

BUCKLEY

False Claims Act & FIRREA Practice

The Department of Justice has been aggressive in its enforcement of the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act. As the federal government provides unprecedented financial assistance to private businesses and institutions large and small, including through the Paycheck Protection Program and Small Business Administration lending, the risk of FCA and FIRREA enforcement in today's environment is particularly acute. Buckley's enforcement attorneys have extensive experience guiding clients through the enforcement process, from counseling clients on ways to minimize enforcement risk in federal programs, through the investigation, settlement, and litigation processes.

We work with clients to identify compliance risk and take corrective action with the goal of avoiding investigation or enforcement action. On these efforts, our FCA/FIRREA enforcement attorneys routinely work hand in hand with the firm's regulatory and compliance attorneys, who are steeped in the intricate regulatory issues that often underlie such investigations. Buckley also assists clients throughout the life cycle of government agency audits, which can often provide the impetus for an investigation or enforcement action. Our experience includes preparation of responses to audit reports, reviewing and revising compliance documents, conducting risk assessments, overseeing loan file reviews, assisting with annual recertification, and responding to notices of violation and matters involving the Department of Housing and Urban Development's Mortgagee Review Board (MRB). We also help clients minimize the risk of FCA/FIRREA exposure by conducting effective internal investigations into the allegations of whistleblowers.

Our team has extensive experience handling FCA/FIRREA matters at the investigative stage, helping our clients manage their compliance with often burdensome civil investigative demands and subpoenas issued by the DOJ, U.S. attorney's offices, and federal agency offices of inspectors general. FCA/FIRREA investigations can be extensive in their reach and extremely costly; we work with our clients to minimize the burden and intrusiveness of these sometimes sprawling investigations by negotiating with the government. We have a proven track record of convincing the government to decline enforcement action against our clients, and in negotiating successful pre-suit settlements when litigation cannot be avoided. Our team includes several former government enforcement attorneys who bring valuable insights into the government's approach to these cases, and who can lend additional credibility in pre-suit negotiations.

We know how to litigate — and win. Our FCA/FIRREA attorneys are steeped in the subject matter and recognized thought leaders, as well as experienced trial and appellate attorneys. We have regularly succeeded in getting litigated FCA cases dismissed by the courts at the earliest possible stage.

Significant representations include:

- Successfully represented multiple large mortgage lenders in FCA and FIRREA investigations into Federal Housing Administration lending, reaching pre-suit settlement agreements with the DOJ in several cases that included no admission of liability, no administrative sanction, and no prospective relief
- Successfully represented a large lender in an FCA qui tam investigation of SBA lending
- Successfully represented a top research university in reaching a favorable, pre-suit settlement of an FCA qui tam investigation regarding federally sponsored research grants
- Successfully represented eight mortgage servicers in *U.S. ex rel. Grubea v. Rosicki, Rosicki & Assoc.*, 318 F. Supp. 2d 680 (S.D.N.Y. 2018), an FCA qui tam litigation in the Southern District of New York, which resulted in a dismissal with prejudice for all clients, a result that the *American Lawyer* called “a big win for a veritable army of outside counsel led by Buckley”
- Successfully represented multiple indirect auto finance companies in FIRREA investigations of subprime auto lending and securitization practices
- Successfully represented multiple top banks in responding to the DOJ’s “Operation Choke Point” FIRREA investigation into third-party payment processing, in which the government declined to pursue enforcement action
- Successfully represented a top mortgage loan servicer in an FCA qui tam investigation into servicing and loss mitigation activities, in which the government declined to intervene in the case; the district court dismissed the case on motion, and the Sixth Circuit upheld the dismissal

Sub Practices

Topic Spotlight: Assistance in responding to government oversight of pandemic relief

The federal government’s financial response to the Covid-19 pandemic is measured in trillions of dollars, and the intensity of oversight related to that response reflects this unprecedented commitment. All involved in the government’s response, particularly financial services providers, should expect increased scrutiny of how those dollars have been and will be spent.

Buckley’s white collar, enforcement, congressional investigations, class actions, complex civil litigation, and False Claims Act & FIRREA teams are prepared to assist with government and congressional inquiries, examinations, investigations, and government and private party litigation that arise from the pandemic response. We work

closely with our financial services regulatory practices to combine the firm's core substantive experience with our deep knowledge of government investigations and litigation of all kinds.

Learn more »