




Civil and Criminal False Claims Act Investigations

Speakers:

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You Have a Duty to Report Wrongdoing

“One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public’s confidence in our justice system.”

*Former Deputy Attorney General, Sally Quillian Yates
September 9, 2015*

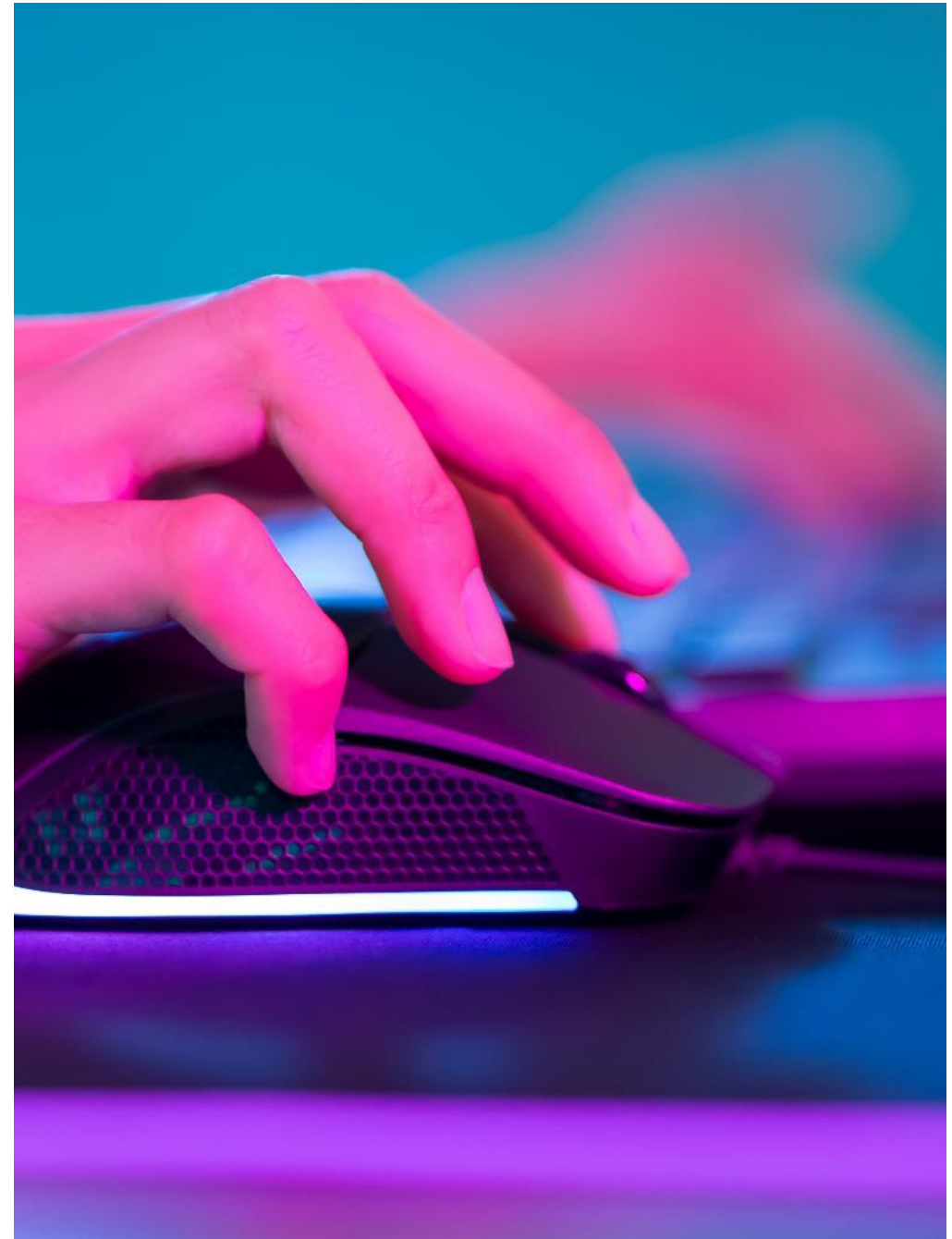
Timely Disclose Credible Evidence

The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act ([31 U.S.C. 3729](#) - [3733](#)).

**You have a right
to investigate to
determine if the
evidence is
credible.**



Agenda

- Overview of the Internal Investigation
- Key Considerations for Selecting Investigators
- Preparing and Conducting Interviews
- Preserving Attorney-Client Privilege
- Special Care for Whistleblowers
- Written or Oral Reports
- Developing and Managing the Budget
- Considerations with Potential Civil or Criminal FCA Violations

What Happens During an Internal Investigation?

- Opening the Investigation
- Defining the Investigation's Scope and Procedures
- Information Collection
- Conducting Interviews
- Drawing Conclusions and Making Recommendations
- Closing the Investigation
- Determine whether to make a disclosure

Should the Company Conduct an Investigation?

- Nature of the allegations or misconduct
- Potential risk or exposure
- Source of the information
- Prior criminal or regulatory matters
- Impact to timely disclosures
- Notice to insurance carrier
- Potential whistleblowers or other third parties

Key Considerations for Selecting Investigators

- Nature of the allegations
- Seriousness or sensitivity of the issue
- Special expertise in internal investigations
- Credibility with regulators or prosecutors
- Time is of the essence — allocation of resources
- Attorney-client privilege
- Budget constraints

Preparing and Conducting Interviews

- Identify potential interviewees
- Document review of relevant files
- Conduct interviews close in time
- Generally, conduct highest priority interviews later in the process
- Have a dedicated notetaker during interview
- Proper Upjohn warning
- Remind witnesses they have an obligation to tell the truth
- Ask open ended questions — you want the interview to be conversational

Preserving Attorney-Client Privilege

- When non-attorneys assist, they should be acting under the direction of counsel for the purpose of providing legal advice to the company
- Be clear when providing business advice versus legal advice
- Treat confidential documents accordingly
- Provide clear Upjohn warnings
- Prefer notetaking over recordings
- Memo from interviews should be mental impressions, opinions and subjective analysis

Special Care for Whistleblowers

- Whistleblowers have financial incentives to “blow the whistle”
- Make it easy to report internally
- Respond quickly
- Special care when interviewing a whistleblower
- Avoid retaliation
- Be careful with privilege issues in communications with whistleblowers

Do You Need a Written Report?

- Oral reports should be used when possible
- Federal agency demands it
- Complex factual circumstances
- Document fiduciary duties
- Support for disciplinary actions

Developing and Maintaining the Budget

- Activities should reflect the investigation plan
- Expert or consultants
- Initial case assessments or research
- eDiscovery costs
- Separate counsel for Officers or Employees
- Preparation of reports and recommendations
- Remediation efforts (policy changes, personnel, additional training)
- Settlement Payments

Considerations with Potential Civil or Criminal FCA Violations

- Bet the company risks with substantial exposure
- Depending on the wrongdoer, the company may engage separate counsel for the subject of the investigation
- Potential criminal liability
- FCA provides whistleblower protections
- D&O Policies and potential insurance
- Provide guidance early



Contact

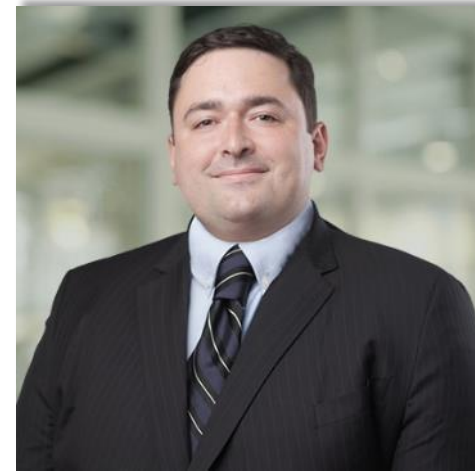


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