

Text of Proposed Regulations

A new subdivision (d) is added to section 400.4 of Title 13, Part 400 to read as follows:

(d) If the state or a local government decides not to intervene or supersede in a qui tam action, the qui tam plaintiff may not pursue the qui tam action on a pro se basis unless the qui tam plaintiff is an attorney eligible to represent a party before the court in which the qui tam action is proceeding.

New sections 400.5-400.8 are added to Title 13, Part 400 to read as follows:

400.5 Public disclosure bar motions

The state shall not seek to dismiss, and shall oppose the dismissal, of a qui tam action pursuant to paragraph (b) of subdivision nine of section one hundred ninety of the New York False Claims Act in the event that:

(a) any cause of action in the qui tam plaintiff's complaint would be dismissed other than a cause of action alleging substantially the same allegations or transactions that have been publicly disclosed in a manner set forth in such paragraph (b); or

(b) any cause of action in the qui tam plaintiff's complaint would be dismissed pursuant to subparagraph (ii) of such paragraph (b) solely because of an alleged public disclosure in a federal report, hearing, audit, or investigation.

400.6 Application of the damage multiplier

The state or a local government's damages shall be trebled or doubled pursuant to section one hundred eighty-nine of the New York False Claims Act before any subtractions are made for compensatory payments received by the government from any source, including but not limited to the defendant, or before any subtractions are otherwise made because of any offset or credit received by the government from any source, including but not limited to the defendant.

400.7 Obligations

(a) For purposes of paragraph g of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly makes, uses, or causes to be made or used, a false record or statement material to such obligation to pay or transmit money or property to the state or a local government.

(b) For purposes of paragraph h of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly conceals or who knowingly and improperly avoids or decreases such obligation to pay or transmit money or property to the state or a local government, or who conspires to do the same.

400.8 Payment of costs and attorneys' fees

A person who violates section one hundred eighty-nine of the New York False Claims Act shall be liable for the costs, including attorneys' fees, of a civil action brought to recover penalties or damages. Such person shall pay all costs borne by the state, a local government, a qui tam plaintiff, or counsel, as may be applicable. All such costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state, local government or a qui tam plaintiff prevails in the action.