Regulatory Flexibility Analysis

1. Effect of rule on small businesses and local governments. (A) Small businesses. By virtue of its subject matter, the rule will have no impact on small businesses, unless the business becomes involved in litigation under the Act. For example, pursuant to section 400.5, a small business acting as a qui tam plaintiff may now pursue causes of actions that might otherwise have been dismissed pursuant to the statutory public disclosure bar. Under section 400.6 it is now clear that a small business that brings a successful qui tam action will receive a larger award than if the Act had been interpreted to apply the damage multiplier on the net, not gross, damages of the fraud. A small business that is liable under the Act will not be able to avoid the full effect of the damages multiplier. Section 400.4(d) also reduces the risk of a non-meritorious or abusive qui tam action being litigated against a small business. (B) Local governments. The rule may apply to every county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state, as defined in section 188(6) of the Act. Local governments will benefit overall from the rule because it encourages more meritorious qui tam actions to be filed on their behalf, clarifies that the full damage multiplier is applied to recoveries, and will deter fraud against such governments.

2. Compliance requirements: The rule imposes no compliance requirements.

3. Compliance costs: The rule imposes no compliance costs.

4. Feasibility of compliance: Because the rule does not impose any compliance requirements, but only clarifies the viability of certain claims brought and the scope of liability under the Act, small businesses and local governments will easily be able to comply with the rule.

5. Minimizing adverse impact: The rule will not have a significant adverse impact on small businesses or local governments. Indeed, local governments will benefit from the rule from increased

recoveries of fraudulently obtained, or retained, funds and property. A handful of small businesses found to have defrauded the government will be potentially adversely impacted because the rule prevents them from avoiding the full effect of the damages multiplier. The rule minimizes these effects by protecting small businesses from abusive or non-meritorious qui tam actions litigated on a pro se basis by qui tam plaintiffs.

6. Economic and technological feasibility: The rule imposes no technological requirements.

7. Local government and small business participation: In order to ensure that small businesses and local governments have an opportunity to participate in the rule making process, a copy of the proposed rules has been sent to the Executive Director of the New York State Association of Counties, the New York Conference of Mayors, and the Taxpayers Against Fraud Education Fund. A copy of the proposed rules will also be posted on the web site of the Attorney General of the State of New York.