

YOUR COMPANY HAS BEEN SERVED WITH A CIVIL INVESTIGATIVE DEMAND: NOW WHAT?

Healthcare Enforcement Compliance Institute
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1:00pm - 2:00pm Breakout Session

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What is a Civil Investigative Demand?

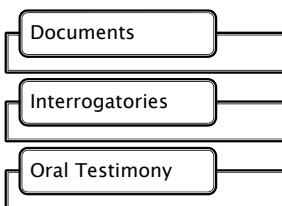
- ▶ Often called a "CID."
- ▶ Pre-litigation investigative tool used by the government to request information.
- ▶ Used by both the federal and state governments during investigations pursuant to their statutory authority.

Civil Investigative Demand – Authority

- ▶ **31 U.S.C. § 3733** – Authorizes the Attorney General, or his designee, to serve a CID on a person or entity if there is reason to believe there is evidence relevant to a False Claims Act investigation.
- ▶ Many states have similar provisions.
 - For example, Virginia's state FCA, the Virginia Fraud Against Taxpayers Act (Va. Code § 8.01-216.1 *et seq.*), contains language similar to the federal FCA.

What Can The Government Obtain?

- ▶ **CID Scope is Broad** – government must have "...reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation..."



31 U.S.C. § 3733

CID INVESTIGATIVE TOOLS

What Does It Mean If Your Company Has Received A CID?

- ▶ Essentially, it means the serving government entity believes the company may have evidence related to the subject(s) of its investigation.
- ▶ The company may or may not be the target of the government's investigation.
- ▶ A CID can stem from a *qui tam* case or from an investigation that is government initiated.

What Can A CID Tell You?

- ▶ Can sometimes indicate the stage of the investigation.
- ▶ Can often indicate the potential subject matter of the investigation based on the requests in the CID.
- ▶ Can indicate what government entity/entities may be investigating the company (national vs local in scope).

What Happens After A CID Is Received?



Best Practice Considerations

- ▶ Reach out to company counsel right away.
- ▶ Contact the government ASAP (usually through counsel).
- ▶ Contact IT/affected staff to ensure data-retention procedures are put in place so that the company can preserve any information requested by the government (i.e. hold letter, etc.).
- ▶ Involve an ESI vendor early in the process.
- ▶ Cooperate in good faith.
- ▶ Complete production by the deadline unless an extension has been granted by the government.

Result of Noncompliance?

- ▶ **Noncompliance with a Civil Investigative Demand can result in the issuing government entity seeking court enforcement.**
- ▶ **For example:**
 - United States can file a petition for enforcement - 31 U.S.C. § 3733(j)(1)
 - Commonwealth of Virginia can file a petition for enforcement - Va. Code § 8.01-216.18.

Are CIDs Only Used in FCA Cases?

- ▶ The short answer is no. CIDs are used in contexts other than FCA investigations.
- ▶ Some examples are:
 - *Antitrust Investigations* - 15 U.S.C § 1312
 - *Consumer Financial Protection Investigations* - 12 U.S.C § 5562

Some Examples of CIDs

- ▶ USAO (NY) SERVED ELI LILLY WITH A CID REQUESTING DOCUMENTS AND INFORMATION RELATING TO CONTRACTS WITH PHARMACY BENEFIT MANAGERS (2016); <https://www.statnews.com/pharmalot/2016/07/29/eli-lilly-opioids-cancer/>
- ▶ DOJ CID SEEKING INFORMATION IN CONNECTION WITH SALES, MARKETING OF FLOCHEC, QUANTAFLO DEVICES FROM CR BARD INC. (2017); <http://bit.ly/2ve1r5Y>

QUESTIONS????