

Colorado False Claims Act

**Statement of Enforcement Policies**

*Updated: January 5, 2024*

Approved by the Attorney General. For publication on Consumer Protection Section webpage.

**Purpose**

This memo sets out certain of the Attorney General’s policies for enforcing the Colorado False Claims Act (“CFCA” or “the Act”). Enforcement of the Act necessarily involves the exercise of judgment by Department of Law officials. These policies are designed to guide that judgment, not to dictate a particular result in all situations. The policies set out here may be adapted or departed from as required by an individual case. Further, the policies set out in this document are not comprehensive. They cannot, and do not, contemplate every issue that will be raised during CFCA investigations or litigation. Instead, they are designed to provide a general framework for the Attorney General’s enforcement efforts. These policies are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the State of Colorado or a private relator.

**Policy 1: Independent Enforcement by the False Claims Unit**

The Attorney General’s plenary enforcement authority under the CFCA is exercised by the False Claims Unit, which is part of the Department of Law’s Consumer Protection Section, and subject to oversight by the Attorney General and their designees. C.R.S. § 24-31-1201, *et seq.*

The False Claims Unit should conduct enforcement activities, including investigations and litigation, in collaboration with other units across the Department of Law and other enforcement partners. However, decision-making concerning CFCA enforcement must occur independent from other units, political subdivisions, agencies, and other constituencies, subject to the policies and procedures set out in this memo and the approval of the Attorney General and their designees.

**Policy 2: Confidentiality of CFCA Investigations**

Subject to the other policies in this memo, the existence of a relator or other complainant, the existence of a voluntary or compulsory request for information, and any information obtained as part of a CFCA investigation, should be held in confidence and not disclosed to any person absent a court order, statutory obligation, or a person or entity’s legitimate need to know for law enforcement or public policy purposes.

Information obtained as part of a CFCA investigation may be shared with a relator or their counsel if there is a legitimate investigatory reason for doing so. Generally, sharing information with a relator or their counsel should occur after the entry of a protective order or other appropriate written device for protecting confidential information from unauthorized or inappropriate disclosure. Information shared with a relator or their counsel may be redacted or truncated to protect confidentiality. If good cause exists, the False Claims Unit may deny investigation participants access to information obtained as part of a CFCA investigation, including transcripts of investigation participants' own testimony, to protect confidentiality.

Following the filing of a public complaint or other pleading, this confidentiality policy becomes secondary to, and may be overridden by, a court order or applicable procedures. Nothing in this policy prohibits the False Claims Unit from seeking in litigation a protective order or other device that is different from the investigatory confidentiality policy set out here.

### **Policy 3: Referrals**

The False Claims Unit is authorized to refer any matter to an appropriate enforcement entity pursuant to the guidelines established here. Generally, a matter should be referred if there is reasonable cause to believe that a person or entity known to the False Claims Unit has committed a violation of another statutory or regulatory provision, a contract, a common law rule, or other source of law. In determining whether and when to make a referral, the False Claims Unit should consider:

- Whether referral is in the best interest of the State, including affected persons and/or entities.
- Whether referral is likely to interfere with any CFCA investigation.
- Whether referral is likely to interfere with any other investigation or litigation that may be undertaken by the Department of Law.
- Whether the referral is to an agency or entity with a history of cooperating with the False Claims Unit and/or Department of Law.
- Whether the referral is likely to lead to an effective enforcement action.

A referral may be made without notice to the person or entity being referred. A referral may, subject to the other policies in this memo, include any materials obtained during a CFCA investigation that the False Claims Unit believes relevant to the referral.

### **Policy 4: Initial Case Assessment**

The False Claims Unit may receive complaints or initiate investigations on its own initiative. The Unit's investigations should generally begin with an initial case assessment. The purpose of an initial case assessment is to determine whether there is reasonable cause to believe that a violation of the CFCA has occurred. The False

Claims Unit is authorized to gather all information necessary to make that determination. During an initial case assessment, the False Claims Unit should generally obtain information on a voluntary basis. Voluntary requests for information should be accompanied by a notice of these policies.

### **Policy 5: Formal Investigations**

The purpose of a formal investigation is to determine whether there is a substantial likelihood of success should the False Claims Unit file or intervene in an enforcement action under the Act. The False Claims Unit should, as necessary, use compulsory process to compel investigation targets or other persons or entities to supply information relevant to the investigation. Compulsory requests for records or testimony should be accompanied by a notice of these policies.

### **Policy 6: Target Meeting**

At an appropriate juncture before filing or intervention in a case, the False Claims Unit should inform the investigation's target that it is the subject of an investigation under the CFCA. At that time, the False Claims Unit should invite the target's legal counsel (or other representative) to attend a voluntary meeting with False Claims Unit personnel. At this target meeting, the False Claims Unit will present their theory of CFCA liability to the target and give the target a reasonable time to respond. A subsequent meeting for that response may be appropriate. In certain extraordinary cases, the target meeting may be modified, truncated, or dispensed with.

### **Policy 7: Declinations & Statements of Reasons**

The False Claims Unit may decline to pursue a case at any time during an investigation or dismiss a case at any time during litigation. In deciding to decline or dismiss a case, the False Claims Unit must consider the following topics:<sup>1</sup>

- The weight and materiality of the evidence.
- The severity of the potential false claim or claims.
- The program or population impacted by the potential false claim.
- The duration of the potential fraud.
- Any other means to make the affected program whole.
- As applicable, the target's level of cooperation with the investigation.
- For *qui tam* complaints, the relator's cooperation and access to relevant information.

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<sup>1</sup> C.R.S. § 24-31-1204(3)(b)(II) (directing the Attorney General to consider the factors in § 24-31-1204(1)(b) when deciding whether to intervene), (1)(b) (setting out factors). *See also generally* C.R.S. § 24-31-1204(1)(b) (authorizing the Attorney General to consider "other factors" that the AG "deems relevant").

Statements of reasons<sup>2</sup> for a declination will be given only in extraordinary cases. Before submitting a statement of reasons to a court, the False Claims Unit should attempt to discuss those reasons with relator's counsel and offer relator's counsel an opportunity to respond.

**Policy 8: Amicus Briefs**

The False Claims Unit is authorized to file amicus briefs expressing the views of the State in cases relevant to the CFCA, including CFCA cases in which the State has declined to intervene. The False Claims Unit's failure to submit an amicus brief should not be construed as indication of the Attorney General's position on any issue in any case.

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<sup>2</sup> See C.R.S. § 24-31-1204(4)(c).