
David W. Ogden: False Claims Act Should be Reformed

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On July 30, 2014, David W. Ogden, former Deputy Attorney General of the United States and current partner with WilmerHale, urged Congress to amend the False Claims Act while [testifying before the US House Judiciary Committee's Subcommittee on the Constitution and Civil Justice](#). "The False Claims Act has been a focus of both my government service and my private practice over the last 15 years, and so I know from direct experience that its unique provisions play a catalytic role in unearthing evidence of fraud and recovering moneys lost to fraud, but also have harmful and counterproductive effects."

Mr. Ogden invited Congress to consider a "sensible way forward from here, one that aligns government and business alike to prioritize *preventing* fraud before it diverts federal dollars from their intended uses, truly making compliance rather than litigation the first line of defense." Such a way forward would entail "encouraging and incentivizing all companies that work with the government to implement and maintain state-of-the-art compliance programs that promote the highest levels of corporate ethics and legal compliance, encourage and protect internal whistleblowers, and voluntarily report any violation promptly to government authorities."

Pursuant to this sensible way forward—outlined in [Fixing the False Claims Act](#)—"certain rules would apply differently to entities that have been independently certified as maintaining state-of-art compliance programs, including the strongest protections for whistleblowers, consistent with standards approved by the government."

The reforms, developed based on the years of experience of Mr. Ogden and his co-authors, and building on the research of his fellow witness Dr. Patricia Harned of the Ethics Resource Center, "are designed to incentivize individual employees to report wrongdoing internally and companies to act quickly to identify and halt wrongdoing and report it to the authorities. They are also designed to make the potential consequences more proportionate to the circumstances—including taking into account whether an entity has programs in place to prevent fraud."

Based on his extensive experience, Mr. Ogden concluded that there "is every reason to believe that the increased self-policing and voluntary disclosures that these reforms would encourage will lead to less fraud, less harm, and less need for lawsuits."

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