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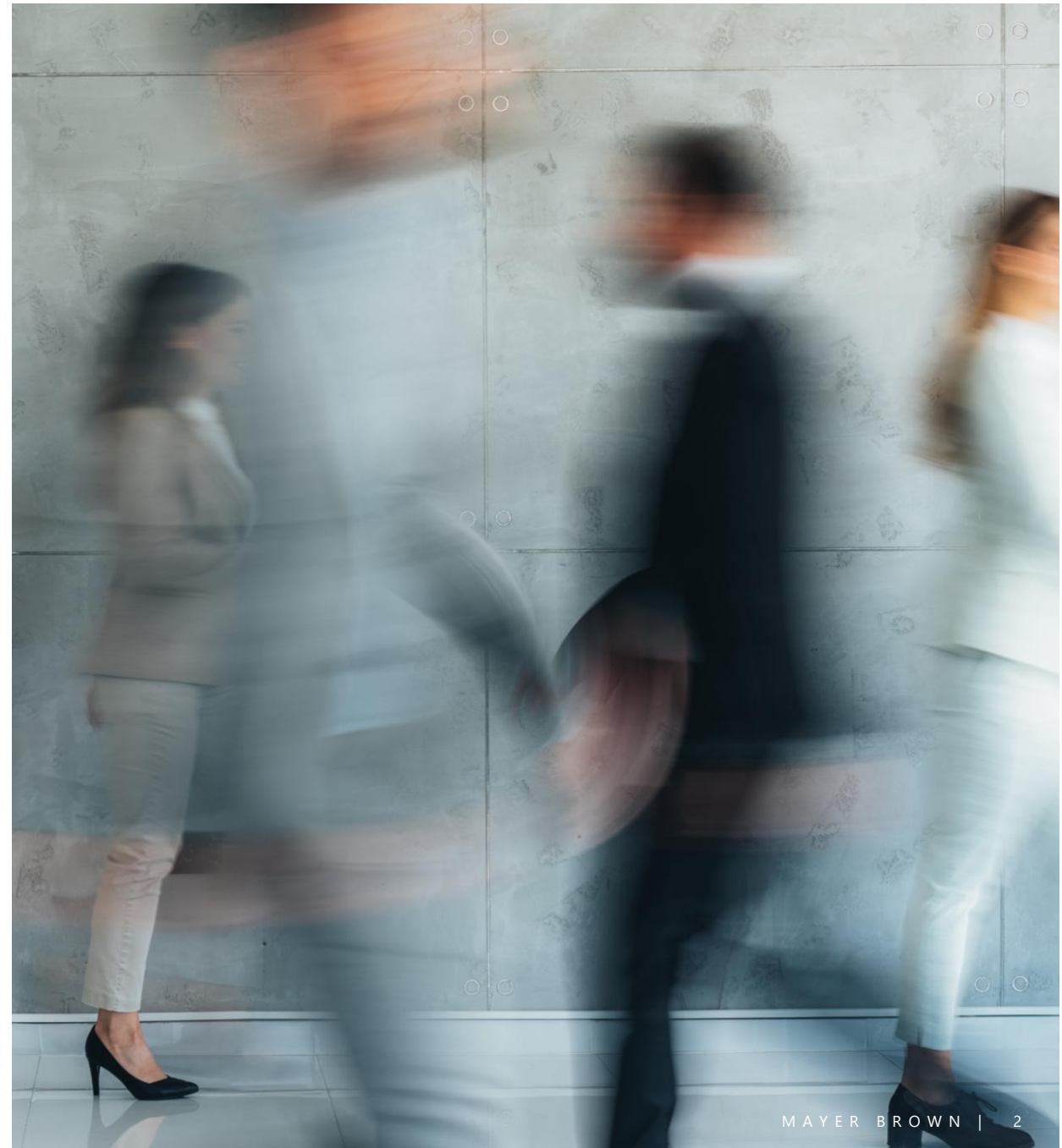
THE FALSE CLAIMS ACT

BEST PRACTICES IN RESPONSE TO CHANGING PRIORITIES



INTRODUCTION

- The FCA, 31 U.S.C. §§ 3729-3733, is the government's primary tool to combat fraud on the government.
- The FCA was enacted during the Civil War to address procurement fraud, but it was rarely used until it was amended in 1986. Since then, it has been used to recover tens of billions of dollars.
 - The FCA is most often used against healthcare or life sciences companies, but it also reaches government contractors, banks, importers, and others who do business with or obtain loans from the United States.



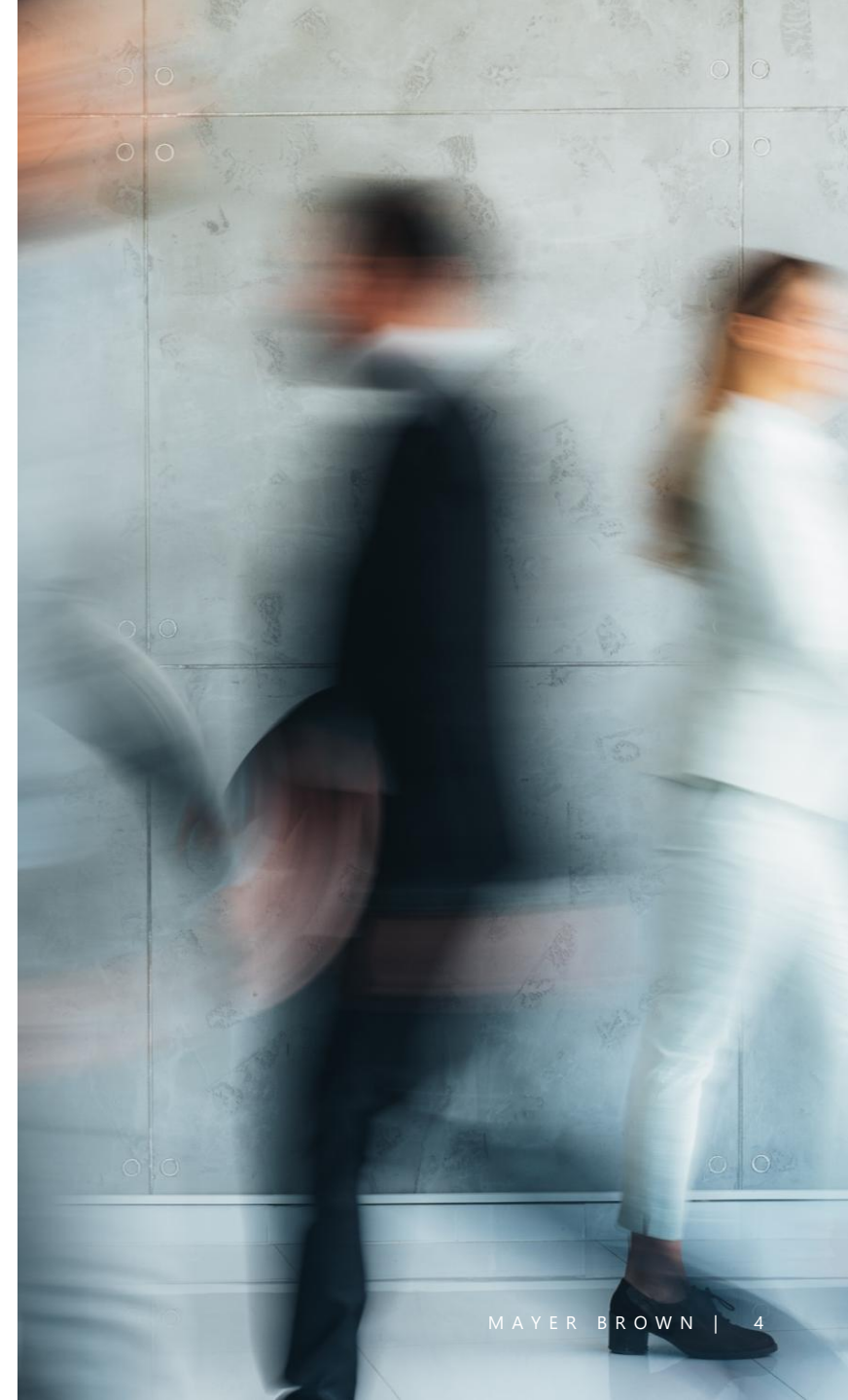


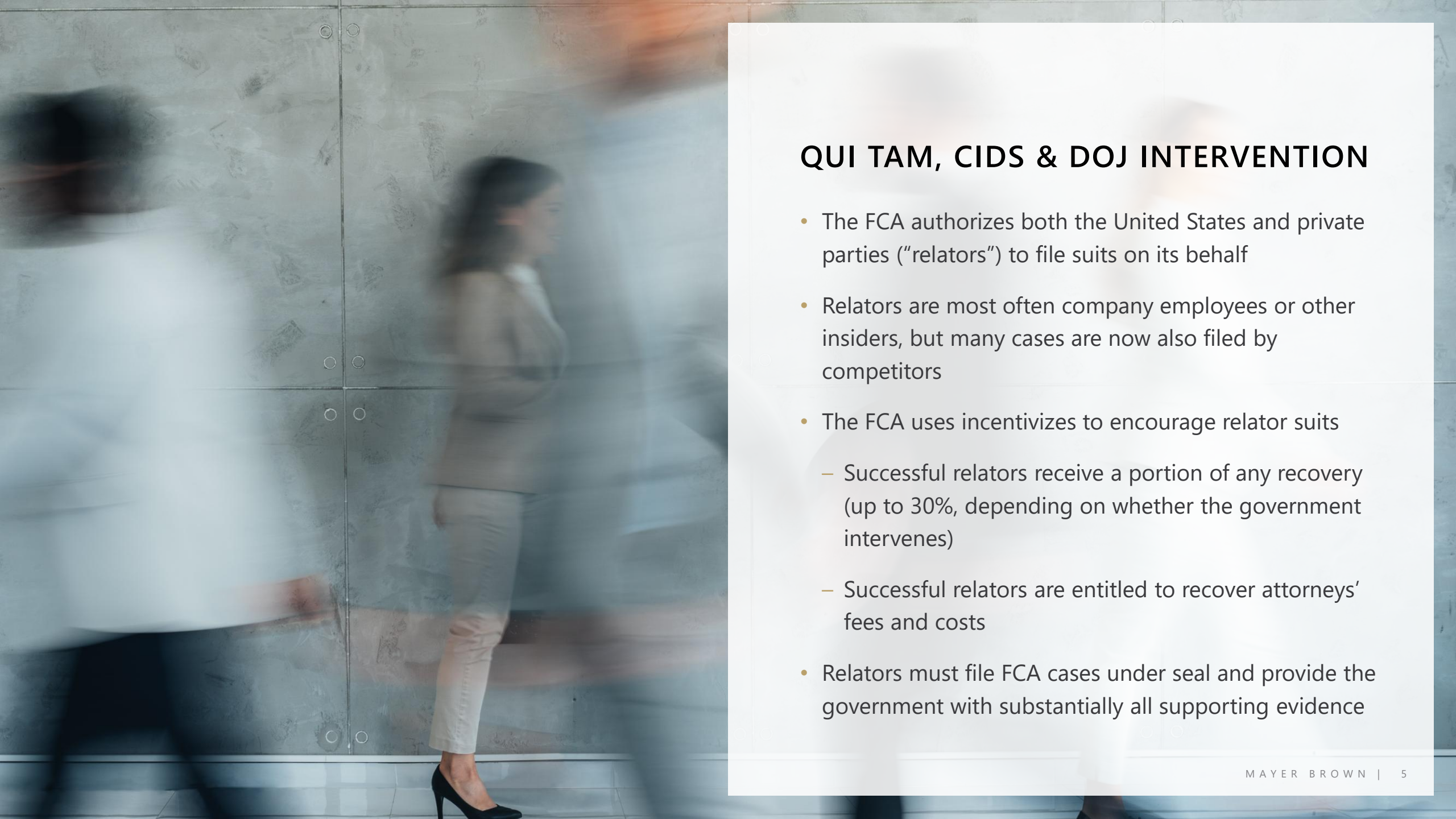
FCA VIOLATIONS

- The four most common FCA violations:
 - Knowingly presenting, or causing to be presented, a false claim for payment (31 U.S.C. § 3729(a)(1)(A))
 - Knowingly making a false statement or record material to a false or fraudulent claim (31 U.S.C. § 3729(a)(1)(B))
 - Knowingly engaging in a scheme to avoid an obligation to pay the government (31 U.S.C. § 3729(a)(1)(G))
 - Conspiring to violate any provision of the FCA (31 U.S.C. § 3729(a)(1)(C))
- Knowledge = actual, reckless disregard, or deliberate ignorance
 - Specific intent to commit fraud is not required.
- Penalties: Treble damages (government's losses) + \$14,308–\$28,619 per claim (adjusted annually)

CERTIFICATION, MATERIALITY & ESCOBAR DOCTRINE

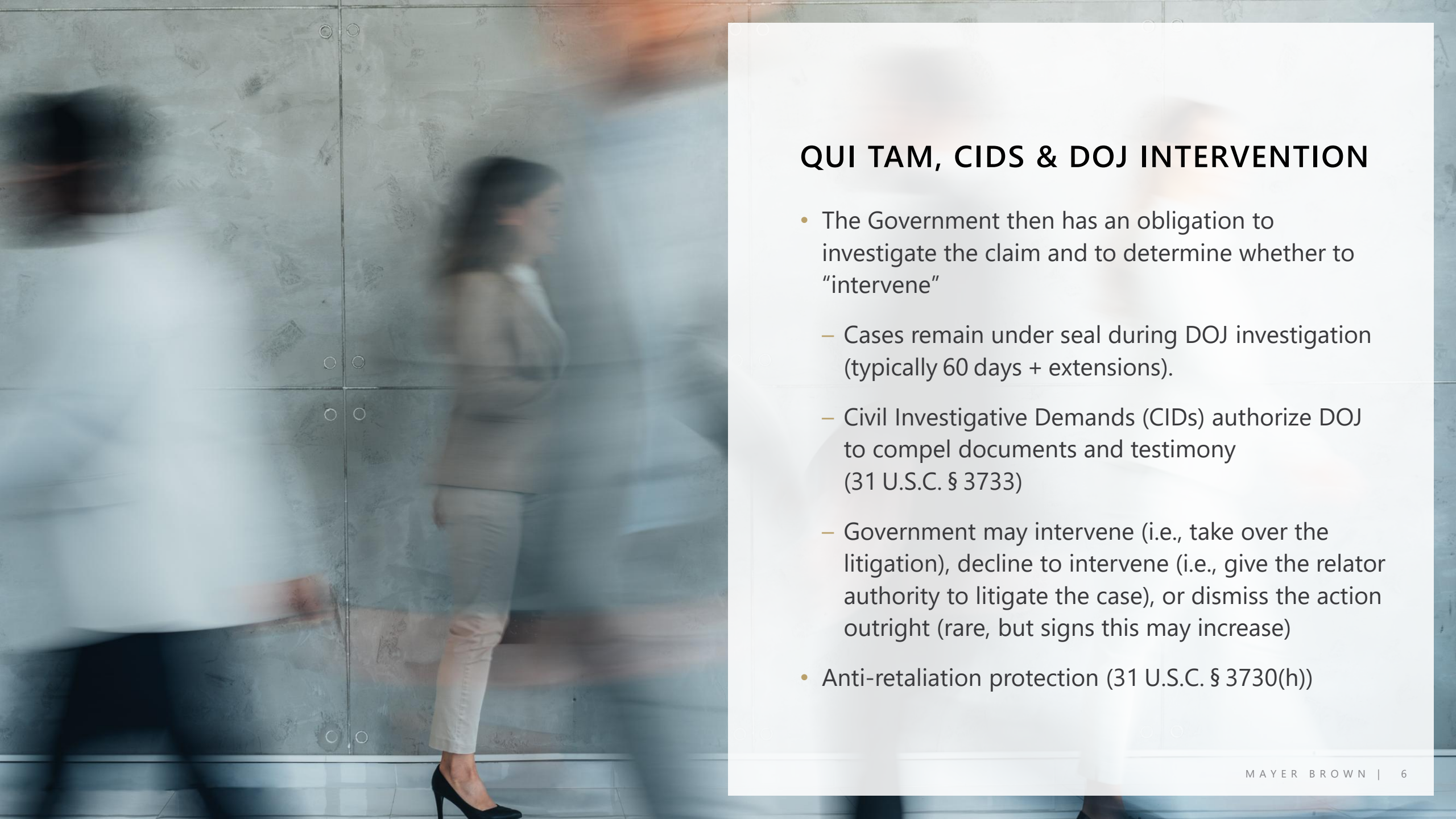
- Express or implied certifications may be actionable.
- Materiality under *Universal Health Servs. v. U.S. ex rel. Escobar*, 579 U.S. 176 (2016) is "rigorous and demanding."
- Material if noncompliance would influence payment or contract award; minor violations are insufficient.
- Materiality factors identified in *Escobar* include:
 - Whether the government has expressly identified compliance with a specific statutory, regulatory, or contractual requirement as a condition of payment
 - Whether the government generally refuses to pay claims that fail to meet the specific statutory, regulatory, or contractual requirement
 - Whether the government has continued to pay claims despite actual knowledge of noncompliance with the requirement
 - Whether the alleged noncompliance is considered minor or insignificant, or if it goes to the "very essence of the bargain"





QUI TAM, CIDS & DOJ INTERVENTION

- The FCA authorizes both the United States and private parties (“relators”) to file suits on its behalf
- Relators are most often company employees or other insiders, but many cases are now also filed by competitors
- The FCA uses incentives to encourage relator suits
 - Successful relators receive a portion of any recovery (up to 30%, depending on whether the government intervenes)
 - Successful relators are entitled to recover attorneys’ fees and costs
- Relators must file FCA cases under seal and provide the government with substantially all supporting evidence



QUI TAM, CIDS & DOJ INTERVENTION

- The Government then has an obligation to investigate the claim and to determine whether to “intervene”
 - Cases remain under seal during DOJ investigation (typically 60 days + extensions).
 - Civil Investigative Demands (CIDs) authorize DOJ to compel documents and testimony (31 U.S.C. § 3733)
 - Government may intervene (i.e., take over the litigation), decline to intervene (i.e., give the relator authority to litigate the case), or dismiss the action outright (rare, but signs this may increase)
- Anti-retaliation protection (31 U.S.C. § 3730(h))

TRUMP ADMINISTRATION FOCUS ON FALSE CLAIMS ACT

- Criminal Division White-Collar Priorities (May 2025)
 - Ten focus areas include areas that can be targeted with the False Claims Act, including: health care fraud, procurement fraud, and trade/tariff fraud.
 - DOJ-HHS False Claims Act Working Group (July 2025)
- Civil Division Priorities (July 2025)
 - Mentions DEI, antisemitism, and gender affirming care as 3/5 priorities enforceable through the False Claims Act
- Civil Rights Fraud Initiative (May 2025) and Bondi Memo on Unlawful Discrimination (July 2025)
 - DOJ “will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws.”
 - Bondi Memo provides guidance on what qualifies as “illegal DEI.”
- Establishment of DOJ-DHS Cross-Agency Trade Fraud Task Force (Aug. 2025)
 - “You can expect the [DOJ] to continue to use the False Claims Act to enforce these trade laws” and described “aggressive” enforcement efforts. (Feb. 2025 Speech to FBA Qui Tam Conference.)



TRADITIONAL APPLICATIONS

HEALTH CARE FRAUD

- Common schemes: kickbacks, upcoding, medically unnecessary services, risk-score inflation.
- \$1.67B in settlements and judgments related to health care fraud in FY2024
 - \$949 M Omnicare / CVS (July 2025)
 - \$98 M + \$62 M Medicare Advantage settlements (Dec 2024 & Mar 2025)
 - \$350 M opioid-related settlement (Apr 2025)
- DOJ-HHS False Claims Working Group relaunched (July 2025)

GOVERNMENT CONTRACTS & PROCUREMENT

- Frequent violations: false cost accounting, bid-rigging, misuse of small-business status
- Recent settlements 2025: \$3.3 M big-rigging & \$15.9 M overcharging cases
- Employment Eligibility Verification (FAR 52.222-54): \$1 M + \$4 M shipbuilder settlements (Jan & Sept 2025)
- DOJ continues to promote self-disclosure and cooperation credit (Justice Manual § 9-28.300)

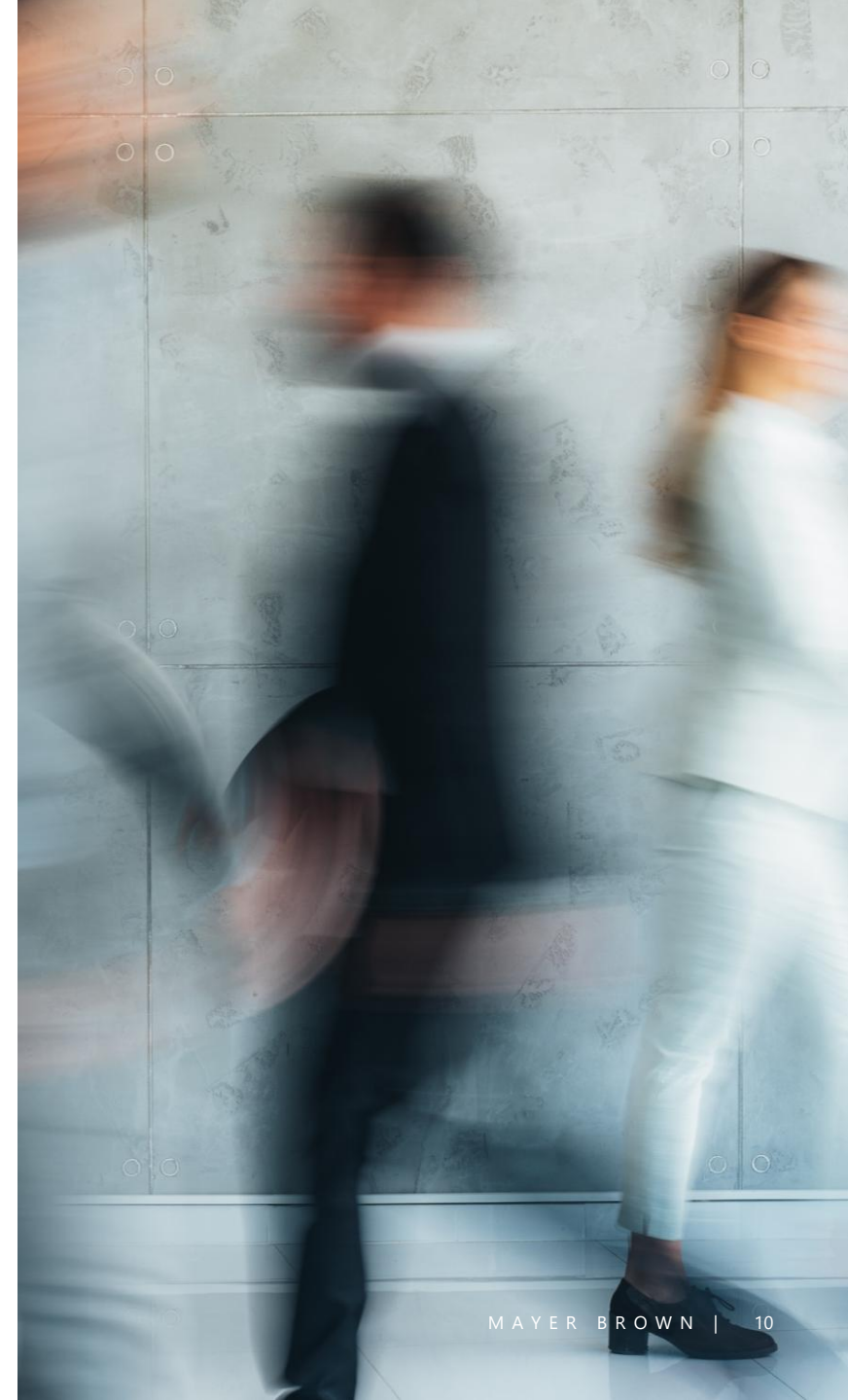
NOVEL FOCUS: CYBERSECURITY IN GOVERNMENT CONTRACTS

- Biden-Era Civil-Cyber Fraud Initiative continues.
- FCA liability for failure to meet cyber requirements (NIST SP 800-171, required in many contracts by DFARS 252.204-7012).
 - CMMC implementation beginning November 2025 may increase demands on contractors to certify.

CASE (YEAR)	SETTLEMENT	CLAUSES / COMMITMENT	ALLEGED VIOLATIONS	FALSE CLAIMS THEORY
Aerojet Rocketdyne (2022)	\$9 M	DFARS 252.204-7012 & NIST SP 800-171	Internal gaps vs. required cybersecurity controls; nonetheless represented compliance while performing on DoD/NASA work.	Invoices/certifications implied compliance with mandatory cyber clauses (express/implied false certification).
Penn State University (2024)	\$1.25 M	NIST SP 800-171 & DFARS (SPRS score reporting under 7019/7020)	Failed to implement required controls; inadequate POA&Ms; submitted summary compliance scores to DoD despite deficiencies.	Payment claims while non-compliant with material cyber requirements and misrepresented SPRS scores.
MORSECORP (2025)	\$4.6 M	NIST SP 800-171 & DFARS 252.204-7012	Used third-party email hosting without protections; lacked consolidated SSPs; reported 104 to DoD but actual score was –142; delayed correction.	Claims for payment and certifications while not meeting NIST 800-171/FedRAMP-equivalent obligations; false SPRS reporting.
Raytheon / RTX & Nightwing (2025)	\$8.4 M	DFARS 252.204-7012 & FAR 52.204-21	Failed to develop/implement an SSP; failed to implement required cyber controls for CDI/FCI systems on 29 DoD contracts/subcontracts.	Submitting claims while falsely representing compliance with DFARS/FAR cyber requirements.
Aero Turbine (ATI) & Gallant Capital (2025)	\$1.75 M	DFARS 252.204-7012 & NIST SP 800-171	Did not implement certain required controls (2018–2020); shared sensitive defense info with unauthorized foreign vendor; later self-disclosed.	Claims on contract allegedly non-compliant with mandatory cyber clauses; cooperation led to credit on penalty.

NOVEL FOCUS: TRADE & TARIFF FRAUD

- Deputy AAG Feb 2025 (FBA Qui Tam Conference): “Aggressive FCA trade enforcement”; FCA is a “permanent fixture”
 - DOJ would use FCA “to protect against illegal foreign trade practices and attempts to fraudulently avoid the payment of import duties and tariffs.”
 - Anticipated FCA actions on misstatements in origin, declared value, and quantity of goods
- Aug 2025: DOJ–DHS Trade Fraud Task Force launch
- FY 2025 settlements involving wood flooring, resin, aluminum, quartz imports
- Ninth Circuit affirmed \$30 M customs fraud judgment (2025 decision upholding FCA use in customs context)

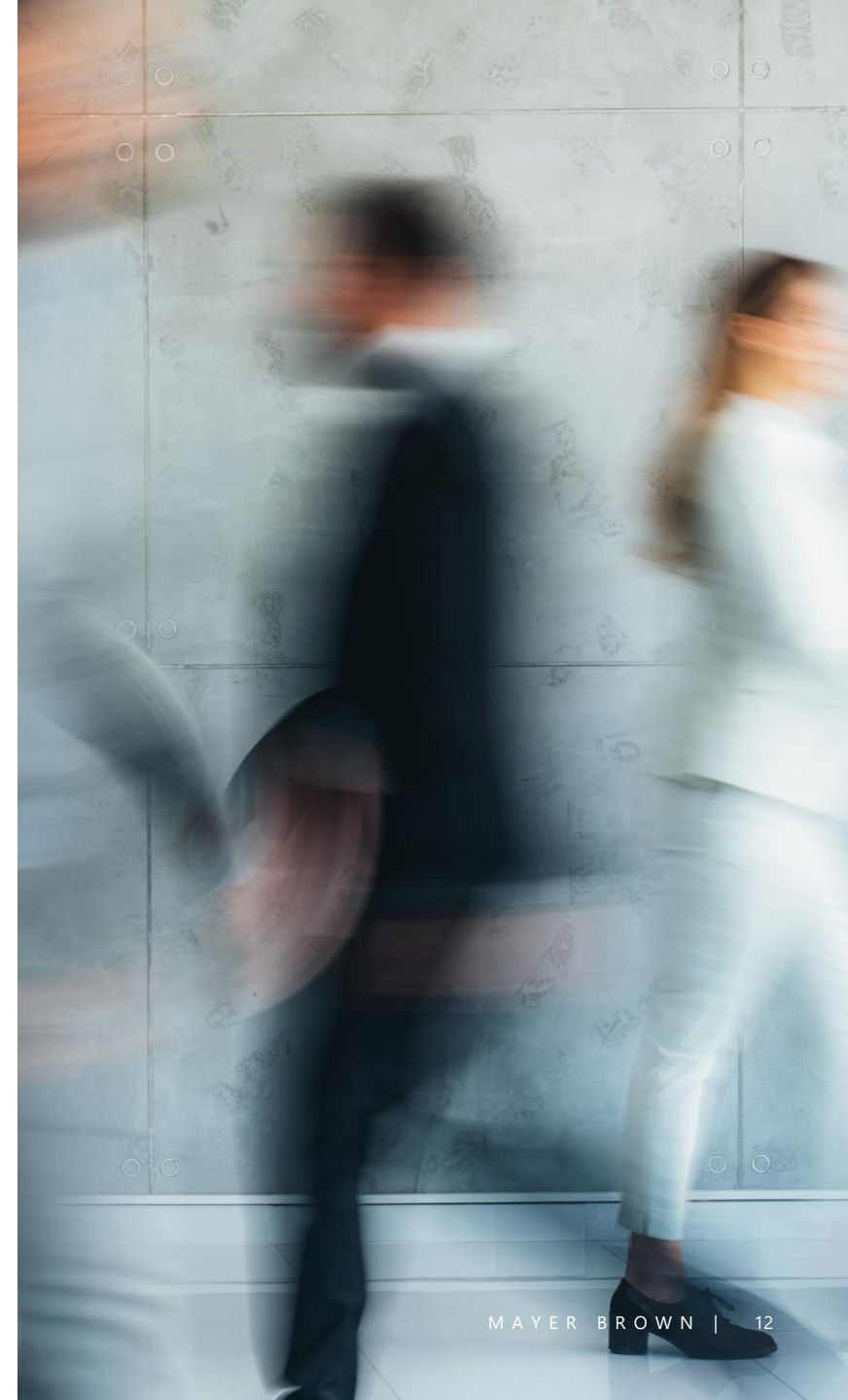


NOVEL FOCUS: CIVIL RIGHTS / DEI

- DOJ Civil Rights Fraud Initiative established May 2025
 - “Will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws.”
 - Focus on preferential treatment, antisemitism, and sex differences
 - Certifications of compliance with civil rights laws can form basis for FCA suit
- AG Bondi Memo "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (July, 29 2025)
 - Using protected characteristics (including race, color, religion, sex, and national origin) as a basis to make decisions about “employment, program participation, resource allocation, or other similar activities, opportunities, or benefits, is unlawful,” regardless of whether the intention or motive is not to disadvantage any group, per se, but rather to be positive or “preferential.”
 - Prohibited use of proxies (measured by the intent): evaluating job applicants by their ability to demonstrate “cultural competence,” “lived experiences,” or “cross-cultural skills,” and implementing recruitment strategies targeting specific geographic areas and institutions chosen primarily because of their racial or ethnic composition rather than other legitimate factors
 - Sex segregation (e.g., in restrooms) required by federal law, according to DOJ
- Certification based on a good-faith belief that program is lawful is not a basis for liability

NOVEL FOCUS: GENDER-AFFIRMING CARE

- AG memo from April 2025 directed Fraud Section to pursue false claims for "non-covered services related to gender experimentation."
- June 2025 Civil Division Enforcement Priorities: lists investigating gender-affirming care as one of five
 - Civil Division will investigate violations of the Food, Drug, and Cosmetic Act (FDCA) by "(1) pharmaceutical companies that manufacture drugs used in connection with so-called gender transition and (2) dealers such as online pharmacies suspected of illegally selling such drugs."
 - The Civil Division also "will aggressively pursue claims under the [FCA] against health care providers that bill the federal government for impermissible services."
 - DOJ appears to be targeting the "off-label" use of pharmaceutical and biotech products, such as puberty blockers and hormone therapies
- Encourages qui tam whistleblowers to report improper billing for puberty blockers or surgical procedures billed as other services



COMPLIANCE & RISK MANAGEMENT

- Best Practices:
 - Conduct targeted audits and risk assessments
 - Centralize review of government certifications
 - Train employees on billing and contract compliance
 - Protect whistleblowers (§ 3730(h))
 - Coordinate self-disclosure decisions with counsel (Justice Manual § 9-28.900)

TAKEAWAYS

- FCA remains DOJ's central civil enforcement tool
- Enforcement expanding into cybersecurity, trade, DEI, and gender affirming care
- DOJ
 - increasing resources and coordination with other agencies
 - prioritizing self-disclosure and corporate cooperation

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