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## DOJ Issues Guidance of FCA Cooperation Credit

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On May 7, 2019, the U.S. Department of Justice (“DOJ”) issued formal guidelines to identify key factors to be considered and the type of credit to be provided to entities or individuals who voluntarily self-disclose and cooperate during False Claims Act (“FCA”) investigations. The new guidelines encourage entities and individuals to make “proactive, timely, and voluntary self-disclosure to the DOJ about misconduct” and can earn cooperation credit by 1) disclosing misconduct that may be uncovered in the course of a governmental investigation, 2) by taking steps to cooperate with an ongoing FCA investigation, or 3) by taking appropriate remedial actions in response to an FCA violation.

The guidelines set forth measure that entities and individuals can voluntarily take to qualify for cooperation credit but note that each case has diverse factual and legal circumstances that will be taken into account.

The “value” of the voluntary disclosure or additional cooperation is determined by the DOJ based on a consideration of the following factors: 1) the timeliness and voluntariness of the assistance; 2) the truthfulness, completeness, and reliability of any information or testimony provided; 3) the nature and extent of the assistance; and 4) the significance and usefulness of the cooperation to the government.

The guidelines indicate that entities and individuals can earn credit in the form of a reduction of penalties or damages sought by the DOJ and further indicate that “the maximum credit that a defendant may earn may not exceed an amount that would result in the government receiving less than full compensation for the losses caused by the defendant’s misconduct (including the government’s damages, lost interest, costs of investigation, and relator share).” The potential to reduce damages to single damages is quite valuable as the FCA allows for treble damages; however, the guidelines make clear that defendants are not automatically entitled to credit solely because of their cooperation, and that the decision to award credit is solely within the DOJ’s discretion.

Please consult with Rebecca J. Maziarz, Jeffrey R. Hantz, or Gabrielle M. Carbonara at Dickie, McCamey & Chilcote, P.C. They have assisted with voluntary self-disclosure, and they can answer any questions about how these changes may apply to your business.



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*Ms. Maziarz was the Director of Medical Information Management for two Western Pennsylvania hospitals and one in West Virginia. Additionally, she served as a Long Term Care Consultant to area nursing homes. Her background in the healthcare industry provides clients with an invaluable resource and unique perspective into the ever-evolving healthcare landscape.*