

# False Claims Act Defense

Skadden offers significant experience in advising and defending clients in matters involving the federal False Claims Act (FCA) and analogous state and municipal statutes, including the proper handling of allegations or issues raised by those seeking whistleblower protection. The firm's reach, depth and experience provide the ready capability to perform fact-finding and analysis in connection with complex business matters in any jurisdiction in which our clients deal with the government.

The FCA poses consequential risks to clients in light of the potential imposition of treble damages and statutory penalties. Separate and apart from substantial financial consequences, clients also may face possible criminal liability, debarment and reputational harm. Skadden relies on a deep bench of FCA, criminal defense and regulatory attorneys to ensure that the allegations are properly defended in this broad legal landscape.

Our team represents companies, their boards and management, and individuals in all aspects of FCA matters, including internal investigations, transactional due diligence, the implementation of remedial measures and compliance programs, and the defense of government investigations, enforcement actions, and criminal and civil proceedings. We have handled FCA matters in many different contexts, in the life sciences industry, the health care industry, the defense and aerospace industry and the government contracting context. Such matters typically arise from investigations by United States Attorney's Offices, the Offices of Inspector General and state attorneys general, often in response to a whistleblower report or lawsuit, and from audits by the General Services Administration (GSA), the Defense Contract Audit Agency and the Defense Contract Management Agency.

Skadden has numerous former United States attorneys, assistant United States attorneys, Department of Justice lawyers and counsel in regulatory agencies such as the Food & Drug Administration, in our Boston, Chicago, Los Angeles, New York and Washington, D.C.

offices. The powerful combination of former prosecutors, experienced civil litigators and regulatory counsel enables the firm to anticipate and respond to the many demands created by the joint investigations and proceedings routinely pursued in connection with FCA matters. Our attorneys handle such matters from the time that the allegations first arise through final resolution, whether the matter is concluded with a declination, an agreed upon settlement, or, if necessary, trial and appeal.

Nearly 80% of FCA cases are triggered by so-called "whistleblowers," who often are employees or former employees of the company that is the target of the FCA investigation or suit. Our experience has shown that clients that conduct a prompt and thorough internal investigation in response to such legal threats are better positioned to influence the government's approach to the matter, whether by convincing the government not to intervene in such whistleblower actions or successfully resolving matters through favorable settlements. We also have negotiated favorable settlements of complex parallel proceedings involving criminal, civil and administrative issues, where appropriate, without the need for costly and public litigation. When, however, litigation is the necessary response, Skadden teams have the courtroom experience to mount an effective defense to the FCA allegations.

Skadden's False Claims Act experience is both deep and broad. Among the matters the firm has handled in the life sciences and health care space are the representation of medical device

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companies alleged to have billed the government for services that were not medically necessary and pharmaceutical companies alleged to have paid kickbacks to physicians prescribing the companies' drugs and to patients who received charitable contributions to purchase drugs. We have represented numerous companies that sell their products and services through GSA Schedules, either held directly or through a third party, accused of misrepresenting sales data used to arrive at schedule prices. We also have substantial experience in representing the defense industry in cost accounting and pricing issues relative to major procurements. Our experience further extends to the for-profit educational industry in defending *qui tam* allegations relative to compensation of student recruiters. Skadden's broad FCA experience results in skillful advice and defense with respect to allegations raised through ethics hotlines or other internal mechanisms, government or internal investigations, and any resulting FCA and employment litigation.

Although FCA litigation once was almost the exclusive province of the federal government, the Deficit Reduction Omnibus Reconciliation Act of 2005 provided financial incentives for states to adopt their own versions of the FCA. At least 30 states and the District of Columbia now have false claims statutes, with many focusing specifically on health care. In addition, at least eight cities and counties have adopted versions of the FCA. Moreover, *qui tam* litigants who bring FCA suits on behalf of the federal or state government are combining federal, state and municipal FCA causes of action in their suits to extract higher recoveries for governmental units and themselves. Skadden has handled both state and municipal FCA matters parallel to federal actions and stand-alone matters. Skadden also has experience in negotiating and litigating fee awards under the FCA and analogous state statutes, resulting in significant savings to a company found liable or settling a *qui tam* action.