



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

Money on the Table

Enhancing Use of the Program
Fraud Civil Remedies Act To
Recover Fraudulently Paid Claims

A Report by the Investigations
Committee Program Fraud Civil
Remedies Act Working Group on its
First-Year Accomplishments and
Second-Year Plan

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Committee, February 4, 2014

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I. Executive Summary:

In November 2012, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) approved a cross cutting project to explore ways to increase the use of the Program Fraud Civil Remedies Act (PFCRA) to deter fraud. Previous studies had shown that only a few Federal agencies were using this remedy, and only one Federal agency had incorporated this remedy into its routine practices. As a result, the Government is not using all available remedies to pursue some smaller dollar fraud cases, leaving “money on the table.” Thus, the CIGIE Investigations Committee established a PFCRA working group (the Working Group), headed by Small Business Administration Inspector General Peg Gustafson, to identify impediments to use of the PFCRA and to develop proposals and recommendations to overcome these impediments.

During its first year, the Working Group has identified several major impediments that have limited use of the statute through internal discussions, reviews of previous studies, and by conducting its own survey of the Offices of Inspectors General (OIGs) that comprise the CIGIE. As described in more detail below, the Working Group’s efforts over the past year have been successful in accomplishing several key endeavors to address these impediments and enhance the use of the PFCRA within the OIG community. Foremost among these accomplishments is the development of a Practitioner’s Guide that OIG and other Federal personnel can use to initiate and litigate PFCRA cases, and to collect judgments if litigation is successful. Among other things, the Guide provides all offices with a comprehensive outline of the statute’s requirements, a step-by-step overview of procedures, and useful model pleadings and forms. Additional Working Group accomplishments from the past year are discussed below.

Although the Working Group has undertaken a number of steps to promote the PFCRA as a fraud deterrent, there is more work to do. In the upcoming year, the Working Group plans to coordinate with the CIGIE Training Institute to develop a training program on the PFCRA; to reach out to attorneys working in agency Offices of General Counsel to broaden their understanding of the PFCRA; to work with DOJ to pursue development of guidance that can be issued to United States Attorney’s Offices to encourage consideration of the PFCRA as a viable alternative to judicial litigation for lower dollar fraud cases; and to work with the CIGIE Legislation Committee to develop additional proposals to reform the PFCRA.

II. Background

The PFCRA (31 U.S.C. §§ 3801-3812) is often referred to as the “mini False Claims Act” because it provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution. Although many of the terms in, and underlying concepts of, the False Claims Act (31 U.S.C. §§ 3729–3733) and the PFCRA are similar, PFCRA cases are adjudicated before Administrative Law Judges (ALJs), unlike False Claims Act cases, which are litigated in Federal court. The False Claims Act allows the Government to recover treble the amount of the false claim(s), whereas only double damages are

available under the PFCRA. Both statutes also allow for recovery of civil money penalties for false claims; whereas the False Claims Act allows penalties of \$11,000 per false claim, the PFCRA permits a \$5,000 recovery for each false claim. Unlike the False Claims Act, however, the PFCRA authorizes civil money penalties for false statements even if there has been no claim for payment of money.

Use of ALJs can make the PFCRA a potentially faster and lower-cost alternative to recover damages in smaller dollar fraud cases. However, the statute remains a relatively underutilized tool as noted in a 2012 report from the Government Accountability Office (GAO) entitled: “Program Fraud Civil Remedies Act: Observations on Implementation,” GAO-12-275R (January 27, 2012) (hereinafter the “GAO 2012 Report”). According to the GAO 2012 Report, which was based upon a survey GAO undertook of OIGs and interviews with Federal officials, many agencies were not using the PFCRA for several reasons including: a lack of familiarity with the statute; insufficient resources; cumbersome and time-consuming procedures; availability of alternate remedies; and the absence of ALJs in certain agencies that could hear PFCRA cases. As discussed in greater detail below, a survey that the Working Group conducted of CIGIE members in 2013 revealed that a number of these concerns remain, thus underscoring the continuing challenges that inhibit widespread use of the PFCRA to combat fraud.

III. Working Group First Year Accomplishments

The Working Group completed a number of projects during the past year to gain a better understanding of impediments to PFCRA use and develop strategies to address these inhibitors. In addition to preparing the Practitioner’s Guide, the Working Group: (1) developed, in coordination with the Department of Justice (DOJ), templates for agency PFCRA referrals to DOJ to expedite internal DOJ review of such referrals; (2) acquired a better understanding of available processes that facilitate the efforts of agencies that do not employ ALJs to obtain adjudicatory services from other agencies for PFCRA cases; and (3) surveyed OIGs to identify impediments and suggested practices and strategies that OIGs can employ to encourage PFCRA use. These efforts are discussed in greater detail below. Additionally, the Working Group met with several key external organizations to identify impediments and potential solutions to PFCRA usage. This stakeholder engagement included a presentation on administrative remedies including the PFCRA at the Federal Executive Audit Council’s September, 2013 meeting, and an overview of the PFCRA and the Working Group’s efforts at meetings of the Assistant Inspectors General for Investigations in April and November of 2013.

A. Practitioner’s Guide

One impediment to use of the PFCRA that the Working Group identified was a lack of familiarity with the statute and related procedures by governmental personnel. To address this hindrance, the Working Group developed a comprehensive Practitioner’s Guide (Guide) on

conducting PFCRA cases. The Guide contains both a conceptual summary of the PFCRA as well as a procedural walk-through with suggested forms for all major steps in initiating a PFCRA referral and in conducting litigation before an ALJ. The Working Group believes this Guide will be extremely useful to OIG and agency employees unfamiliar with the PFCRA as well as to experienced fraud specialists. The Working Group obtained useful comments on the Guide from various OIG components and from civil fraud experts at the Department of Justice. The CIGIE approved this Guide on November 19, 2013, and the Guide was subsequently distributed to all OIGs. The Guide provides helpful instruction on the following subjects:

- Overview and history of the PFCRA;
- Requirements for agency regulations;
- The PFCRA’s key liability provisions, including the elements of a PFCRA claim and guidance on whether the party that submitted the false claim or statement possessed sufficient knowledge of the falsity to allow the claim to proceed;
- Available remedies under the PFCRA and other authorities;
- Procedural requirements for commencing and litigating PFCRA actions; and,
- Relevant sample forms, templates, pleadings, and other documents.

As this list indicates, the Guide contains a detailed and useful explanation of the requirements and elements of the statute. For example, the section on liability supplies relevant case law and discussion on the PFCRA’s definitions of key terms such as “claim” and “knows,” which are similar to definitions of the same terms under the False Claims Act. Significantly, the Working Group obtained insightful recommendations and comments from experienced fraud practitioners at DOJ in developing this section. In addition, the Guide contains practical information, including many useful forms and templates such as a form for drafting a memorandum seeking DOJ approval for commencing a PFCRA action, a sample complaint, and a sample interagency agreement and points of contact for assistance in obtaining the services of an ALJ from another agency. The Guide also provides advice on other non-PFCRA related issues, such as alternative remedies for addressing fraud and judgment collections.

The Working Group believes that distribution of the Guide will significantly boost understanding and awareness of the PFCRA, and also provide a clear road map agencies can use to pursue a PFCRA case from start to finish. Increased awareness will likely lead to greater collaboration among OIGs, agency personnel, and DOJ attorneys towards pursuit of PFCRA actions and other tools to prevent, detect and redress “small-dollar” fraud.

B. Templates to Expedite DOJ Consideration

Another impediment to PFCRA usage that the Working Group learned of was the concern by some agencies regarding delays (or perceived delays) with respect to DOJ’s consideration of referrals from agencies. The GAO 2012 Report stated on page 3 that “[o]n

average, DOJ's reviews of PFCRA cases took 211 days rather than 90-days as prescribed by PFCRA." A survey GAO conducted in connection with this report found that a number of OIGs viewed the DOJ review time as a deterrent to PFCRA use. According to the GAO, one of the factors DOJ cited as contributing to the time needed for these reviews was "time for DOJ follow-up with the referring agencies to obtain necessary information."

To alleviate this impediment, the Working Group worked with personnel from DOJ's Civil Fraud Section within the Commercial Litigation Branch on the development of several templates agencies can use in submitting PFCRA referrals. Among the forms included in the Guide, Appendices A and D contain a routing cover form for agencies that are sending PFCRA referrals to DOJ for suit authorization and a sample memorandum that agencies should include with their referral to DOJ. These forms should, in all but the most complex or factually unique PFCRA cases, provide DOJ with the specific information it needs to determine whether to authorize the PFCRA litigation. By organizing the information submitted to DOJ in connection with a PFCRA referral, and providing a routing form for internal DOJ reviewers, these forms benefit DOJ by reducing the amount of resources needed to consider agency referrals. As such, it is anticipated that these forms will expedite DOJ consideration of PFCRA referrals.

C. Efforts to Identify Presiding Officials

Under the PFCRA, agencies must litigate cases before ALJs or other officials appointed under a similar authority. The GAO 2012 Report advised that another hindrance to use of the PFCRA was the absence of ALJs at certain agencies such as the Department of Defense. The Working Group has identified a resolution to this ALJ-availability problem that agencies can pursue under the confines of the current law, and a proposal that would require legislative action. This Report discusses the legislative proposal in Section III F below.

Several OIGs that responded to the survey GAO conducted in 2011 in connection with the GAO 2012 Report stated that one impediment to use of the PFCRA was that they lacked statutory authority to hire an ALJ. However, the Working Group found that this authority is specifically provided for in 5 U.S.C. § 3344, which provides that an agency (as defined in 5 U.S.C. § 551) can obtain ALJ services from another agency through the Office of Personnel Management (OPM). OPM regulations at 5 C.F.R. § 930.208 identify the information necessary for an ALJ request.

Working Group representatives met with OPM officials to learn about that agency's ALJ Loan Program. This program matches an agency that lacks sufficient ALJ capacity (including workload issues for current ALJs or because an agency does not employ ALJs) with an ALJ available to hear the case from another agency. Once OPM identifies a potential match, the lending and borrowing agencies execute an Economy Act agreement to reimburse the lending agency's costs of the ALJ. The Practitioner's Guide contains information about OPM's ALJ

Loan Program, a citation to the OPM regulation, and templates that agencies can use to borrow ALJ services.

Additionally, under existing law, it appears that appropriation authorities would allow certain agencies to detail ALJs to other agencies on a non-reimbursable basis. GAO has approved non-reimbursable inter-agency details when those details involve a matter similar or related to matters ordinarily handled by the loaning agency and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided.” (B-211373, 64 Comp. Gen. 370, 380 (March 20, 2985). Should they care to do so, it is possible that certain agencies could make ALJs available on a non-reimbursable basis. For example, ALJ services could be available from DOJ under its general law enforcement authority or the Small Business Administration (for small business program cases). DOJ, however, does not, at this time, appear to have ALJs available to serve in this role as only the Executive Office of Immigration Review and Drug Enforcement Administration have ALJs. Those entities appear to fund the ALJs with specific appropriations from offices that do not have general law enforcement authority. The Working Group is exploring several ideas to address this issue as discussed below.

D. Survey/Suggested Practices and Strategies

In October 2013, the Working Group conducted a survey of the IG community to gather current information about PFCRA use and practice among OIGs. The intent of the survey was to supplement responses to the OIG survey that the GAO undertook in 2011 discussed in the GAO 2012 Report. Data from the 2013 Working Group survey shows a slight increase in PFCRA use, ideas for suggested practices and strategies that OIGs can use, and general support for CIGIE legislative initiatives.

1. Results of 2011 GAO Survey

The results of the initial GAO survey revealed a very limited use of this important statute. As the GAO 2012 Report only summarized the responses to the survey, the Working Group obtained the OIG survey responses from GAO so that it could gain a better understanding of OIG concerns.

The survey showed that only six OIGs reported using the PFCRA in Fiscal Years (FYs) 2006 through 2010, and 63 offices advised they did not. During this period, the six OIGs reported making a total of 224 PFCRA referrals to their agencies; the Department of Housing and Urban Development (HUD) OIG was responsible for 211 of these cases, with the remaining 13 PFCRA referrals split among the other OIGs. For reasons that are not explained in the GAO 2012 Report or the survey responses, GAO reported that based upon information provided by DOJ, agencies referred only 141 PFCRA cases to DOJ for approval, of which 135 came from HUD. HUD OIG advised that a number of PFCRA cases are settled prior to DOJ referral so it is possible that the different numbers reflect this process.

Many of the respondents that reported they had not used the PFCRA advised that their agencies were not subject to the PFCRA (possibly because they were legislative branch agencies) or that their agencies had not adopted PFCRA regulations. In fact, at the time of the survey, 61% of the OIG respondents (44 OIGs) reported that their agencies did not have any PFCRA regulations in place; many OIGs reported that the lack of regulations was a determining factor preventing them from pursuing PFCRA claims.

According to the GAO 2012 Report on page 26, OIGs cited a variety of additional impediments to use of the PFCRA, including the following:

Factors Identified by OIGs That Limited Their Use of The PFCRA in Response to GAO Survey	Number of IGs That Identified Limitations
Use of alternative processes for false claims*	15
Limited resources to implement the PFCRA	10
PFCRA recoveries sent to the Treasury, not retained by defrauded agency	9
\$150,000 limitation on PFCRA claims is too low	9
PFCRA process is too cumbersome	9
Regulatory agencies have few issues with false claims	7
Lack of available ALJs	6

* For example, the HHS OIG reported that it prefers using its delegated statutory authority to seek civil monetary penalties because the statute allows greater monetary penalties than under the PFCRA, includes exclusion of health care providers, and allows the penalties to be retained by the appropriate program's trust funds.

In responding to the GAO survey, many OIGs also expressed support for revisions to the PFCRA proposed by the DOJ National Procurement Fraud Task Force in a report issued in June of 2008. These proposals were largely incorporated into a legislative reform package developed by the CIGIE Legislation Committee. As reported on page 28 of the 2012 GAO Report:

Proposed Revisions to the PFCRA	OIG Responses to GAO Survey Questions			
	Yes	No	Undecided	No Answer
Should the \$5,500 PFCRA penalty amount be changed?*	27	6	33	5
Should the \$150,000 claim threshold be changed? **	37	4	25	5
Should the IG be able to refer PFCRA cases directly to DOJ without going through the agency?	38	5	22	6
Should agencies retain PFCRA recoveries?	51	2	13	5
Should the definition of presiding officer in the PFCRA be amended to include agency boards of contract appeals or military judges?	20	3	40	8
Would you use the PFCRA more if the claim ceiling and/or penalty amounts were increased?	24	17	24	6

* Most OIGs advised they thought this amount should be increased to \$10,000.

** Most OIGs reported that this amount should be increased to \$500,000.

2. 2013 PFCRA Working Group Survey

The Working Group conducted a follow-up survey of OIGs in 2013 to supplement the 2011 GAO survey information and obtained responses from 63 OIGs. The 2013 survey revealed that slightly more OIGs were making use of the PFCRA than indicated by the GAO survey, and that HUD OIG continued its impressive success via its robust PFCRA practice.

Specifically, HUD OIG reported that between FYs 2011 and 2013, it made 173 PFCRA referrals (of these referrals, approximately 100 were open matters at the time of the survey). For cases closed during the reporting period, the HUD OIG advised that **\$5.4 million** in judgments or settlements were obtained on approximately 60 cases. Of those 60 cases, 49 matters settled prior to the case going to adjudication before an ALJ. HUD also obtained favorable adjudications in the eleven remaining cases; most of those favorable adjudications involved default judgments. HUD's experience suggests that when actively considered and used as an available remedy, the PFCRA can be an effective means to recover significant taxpayer funds that might otherwise be lost. Further, most PFCRA cases that HUD pursued were resolved through settlements or as a result of the defendant defaulting, without the need to conduct lengthy litigation proceedings.

However, only 11 other OIGs reported making PFCRA referrals during FYs 2011 and 2013. This reflects a slight increase of six more OIGs making referrals than seen in the GAO survey. Two of these other OIGs reported that their agency had settled DOJ-approved PFCRA matters before they went to adjudication. One OIG reported obtaining a decision in favor of the Agency through adjudication.

The responses to the 2013 survey indicated continued impediments to use of the PFCRA:

Identified Factors That Limited the Use of the PFCRA	Number of IGs That Identified Limitations
Lack of available ALJs	20
PFCRA recoveries sent to the Treasury, not retained by defrauded agency	19
Use of alternative processes for false claims	16
Resources and costs needed to pursue PFCRA cases are not justified given claims threshold of \$150,000	15
Attorneys in agency's OGC or other agency personnel were reluctant to pursue PFCRA cases due to resources involved, lack of familiarity with the statute, or other factors	15
Agency has not adopted PFCRA Regulations	14
OIG Personnel not familiar with the PFCRA	8
Length of time for agency and DOJ to complete reviews	7

The survey results indicate that some of the identified impediments can be addressed through education and outreach. Efforts by the Working Group that should alleviate concerns

such as a lack of familiarity with PFCRA procedures by OIG and agency personnel, and the length of time for agency and DOJ reviews include: (1) the Practitioner’s Guide; (2) the DOJ templates; (3) contemplated PFCRA training programs; and (4) the Working Group’s planned outreach to attorneys in agency General Counsel offices.

Regarding agency adoption of PFCRA regulations, 44 OIGs responded to the GAO survey in 2011 that their agencies had not adopted PFCRA regulations, but only 14 OIGs reported to the 2013 survey as to the non-adoption of regulations. This reflects considerable improvement, yet, one might have anticipated even a lower number given the fact that Congress extended the PFCRA to designated federal entities in 2008. The Working Group believes that this hurdle can be addressed through outreach and education, or if necessary, through OIG recommendations to their agencies to implement mandated regulations. Indeed, six OIGs noted in their Working Group survey responses that they had recommended that their agencies adopt regulations, and three OIGs reported that they had made recommendations that agencies revise existing regulations. At least one respondent, however, was unable to convince its agency to implement PFCRA regulations, even after the OIG drafted the regulations for the agency.

Certain identified impediments appear to be more intractable. Twenty OIGs reported that the absence of ALJs was an impediment to use of the statute. As discussed above, the Working Group has attempted to address this concern by providing information about the OPM ALJ Loan Program in the Practitioner’s Guide and including templates to facilitate renting ALJ services. However, it should be noted that of the 20 OIGs reporting that their agencies did not have an ALJ, six OIGs reported that their agencies were unwilling to obtain ALJ services from another agency on a reimbursable basis. Discussions at Working Group meetings revealed that some agencies were not willing to pay for the costs of renting ALJ services from another agency absent a financial incentive to do so, i.e., the recovery of funds to compensate for the fraudulent induced payment.

Further impediments identified in the 2013 survey would require a legislative solution. In response to survey questions asking about legislative revisions of the PFCRA, a number of OIG respondents indicated that they would be more willing to use the PFCRA to deter fraud if changes could be made to the statute:

Statutory Revision	Number of OIGs that would be more likely to use the PFCRA if revision made	Percentage of OIGs answering question
Allowing agency to retain monetary recovery in a PFCRA action to repay fraudulent claims	29	78.3%
Allowing OIG to retain monetary recovery in a PFCRA action to repay the costs of investigation.	27	73%
Allowing OIGs to litigate PFCRA cases rather than relying on the agency to conduct such litigation.	23	62%

Statutory Revision	Number of OIGs that would be more likely to use the PFCRA if revision made	Percentage of OIGs answering
Creating a government-wide panel of ALJs or other officials, such as Boards of Contract Appeals judges, that could hear PFCRA cases	22	59.4%
Expanding the category of officials within agency that could decide PFCRA cases other than ALJs	21	56.7%
Expediting DOJ review of PFCRA referrals by allowing greater delegation within DOJ	19	51.3%
Increasing the amount of the claim that could serve as the basis for a PFCRA action to an amount from \$150,000 to \$500,000	18	50%
Increasing the amount of the claim that could serve as the basis for a PFCRA action to an amount from \$150,000 to \$300,000	17	48.5%

As reflected above, survey respondents generally supported an increase in the PFCRA jurisdictional cap of \$150,000 per claim and a revision that would permit OIGs to make DOJ referrals and to litigate PFCRA cases. Responding OIGs also overwhelmingly supported revising the PFCRA to allow agencies to retain PFCRA recoveries to repay fraud losses (79.5% support) and using those recoveries to offset OIG investigative costs (74.4% support).

The survey also provided insight on efforts that OIGs have made to increase the use of the PFCRA. Relevant responses are discussed in the following section. For example, one responding OIG reported working with the agency to create a PFCRA program and identify an ALJ who would handle PFCRA cases in the future, and another OIG added a section related to the PFCRA to its investigations manual.

3. Suggested Practices and Strategies Revealed by Survey Responses

In developing the Practitioner’s Guide, the Working Group identified and incorporated a number of suggested practices and strategies to promote use of the PFCRA. In addition, the GAO survey and the 2013 Working Group survey identified other measures and strategies that OIGs can employ to promote the use of the PFCRA to deter fraud. In responding to the GAO survey, the HUD OIG identified a number of factors that contributed to its success in pursuing PFCRA cases. Factors identified by the HUD OIG included:

- The support of HUD’s top management officials;
- Applying the PFCRA to previously completed successful criminal prosecutions, which required little additional review;
- Proactive involvement by the HUD OIG including attorney assistance to identify potential PFCRA cases and additional training on the PFCRA;

- Close coordination within HUD between the HUD OIG and the Office of General Counsel, and between HUD and DOJ prior to referral of a PFCRA case;
- A standardized case documentation format for potential PFCRA cases with fully developed supporting documents; and,
- A PFCRA case tracking system through the use of a database.

In responding to the Working Group's 2013 survey, HUD OIG amplified on these points, noting as follows:

HUD and HUD OIG work very closely to identify, develop and refer viable PFCRA cases. A streamlined procedure for referrals has expedited the forwarding of proposed PFCRA [cases] from HUD to DOJ, has greatly decreased the time it takes for DOJ to make its decision, and had also greatly increased the number that are actually approved. This translates into more dollars recovered.

Members of CIGIE also reported that they are taking a number of steps to promote PFCRA cases in responding to the Working Group 2013 survey:

- 11 OIGs had met with their agency's OGC to encourage agency referrals.
- 9 OIGs had developed internal procedures governing PFCRA referrals.
- 8 OIGs had trained their own staff on the PFCRA.
- 7 OIGs had implemented methods other than development of OIG procedures to encourage agents and other OIG employees to consider PFCRA in low-dollar fraud cases.
- 6 OIGs had recommended the adoption of PFCRA regulations in cases where their agencies had not implemented regulations.
- 5 OIGs had taken other steps to promote agency use of the PFCRA (some of these measures are discussed below).
- 3 OIGs had reviewed their agency's PFCRA regulations and submitted recommendations of revisions of their agency's adopted PFCRA regulations.
- 2 OIGs had trained agency personnel on the PFCRA.
- 2 OIGs had assisted their agency in writing PFCRA referrals to DOJ.
- 1 OIG had assisted the agency in litigation and/or collection judgments.
- 1 OIG had audited the extent of agency use of the PFCRA.

In identifying additional measures that OIGs had taken, the Interior OIG reported as follows:

The DOI AIGI issued a blog on the DOI OIG SharePoint site, providing information to all OIG employees regarding PFCRA and encouraging its use. DOI OIG officials met with the DOI Office of Hearing and Appeals and obtained their agreement to provide ALJ services for PFCRA cases. A new point of contact was

obtained within the Solicitor's Office to develop a PFCRA program. The DOI OIG Administrative Remedies Director worked on CIGIE Investigations' PFCRA Handbook and had discussion with the DOI Solicitor's Office to collaborate on establishing policies and procedures.

Additionally, the response from the NSF OIG included the following information:

Our office has made significant efforts to ramp up the use of PFCRA. We had representatives attend the CCIG training session on PFCRA and shared the information with our investigative group. We participate in the CIGIE PFCRA working group, and provided outreach about CIGIE's PFCRA initiative to the AIGI meeting. We added a section about PFCRA to our Investigations Manual, to set forth related OIG procedures for making a PFCRA referral to the agency and incorporate consideration of PFCRA actions into our investigations (similar to the way we now regularly consider government wide suspension and debarment). We recently issued our first PFCRA referral memo to NSF, and have been communicating with our Office of General Counsel point of contact about the process. Finally, we have included a PFCRA side bar in our upcoming Semiannual report for outreach purposes.

Finally, one Working Group member offered the following thought on expanding PFCRA use: Agencies may increase the number of PFCRA cases they refer by using convictions to establish liability not only for an individual in a criminal case, but also the individual's employer and other parties that may be vicariously liable for the defendant's actions.

The responses of CIGIE members discussed above identify a number of different measures that OIGs can employ to promote the use of the PFCRA by their agencies. All of these approaches indicate that an office's commitment to the PFCRA as an integral tool to fight lower-dollar fraud cases is critical towards any success an OIG may have in this area.

IV. Future Anticipated Actions

A. Development of Training Programs for OIG Personnel

Development of a training program on the PFCRA will be a critical step to increasing knowledge of this enforcement remedy within the OIG community. OIG responses to the Working Group's 2013 survey indicated broad support for implementation of a PFCRA training program. 32 OIGs responded that personnel from their offices would be interested in obtaining training on the PFCRA to make better use of this administrative remedy to address fraud.

The Working Group will attempt to mirror the success that the CIGIE Investigations Committee Suspension and Debarment Working Group has had in developing training programs

on suspension and debarment for various sectors of the OIG community. The Group will put together a subgroup to develop a curriculum and identify trainers in coordination with the CIGIE Training Institute. The Working Group's internal discussions and the responses to the 2013 survey have already identified OIG personnel who would be willing to help provide training in this area. The proposed training program will introduce basic PFCRA concepts and convey suggested practices in the preparation, as well as litigation, of PFCRA cases. The Working Group anticipates that the training will feature a practical exercise using forms from the Practitioner's Guide.

In addition, the Suspension and Debarment Working Group has offered to include sessions at the upcoming Spring 2014 workshop on coordination of remedies and on the PFCRA. These sessions will raise awareness of the PFCRA for a targeted audience that regularly deals with fraud and matters involving false statements at agencies across the Government.

B. Outreach to General Counsel Contacts

Agency Offices of General Counsel (OGCs) are crucial stakeholders in the PFCRA process. Many of these offices, however, are unfamiliar with the PFCRA, which impedes effective use of the statute. Outreach to this sector of the government is, therefore, critical to enhancing use of the PFCRA as a tool to fight fraud. However, unlike OIG attorneys, who communicate through the Council of Counsels to the Inspectors General, the Working Group was not able to identify any organized forum that allows all OGC attorneys to exchange ideas on the most efficient ways to protect the government from fraud and false statements. During the past year, the Working Group approached several groups, including the General Counsel Exchange, an organization of members of various OGCs, and the Federal Electronic Discovery Working Group, but neither organization felt that the PFCRA fit into their list of priorities.

In order to address this lack of capacity, the Working Group obtained OGC contact information in the OIG responses to the 2013 survey. Further, the Group intends to work with the DOJ Civil Fraud Section and the Interagency Suspension and Debarment Committee (ISDC) to build up a list of OGC attorneys that participate in investigations and litigation under the False Claims Act cases and suspension/debarment matters. The goal is to distribute the Practitioner's Guide and offer training to OGC personnel and see whether there is any interest in creating an umbrella group for the PFCRA and other affirmative enforcement efforts similar to the ISDC.

C. Seek DOJ Willingness to Issue Memorandum Promoting PFCRA

Another important step in promoting use of the statute is to obtain greater acceptance of the PFCRA by civil fraud Assistant United States Attorneys (AUSAs) as an effective means to address lower-dollar fraud cases. Working Group members have experienced occasions when AUSAs were reluctant to close out such cases that had significant PFCRA potential. Although

acting with good intentions, these AUSAs were also unable to prioritize the lower-dollar cases given the other matters competing for their time and resources.

The Working Group has held preliminary discussions with DOJ regarding the possible development of a memorandum or other form of communication encouraging AUSAs to consider use of the PFCRA to address lower dollar civil fraud and false statement cases. It is anticipated that such a memorandum would accomplish the following: (1) identifying more cases that could be candidates for PFCRA litigation, and (2) developing a process so that AUSAs gained comfort in reviewing appropriate cases and making a determination that they were more suitable for the PFCRA than False Claims Act litigation. Working Group representatives have found that when AUSAs are willing to make such determinations, and issue them in writing, the DOJ's ultimate review and authorization of the case as appropriate for the PFCRA is greatly expedited. In one such case, DOJ authorized the PFCRA action in approximately 30 days.

D. Seek DOJ Willingness to Fund ALJs to hear PFCRA Cases

As discussed above, the Working Group's research indicates that, under legal appropriation authorities, agencies with ALJs may detail those ALJs to other agencies on a non-reimbursable basis if the detail is consistent with the intent of the lending agency's appropriation. Given DOJ's law enforcement mission, it could theoretically fund Economy Act agreements or detail existing ALJs. Currently, however, the only DOJ components that appear to have ALJ positions are the Drug Enforcement Administration (DEA) and The Executive Office for Immigration Review (EOIR). DEA ALJs appeals include physician objections to DEA denying the ability to prescribe certain scheduled drugs. EOIR ALJs adjudicate immigration cases. Both of those offices are funded through separate line items in DOJ's appropriation, so it does not appear that DOJ's general law enforcement and anti-fraud mission would currently allow use of those ALJs in PFCRA matters.

The Working Group is considering consulting with DOJ to determine if the Department would support a process that would allow those agencies that lack ALJs to use DOJ ALJs for adjudication of PFCRA cases. This could occur if DOJ's appropriation language were changed so that ALJs were funded through more general language rather than the specific purposes currently used in connection with funding DEA and EOIR ALJs. It is unclear whether DOJ would support such an initiative.

E. Continued Efforts to Develop Legislative Proposals

In the past year, the Working Group has focused its efforts on identifying measures to promote the use of the PFCRA within the confines of the current law. However, it is widely recognized that statutory changes could improve PFCRA usage. The CIGIE Legislation Committee previously developed a package of proposed amendments of the PFCRA to allow

greater use of the statute to fight fraud. In the upcoming year, the Working Group anticipates coordinating with the Legislation Committee to promote legislative proposals that will supplement these PFCRA reform proposals.

One proposal that the Working Group is exploring involves development of specific amending language authorizing Boards of Contract Appeals (BCAs) to hear PFCRA cases. In connection with this idea, Working Group representatives met with judges from the Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals to gauge the Boards' willingness to adjudicate PFCRA cases in the event that such a change occurs. Judges from both Boards indicated a willingness to take on PFCRA cases, but expressed resource concerns and a preference that BCA procedures would apply rather than PFCRA procedures.

V. Conclusion

The Working Group believes it was successful in identifying impediments to the use of the PFCRA to fight fraud and development of solutions to overcome these impediments. The Working Group provided outreach and helped to generate an important discussion of the PFCRA, which will help create synergy within the OIG community to focus on increased use of this tool. The Working Group also developed practical products that will assist these efforts, including the Practitioner's Guide and the DOJ templates. The 2013 PFCRA survey for OIGs also represented a helpful step towards gaining a greater understanding of continued hindrances to the use of this remedy, identification of suggested practices and strategies, and increasing education, outreach and coordination between OIGs and agency OGCs that need to work together to pursue PFCRA cases. The Working Group's survey and discussions reveal an apparent willingness by agency OIGs and a number of agencies to begin using this statute to recover funds in small dollar fraud cases, which would otherwise go unrecovered.

The Working Group intends to continue its work in the future, as members of the Group will be engaged in developing and deploying training and outreach for OIG, agency and DOJ personnel. Further, the Working Group intends to develop recommendations to supplement the CIGIE's legislative PFCRA reform proposals, particularly a proposal to expand the adjudication of PFCRA cases beyond ALJs to BCAs. These efforts will increase familiarity with the statutory scheme, and are anticipated to augment the use of the PFCRA for fraud deterrence and remedies, as the IG community did with government-wide suspension and debarment.