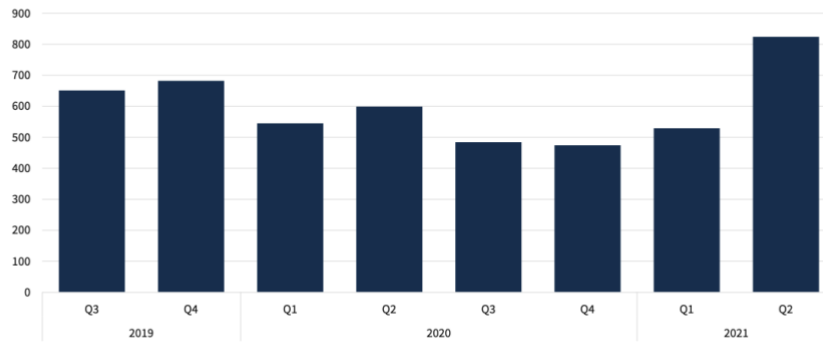
This enforcement action was an “aggressive, coordinated and proactive effort” to target financial fraud, prosecute wrongdoers, obtain civil settlements, and resulted in the arrest of mortgage fraudsters responsible **for over \$2.3 billion in losses**. Operation Stolen Dreams was an inflection point, and from the early 2010s onward, whistleblowers have played a more crucial role in government efforts to combat mortgage fraud.

So, how prevalent is mortgage fraud? According to **CoreLogic’s 2021 Annual Mortgage Fraud Report**, the estimated number of mortgage applications that showed indications of fraud in Q2 2021 was 0.83%, or about 1 in 120 applications. This represents a 36% increase from the estimated 0.61%, or about 1 in 164 applications, that showed indications of fraud in Q2 2020. The sectors that showed the highest risk for fraudulent misconduct were investment properties (about 1 in 23 applications), with **a 37.2% increase in overall fraud risk from Q1 2020 – Q2 2021**.

However, False Claims Act liability only applies to a subset of these mortgages—namely, loans made by Federal Housing Administration (FHA)-approved lenders. When borrowers default on these loans, FHA funds are deployed. Multiple False Claims Act *qui tam* actions have alleged fraud on these loans.

Fraud Tip Volume Had a Significant Increase this Quarter

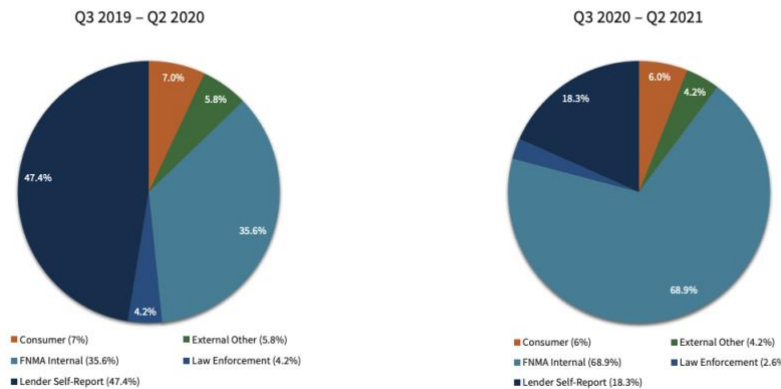
Fraud tips received Q3 2019 – Q2 2021



2

Fannie Mae Identified Tips Comprise the Majority of Recent Fraud Tips

Fraud tips received Q3 2019 – Q2 2021



3

Source: Fannie Mae, Mortgage Fraud Tip Trends, Page 2 & 3

Written by Julia-Jeane Lighten and Alex Cala of *Taxpayers Against Fraud*. Edited by Jeb White of *Taxpayers Against Fraud*. Fact checked by Julia-Jeane Lighten of *Taxpayers Against Fraud*.

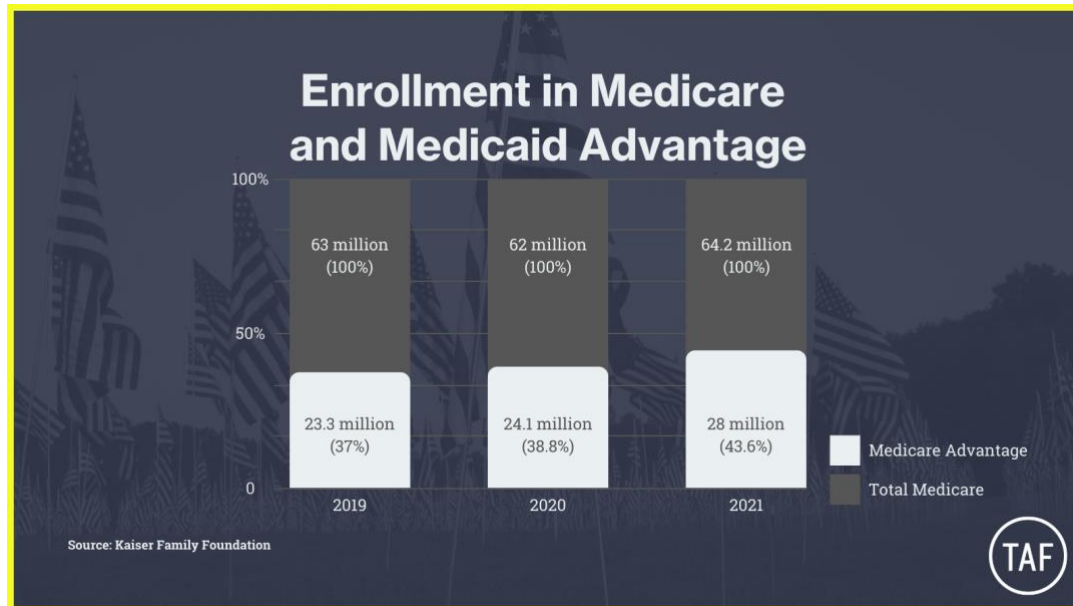
Whistleblowers Can Defeat Medicare Advantage Fraud

September 13, 2022 By Renée Brooker and Eva Gunasekera of Tycko & Zavareei

Twenty-eight million Americans now rely on “Medicare Advantage” (MA) plans, also known as “Part C” for their health insurance benefits. These plans have a special structure, which can improve service and provide savings, but unfortunately also provide new ways for companies to cheat the government.

MA plans offer the same “traditional” Medicare benefits to beneficiaries in exchange for “capitated” payments from the government. That means the plans receive a set amount each month from the government for each beneficiary they cover, regardless of the healthcare services provided to the beneficiary. To entice beneficiaries, the plans frequently offer additional benefits, and the capitated payment model also theoretically saves the government money.

The siren call of all these advantages has led to steady growth in enrollment, a 20% increase between 2019 to 2021 in beneficiaries.



A full 45% of Medicare beneficiaries are now enrolled in these plans. As you can see from the chart above, both the raw number of Americans enrolled in Medicare Advantage Plans and the percentage of total Medicare beneficiaries are steadily rising. Kaiser Family Foundation reports that more than half of all Medicare beneficiaries will be enrolled in Medicare Advantage plans by 2030.

The government pays MA plans more to cover sicker patients, on the assumption that they need more healthcare and therefore cost more to cover. The government determines how sick patients are, and how much to pay insurers, based on diagnosis data provided by healthcare providers. If the insurers show they have “sicker” patients, they get more money, because supposedly their beneficiaries are receiving more treatment.

But multiple whistleblower cases and repeated government audits show that Medicare Advantage providers have cheated the system by finding ways to generate diagnoses for which their patients are not actually being treated and even submitting diagnoses that they know the patients don’t have.

With so many millions of Americans dependent on the program now, the impact of Medicare Advantage fraud has become monstrous. According to a November 2021 analysis of Medicare Advantage billing data, the government is estimated to have “overpaid [Medicare Advantage] plans by more than \$106 billion from 2010 through 2019,” with almost \$34 billion originating in 2018-2019. Recouping and stopping those overpayments would get us a long way towards expanding Medicare coverage by lowering the age of eligibility or recognizing that “Seniors Have Eyes, Ears, and Teeth.”

Meanwhile, big name health insurers, particularly those with high Medicare Advantage enrollment, are raking in record profits and concerns about these plans not providing necessary care are growing.

Whistleblowers, such as medical coders, providers, and employees of Medicare Advantage plans, have already had some success in reporting fraud. Two recent cases, related to just this kind of Medicare Advantage fraud, recouped more than \$96 million combined.

Since Medicare Advantage will continue to grow, there will be more monsters, and more need for whistleblowers to slay them.

Who Can We Rely On When the Watchdogs Are Not Doing Their Jobs? Whistleblowers.

September 14, 2022 By Molly Knobler of DiCello Levitt

Last year we described the immense job facing the Securities and Exchange Commission (SEC), the U.S. agency charged with regulating financial markets.

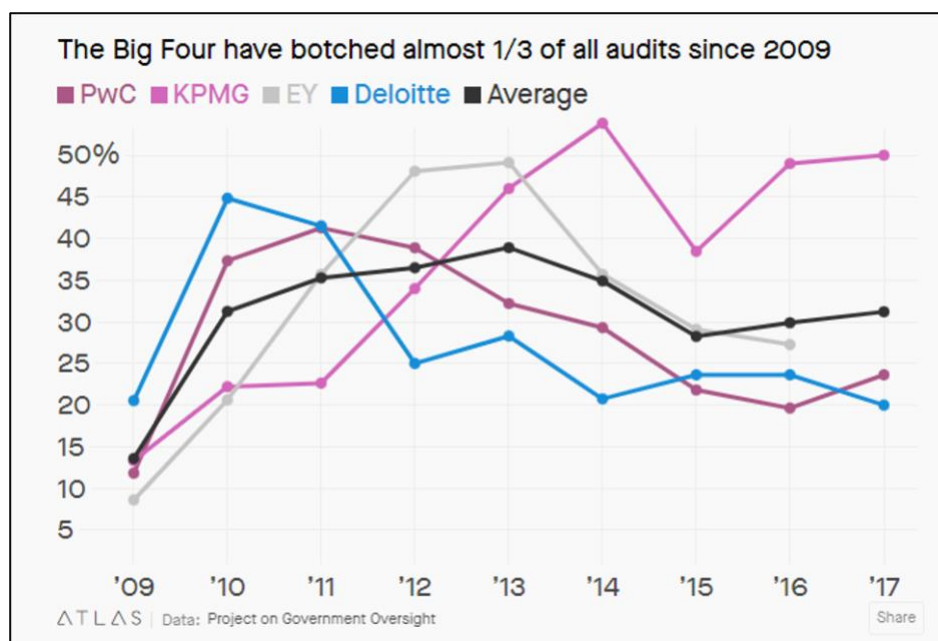
The SEC's staff of 4,459 people is responsible for overseeing nearly every part of the United States' \$110 trillion capital markets. That's about \$24.7 billion per person—more than the entire value of Rupert Murdoch's media empire. Moreover, this requires oversight of more than 28,000 registered entities (including investment advisers, mutual funds, exchange-traded funds, broker-dealers, municipal advisors, and transfer agents), 7,400 reporting companies, 24 national securities exchanges, 9 credit rating agencies, and 7 active registered clearing agencies.

This burden is why the SEC relies, in part, on independent auditors and accountants as “watchdogs” to curb abuses and protect investors.

Chief among these watchdogs are the “Big Four”—accounting firms Deloitte, Ernst & Young (EY), KPMG, and PricewaterhouseCoopers (PwC). In 2021, the Big Four audited more than 90 percent of the largest public companies (“large accelerated filers”).

However, the Public Company Accounting Oversight Board (“PCAOB” or “peek-a-boo”)¹, has repeatedly found widespread and substantial deficiencies in audits conducted by the Big Four. In its inspection of a sample of 2017 and 2016 audits, PCAOB found 20% of Deloitte's audits to be inadequate, 23.6% of PwC's, 27.3% of EY's, and 50% of KPMG's. When an audit is found to be “inadequate,” it means that if the audited company had reported erroneous financial results or engaged in accounting fraud, the audit may not have detected these problems.

These deficiencies are not anomalies; they are reflective of a long pattern:



Graph from Quartz: “Big Four accounting firms bungle a third of US audits but are rarely fined”

In 2022 alone, the Big Four collectively audited over 1,900 the largest public companies – making them responsible for oversight of **at least \$1.37 trillion** worth of company equity in the hands of public investors.

Applying the deficiency scores from PCAOB’s review of 2017 and 2016 audits cited above, the Big Four ***inadequately audited, at minimum, investments of about \$399 billion***. That’s like saying they inadequately audited an amount equal to the **entire GDP of Norway!**

That’s the GDP of **Norway!** Enough to **buy a house** for every man, woman, and child in **Delaware** and still have \$65 billion left over.

Conflicts may contribute to this problem. “Independent” auditors are paid by the companies they scrutinize, resulting in pressure to produce reports that please those companies. A **recent academic study** of 13 years’ worth of data on 358 U.S. audit firms found that, on average, auditors saw a 2.2 percent drop in their client growth for each flaw they highlighted, while their revenue grew 8 percent less than competitors who didn’t flag those flaws.

In March of this year, **the SEC launched a probe** into the Big Four’s conflicts of interest policies, concerned that their sale of consulting and other non-audit services might undermine their ability to conduct independent reviews of public companies’ financials. All four firms have paid fines to the SEC in the last 8 years to settle prior regulatory investigations of audit independence violations.

Other regulatory agencies have also taken note of the issues that arise where an accounting firm is responsible for auditing its own work. For instance, in 2014, the I.R.S. challenged what it called a **“sham” tax arrangement** devised by EY for its client Perrigo to allow the drug company to avoid more than \$100 million in federal taxes. Perrigo’s then auditors, accounting firm BDO, questioned the propriety of the arrangement. Shortly thereafter, Perrigo replaced BDO with EY as its auditor. EY proceeded to bless the arrangement designed by its colleagues. The IRS has challenged similar offshore arrangements undertaken by Coca-Cola, Facebook, and Western Digital. In all of those cases, the accounting firm that constructed the elaborate tax plan later signed off of the company’s books in its capacity as an independent auditor.

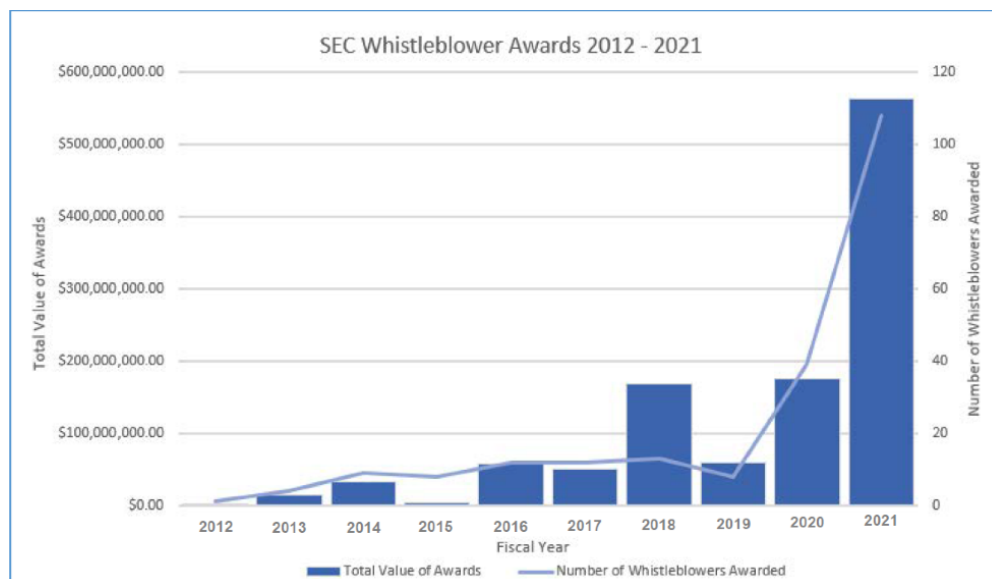
We expect to see significant enforcement activity resulting from the SEC’s announced probe. Just a few months ago, the **SEC imposed a \$100 million fine** on EY—the largest penalty ever imposed by the SEC against an audit firm—for “failure[] to act with the integrity required of a public company auditor.” (KPMG **paid \$50 million to settle** similar charges in 2019.)

The SEC charged, and the firm admitted, that EY audit professionals cheated on exams required to obtain and maintain their licenses as Certified Public Accountants (CPAs) and that EY withheld evidence of this misconduct from the SEC during the Enforcement Division’s investigation of the matter. Specifically, EY audit professionals cheated on the ethics component of CPA exams and various continuing professional education courses required to maintain their CPA licenses, including ones designed to ensure that accountants can properly evaluate whether clients’ financial statements comply with Generally Accepted Accounting Principles (GAAP).

The SEC has a huge job to do. A job which is, unfortunately, not always made easier by the watchdogs who are supposed to ease the load. But there is one group who can always be relied on as a crucial law enforcement partner: whistleblowers. As **SEC Chair Gary Gensler commented**, “Whistleblowers provide a critical public service and duty to our nation, taking personal and professional risks in doing so. Since the [SEC whistleblower] program’s inception, enforcement matters brought using information from whistleblower have resulted in more than \$1.3 billion that has been (or is scheduled to be) returned to harmed investors.”

In **fiscal year 2021**, the SEC announced that it had filed 434 new enforcement actions, 697 total enforcement actions, and obtained judgments and orders for nearly \$2.4 billion in disgorgement and more than \$1.4 billion in penalties. Among these were several actions specifically intended to “ensur[e] gatekeepers live up to their obligations.”

Notably, the SEC whistleblower program also notched a banner year, awarding a record \$564 million to 108 whistleblowers (bringing the total awarded over the life of the program to over \$1 billion) and awarding record-setting awards of \$114 million and \$110 million.



Written by Molly Knobler of DiCello Levitt. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. PCAOB is a non-profit entity under the SEC’s purview which serves as a “watchdog” of the supposed “watchdog” auditing companies.

Bring Me Your Tired, Your Poor, Your Whistleblowers

September 15, 2022 By Mary Inman and Elizabeth Soltan of Constantine Cannon

The United States' whistleblower programs are a model for other countries. American exceptionalism generally may be a matter for debate, but not when it comes to empowering, protecting and rewarding whistleblowers – that's one area in which the good ol' US of A can absolutely claim moral leadership.



That leadership shows in the way US whistleblower programs have become magnets for international whistleblowers. There is no requirement that an individual be a U.S. citizen or resident to bring cases under the False Claims Act, the Foreign Corrupt Practices Act, or to submit a tip to the SEC, IRS, or any other agency whistleblower program. Whistleblowers from foreign shores can bring their information to U.S. authorities and qualify for whistleblower awards, and they do.

The top six countries for international tips to the SEC whistleblower program are Canada, the United Kingdom, China, Australia, India, and Germany. The number of tips from these countries has been on an upward trend. Together, whistleblowers from these six countries submitted 209 tips in 2012. In 2021, that number rose to 717. As **the SEC put it in a 2014 decision providing an award to a foreign whistleblower**, “it makes no difference whether, for example, the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the US securities law violation occurred entirely overseas.”

It's no wonder that a **2020 report** by the Working Group on Bribery of the Organization for Economic Co-operation and Development (OECD) praised the U.S. as a leader in fighting “transnational corruption” and singled out the SEC's whistleblower program for praise. The peculiar vantage point of international whistleblowers is particularly helpful in the detection and prosecution of the anti-bribery provisions of the FCPA, which prohibit bribes paid by U.S. persons or companies to a foreign government official to assist in obtaining or retaining business.

Since this is America, after all, readers won't be surprised to hear that there's something in it for *our* national interest. Welcoming whistleblowers to our shores pays off for American enforcement, bringing in tips that lead to effective fraud-fighting that helps protect American investors. In 2021, **the SEC announced an award of \$5 million** to joint whistleblowers outside the United States. Since SEC whistleblowers receive 10-30% of the government recovery¹, these foreign whistleblowers helped the government in a fraud enforcement action that led to between \$16.6 and \$50 million in penalties!

Whistleblowers are especially important given the mismatch between the SEC's shrinking staff and its expansive mandate to safeguard America's capital markets. As **SEC Chair Gary Gensler said in his testimony** to a Senate committee today, the SEC is “doing more with less,” because its Enforcement Division staff levels have shrunk 5 percent since 2016. Whistleblowers both at home and abroad can be an important force-multiplier for stretched agencies.

In 2021, **the SEC received tips from whistleblowers in 99 countries**, with international tips comprising 11% of the total tips submitted to the agency. In that same year, 20 percent of SEC awards went to international whistleblowers, showing that many international tips led to successful and remunerative enforcement actions. And the SEC is not alone in putting out the welcome mat for international whistleblowers. In 2021, **the IRS received 134 whistleblower tips** from individuals outside the US.

America is even willing to pay whistleblowers for the money that foreign countries recover as a result of their tips. In 2021, **the CFTC announced their largest ever whistleblower award** – \$200 million. The whistleblower provided information about Deutsche Bank's manipulation of the London Interbank Offered Rate (LIBOR), an important financial benchmark. Significantly, the amount of the reward was calculated based on the total amount of money recovered by both the US *and* the UK Financial Conduct Authority. America was willing to foot the bill to recognize the importance of the whistleblower's assistance in recovering money for our former colonial overlords. Talk about putting our pounds sterling where our mouth is.

Like Lady Liberty's torch, the American whistleblower reward programs beckon foreign whistleblowers to our shores with the promise of rewards, protection against retaliation and an aggressive enforcement staff within the various participating US agencies who will act on their information. As the above statistics attest, international whistleblowers increasingly are heeding this call as whistleblower programs like the SEC's continue to deliver on this promise and harness the power of their tips to root out fraud and corruption.

Written by Mary Inman and Elizabeth Soltan of Constantine Cannon LLP. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. SEC recoveries are a bit different than recoveries under the False Claims Act. Successful SEC enforcement can result in both the return of the profits from wrongdoing, which usually go to harmed investors, and the imposition of monetary penalties, which usually go to the government. For more information, see the SEC's bulletin titled "How Victims of Investment Fraud May Recover Money."

Fraud Fighters Needed to Combat Government Grant Fraud

September 16, 2022 By Jacklyn DeMar of Taxpayers Against Fraud

The **federal government awarded almost \$811 billion in grants** in FY2021. That is up from almost \$727 billion in 2020 and \$528 billion in 2019 a 53% increase in three years.

The increase in awards over the past few years can be attributed to COVID-related priorities. For instance, the Centers for Disease Control (CDC) made a nearly a ten-fold increase in grants (from \$5 billion to almost \$50 billion) from 2018, before the pandemic, to 2021, during the public health emergency.

State and federal governments award hundreds of billions of dollars in grants each year. **Grants are given** to universities, research labs, law enforcement, non-profit organizations, and businesses that are intended to support projects to provide public services and stimulate the economy. They are meant to support critical recovery initiatives, innovative research, and many other programs.

A government grant is not free money, however. Recipients must satisfy government requirements to get the money, and use it for designated purposes. With this much money at stake, fraudsters do attempt to take advantage of the system and **grant fraud can take many forms**. Often, there is fraud to get the grant award in the first place and fraud in the performance of the grant. These frauds include providing false information on a grant application and using grant funds for purposes or projects that are different than the purpose stated on the grant award. Scientific fraud, such as falsifying the results of grant-funded experiments is a major issue, as is lying about the status of a grant-funded project to continue receiving funds.

With billions of dollars in grants awarded to aid our country's COVID response, there has been an incentive to commit fraud and some notable enforcement actions. There have been criminal indictments for **falsely obtaining grants** from the National Institutes of Health for immunology research, enforcement actions for **submitting fraudulent applications** for loans and non-refundable grant "advances" of up to \$10,000 through the Small Business Association (SBA).

There have been prosecutions for people accused of **fraudulently obtaining grants** for rental assistance through the COVID-19 Emergency Solutions Grant program, **falsely obtaining disaster loans and grants** from the SBA for businesses that did not exist, and **accepting kickbacks** in exchange for fraudulently distributing federally funded grants from the local government. However, these relatively easy to prove criminal enforcement actions only hint at the civil fraud cases that are under seal or being litigated and take time to prosecute.

Another key area of potential grant fraud enforcement involves the Department of Justice's (DOJ) new **Civil Cyber-Fraud Initiative**. In the press release discussing the initiative, Deputy Attorney General Lisa Monaco specifically mentions grantees as targets of enforcement actions should they fail to maintain sufficient cybersecurity protocols, and DOJ has pledged to "utilize the False Claims Act to pursue cybersecurity related fraud by government contractors and grant recipients."

Whistleblowers are critical to bringing these large and complex fraud schemes to light.

Even with billions at issue and known schemes that can plague these expenditures, grant fraud cases make up only a tiny fraction of total FCA cases. The government's task forces and enforcement efforts alone are not nearly enough to ensure the integrity of these critical programs. The government must rely on whistleblowers to come forward with information about falsely obtained and misspent grants.

Written by Jacklyn DeMar of Taxpayers Against Fraud. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

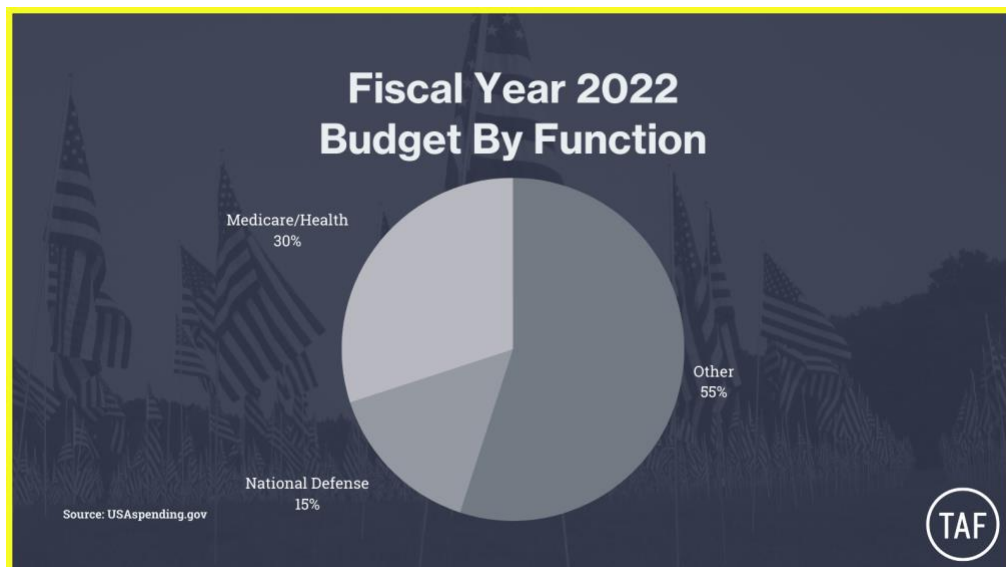
There's Billions in "Other" Frauds Outside of Healthcare and Defense Contracting

September 17, 2022 By Molly Knobler of DiCello Levitt

The **federal government awarded almost \$811 billion in grants** in FY2021. That is up from almost \$727 billion in 2020 and \$528 billion in 2019 a 53% increase in three years.

Healthcare and **defense** spending rank number 1 and 2 in the federal budget every year. It is not surprising that they would similarly take top-billing in fraud recoveries. As described on **September 1**, DOJ issues an annual report detailing statistics on its FCA recoveries. DOJ's report breaks recoveries into three groups: "Health and Human Services," Department of Defense," and "Other." But what *exactly* is "other"? What makes up this non-descript "catch-all" category and how big of a line item in the federal budget does it represent?

The answer is *a lot* of things fall under the "other" umbrella. Most importantly, the government spends *a lot* of money on "other" things besides defense and healthcare. In fact, the government spends *more than half* its annual budget on "other."



According to [USAspending.gov](https://www.usaspending.gov), the federal government will spend \$7.2 trillion on “all budget functions” in fiscal year 2022. Of this, 16.3% (\$1.2 trillion) will go to Medicare, \$13.6% (\$977 billion) will go to “Health” functions (including Medicaid and SCHIP), and 14.6% (\$1 trillion) will go to “National Defense” (including the Department of Defense). That leaves 55.4%—about **\$4 trillion**—for “other” government functions.

What’s covered by this \$4 trillion? **A LOT**. As President Biden said in releasing his 2022 budget, **“[w]here we choose to invest speaks to what we value as a Nation.”** And our spending illustrates the wild, wacky, weird, and wonderful aspects of America.

For example, in FY 2022, we will spend:

- \$1.1 trillion on social security payments to provide a safety net for the disabled and elderly;
- \$232.5 billion in Veterans benefits and services;
- \$166 billion on food and nutrition assistance;
- \$118 billion to the Highway Trust Fund to build and maintain roads;
- \$70.7 billion on higher education including \$45 billion on direct student loans;
- \$57 billion on disaster relief and insurance;
- \$29 billion on international development and humanitarian assistance;
- \$19.6 billion on “space flight, research, and supporting activities”;
- \$14 billion to fund Customs and Border Protection;
- \$9.5 billion to the Federal Aviation Administration;
- \$3 billion for wildland fire management;
- \$684 million to the Bureau of Engraving and Printing;
- \$224 million to the National Endowment for the Arts;
- \$194 million on the National Agricultural Statistics Service; and
- \$142 million for the civil Corps of Engineer to remediate former nuclear energy sites.

We have already talked about various ways in which some of these programs are vulnerable to fraud. The **Government Accountability Office** estimates that federal agencies made \$281 billion in improper payments in FY 2021 (excluding improper payments related to COVID-19 relief funding). This covers fraud, waste, and abuse, but also fails to fully account for the full scope of improper payments, because of a lack of “complete, reliable, or accurate estimates.” Given that “other” programs account for more than 50% of the federal budget, GAO findings, and consistent False Claims Act recoveries in these “other” areas, there may be substantial fraud impacting many of our programs to fund the arts, build roads, go to space, and even print money.

Department of Justice lawyers have expressed their desire to pursue fraud cases outside of the well-worn paths of healthcare and defense cases. In its **announcement** of FY 2021 recoveries, the Department took pains to call out successes in the procurement space and in “other” actions related to natural gas production, underpayment of customs duties, the FCC’s E-Rate program, federal education initiatives, and mortgage fraud.

There is no question that “other” fraud is abundant and that whistleblowers are a key component in the successful pursuit of “other” fraud on the government. Since FY 1987 (the beginning of the Department’s FCA recovery statistics), *qui tam* cases have led to 76% of recoveries in the healthcare space (and have accounted for 87% of the cases brought). At the same time, *qui tam* cases have comprised a substantial, but notably lower, percentage of recoveries (49%) and cases (56%) in the “other” category.

Healthcare and Defense Fraud may grab the headlines. But the numbers make clear that the government’s significant expenditures that get lumped into the “other” category are also vulnerable to fraud – and equally in need of whistleblowers to help the government expose the fraudulent schemes that take money from the diverse programs caught in this “Catch All.”

Written by By Molly Knobler of DiCello Levitt. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

Innovations in the auto industry are picking up speed. Can NHTSA's whistleblower program keep up?

September 18, 2022 By Elizabeth Soltan of Constantine Cannon

The National Highway Traffic Safety Administration, known as NHTSA, issued a report in June 2022 publicizing 392 crashes involving “partially automated driver-assist systems,” in the 11 months since it began requiring automakers to report these incidents.¹ Partially automated driver-assist systems are innovations that control the car’s steering, speeding up, and slowing down without the driver. Almost 70% of these reported crashes involved Tesla vehicles. Meanwhile, Tesla reported \$3.3 billion in profits in the *first three months* of 2022.

As sales of Tesla vehicles and other cars with automated driver-assist systems increase, the number of these cars on the road will only rise. The potential for crashes involving driver-assist systems will rise accordingly – and, of course, this is not the only safety issue to come along with new vehicle innovations. For instance, on April 1, 2022 NHTSA announced an investigation into the safety of LG Energy Solutions batteries used in a number of manufacturers’ electric vehicles, including models from Mercedes Benz, Hyundai, and General Motors.

Tesla CEO Elon Musk has publicly dared his employees to blow the whistle on Tesla, offering a limited edition “Cyberwhistle” for sale, with a design based on the Cybertruck. Musk’s throwing down of the whistleblower gauntlet raises the question: would any employee of a company making newfangled vehicles know where to turn to blow the whistle?

If Mr. Musk’s employees really do have something to report, the NHTSA’s whistleblower program is designated as the place for motor vehicle industry whistleblowers to alert the government of dangerous malfeasance. However, NHTSA has not published regulations on its rules and rewards for whistleblowers in the seven years since the Motor Vehicle Safety Whistleblower Act passed in 2015. Congress even gave NHTSA a deadline of June 2017 to create these regulations, a date now far off in the rearview mirror. For context, between 2015 and 2021, government agencies have published 23,538 final rules, according to data collected by George Washington University’s Regulatory Studies Center (“Rules Published in the Federal Register by Presidential Year”).

The NHTSA whistleblower program is authorized by Congress to offer awards of 10 to 30% of collected sanctions over \$1 million. In 2021, NHTSA issued only one whistleblower award. Whistleblower Kim Gwang-ho traveled from Korea to the United States to provide information about dangerous practices by Hyundai and Kia, including untimely recalls and hiding damaging safety information from NHTSA. He received \$21.4 million dollars, 30% of the sanctions collected from Hyundai and Kia. Mr. Kim’s report of multiple problems, including a safety issue that could cause engines to stall out unexpectedly, led Hyundai and Kia to recall 1.5 million vehicles in the U.S. and South Korea.

Hyundai and Kia are just two automakers. Business Insider reports that, the world over, there are 14 major car companies that control 62 brands of automakers – and that counts only the largest players in the field. With nearly 276 million registered vehicles traveling on over 4 million miles of public roads in the United States, the numbers dictate that we need more than one motor vehicle safety whistleblower.

Written by By Elizabeth Soltan of Constantine Cannon LLP. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. While NHTSA now requires automakers to report this data, it is still self-reported information and may not be complete.

Even By Fraud Business Standards, The Issue of Money Laundering is Huge

September 19, 2022 By Matthew Beddingfield and Tony Munter

In 2009, the United Nations estimated that criminal proceeds were approximately 3.6% of global GDP, with 2.7% of GDP or **\$1.6 trillion a year being laundered**. Seeing as Global GDP is higher today, if this percentage holds, the figures would be more like **\$2.5 trillion dollars a year** being laundered. Making matters more staggering, cryptocurrency wasn't a factor in 2009.



While the problem is international in scope, the United States is, of course, affected. In 2015, The **U.S. Treasury Department issued** a "National Money Laundering Risk Assessment," which said, "...while recognizing the limitations of the data sets utilized, this assessment estimates that about **\$300 Billion** is generated annually in illicit proceeds. Fraud and drug trafficking offenses generate most of those proceeds." That assessment was issued seven years ago so, again the amounts involved likely have only increased.

While we worry about how much money is getting folded, pressed, and sent back to its non-rightful owner, the thing to remember is just how all that money got dirty in the first place.

According to the **Financial Action Task Force**, the international group that tries to fight it, money laundering:

...enables the criminal to enjoy these profits without jeopardising their source. Illegal arms sales, smuggling, and the activities of organised crime, including, for example, drug trafficking and prostitution rings, can generate huge amounts of proceeds. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimise" the ill-gotten gains through money laundering.

Adding to this kind of dirty money we now have foreign policy matters, including the current war in Ukraine, which led the **United States Office of Foreign Assets Control** to create sanctions for those on a "blocked persons" list, create investment banks and sanctions against entities operating in designated sectors of the Russian Economy.

Congress has weighed in too. In January 2021, they passed an Anti-Money Laundering Act. That Act established a Whistleblower reward program for those who report money laundering violations to the U.S. It includes reporting requirements for banks as well. However, there have been no awards for reporting laundered money, as the law currently includes no mandatory awards. Further, the Treasury Department has not enacted any regulations for whistleblowers to report such violations.

As we post this, there is legislation pending (**House Bill 7195**) which would amend the Anti-Money Laundering Act and model its whistleblower program on the Securities and Exchange Commission (SEC) Whistleblower program. The Bill would create mandatory awards of 10-30% for any collection or monetary sanctions imposed on the actions and provide a fund to support it.

We know there are trillions of dollars in the laundry and we know it is the dirtiest kind of money there is. We know that to find it, the government will need whistleblowers. We do not know if there will be any awards to report by this time next year.

Written by Matthew Beddingfield of Zerbe, Miller, Fingeret, Frank & Jadav LLP and Tony Munter of Price Benowitz. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

Deciphering Crypto Fraud

September 20, 2022 By Elizabeth Soltan of Constantine Cannon LLP and Alex Cala of Taxpayers Against Fraud

Given cryptocurrency's **massive market cap** and propensity for volatility, it is no surprise that cryptocurrency is a hot new topic among government agencies tasked with tracking and prosecuting fraud. According to **Pew Research**, 16% of Americans have invested in, used or traded crypto, and that number jumps to 31% of Americans ages 18 to 29. Crypto usage did not vary much among income groups, at 17% for people in the upper and middle-income categories and 15% for people in lower income brackets.

As crypto investments have increased, so too has the number of victims of cryptocurrency fraud. The FTC **announced** this year that between January 2021 and March 31, 2022, more than 46,000 people reported losing a total of over \$1 billion worth of cryptocurrency in scams. Those figures only include scam victims who chose to report to the FTC, so the real numbers of victims and lost investments may be higher. In fact, **a Chainalysis report** on crypto crime in 2021 uncovered larger amounts of crypto fraud than the amount reported to the FTC, with "illicit addresses" receiving over \$14 billion in cryptocurrency¹.

To put that in perspective, if we imagine a fictional country called Cryptofraudia with a GDP of \$14 billion, that country would have a higher Gross Domestic Product (GDP) than about 70 countries on the World Bank's 2021 **ranking**, including Armenia and Jamaica. This \$14 billion directed to "illicit addresses" represents a \$6.2 billion increase from 2020 data. This annual jump is also a gargantuan figure, larger than the GDP of Guam.



Overall, there were **60 times** more reported crypto scams in 2021 than in 2018. The average victim lost \$2,600, which is more than two weeks' pay for someone making the **mean annual wage** in the U.S. Crypto schemes such as "**rug pulls**", in which developers of a cryptocurrency pump up the price of the cryptocurrency and then sell their shares, often leave investors blindsided and financially devastated. The largest confirmed rug pull defrauded investors of more **than \$4 billion in 2017** alone.

While crypto fraud numbers are ballooning, enforcement efforts are still ramping up. The SEC established a Cyber Unit in 2017. It has nearly doubled in size and operates under the new moniker "**Crypto Assets and Cyber Unit**" in 2022 to reflect the growing prevalence of crypto and cyber crimes. In October 2021, the Dept. of Justice created a **National Cryptocurrency Enforcement Team** tasked with prosecuting virtual currency exchanges, money laundering and crypto ransomware.

More recently, Senators Cynthia Loomis (R-WY) and Kirsten Gillibrand (D-NY) **introduced** a bipartisan bill called the Responsible Financial Innovation Act to define cryptocurrency as a commodity under the purview of the Commodity Futures Trading Commission.

At the state level, New York Attorney General Letitia James issued a **call** for insiders at unscrupulous crypto companies to step up as whistleblowers – and to defrauded investors to reach out to her office, too. And recently, SEC Chair Gary Gensler has made multiple **public comments** expressing the need for enforcement in the crypto space and his belief that “a majority of crypto tokens are securities.”

The growing ubiquity of the crypto market and the rising GDP of Cryptofraudia suggest that the push for enforcement, supported by whistleblowers, is coming not a moment too soon.

Written by Elizabeth Soltan of Constantine Cannon LLP and Alex Cala of Taxpayers Against Fraud. Edited by Jillian Estes of Morgan Verkamp LLC, Kate Scanlan of Keller Grover LLP, and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. To access the free report, visit <https://go.chainalysis.com/2022-Crypto-Crime-Report.html> and enter your name.

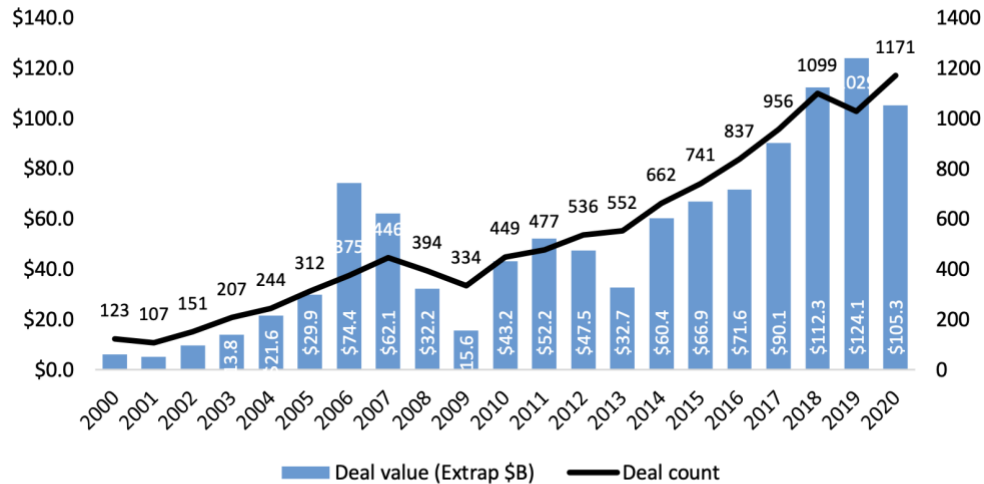
Private Equity Investment in Healthcare is Skyrocketing; Grandma Should Be Scared

September 21, 2022 By Molly Knobler of DiCello Levitt

Private equity investment in healthcare providers has skyrocketed over the last decade. Between 2010 and 2019, private equity deals in healthcare nearly **tripled in value**—from \$43 billion to \$124 billion—**totaling \$750 billion over the last decade**. That’s more than the **combined budgets** of the Department of Agriculture, the Department of Veterans Affairs, and the Department of Transportation this year.

A “private equity” (or “PE”) investment means capital that comes from institutional funds and individuals that invest directly in private companies, rather than through a public exchange. Private equity fund managers often take an active hand in managing the day-to-day operations of the “portfolio” companies in which they invest.

FIGURE 1: Total PE Investment in Health Care: 2000-2020



Source: PitchBook data calculations. Note: Values are estimates based on PitchBook's formula for extrapolating from the actual data, which on average are 50% of the extrapolated values.

([image source](#))

As a result, over the last ten years, a relatively small group of investors subject to little regulation or transparency have shifted the focus of healthcare – from optimizing patient care, to maximizing investor returns.

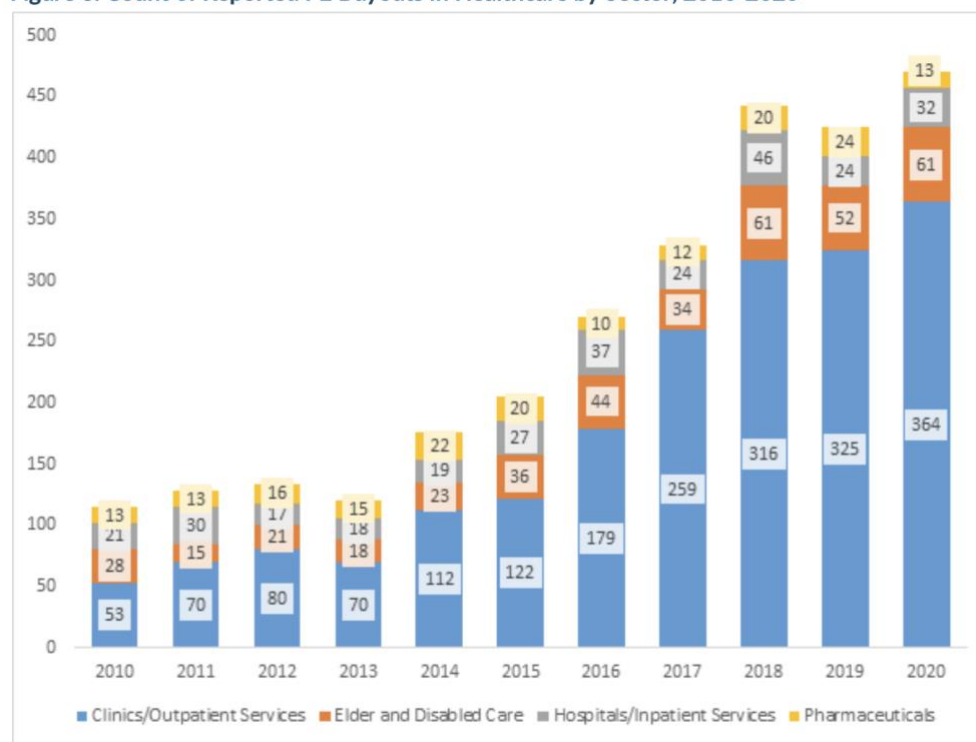
All this private equity investment has major downsides for health care according to a **recent study** published by the University of Chicago. The report found that private equity ownership of nursing homes was associated with an increased probability of death during a patient's stay and in the 90 days following discharge. The authors' analysis implied about 20,150 Medicare lives lost due to PE ownership of nursing homes between 2000 and 2017.

The study also found that patient care suffered when private equity took over, including a decline in nurse availability per patient and a 50% increase in the likelihood of patients receiving antipsychotic medications (which are **strongly discouraged** in the elderly due to their association with greater mortality).

In addition to the tragic **personal tolls**, financial costs increased as well. The study found an 11% increase in the amount billed for the stay and the 90 days following the stay and an increase in operating costs that tended to drive profits for the PE owners. Private equity ownership of nursing homes has also been linked to unethical or illegal billing practices, including **"surprise medical billing."**

Private equity investments have focused disproportionately on outpatient care and home health markets, though there has also been substantial investment in hospitals, particularly emergency room services, and pharmaceutical companies.

Figure 3. Count of Reported PE Buyouts in Healthcare by Sector, 2010-2020



Petris Center/AAI analysis of PitchBook data.

SOURCE: PitchBook Data, Inc. Data has not been reviewed by PitchBook analysts.

NOTE: Data as of 4/3/2021. Deal counts = counts of private equity buyouts in a year. The PitchBook database is dynamic and deal counts produced by the same search on different dates may vary as underlying data change over time.

([image source](#))

In addition, since 2013, at least 25 private-equity owned healthcare companies (and sometimes the private equity owners themselves) have entered into settlements or been subject to judgments totaling almost \$614 million¹ to resolve claims that they fraudulently overcharged government payers. **Every single one** of those 25 cases was initiated by a whistleblower.²

These whistleblowers not only protect the solvency of government healthcare programs; they protect patient welfare. As PE investments in healthcare continue to increase exponentially, so too will the need for whistleblowers to expose the fraudulent and abusive billing practices that too often go hand-in-hand with deficient or harmful patient care.

Written by By Molly Knobler of DiCello Levitt. Edited by Kate Scanlan of Keller Grover LLP and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1 & 2 Sources on file with author.

Paycheck Protection Program Fraud: All Cannot Be Forgiven

September 22, 2022 By Kate Scanlan of Keller Grover

In 1986, Congress passed the False Claims Act Amendments. From 1986 until 2019 DOJ, together with the whistleblowers the law empowered, clawed back more than **\$62 Billion in settlements and judgments** related to Government fraud. Then came the COVID-19 pandemic, lockdowns, and a public health emergency declaration that's still in place today, three years later.

As part of the response to the unprecedented pandemic, **Congress funded the novel Paycheck Protection Program** (PPP) in multiple tranches:

- **March 27, 2020** – The CARES Act provided \$349 billion to create the PPP.
- **April 24, 2020** – The PPP and Healthcare Enhancement Act added \$310 billion to the PPP, bringing the total program authorization to \$659 billion.
- **December 27, 2020** – The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act provided an additional \$147.5 billion, bringing the total program authorization to \$806.5 billion. It also extended the program through March 31, 2021.
- **March 11, 2021** – The American Rescue Plan Act of 2021 provided an additional \$7.2 billion to the PPP, bringing the total program authorization to \$813.7 billion.
- **March 30, 2021** – The PPP Extension Act of 2021 allowed the Small Business Administration (SBA) to continue accepting PPP loan applications until May 31, 2021.

All in, therefore, the PPP authorized \$813.7 billion in federal loans to be made pursuant to applications submitted in a fourteen-month window (April 2020-May 2021). Ultimately, **SBA received more than 27 million applications** for a piece of the \$813.7 billion pie. The PPP provided small businesses with funds to pay up to 8 weeks of payroll costs including benefits, and authorized billions toward job retention and certain other expenses for small businesses across the country. **As of May 31, 2021, SBA had processed 11.8 million guaranteed PPP loans, totaling \$799.8 billion, through about 5,460 private lenders.** Almost the entire \$813.7 billion went out the door.

Unfortunately, the SBA Office of Inspector General (OIG) recently concluded that the **SBA**, tasked with implementing the massive program, “did not have an organizational structure with clearly defined roles, responsibilities, and processes to manage and handle potentially fraudulent PPP loans across the program.” Independent analysis of the program’s loan process published in 2021 estimated that **“1.8 million of the program’s 11.8 million loans – more than 15 percent – totaling \$76 billion had at least one indication of fraud.”** In other words, ***estimates point to fraudsters taking more from the PPP by fraud over a little more than a year than had been recovered in all FCA enforcement in the previous 34 years, combined.***

This year, as the SBA OIG catches up to the PPP loans that were made in 2020-2021, audits show those early estimates of fraud were likely low – and failed to account for who the fraudsters were or what they were doing with the money. For example, OIG’s **most recent report** raises significant concern that the Economic Injury Disaster Loan (EIDL) Program, representing \$342 billion of the total \$813.7 billion PPP authorization, received ineligible applications from outside the United States but paid those applicants anyway. The OIG also raised questions about whether these loans of government funds were used to support organized international crime syndicates, and individuals and organizations in states deemed hostile to the United States.

Although the application period is closed and nearly \$800 Billion has been dispersed, OIG notes that **“SBA’s challenge [now] is to effectively handle potentially fraudulent PPP loans to reduce the risk of financial loss and ensure only eligible borrowers receive forgiveness in accordance with program requirements.”** To do that hard work of clawing back fraudulent PPP loans, SBA will be relying, in part, on tips from whistleblowers. OIG notes that **“[a]s of December 2021, PPP fraud Hotline complaints exceeded 54,000.”** The Department of Justice will also rely on its primary weapon for fighting fraud on the government, the False Claims Act. News on that front. On September 13, 2022 **DOJ announced** what was “believed to be the nation’s first settlement with a PPP lender pursuant to the False Claims Act.” It recovered \$18,673.50.

PPP money went out from a firehose. It will have to be clawed back one thimble-full at a time.

Written by Kate Scanlan of Keller Grover LLP. Edited by Regina Poserina of Cohen Milstein Sellers & Toll PLLC and Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

Mind the Tax Gap!

September 23, 2022 By Molly Knobler of DiCello Levitt and Tony Munter of Price Benowitz

Government and academic sources refer to the difference in the amount of money paid in taxes and the amount owed as the “Tax Gap.” The IRS Commissioner recently cited the federal tax gap as **\$1 trillion per year**. Mind that gap!

In addition, each state has its own tax gap. Estimates of these gaps are hard to come by. But the analysis that has been done indicates that states are losing billions every year to “gapsters” – those who don’t pay their fair share. California collected **\$196.6 billion** in tax revenues in 2019. But the California Franchise Tax Board estimates that in fiscal year 2018/2019, the state’s tax gap was **\$24 billion** – more than 12% of the total amount collected! It falls to law-abiding taxpayers to fill these gaps – meaning that while the gapsters enjoy their padded pocketbooks, the rest of us are bearing more than our fair share.

The Federal False Claims Act can’t be used to close the federal tax gap as it precludes an action for tax revenue, but in 2010 Congress created the **IRS Whistleblower Program**.¹ Most states, even those with False Claims Acts, do not have any mechanism for whistleblowers to report gapsters.

New York State does. And other states are looking to follow New York’s lead.

New York amended its **False Claims Act** in 2010 to allow whistleblower actions alleging tax fraud. The New York law has **thresholds**, so unreported tip income by a waiter, or other small scale tax cheating, are not actionable under the statute.²

New York’s law is paying off and picking up speed. Since the law was amended to add tax liability, at least 21 Defendants have settled cases worth **\$577.8 Million** for New York tax fraud allegations. The bulk of this recovery came from two huge cases settled in the last 5 years. In the first, telecommunications company Sprint paid **\$330 million** to settle claims by New York that it failed to collect more than \$100 million in sales taxes from customers for nearly a decade. In the second, hedge fund manager Thomas Sandell paid **\$105 million** to settle allegations that he defrauded New York state and New York City out of taxes on deferred compensation earned in 2017.

Not surprisingly, given the success of the NY State law, the idea is spreading. Both **Maryland** and the **District of Columbia** have adopted tax whistleblower programs in recent years. The False Claims Acts of Illinois, Indiana, and Rhode Island allow whistleblower suits related to violations of non-income tax laws. Delaware, Florida, and Nevada’s False Claims Acts do not have any explicit prohibition against filing tax cases. **Nevada** has publicly thrown its support behind a currently pending case alleging high-profile online travel companies like Orbitz and Travelocity avoided paying hundreds of millions of dollars in hotel room taxes. While it has not yet come to fruition, **California** legislators have attempted at least twice to remove the tax bar from California’s False Claims Act.

Of course, the real number for taxpayers to think about, like those in California (2022 GDP: **\$3 trillion**), Texas (2022 GDP: \$1.8 trillion), and Florida (2022 GDP: \$1.1 trillion), is \$0. That is how much most states collect to close their state tax gaps caused by fraudulent gapsters absent a whistleblower provision to help fight major state tax fraud. New York has collected \$577.8 million more than that. The numbers show these states have two choices to close their tax gaps. Adopt whistleblower laws like NY and others to recoup the money from tax cheats...or collect more from you.

Written by Molly Knobler of DiCello Levitt and Tony Munter of Price Benowitz. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. The IRS whistleblower program allows whistleblowers to report fraud to the IRS and seek an award, but does not allow whistleblowers to file their own action in court.

2. Net income or sales in one year must exceed one million dollars and the damages to New York exceed \$350,000.

Medical Devices Present Opportunities for Fraud, but Whistleblowers Are Fighting Back

September 24, 2022 By Regina D. Poserina of Cohen Milstein Sellers & Toll

Medical devices can be big or small, ordinary or incredible. They include such disparate items as surgical face masks and cardiac defibrillators. In fiscal year 2020, Medicare paid \$11.2 billion for durable (multiple use) medical equipment and \$2.3 billion for non-durable (single use) medical equipment, a total of \$13.5 billion for the two categories that include most medical devices. That amount of spending creates a big target for unscrupulous device manufacturers willing to resort to fraud. But where there's fraud, there will be whistleblowers successfully fighting back.

One of the most common schemes medical device manufacturers use to get a piece of that \$13.5 billion is enticing healthcare providers to order their products through the use of illegal kickbacks. For example, on July 28, 2022, Biotronik **paid** \$12.95 million to settle allegations that it had paid kickbacks to cardiac physicians for implanting Biotronik's cardiac rhythm management products. Biotronik's scheme included paying physicians \$400 per procedure to permit Biotronik employees to observe cardiac procedures, ostensibly for "training" purposes but really as a way to funnel kickbacks to doctors. Some physicians allegedly performed up to 10 procedures per day and received up to \$4,000 per day in kickbacks from Biotronik.

In January 2017, Shire Pharmaceuticals LLC and its subsidiaries **paid** \$350 million to settle allegations that it paid kickbacks to induce use of its bioengineered human skin substitute, Dermagraft. And in 2018, Abiomed **paid** \$3.1 million to settle allegations that it had induced physicians to use its heart pumps by buying meals for physicians and their spouses at some of the most expensive restaurants in the country, spending as much as \$450 per person.

Another type of fraudulent scheme related to medical devices involves what products the government will agree to reimburse. Medical devices are regulated by the Food and Drug Administration (FDA) and must comply with the Food Drug and Cosmetics Act. Typically the government will only purchase devices that have been approved by the FDA. When a manufacturer engages in fraud either in the process to obtain permission to sell the device, or marketing or selling the device for unapproved uses, it can result in FCA violations.

For instance, in 2016, Acclarent, Inc., a Johnson & Johnson subsidiary, **paid** \$18 million to settle allegations that it fraudulently marketed a medical device outside of the uses approved by the FDA. Acclarent manufactured Relieva Stratus MicroFlow Spacer, a device the FDA approved to maintain sinus openings following surgery. The FDA rejected the company's request to use Stratus to deliver drugs to a patient, only approving its use to deliver saline. Acclarent allegedly improperly marketed and sold Stratus as a drug delivery device nonetheless. In addition to the civil settlement, two former Acclarent executives were **convicted** of 10 misdemeanor counts of introducing adulterated and misbranded medical devices into interstate commerce.

Where money goes, fraud will follow. The all-too-common practices of kickbacks in the medical device industry, as well as selling devices for uses beyond their FDA approval, divert taxpayer resources that ought to be used to care for some of the most vulnerable members of our population. But they also create fertile ground for successful FCA cases brought by whistleblowers who have the courage to fight back.

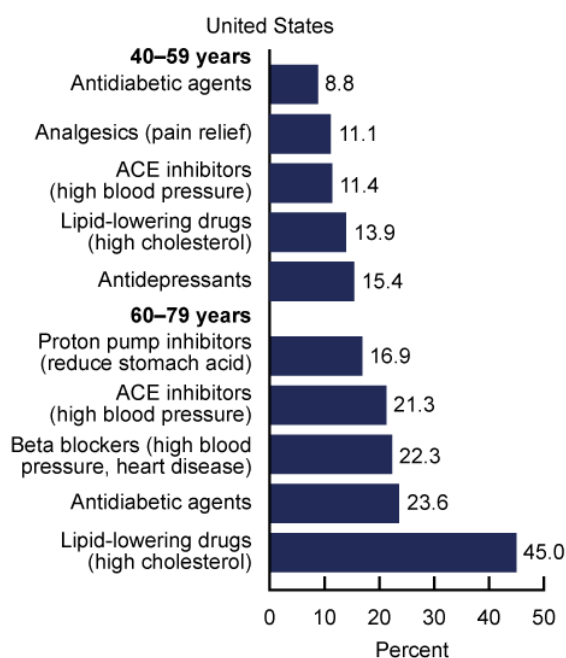
Written by Regina Poserina of Cohen Milstein Sellers & Toll. Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

One Year's Tax Revenue is Another Year's Purchases of Drugs and Biologics

According to the Government Accountability Office's (GAO) recently released "**Snapshot of Government Spending**," the federal government spent about \$637 billion on contracts for Fiscal Year 2021. Roughly 7.6% of all government contracting went to the purchases of drugs and biologics.¹ Civilian agencies including the Department of Health and Human Services bought \$13 Billion, and defense related agencies including the Department of Defense accounted for another \$35.4 Billion. That's a whopping **\$48.4 Billion** to buy drugs and biologics in 2021. It also happens to be the exact amount the bottom 50 percent of US taxpayers (taxpayers with Adjusted Gross Income below \$44,269) paid in **individual federal income taxes in 2019**.

Of course, some of that spending is attributable to the pandemic. (GAO found COVID-19 related spending increased from \$35 Billion to \$52 Billion in FY 2021.). But the pandemic doesn't account for all of it. Adult Americans, many of whom are beneficiaries of government healthcare programs like Medicare, Medicaid, Tricare and the VA, take a lot of pills.

As of 2019, nearly 7 in 10 American adults aged 40–79 used at least 1 prescription drug in the past 30 days, and around 1 in 5 used at least 5 prescription drugs. The following chart illustrates the most commonly used drugs, by age group:



Many taxpayers would be happy to trace their tax dollars to paying for Grandma's blood pressure pills, or Uncle Fred's cholesterol meds. However, industry research shows that the government's contracts to purchase drugs and biologics have long been, and continue to be, prone to fraud by pharmaceutical companies with billions in revenue every year thanks, in large part, to those taxpayer dollars.

In a groundbreaking industry case study published in 1984, before the modern amendments to the False Claims Act, John Braithwaite analyzed frauds including bribery (kickbacks), drug safety and unsafe manufacturing practices, antitrust violations, incentives to start patients on drugs, and financial abuses committed by pharmaceutical companies.² ***Almost every company Braithwaite interviewed acknowledged dealing with illegal behavior.***

Then Congress passed the False Claims Act in 1986. Thereafter, pharmaceutical companies improved practices and self-regulated to avoid FCA liability, right? Unfortunately, Braithwaite's follow-up research in 2014 did not find fraud slowed down after his 1984 study let alone stop.³ Rather, his most significant finding was that the

scale of pharmaceutical fraud increased as the prices paid by purchasers, including the US government, shot up.

Indeed, since 1986, settlements and judgments involving false claims in the sale of drugs and biologics by pharmaceutical companies to the United States have factored heavily in the government's total recoveries, and the size of the settlements confirms Braithwaite's findings of increased dollars at stake. Since 2000, every one of the **top 10 pharmaceutical companies in 2021** (ranked by revenue) has inked **more than one** settlement to resolve "alleged" False Claims Act violations.

Together these Top 10 leaders in the pharma industry have returned more than \$5.7 billion to the government over twenty years.⁴

False Claims Act Recoveries from Top Ten Pharmaceutical Companies				
Rank	Company	Annual Revenue	False Claims Act and Related Offenses	Total Recovered
1.	J&J	\$93.77 billion	11	\$543,705,368
2.	Pfizer	\$81.29 billion	20	\$1,148,191,225
3.	Roche	\$68.70 billion	2	\$33,500,000
4.	Abbvie	\$56.20 billion	23	\$435,190,629
5.	Novartis	\$51.63 billion	12	\$823,474,307
6.	Merck	\$48.70 billion	15	\$818,033,333
7.	Bristol Meyers Squibb	\$46.40 billion	7	\$470,338,719
8.	GlaxoSmithKline	\$43.57 billion	12	\$383,656,216
9.	Sanofi	\$44.67 billion	15	\$489,458,415
10.	AstraZeneca	\$37.42 billion	13	\$556,241,159

Source: Good Jobs First Violation Tracker

TAF

Sources: [J&J](#) | [Pfizer](#) | [Roche](#) | [Abbvie](#) | [Novartis](#) | [Merck](#) | [Bristol Meyers Squibb](#) | [GlaxoSmithKline](#) | [Sanofi](#) | [AstraZeneca](#)

Note: Pharmaceutical companies often sell more than drugs and biologics. Many of them have robust divisions selling medical devices, which was covered in yesterday's post. The offenses and recoveries summarized here may have involved devices, not just drugs or biologics.

Even with the False Claims Act and the massive recoveries made possible by whistleblowers exposing pharmaceutical fraud since 1986, the fraud weed has a deep root in 7.6% of all government contracts — the purchases of drugs and biologics.

Clearly, our weeding in *this* field isn't done.

Written by Kate Scanlan of Keller Grover LLP. Tony Munter of Price Benowitz. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. Drugs and biologics are regulated under the Food Drug and Cosmetic Act and must be approved as safe and effective by the FDA before they may be sold in interstate commerce. **Biologics include** “a wide range of products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues, and recombinant therapeutic proteins. ... In contrast to most drugs that are chemically synthesized and their structure is known, most biologics are complex mixtures that are not easily identified or characterized.” <https://www.fda.gov/about-fda/center-biologics-evaluation-and-research-cber/what-are-biologics-questions-and-answers>

2. Braithwaite J. Corporate crime in the pharmaceutical industry. London: Routledge & Kegan Paul pic; 1984.

3. Dukes G, Braithwaite J. Maloney JP. Pharmaceuticals, corporate crime and public health. Cheltenham: Edward Elgar Publishing; 2014.

4. Running afoul of the FCA is not something reserved for the industry's Top 10, however. In just the last few months Biogen and Eli Lilly added more than a billion dollars to this total. In July, Biogen agreed to a **\$900 million settlement** to resolve allegations regarding kickbacks in the sale of its drugs. Then, in August, a jury returned a **\$61.2 million verdict** – before trebling – against Eli Lilly for failing to refund rebates to the Medicaid drug program.

How the Tax Code Rewards Fraudsters and Punishes Whistleblowers

September 26, 2022 By Noah Rich of Baron & Budd

Corporate defense counsel and their allies such as the U.S. Chamber of Commerce have unfairly maligned whistleblowers as “living the dream” and receiving a “windfall” from their awards. This characterization could not be further from the

truth. Not only do whistleblowers face enormous risk—often for relatively little reward—but the tax code benefits fraudsters over whistleblowers at every turn. In fact, last year, the tax deductions available to defendants as a result of committing fraud likely exceeded the entire amount awarded to whistleblowers.

The tax code doubly rewards fraudsters. Under section 162(f) of the Internal Revenue Code, a taxpayer may deduct from its taxable income any amounts that “constitute[] restitution ... for damage or harm which was or may be caused by the violation of any law or the potential violation of any law,” or that are “involved in the investigation or inquiry” of a violation of law.¹

That means companies and individuals that settle False Claims Act (FCA) suits can deduct from their tax liability the portion of the settlement earmarked for “restitution,” as well as any attorney fees and other expenses they incur in defending against the FCA claims. So, while whistleblowers and their attorneys must pay taxes on everything they earn, defendants who have defrauded the government can write off a substantial portion of the bills they pay.

The Department of Justice’s FCA settlement statistics from 2021 provide real-world insight into how these double standards work. DOJ recovered \$2.625 billion in FCA cases last year, excluding the bankruptcy settlements involving Purdue Pharma and its owners, which involved a unique procedural posture. Of this sum, the DOJ paid about \$238 million in awards to whistleblowers, known as “relators” in FCA cases. But these figures don’t tell the whole story.

Turning first to the amount recovered from defendants, any amount earmarked for “restitution” is tax-deductible. Although the percentage of each settlement allocated to restitution varies, it rarely drops below 50 percent. Of the 15 highest-value civil FCA settlements in 2020 and 2021 for which data are available, the average restitution percentage was 58.45 percent. Applying this figure to the total recoveries in 2021, we can estimate that approximately \$1.53 billion of the \$2.6 billion paid by defendants was considered restitution. At the corporate tax rate of 21 percent,² this would have resulted in **a tax savings of more than \$322.2 million for these defendants, exceeding the entirety of the \$238 million awarded to whistleblowers.**

And this figure likely underestimates the tax write-offs available to fraudsters, as it does not include write-offs for the attorney fees and other costs these defendants incurred in defending against the government’s allegations. With high-profile defense firms often charging well over \$1,000 per hour,³ these expenses—and tax write-offs—can add up quickly. In addition, well-heeled defendants may end up avoiding many of these expenses altogether. Large corporations often have insurance policies that cover defense costs, judgments, and settlements for damages.

Several recent court cases have held that these policies apply to FCA cases, even where some or all of the settlement is considered restitution.⁴ As a result, many defendants have been able to further offset the costs of defending against and settling allegations of fraud.

Whistleblowers face a much less favorable financial outlook. They cannot write off the amounts they receive as whistleblower awards. Federal and state income taxes are likely to consume at least one-third of these payments. After deducting taxes and attorney contingency fees, whistleblower take-home pay in 2021 was likely around \$95.2 million.⁵ This means that **fraudsters likely earned a tax break worth more than three times the net amount whistleblowers earned from federal FCA suits.** No wonder many corporate defendants see the penalties for committing fraud as merely the cost of doing business.

Fortunately, these results are not preordained. Aggressive prosecutors in recent years have crafted settlement agreements that prevent defendants from taking advantage of tax breaks to offset their liability. For instance, the members of the Sackler Family **agreed** not to seek a tax deduction for any of the \$225 million they paid as part of the Purdue Pharma settlement. And the U.S. Attorney’s Offices for the Northern District of New York and the Eastern District of Washington recently entered into a **settlement** whereby the owner of one of the corporate defendants paid a \$100,000 civil penalty and agreed not to seek indemnification for the amount, including through any insurance policy.

Classifying the payment as a penalty, rather than restitution, means the defendant cannot benefit from a tax write-off. These tactics could be replicated in other cases to make sure that fraudsters are held fully to account for their wrongdoing.

Written by Noah Rich of Baron & Budd. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. 26 U.S.C. § 162(f)(2)(A)(i)(I)-(II).

2. Non-corporate individual defendants likely would face even higher tax rates—and reap greater tax deductions.

3. See, e.g., Objection of the United States Trustee to Debtor’s Application for Retention of Hogan Lovells Us LLP as Special Counsel ¶ 23, *In re: LTL Mgmt. LLC*, No. 21-30589-MBK (Bankr. N.J. May 20, 2022), ECF No. 2324.

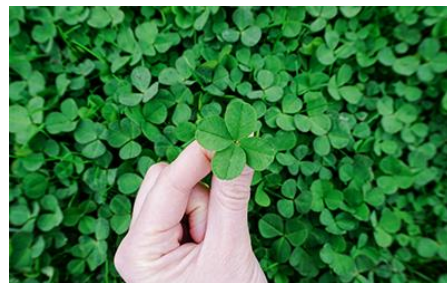
4. See *Astellas US Holding, Inc. v. Starr Indem. & Liab. Co.*, 566 F. Supp. 3d 879, 908 (N.D. Ill. 2021) (settlement payment “is insurable as a Loss” because “it is a payment for the Government’s damages,” rather than disgorgement of profits). See also *Guaranteed Rate, Inc. v. ACE Am. Ins. Co.*, No. CVN20C04268MMJCCLD, 2021 WL 3662269 (Del. Super. Ct. Aug. 18, 2021) (insurer must advance defense costs in responding to government investigation); *Call One Inc. v. Berkley Ins. Co.*, No. 21-CV-00466, 2022 WL 580802, at *5 (N.D. Ill. Feb. 25, 2022) (claims under Illinois FCA not uninsurable as a matter of law); *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 642-43 (4th Cir. 2020) (holding that healthcare fraud case was related to “medical incident” such that insurance policy applied).

5. According to scholarship on the subject, contingency fees in *qui tam* cases are “often set at 40%.” David Freeman Engstrom, *Harnessing the Private Attorney General: Evidence from Qui Tam Litigation*, 112 Colum. L. Rev. 1244, 1282 (2013). This estimate also includes a 33% reduction for federal and state income taxes.

Whistleblowers: Rarer Than A Four-Leaf Clover, But Far More Important

September 27, 2022 By Regina D. Poserina of Cohen Milstein Sellers & Toll

Are you considering becoming a whistleblower? If so, you are one of the few and the brave. It may seem like whistleblowers are very common. After all, they are heroes of popular films such as *The Insider*, *Erin Brockovich*, *The Informant*, *The Pelican Brief*, and many others. But as popular as whistleblowers are in Hollywood, their actual numbers pale in comparison.



Whistleblowers are extremely rare, but they are vital to the proper functioning of our democracy and the protection of taxpayers. In the fiscal year ending September 30, 2021, there were only 598 whistleblower lawsuits filed under the federal False Claims Act, the law that protects and rewards whistleblowers for reporting fraud on the federal government.

Those reports, in the form of 598 FCA whistleblower lawsuits, known as “qui tam” actions, revealed numerous fraudulent schemes against the federal government, including Medicare and Medicaid fraud and Department of Defense fraud. But these few whistleblowers can have an outsize impact: in FY 2021, the federal government recovered nearly \$1.7 billion in settlements or judgments from cases initiated by whistleblowers. But there was only 1 new qui tam lawsuit filed for every 426,421 adults.

To put the rarity of whistleblowers in perspective, consider that:

- 17 million people, or 7% of the American population, believe that chocolate milk comes from brown cows. More than 1000 times as many Americans believe brown cows produce chocolate milk than have filed qui tam suits since the inception of the modern FCA in 1986.

- In a field of clover, only 1 in 10,000, or 0.1%, will be a four-leaf clover. Still, if all of the 255 million adults in the United States were a single stem of clover, the four-leaf clovers would outnumber every qui tam whistleblower since 1986 by about 2:1.

With fraud on the government continuing to cheat taxpayers out of their hard-earned money, decide for yourself if we have too many whistleblowers or not nearly enough.

Written by Regina D. Poserina of Cohen Milstein Sellers & Toll. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

The U.S. Attorneys' Offices – By the Numbers

September 28, 2022 By Tony Munter of Price Benowitz with research by Julia-Jeane Lighten of TAF

We talk a lot about False Claims Act recoveries for the United States as a whole. But we rarely look at where exactly the cases that lead to those recoveries are filed, and which U.S. Attorneys' Offices in those districts are working with relators most frequently to deliver those results. To help answer those questions, we've delved into the numbers to come up with some pretty interesting tallies.¹

There are 94 jurisdictions in the U.S. in which to file a False Claims Act case, and so far, there are 16 districts with a Billion Dollars or more in FCA settlements and judgments.

The district which has generated the most money in FCA settlements and judgments is the District of Massachusetts, with more than **\$9.59 Billion** in recoveries.

Rank	Jurisdiction/District	Settlements & Judgments
1.	Massachusetts	\$9,593,849,013
2.	New York Southern	\$7,936,689,308
3.	Pennsylvania Eastern	\$6,804,929,784
4.	California Central	\$4,053,313,523
5.	New York Eastern	\$3,704,764,156
6.	District of Columbia	\$3,149,779,493
7.	Florida Middle	\$2,967,182,425
8.	Georgia Northern	\$2,290,675,458
9.	New Jersey	\$1,870,544,169
10.	Florida Southern	\$1,382,877,403
11.	California Northern	\$1,291,411,658
12.	Illinois Northern	\$1,269,666,298
13.	Ohio Northern	\$1,259,126,662
14.	Texas Southern	\$1,255,464,270
15.	Virginia Eastern	\$1,170,539,764
16.	Texas Eastern	\$1,022,495,714
Total:		\$51,023,309,096

Source: All data was obtained from publicly available information and prepared internally at TAF

As you can see these 16 jurisdictions account for more than \$51 Billion in settlements and judgments for the federal government through False Claims Act cases. That is roughly 72.7% of the total for all False Claims Act cases.² These figures do not include a major case settlement just announced, *United States ex rel. Bawduniak v. Biogen Idec, Inc.*, No. 12-cv-10601-IT (D. Mass.). Under the terms of the settlement, **Biogen will pay \$900 Million** (\$843,805,187 to the United States and \$56,194,813 to 15 states). That number will go onto next year's totals.

By next year there could also easily be 18 jurisdictions responsible for recovering more than a Billion Dollars. Colorado is tantalizingly close to making the list as is the Eastern District of Michigan. And since one large case can add significantly to any district's totals, there may be other districts joining the list in the future.

The busiest districts, or at least the ones with the most successful cases, are California Central (Los Angeles and surrounding areas) and Pennsylvania Eastern (Philadelphia area) tied with 276 cases leading to FCA settlements or judgments.



Rank	Jurisdiction/District	Successful Cases
1.	California Central	276
1.	Pennsylvania Eastern	276
3.	Florida Middle	247
4.	Massachusetts	229
5.	Virginia Eastern	198
6.	New York South	197
7.	District of Columbia	196
8.	New Jersey	164
9.	Florida Southern	154
10.	Georgia Northern	152
11.	Illinois Northern	143
12.	California Northern	138
13.	Texas Southern	106
14.	New York Eastern	104
15.	Texas Eastern	76
16.	Ohio Northern	67

Source: All data was obtained from publicly available information and prepared internally at TAF

Even the districts with the most successful FCA cases have less than 300 settlements and judgments since the False Claims Act was amended in 1986. That means even the busiest districts are not averaging 10 such settlements or judgments per year. When we report on the billions collected by False Claims Act cases it is still money generated by relatively few cases.

Finally, Massachusetts is back at the top as the first to pay more than a Billion Dollars in relator's share awards. (\$1,323,515,533.60 by our count). Again, these totals do not account for the **29.6% relator share** awarded to the successful whistleblower in the recent *Biogen* settlement, which will add an additional \$266.4 Million to the Massachusetts tally for next year.³



As those of us born there say, “God Save the Commonwealth of Massachusetts.” And for everyone else, “there’s always next year.”

Written by Tony Munter of Price Benowitz and research conducted by Julia-Jeane Lighten of Taxpayers Against Fraud. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. All data summarized below was taken from publicly available information on settlements and judgments in False Claims Act cases and prepared internally at TAF. Data includes both declined and intervened cases.

2. The total federal settlement and judgment number is **\$70,148,409,966.00** as of FY 2021.

3. Relators earn between 25-30% on declined cases as opposed to 15-25% on cases intervened (taken over) by the government. In this case, relator and his counsel litigated the case after the government declined to intervene and reached this settlement on the eve of trial more than ten years after filing the case.

Whistleblowers Were Never Promised a Rose Garden, But What if They Were?

September 29, 2022 By Jillian Estes and Colleen Brugger of Morgan Verkamp

In October 1970, Lynn Anderson sang her way into country music stardom crooning, **“I beg your pardon, I never promised you a rose garden.”** Anderson’s cover shot to number 3 on the **Billboard Hot 100 by February 1971** and earned Anderson the Grammy Award for **Best Female Country Vocal Performance for 1970.**

For whistleblowers, there may never be Top 100 lists, celebrity status, or a lavish award ceremony with thousands of screaming fans celebrating those who hold contractors accountable for fraudulent conduct. But, there is one thing the United States can do to acknowledge the heroic efforts of the select few who are willing to step forward: **whistleblowers should be promised a rose garden, or more specifically, the White House’s Rose Garden.**

For more than three decades, one of the primary drafters of the modern False Claims Act, Sen. Charles Grassley, **has been trying to make that happen.**

"I said to a president, 'You need to do that.' He said, 'Well, you know if we did that, we'd have 3,000 whistleblowers coming out of the woodworks.' That's exactly why you should do it!" – Sen. Chuck Grassley (R-Iowa)

So today we ask, what if that nameless president was right? What if we filled the Rose Garden in a celebration of those who have come forward to shine a light on corporate fraud, and that celebration alone was enough to give 3,000 new whistleblowers the confidence to step forward?

Since the modern False Claims Act was passed in 1986, there have been 14,595 new *qui tam* matters brought to the U.S. Department of Justice by whistleblowers. As of Sept. 30, 2021, those matters have brought \$48,221,339,535 in settlements and judgements from whistleblower cases, according to the **U.S. Department of Justice** (and that's just accounting for federal funds, not the additional moneys that were returned to individual states as a result of the same cases).

So, to see how a Rose Garden party might work, let's assume we could use these numbers to set an average whistleblower collection.¹ If each of 14,595 matters was brought by one person, that would mean that every whistleblower who has come forward has been responsible for an average of \$3,303,963 returned to the United States.²

If that figure held true, and if one Rose Garden party could bring forward 3,000 new whistleblowers, that would mean a potential return of \$9,911,889,000. **That's almost \$10 billion spurred on by just one party!**

But what if we thought bigger? What if we kept publicly building up and celebrating whistleblowers until we'd encouraged enough people to come forward that we could fill Madison Square Garden instead of the Rose Garden? The **19,812 seats in MSG** would be filled with whistleblowers responsible for \$65,458,114,956 in settlements and judgments brought back to the United States.

And then even bigger, until we could fill the Rose Bowl with courageous whistleblowers? If, one day, **90,888 whistleblowers filled the Rose Bowl** to celebrate "that it's the right thing to do to be a whistleblower and point out wrongdoing when wrongdoing violates the law or the money's being wasted or it's being fraudulently taken into somebody's pocket" then the United States could be honoring settlements and judgments totaling \$300,290,589,144.³

So, whistleblowers may not have been promised the Rose Garden yet, but there are more than *300 billion* reasons why we should take Lynn Anderson's invitation to "come along and share the good times while we can." If we keep working towards boldly, loudly and publicly celebrating the unrivaled impact that whistleblowers have in protecting American taxpayers, parties in the Rose Garden will be just the beginning.

Written by Jillian Estes of Morgan Verkamp with research conducted by Colleen Brugger of Morgan Verkamp. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.

1. Of course, there is no actual "average" recovery in a case. Many cases do not result in any collection, while some are very large. This number is calculated for illustrative purposes only, not to imply the expected settlement of any new case.

2. On occasion, new matters are brought by a group of whistleblowers, by a corporation whose members are not public, or by a whistleblower who has previously brought forth another matter. For purposes of this post, we assume each new matter represents one new whistleblower.

3. It would also mean that more than six times as many cases were filed as a result of openly celebrating whistleblowers than were filed in the first thirty-five years of the modern False Claims Act.

Why Would Anyone Oppose Whistleblower Programs?

September 30, 2022 By Jeb White of TAF and Kate Scanlan of Keller Grover

For the last 30 days, we have explored the fraud schemes that siphon government dollars and undermine our financial markets. We have documented how incentivized whistleblower programs unmask the perpetrators of these frauds and recover billions of stolen dollars for the U.S. Treasury and the American people. We have discussed how whistleblowers effectively safeguard our prescription drugs, medical devices, healthcare dollars, cryptocurrency markets, automobiles, non-healthcare government programs, government grants, financial markets, accounting standards, Medicare Advantage programs, private insurance, housing markets, military expenditures, state government programs, telehealth, COVID relief efforts, environment, local government programs, and our supply chain.

Well, as we now emerge from a global pandemic and navigate complicated financial issues like deficits and inflation in the months and years ahead, there are two things the numbers tell us with certainty. First, so long as the government awards billions of dollars in contracts and our markets move trillions of dollars in financial transactions, opportunistic fraudsters seeking ill-gotten gains will target them. Second, whistleblowers are the most powerful tool we have to expose these fraudsters. Their apologists may seek to undermine whistleblower programs with the hope of silencing those who expose wrongdoing.

However, the numbers do not lie. The incentivized whistleblower programs have successfully supplemented the government's limited resources, reducing the number of times the government has to choose which of two fraudsters to pursue based on its limited enforcement resources. It can go after both – and recover from both. More and more incentivized whistleblower programs have been adopted over the past fifteen years **because they work.**

These programs now help the government deter and detect fraud on government programs, the IRS, the SEC, the CFTC, and the NHTSA. It's even expanding into efforts to target money laundering and the organized criminals who try to wash the money they make selling everything from drugs to weapons to people so they can enjoy a lifestyle most Americans only ever see on television. The end result is worth billions of additional dollars recovered yearly.

Of course, what we cannot quantify in statistics is the deterrent effect each whistleblower case has, and the ways in which their cases make us all safer and more secure in the things we do living our lives every day. Not being able to quantify it doesn't mean it doesn't exist. Among countless examples, they've helped assure that:

- the pills we take are made and sold according to the strict standards our government has set forth as the Gold Standard for the world;
- our healthcare providers are putting our interest as patients ahead of their potential profits;
- the munitions and protective gear purchased for our collective defense work as they should for our troops who put themselves in harm's way for us;
- the investments we make to fund our retirements or to buy a new home are accurately described and soundly managed;
- taxes get paid to the government commensurate with obligation so that we all pay our fair share;
- the cars driven on our roads can get us safely from home to work or school and back again;

As we head into another fiscal year for the U.S. government starting October 1, the question can't be why do we have whistleblower programs. It's why would anyone oppose a whistleblower program?

This is the second year TAF has produced the "Fraud by the Numbers" blog series. It is an ambitious and righteous project telling a story that needs to be told. It would not be possible without the countless hours of time donated by our Fraud by the Numbers team to research, write, edit and cite-check every post we publish. We simply could not do this without the dedication and hard work of the following individuals:

- **Kate Scanlan** is one of the founding attorneys of Keller Grover LLP and currently serves as the chair of the TAF Public Education Committee. Kate has exclusively represented plaintiffs for more than 16 years and primarily represents whistleblowers using the Federal False Claims Act and state versions of the FCA to expose fraud on the government. Among other cases, she is currently counsel of record in the matter of *United States ex rel. Kathy Ormsby v. Sutter Health and Palo Alto Medical Foundation*, alleging that the defendants violated the FCA in their Medicare Advantage program.
- **Tony Munter** leads the False Claims Act and Whistleblower Reward practice at Price Benowitz, LLP. At Price Benowitz, Tony created a new *qui tam* practice by advising lawyers – in particular, employment law specialists – on the procedures required to handle False Claims Act cases. With more than 20 years in the practice, he helps those attorneys determine if their clients can pursue whistleblower rewards along with employment law or retaliation cases.
- **Regina D. Poserina** is Of Counsel at Cohen Milstein and a member of the firm’s Whistleblower/False Claims Act practice. Regina represents whistleblowers in *qui tam* cases brought throughout the United States under the federal and state False Claims Act statutes against recipients of Government funds. A retired registered nurse, Ms. Poserina focuses predominantly on representing whistleblowers in healthcare fraud, including Medicare/ Medicaid and nursing home fraud. She also has extensive experience in *qui tams* related to other Governmental programs, including the Department of Defense, Housing and Urban Development, Food Stamp/Department of Agriculture, Small Business Administration, and Department of Education fraud.
- **Renée Brooker** is a Partner at Tycko & Zavareei LLP. Renée Brooker was a long-time Civil Frauds Assistant Director at the United States Department of Justice, the Office that supervises all False Claims Act cases in all 94 United States District Courts. In this leadership role, she was responsible for billions of dollars in recoveries and held companies accountable for their conduct.
- **Eva Gunasekera** is a Partner at Tycko & Zavareei LLP. Eva was the Senior Counsel for Health Care Fraud at the United States Department of Justice, the Office that supervises all False Claims Act cases in all 94 United States District Courts. In this role, she analyzed complex health care data sets, including Medicare and Medicaid payment data and trends, to identify potentially fraudulent practices in the health care space.
- **Julia-Jeane Lighten** is the TAF Public Interest Advocacy Fellow for 2022-2023. Julia-Jeane is responsible for undertaking various legal research and writing projects such as drafting bi-weekly legal case summaries and blog posts. Before joining TAF, Julia-Jeane worked as a paralegal at a law firm in Baltimore City, where she assisted with commercial litigation matters. Julia-Jeane earned her Bachelor of Arts in International and Global Studies-Latin America from Middlebury College in May 2020. She plans to attend law school.
- **Jillian Estes** joined Morgan Verkamp in 2018 as a Senior Attorney. Jillian began her career handling class action cases primarily against for-profit colleges. Since 2010, she has exclusively worked on False Claims Act matters. Jillian was lead counsel on one of the first cases to successfully apply the Stark Statute to Medicaid claims, obtained a favorable first-to-file determination (including successfully defending an appeal to the Third Circuit) for a relator following a \$192 million settlement, and represented a relator through post-settlement relator’s share litigation with the United States.
- **Molly Knobler** is Senior Counsel with the law firm DiCello Levitt. She works exclusively with whistleblowers – pursuing cases under the False Claims Act and under the IRS, SEC, and CFTC whistleblower programs. She has extensive experience representing health care whistleblowers and is proud and grateful to work with such remarkable people. Super Lawyers has repeatedly recognized her as a “Rising Star” and she was included on the 2023 Best Lawyers in America list for *qui tam* law. She graduated from Stanford Law School with multiple honors. Born and raised (and barred) in California, she is now based in D.C. where she lives with her rugby-loving husband, exuberant toddler, and over-fed dog.
- **Mary Inman** is a partner from Constantine Cannon’s San Francisco office who is on assignment to the London Office. After 20+ years representing whistleblowers in the U.S., she moved to London in July 2017 to launch the

firm's international whistleblower practice. She specializes in representing whistleblowers from the U.K., E.U. and worldwide under the American whistleblower reward programs. Ms. Inman is a recognized expert and frequent author and speaker on areas related to the international application of the American whistleblower laws, financial frauds, health care reimbursement and government procurement.

- **Noah Rich** is an Attorney at Law at Baron & Budd. He joined the firm in 2018 and represents clients on a broad range of legal issues at all stages of litigation in state and federal courts across the country. His experience includes civil rights litigation, class actions, regulatory challenges, False Claims Act litigation, and indigent criminal defense. At Baron & Budd, Mr. Rich is a member of our robust *Qui Tam* practice, specializing in litigation to combat civil fraud under the False Claims Act, Racketeer Influenced and Corrupt Organizations Act, and other federal and state laws.
- **Matthew Beddingfield** is a Senior Associate at Zerbe, Miller, Fingeret, Frank, Jadav, & Hunziker LLP, where he represents whistleblowers from the claim filing stage to litigation, when necessary. He primarily represents clients filing claims with the IRS Whistleblower Program, but also represents whistleblowers who have filed claims with the SEC, FinCEN, and others. Prior to his current role, Matthew was a legal editor at Bloomberg, where he reported on federal tax matters from cases at the U.S. Tax Court and Supreme Court to legislative updates from Capitol Hill. He graduated from the Duquesne University School of Law, where he was the Editor-in-Chief of *Juris*, the law school's primary legal magazine.
- **Elizabeth "Liz" Soltan** is an associate in Constantine Cannon's New York Office. She practices in the firm's whistleblower representation group. Liz is part of the legal team pursuing a *qui tam* case against UnitedHealth Group alleging the nation's largest Medicare Advantage Organization for payment to the Medicare Program by improperly inflating its members' risk scores, a practice known as risk adjustment fraud.
- **Charlie Wysong** is a Partner at Hughes Socol Piers Resnick & Dym, Ltd. He counsels and represents clients on a wide range of legal issues, with a focus on civil rights, labor and employment litigation, whistleblower and *qui tam* claims, education law, and complex business litigation. He actively litigates in state and federal court, including appeals before the Seventh Circuit Court of Appeals, Illinois Appellate Court, and Illinois Supreme Court.
- **Margaret Truesdale** is an Associate at Hughes Socol Piers Resnick & Dym, Ltd. Ms. Truesdale represents clients in state and federal court in a broad range of complex litigation matters, with a concentration in the areas of civil rights, constitutional litigation, false claims act litigation, and labor and employment. She joined the firm in 2020.
- In addition, we want to thank the interns who helped tremendously with Fraud By The Numbers. From TAF, Alex Cala and from Morgan Verkamp, Colleen Brugger.
- **Jeb White** is the President and Chief Executive Officer of TAF. He is also the host of the organization's podcast, *Fraud in America*. Jeb began his legal career at TAF, where he first served as the Director of Legal Education from 2004-2007 and then as the President and CEO from 2007-2010. Jeb was recognized for growing the TAF community and for leading the efforts resulting in the enactment of various state False Claims Acts and the strengthening of the federal False Claims Act in 2009 and 2010.
- **Jacklyn DeMar** is the Director of Legal Education of TAF. Jacklyn works with whistleblowers, their counsel, and government attorneys on matters involving the various whistleblower programs. She files *amicus curiae* brief in federal courts across the country—including the U.S. Supreme Court—and serves as editor-in-chief of TAF's legal periodical, the *False Claims Act & Qui Tam Quarterly Review*.
- **James King** is the TAF Director of Communications and Digital. James directs the organization's strategic communications strategy and digital content. He also manages the TAF website, social media channels, weekly newsletter, blog, podcast, legal document database, membership database, printing, marketing, and virtual events.

Written by Jeb White of Taxpayers Against Fraud and Kate Scanlan of Keller Grover LLP. Edited by Kate Scanlan of Keller Grover LLP. Fact checked by Julia-Jeane Lighten of Taxpayers Against Fraud.