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Changes to the Administrative False Claims Act Pave the Way to the Likelihood of Increased Enforcement

Last December, President Biden signed into law the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (“NDAA”). Within the NDAA is the Administrative False Claims Act (“AFCA”), which replaces the seldom used Program Fraud Civil Remedies Act of 1986 (the “PFCRA”). The PFCRA allowed government agencies to initiate administrative proceedings on claims up to \$150,000 when the United States Department of Justice (the “DOJ”) declined to pursue a matter under the far more well-known False Claims Act (the “FCA”).

By contrast, the new AFCA has expanded the PFCRA’s scope and authority and is expected to cause an uptick in enforcement actions due to the significantly higher economic incentives provided to agencies, including the easier ability to recoup costs. Indeed, the maximum claim under the AFCA increased from \$150,000 under the PFCRA to \$1 million. In addition, agencies are still able to collect civil penalties of up to \$5,000 per claim; any money collected will be used to reimburse the agency for its costs before the remainder is deposited into the United States Treasury.

One important distinction between the AFCA and FCA that Congress did not change is that the AFCA does not have a *qui tam* provision that allows private citizens to bring claims on behalf of the agencies. Another major difference is that defendants in administrative proceedings enjoy less procedural and discovery protections than in federal court.

Another change is that agencies may now refer matters to the Board of Contract Appeals, expanding the number of officers who may preside over claims. The type of claim that may be brought was also expanded and now includes “reverse” false claims. This occurs when someone acts to conceal or improperly avoid or decrease an obligation to the agency.

The statute of limitations for AFCA violations was extended as well. It was previously six years from the date of the violation; there is now a carve out allowing claims to be brought up to three years after the material facts become known or reasonably should be known, up to a maximum of ten years after the date of the violation.

The AFCA requires semi-annual reporting including but not limited to the following: a) the amount of actions taken in response to reports submitted by an investigating official; b) the amount of pending cases; c) the amount of resolved cases; and d) the average length of time to resolve a claim. From this, the potential increase in enforcement actions should be readily discernible. Federal agencies were given 180 days from the date the AFCA was enacted to develop regulations and procedures necessary to implement the AFCA. Therefore, these changes will be seen in the short term.

The increased incentives and types of claims that may be brought under the AFCA are likely to cause agencies to use this tool going forward far more frequently and in ways they have not done in the past. Thus, companies that contract with the government must be more vigilant than ever in their compliance with federal rules and regulations as government agencies now have a more effective tool to pursue false claims.

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