



## Construction Industry Round Table

## Regulatory News

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### 7/20/09 – New Changes in Law Leave Harmful Legal Uncertainties

The recently enacted Fraud Enforcement and Recovery Act, P.L.111-21, which CIRT opposed, included modifications to the Civil Investigative Demand (“CID”) process. These changes are designed to expand the use of CIDs by the Department of Justice (“DOJ”), and they raise several important policy issues that members of ATRA believe the DOJ should clarify and define. As such, they warrant the DOJ instituting a formal rulemaking process to establish Departmental regulations concerning the fair and balanced use of these powerful investigative tools in the interest of all stakeholders.

The law signed by President Obama on May 20, 2009, makes three important changes to the CID provisions. First, the legislation authorizes the Attorney General to delegate authority to issue CIDs. Second, the legislation permits the DOJ to share information obtained through use of a CID with relators (i.e., those relating the alleged fraud, etc.) upon a determination that “it is necessary as part of any false claims act investigation.” Third, the legislation permits broad use of such information, including: *“any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency.”* (Emphasis added). Any and all of these modifications, which loosen confidential use of information being obtained under a CID, may prove detrimental to the target of a investigation (or even a third party that is drawn in) if the Justice Department does not establish firm guidelines and/or rules to govern their application.