

**Client Alert**

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December 22, 2008

**The US Government Begins Solicitation of New Safe Harbors for the Federal Health Care Anti-Kickback Statute****Areas of Interest****White Collar Defense  
& Compliance****United States**

On December 17, 2008, the government opened up its solicitation period for proposed modifications of safe harbors to the federal health care Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b). The Anti-Kickback Statute provides for criminal, administrative, and civil penalties to individuals or entities who knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward business reimbursable under the federal health care programs.

Because the Statute, as drafted, could be interpreted as criminalizing conduct not intended to be subject to it, the government has already implemented a number of exceptions to the Statute's broad application. And the Inspector General of the Department of Health and Human Services is required to solicit more safe harbor modifications each year.

Until the solicitation period closes on February 17, 2009, the window is open for interested companies and individuals to have their suggestions heard, evaluated, and potentially adopted. In other words, the medical service providers, equipment suppliers, and pharmaceutical companies that may run afoul of the Statute have the opportunity to help shape its application.

The stakes are high. Policing federal health care programs for fraud is currently a high priority for the federal government. In fact, in an [annual report](#) of policing efforts against health care fraud for fiscal year 2007, the federal government acknowledged winning or negotiating for approximately \$1.8 billion in judgments or settlements, nearly \$480 million of which was related to kickbacks.

Clients who are directly or indirectly involved with federal health care programs should consider reviewing the Statute and offering proposed modifications to the safe harbors.

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