



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-0800
FAX (212) 227-5641
mcardozo@law.nyc.gov

March 9, 2012

Hon. Michael R. Bloomberg
Mayor
City Hall
New York, NY 10007

Hon. Christine Quinn
Speaker of the City Council
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor Bloomberg and Speaker Quinn:

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.

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.

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"), which after reviewing them 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 proposed civil complaint and the allegations contained therein, and determines whether it will commence a civil enforcement action, or designate the person who submitted it 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 can receive a percentage of proceeds ultimately recovered in the action or settlement of the action.

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 new 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 other 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; hazardous product claims; civil racketeering and fraud claims; nuisance and restitution claims; antitrust claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for public benefit programs and education.

Under § 7-804(b)(2) of the Act, the Law Department and DOI are charged with promulgating rules regarding a protocol for processing the proposed civil complaints that would be submitted pursuant the Act. Attorneys from this office and DOI collaborated in the drafting of rules that were published in the *City Record* on July 6, 2005. A public hearing on those rules was held on August 5th and on August 8, 2005 a Notice of Adoption of the rules was duly published in the *City Record*, as of which date the rules became effective. The Rules are contained in Title 46 of the Rules of the City of New York. The Act itself became effective the following week, on August 17, 2005.

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 so appropriate referrals can be made. In 2007, the State of New York enacted the New York False Claims Act (Chapter 58 of the Laws of 2007), which was amended in 2010, and can be found at New York State Finance Law §§187 et seq.

Calendar Year 2011

As discussed above, the Act provides that members of the public can submit proposed civil complaints that are investigated for purposes of determining whether they should be filed as civil complaints.

Section 7-808 of the Act provides that the Law Department annually report to the Mayor and the Council certain specified information regarding experience under the Act in the previous calendar year. Set forth below is the information requested for calendar year 2011.

There were twenty proposed matters submitted pursuant to Section 7-804 that this office received in 2011. No proposed civil complaints resulted in this office commencing a civil enforcement action. However, the Law Department has pled a civil enforcement claim under the City's False Claims Act in a separate case first brought by a relator under the State False Claims

Act against the Bank of New York Mellon, concerning the manner in which the Bank trades foreign exchange on behalf of its custodial clients. The Law Department, on behalf of the pension funds, joined the Attorney General, and filed a superseding complaint that pled various claims, including a claim under the City's False Claims Act. The Corporation Counsel did not designate any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. In addition, there are no dispositions to report of lawsuits based on proposed civil complaints.

Of the twenty instances referred to above submitted pursuant to Section 7-804 in 2011, one complaint was withdrawn. Of the remaining nineteen, in one instance the proposed civil complaint was declined under § 7-804(b)(3)(iv) because it failed to state a claim. In six other cases, this office determined pursuant to §7-804(b)(3)(ii) not to commence a civil enforcement action because they were "based upon an interpretation of law or regulation which, if adopted, would result in significant cost to the city." These six proposed civil complaints presented claims for Medicaid funds, and, in the absence of express State approval, the City receives no benefit from successfully litigating such 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 civil complaints had either already been filed as Federal False Claims Act cases of which the federal government was fully aware, or were under consideration by the Office of the New York Attorney General.

Of the initial twenty instances referred to above, twelve matters submitted pursuant to Section 7-804 in 2011 remained pending at the end of 2011, seven of which are Medicaid cases. We also note that three Medicaid cases submitted pursuant to Section 7-804 in earlier years were closed in 2011.

In 2011, this office also received notification of sixteen additional matters that were not submitted pursuant to Section 7-804 of the City's False Claims Act, but were nonetheless considered by this office. Of these sixteen additional cases of which we were notified, several were filed pursuant to the New York State False Claims Act. One case was withdrawn and six were Medicaid cases. Of the remaining nine open matters, three are Medicaid cases. Two cases brought to our attention in earlier years remain open, and eight cases filed in earlier years, all of them Medicaid cases, were closed in 2011.

Sincerely yours,



MICHAEL A. CARDOZO

cc: Hon. Rose Gill Hearn