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## False Claims Act Penalties Could Be on the Rise

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False Claims Act (“FCA”) penalties could double as a result of an interim final rule issued by the Railroad Retirement Board recently, making it the first federal agency to adjust FCA penalties for inflation.

Under the Railroad Board’s rule, minimum per claim penalties would go up from \$5,500 to \$10,781 and maximum per claim penalties would rise from \$11,000 to \$21,563. Most federal agencies, including the United States Department of Justice, are expected to follow suit by July, to be effective August 1.

FCA penalties were last adjusted in 1996 under the Inflation Adjustment Act (IAA). FCA penalties were previously updated in 1986, which included an inflation calculation. Now, in a confusing twist, the Railroad Retirement Board believes that Congress intended that the 1996 adjustment (arising from the IAA) be ignored in favor the 1986 inflation calculation. Yeah, I know: clear as mud.

However this shakes out, it is clear that FCA penalties will be drastically increased by this summer. The reason that you should care about that is that most FCA cases involve relatively small dollar amounts of overpayments, but boatloads of claims. Let’s say the Government believes that your facility overbilled Medicare for one dollar on each of 1,000 claims, for a total of overpayment of \$1,000. What makes FCA cases so scary is that, in addition to the \$1,000 in overpayments, you could see 1,000 penalties from \$10,781 to \$21,563 for each of those claims. Ouch!

We would expect to challenge that sort of penalty relationship to actual damages as an excessive fine or penalty under the 8<sup>th</sup> Amendment of the United States Constitution, but that will be a long and expensive fight fought by FCA defendants all across the country.

Since the FCA goes after false claims on any transaction with any federal government agency, clients in all industries should be aware and extremely careful.

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