

Renewable Energy Industry in False Claims Act Crosshairs

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The renewable energy industry is facing uncertainty about the direction of energy policy and future of the Inflation Reduction Act (IRA).

President Trump has initiated a severe curtailment of federal investments in renewable energy, and some members of Congress have suggested investigating federal loans recently dispensed to renewable energy companies. Possible government investigations targeting some market participants can be initiated using legislation that was commonly deployed during the Biden Administration – the False Claims Act (FCA).

Building Upon a Biden Era Trend

The FCA allows for government enforcement litigation and whistleblower actions. During the Biden Administration, more than 1,400 new FCA matters were initiated by whistleblowers. That's the largest number of newly initiated actions in a single year, and a 15 percent increase over the previous one. It's not just whistleblowers who filed actions; the DOJ initiated 423 cases, the second-largest number filed in a single year. All told, the DOJ recovered approximately \$2.9 billion through judgments and settlements, making fiscal year 2024 the sixteenth straight year in which recoveries surpassed \$2 billion.

Under the second Trump Administration, this trend will likely continue but this time with a particular focus on the renewable energy industry. Given both the passage of sweeping legislation by the Biden Administration like the Bipartisan Infrastructure Law (BIL) and the IRA, which earmarked billions of dollars for a variety of renewable energy projects, and the Trump Administration's freeze on further disbursement of funds from the IRA, renewable energy market participants should anticipate vigorous review of government funding and

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possibly defending against aggressive FCA enforcement litigation concerning their use of those federal loans.

Nevertheless, renewable energy companies can successfully manage FCA investigations, and even significantly reduce potential penalties, with enhanced compliance procedures, conducting routine risk assessments and monitoring government contracting loan.

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