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## WilmerHale Partners Co-Author US Chamber of Commerce Study on Reforming the False Claims Act

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The US Chamber of Commerce's Institute for Legal Reform yesterday released "Fixing the False Claims Act: The Case for Compliance-Focused Reforms," a white paper co-authored by WilmerHale Partners [David W. Ogden](#) and [Jonathan G. Cedarbaum](#). The white paper proposes reforms to the False Claims Act (FCA) designed to enhance the FCA's effectiveness at preventing fraud while discouraging frivolous claims, restricting overbroad theories of liability, and reining in excessive damages and penalties. [The full report can be found here.](#)

The authors propose reforms that would encourage companies to establish rigorous compliance programs, certified by third-party auditors. Companies that maintain these "gold standard" compliance programs would be afforded the benefit of several FCA reforms:

1. establishing a graduated scale of damages depending on a company's degree of intent;
2. barring *qui tam* actions, with limited exceptions, in cases where the company previously disclosed substantially the same allegations to an appropriate governmental entity;
3. encouraging internal reporting by employees by providing for dismissal of *qui tam* actions filed by plaintiffs who failed to report internally at least 180 days prior to filing suit; and
4. eliminating mandatory or permissive exclusion and debarment for these companies.

To address other shortcomings in the FCA and its use, the authors also propose reforms that would apply to all individuals and entities subject to the FCA, including:

1. reducing the relator's share of government recoveries to provide substantial not excessive incentives for bringing fraud to light;
2. barring *qui tam* actions brought by present or former government employees arising from the person's government service;
3. eliminating the judicially-created doctrine of "implied certification" liability;
4. requiring that essential elements of liability under the FCA be proven by clear and convincing evidence;
5. calibrating damages to the government's actual losses;
6. permitting statutory penalties only when no damages are awarded;
7. clarifying that the Wartime Suspension of Limitations Act tolls the limitations period only for

criminal claims, not civil ones;

8. requiring the Justice Department to notify federal agencies of their obligations to preserve relevant documents upon receipt of a *qui tam* complaint; and
9. reforming the Justice Department's policy governing use of civil investigative demands, including by requiring that such demands be used only when necessary and when other less burdensome alternatives are not available.

The white paper was released at the Institute of Legal Reform's annual legal reform summit, where David Ogden appeared on a panel with several corporate general counsels. Ogden previously authored an Institute white paper on "[The Exclusion Illusion: Fixing a Flawed Health Care Fraud Enforcement System.](#)"