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Compliance Update

DOJ Revises Justice Manual to Limit Reliance on Agency Guidance and Expand *Qui Tam* Dismissal Review

By [Roberto J. Gonzalez](#), [Sam Kleiner](#), [Jane H. Yoon](#) and [Joanne Joseph](#)

On September 18, 2026, the U.S. Department of Justice (DOJ or the Department) announced revisions to two sections of the Justice Manual governing False Claims Act (FCA) enforcement.¹ The first, to Section 1-19.000 (Limitations on Issuance and Use of Guidance Documents), reinstates into the Justice Manual the Department's policy that sub-regulatory guidance cannot create legal obligations beyond those in a statute or regulation, but also explains the parameters around how sub-regulatory guidance can be used in certain circumstances. The second revision was to Section 4-4.111 (DOJ Dismissal of a Civil *Qui Tam* Action), which now directs Department attorneys to assess, in every *qui tam* case in which the government declines to intervene, whether the government's interests are served by moving to dismiss the case, and if it declines to dismiss the case, to revisit that assessment as the litigation proceeds. Associate Attorney General Stanley Woodward said the revisions "reflect the Department's commitment to fair notice, transparent enforcement, and the rule of law."²

These revisions matter because the FCA remains one of the leading civil enforcement tools for the Department, and these revisions invite, if not instruct, prosecutors to require clarity around the government's bases for liability and an ongoing assessment of whether the pursuit of an investigation or litigation truly advances U.S. interests — while giving defense counsel an opening to press them to do so.

Below, we discuss the two Justice Manual revisions and practical takeaways for companies.

The Sub-Regulatory Guidance Revision: Section 1-19.000

The revised Section 1-19.000 provides that Department attorneys "may not bring actions based solely on allegations of noncompliance with guidance documents," and that cases must instead rest on violations of a statute, regulation, or contract.

The revision conforms the Justice Manual to earlier memoranda that had been issued in 2017 and 2018. In 2017 and 2018, the Department issued memoranda barring its attorneys from treating noncompliance with agency guidance as a basis for enforcement. Attorney General Garland rescinded those memoranda in July 2021 as "overly restrictive." Attorney General Bondi rescinded the Garland memorandum on February 5, 2025, and reinstated the prohibition against using noncompliance with agency guidance as a basis for government enforcement, but the Manual itself was not revised until now.³

Importantly, the Justice Manual was revised to add guidance on the circumstances in which a guidance document could be used (including in a criminal context). The Justice Manual was updated to provide that DOJ “may use awareness of the guidance document (or its contents) as evidence that the party had the requisite scienter, notice, or knowledge of the law,” and in some circumstances DOJ may use “a guidance document (or its contents) to establish *mens rea*.”

The Dismissal Revision: Section 4-4.111

Whereas in most enforcement areas only the government can initiate cases alleging violations of law, the FCA permits a private relator to file a complaint under seal on the government’s behalf. After the Department receives the complaint and a written disclosure of substantially all material evidence and information from the relator, it must decide whether to intervene, decline to intervene, or move to dismiss a case.

The revision to Section 4-4.111 places a heightened emphasis on the government’s authority to dismiss *qui tam* cases. Associate Deputy Attorney General Paul Perkins described the goal as “seeking dismissal of meritless *qui tam* actions that waste taxpayer resources and impose unjustified burdens on businesses.”⁴

The prior Section 4-4.111 said attorneys recommending declination “**should also consider** whether the government’s interests are served by seeking dismissal.” The revised section now specifies that attorneys “**will in each case assess**” that question and adds that, where the Department concludes at declination that dismissal is not warranted, it “may re-evaluate whether dismissal becomes appropriate as the litigation progresses.”

The Justice Manual, drawing on a prior memorandum, provides a list of “non-exhaustive” factors that may serve as a basis for dismissal, including:

- Curbing meritless *qui tams*;
- Preventing parasitic or opportunistic *qui tam* actions that duplicate a pre-existing government investigation and add no useful information to the investigation;
- Preventing interference with an agency’s policies or the administration of its programs;
- Controlling litigation brought on behalf of the United States in order to protect the Department’s litigation prerogatives;
- Safeguarding classified information and national security interests;
- Preserving government resources, particularly where the government’s costs (including the opportunity costs of expending resources on other matters) are likely to exceed any expected gain; and
- Addressing egregious procedural errors that could frustrate the government’s efforts to conduct a proper investigation.⁵

At the same time, the Manual cautions that dismissal “will not be warranted in every declined case,” because the Department “often will investigate a *qui tam* action only to the point where it concludes a declination is warranted, which may not equate to the conclusion that a *qui tam* is meritless.”

The Justice Manual also strengthens oversight of these matters by the Civil Division. It requires that in *qui tam* matters that have been delegated to a U.S. Attorney’s Office (as opposed to jointly monitored cases), U.S. Attorney’s Offices handling delegated matters must give the assigned Civil Fraud Section attorney at

least 10 days' notice before filing any motion to dismiss, which keeps dismissal decisions under Civil Division oversight. As before, all Department attorneys are directed to consult the affected agency before seeking dismissal and to consider alerting relators to deficiencies so they may dismiss voluntarily.

The revision builds on DOJ's growing practice of utilizing its dismissal authority. Sen. Charles Grassley noted in an April 2026 letter to Assistant Attorney General Brett Shumate that DOJ dismissed approximately 25 *qui tams* under § 3730(c)(2)(A) in 2025, compared with about six a year under the prior administration.⁶ Deputy Assistant Attorney General Brenna Jenny told the Federal Bar Association's Qui Tam Conference in February that robust enforcement is "the new normal" and that the Department is increasingly prepared to use its dismissal authority in this record filing environment.⁷

Key Takeaways

Qui tam filings are at record levels; for companies responding to Civil Investigative Demands (CIDs) and FCA complaints, these revisions raise a few considerations:

- **The Justice Manual revisions on sub-regulatory guidance can provide a potential defense.** The Justice Manual, like the DOJ guidance that it codifies, requires cases to focus on potential FCA violations arising out of breaches of legal duties, not failures to comply with other sub-regulatory guidance documents. Sub-regulatory guidance alone is not sufficient to create liability, but companies should discern whether compliance with guidance has been incorporated into government contracts, which can still serve as the basis for liability. In sum, the revisions may open an opportunity in certain cases to engage in a discussion with government attorneys about the legal bases or theories of FCA liability.
- **The Justice Manual revisions may create more opportunities for companies to engage with DOJ around bases for dismissal.** A CID often arrives while a complaint is still under seal, and there is usually no reliable way to tell if it was triggered by a relator. The existence of a relator may only become clear once a company has begun discussing a resolution with the DOJ, which may move to unseal or partially unseal the complaint. Because the company usually will not know, and because Department attorneys must now assess *qui tam* matters for potential dismissal, pre- and post-declination, there may be opportunities for defense counsel to address the Section 4-4.111 factors earlier in a matter and, if the matter still proceeds, to return to the discussion as the facts, law, or federal interests applicable to the case evolve.

Continue to proactively understand and analyze your company's data. Data-mining relators work from public datasets, including Centers for Medicare & Medicaid Services claims data, Small Business Administration loan data, and federal procurement records, and the Department is investing heavily in the same techniques, as we described in [our recent alert](#) on the Fraud Division's priorities.⁸ A company that runs the same outlier analyses on its own data will see what a relator or the Department would see, and can determine in advance whether there is a lawful explanation and document it. Companies should take note that, as part of the June 2026 healthcare fraud takedown, the DOJ touted its use of advanced algorithms and artificial intelligence tools to identify fraudulent schemes that were charged, and this summer, both DOJ and U.S. Department of Health and Human Services officials indicated that it is a priority of these departments to advance inter-agency data sharing and analytics capabilities to shift from a "pay and chase" model towards a "detect and prevent" approach to healthcare fraud enforcement.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:

Roberto J. Gonzalez

+1-202-551-1815

robertogonzalez@paulhastings.com

Jane H. Yoon

+1-212-318-6006

janeyoon@paulhastings.com

Joanne Joseph

+1-202-551-1909

joannejoseph@paulhastings.com

Sam Kleiner

+1-212-318-6232

samkleiner@paulhastings.com

¹ Press Release, U.S. Dep't of Just., *DOJ Revises Justice Manual to Strengthen False Claims Act Enforcement* (Sept. 18, 2026), <https://www.justice.gov/opa/pr/doj-revises-justice-manual-strengthen-false-claims-act-enforcement>.

² *Id.*

³ U.S. Dep't of Just., *Justice Manual* § 1-19.000 (2026); Memorandum from Pamela Bondi, Att'y Gen., to All Dep't Emps., *Reinstating the Prohibition on Improper Guidance Documents* (Feb. 5, 2025); Memorandum from Merrick B. Garland, Att'y Gen., to the Heads of Dep't Components, *Issuance and Use of Guidance Documents by the Department of Justice* (July 1, 2021).

⁴ Press Release, *supra* note 1.

⁵ The list of dismissal factors was originally issued as part of a 2018 memorandum and is unchanged except that the first factor was previously cases that “*facially* lack merit (either because the relator’s legal theory is inherently defective, or the relator’s factual allegations are frivolous).” The factor now reads simply “curbing meritless *qui tams*,” which could suggest a potentially broader category of cases.

⁶ Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Brett A. Shumate, Assistant Att’y Gen., Civ. Div., U.S. Dep’t of Just. (Apr. 2, 2026).

⁷ Brenna E. Jenny, Deputy Assistant Att’y Gen., Civ. Div., U.S. Dep’t of Just., Keynote Remarks at the Federal Bar Association Qui Tam Conference (Feb. 19, 2026).

⁸ Paul Hastings LLP, *DOJ’s Fraud Division Announces Its Priorities and Deepens the Department’s Focus on Data Analytics*, Client Alert (Aug. 25, 2026), <https://www.paulhastings.com/insights/client-alerts/dojs-fraud-division-announces-its-priorities-and-deepens-the-departments-focus-on-data-analytics>.

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