

ALERTS | 05.01.2026

Not Your Mother's Whistleblower – Data Miners Are Raising the Stakes in FCA Matters

By Christine Savage

Historically, False Claims Act (FCA) whistleblowers were most often company insiders, vendors, or customers who were disgruntled, disaffected or dismissed. More recently, however, data miners and their increasingly sophisticated relator's counsel have been responsible for a more significant percentage of FCA qui tam actions – more than 45% since 2024.¹ While these whistleblowers may not have insider knowledge, they do have access to publicly available data, which they are using to identify potential fraud and then seeking financial rewards for uncovering it. These sleuths may be looking at revenue or volume of service spikes (think Medicare claims), whether a company that obtained loans or programmatic benefits was eligible to receive those dollars or benefits (think PPP loans), or in the case of research grants, they may be looking for images or data that appear to have been altered or fabricated (think grants fraud or scientific misconduct).

The government clearly recognizes the potential value of these unaffiliated whistleblowers but also needs a way to better identify which data miners (and counsel) are bringing them viable cases and which ones are not. To that end, DOJ announced on April 30th the launch of a new Fraud Oversight through Careful Use of Statistics (FOCUS) Initiative for Data Miners Filing Qui Tam Complaints. The goal of the initiative is to facilitate meetings between data miners and DOJ's Civil Fraud Section to allow data miners and/or their counsel to demonstrate that the mathematical, financial or scientific analyses they are conducting can be relied upon by DOJ and the courts. In turn, DOJ has said they will prioritize working with these "new" whistleblowers who bring a "commitment to analytical rigor, familiarity with program rules, and legally sufficient allegations." See Civil Division Announces FOCUS Initiative for Data Miners Filing Qui Tam Complaints (April 30, 2026).²

So, what does this mean for companies and individuals who rely upon government funding? It means that more eyeballs than ever may be looking at whether and to what extent you are complying with federal laws and regulations. It means that someone you've never met or interacted with or who may not even be in the United States may be looking at your data and deciding whether to bring a case against you. It means that those whistleblower lawyers with more sophisticated practices are likely to bring serial cases in the hope of obtaining repeated success (we've seen this in the cybersecurity certification and PPP loan contexts already), and a lower likelihood of non-intervention or dismissal.

1. <https://www.justice.gov/opa/media/143887/dl> ☒

2. <https://www.justice.gov/opa/pr/civil-division-announces-focus-initiative-data-miners-filing-qui-tam-complaints> ☒

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