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Hon. Bill de Blasio
Mayor
City Hall
New York, NY 10007

Hon. Melissa Mark-Viverito
Speaker of the City Council
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor de Blasio and Speaker Mark-Viverito:

Local Law No. 53 of 2005, the "New York City False Claims Act" (the "Act") was signed into law on May 19, 2005 and went into effect on August 17, 2005. On June 20, 2012, Local Law No. 34 was enacted, which extended the Act past the June 1, 2012 sunset date and brought the City's law into closer conformance with the New York False Claims Act, New York State Finance Law, §§187 *et seq.* The purpose of the Act was to establish for New York City a statute modeled on the federal "False Claims Act" and to provide an additional tool to assist in the recovery of monetary damages from parties who have filed fraudulent claims for payment of City funds.

In addition to the requirements and procedures described below, Section 7-808 of the Act requires that the Law Department annually report to the Mayor and the Speaker certain specified information regarding experience under the Act in the previous calendar year. This letter provides such information for calendar year 2015.

Under the Act, individuals who claim to have knowledge of false or fraudulent claims are empowered to submit proposed civil complaints to the City's Department of Investigation ("DOI"). DOI, after reviewing the submissions to ascertain whether an on-going investigation exists or whether one is warranted, forwards them to the Law Department. The Corporation Counsel has assigned responsibility for false claims matters to the Affirmative Litigation Division. The Division undertakes a careful review of the submission and determines whether to commence a civil enforcement action, or designate the person who submitted the information to commence such action, or decline to commence such an action. If an action is commenced based on a person's proposed complaint, such person may be eligible to receive a percentage of proceeds ultimately recovered in the action or settlement of the action. Rules regarding a protocol for processing proposed civil complaints submitted pursuant to the Act appear in Title 46 of the Rules of the City of New York.

The Act calls upon two agencies that are experienced in the areas addressed by the Act and are well positioned to collaborate to utilize this tool for recovering money damages. A major mission of DOI is to investigate and refer for prosecution cases of fraud, corruption and unethical conduct by City employees, contractors and others who receive City funds. DOI is also charged with studying agency procedures to identify corruption hazards and recommending improvements in order to reduce the City's vulnerability to fraud, waste and corruption. The Affirmative Litigation Division of this office represents the City as plaintiff in a wide range of litigated issues in federal and state court and before administrative agencies. Some of the Division's lawsuits seek to recover money for the City in areas including commercial disputes; civil racketeering and fraud claims; nuisance and restitution claims; property damage claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for public benefit programs and education.

The text of the Act and the aforementioned Rules are posted on the websites of both the Law Department and DOI (<http://www.nyc.gov/html/law/html/fca/fca.shtml> and http://nyc.gov/html/doi/html/false_claims_home.html) in order to make them more accessible to the public, and the City's "311" hotline supervisory staff have been briefed about the Act in order to make appropriate referrals.

Calendar Year 2015

As discussed above, the Act provides that members of the public can submit proposed civil complaints to DOI, that are forwarded to the Law Department for purposes of determining whether they should be filed by the City as civil complaints. Set forth below is the information pertaining to such matters for calendar year 2015.

There were nine proposed matters forwarded by DOI to the Law Department that this office received in 2015. None of these nine has resulted in this office commencing a civil enforcement action, or designating any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. All remained open at the end of 2015.

Four cases forwarded by DOI to the Law Department in earlier years were closed in 2015. One was a Medicaid claim, two were dismissed or withdrawn, and one did not state a claim.¹ None of these resulted in this office commencing a civil enforcement action, or designating any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. Five matters forwarded by DOI to the Law Department in years prior to 2015 remain open. In one of them, the Corporation Counsel filed a complaint asserting claims under state and local law.


In 2015, this office also received notification of nineteen additional matters from sources other than DOI that were considered by this office. Of these nineteen matters, almost all were filed pursuant to the New York False Claims Act. Two of the nineteen were closed in 2015. Seventeen remain open.

Six cases brought to our attention from sources other than DOI in earlier years were closed in 2015, two of which were Medicaid cases. Two matters were settled in conjunction with the Attorney General's Office. Twenty-six cases brought to our attention from sources other than DOI in earlier years remain open.

We reported last year on the case against the Bank of New York Mellon. The Attorney General has settled its portion of the case. We continue to press forward the claims of the City pension funds, although the false claims act claims have been dismissed.

Sincerely yours,

ZACHARY W. CARTER
Corporation Counsel of the City of New York

By: 
Gail Rubin
Chief, Affirmative Litigation

cc: Hon. Mark G. Peters

¹ In the absence of express state approval, the City receives no benefit from successfully litigating Medicaid claims, as all Medicaid recoveries go to the State of New York pursuant to Part C of Chapter 58 of the Laws of 2005 (the "Medicaid cap statute") and the subsequent reenactments of that law. The proposed Medicaid claims had already been filed as federal False Claims Act cases, and/or were under consideration by the Office of the New York Attorney General.