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False Claims Act Enforcement in 2025: New Risk Areas for Government Contractors

Prepared for ACC-NCR

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September 25, 2025



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Agenda

FCA Enforcement in 2025: Trends and Developments

Case Study # 1 – The Hotline Report

Case Study # 2 – DOJ Civil Investigative Demand

Case Study # 3 – Internal Investigation and Disclosure Issues

Questions?

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What is your level of familiarity with the False Claims Act?

a.) Very



b.) Moderate



c.) Not familiar



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What aspects of managing FCA risk are most relevant to you?

a.) Developing compliance programs and policies



b.) Best practices for responding to DOJ investigations



c.) Effective approaches to reports of misconduct.



FCA Enforcement in 2025: Trends and Developments



Big Picture: the FCA landscape in 2025

- Robust enforcement of the FCA aligns with new administration's focus on combating waste, fraud, and abuse.
- DOJ embracing FCA as an enforcement tool to advance key policy priorities. Defending *qui tam* statute against constitutional challenge.
- *Qui tam* suits continue to drive investigations after record-high in FY 2024 (979 *qui tam* suits compared to 713 in FY 2023 and 659 in FY 2022).
- New compliance obligations in areas such as cybersecurity.

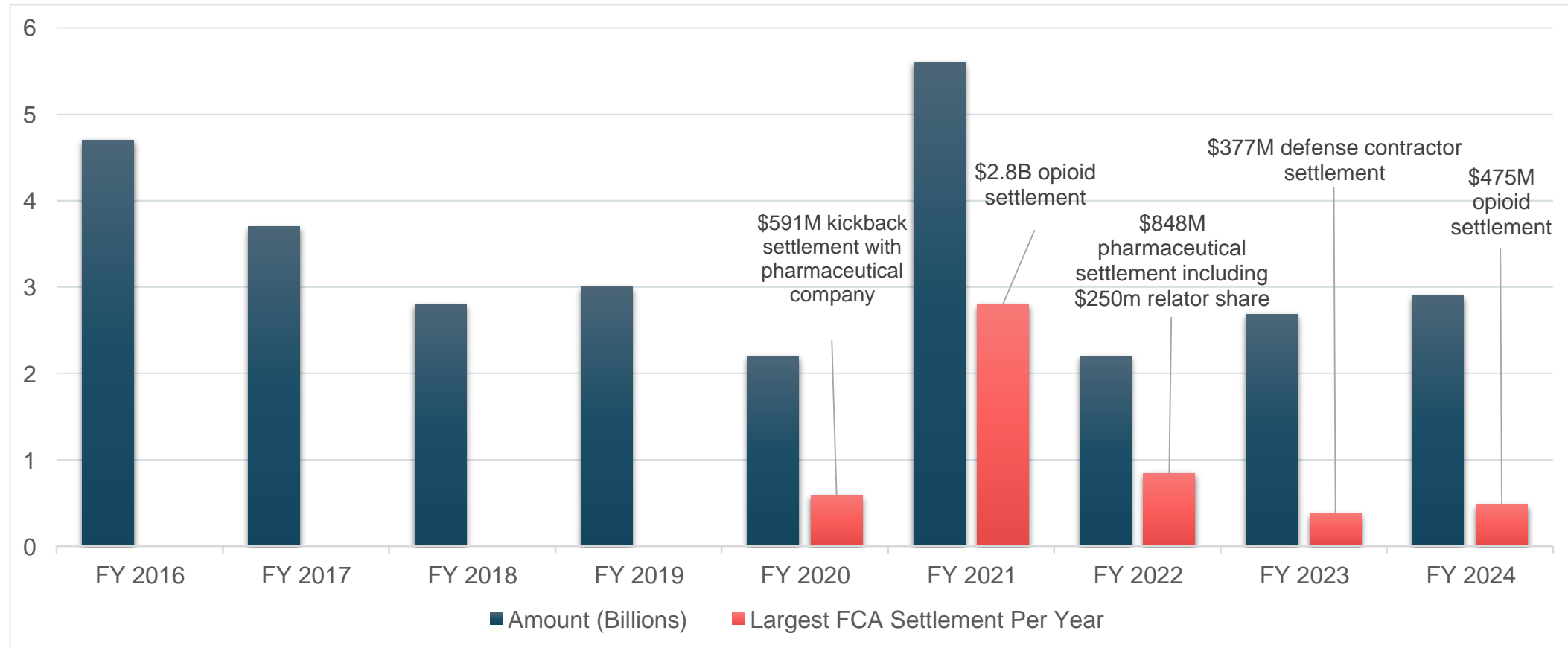


FCA Essentials

- Primary civil remedy to combat fraud against the government (31 USC § 3279 *et seq.*).
- Imposes liability for knowingly presenting, or causing to present, false or fraudulent claims for payment to the government.
- Treble damages (3x losses) plus per-claim penalties ranging from \$14k to \$28k.
- Majority of recoveries originate from suits filed by *qui tam* relators.
- DOJ recovered \$2.9B in FY 2024 in FCA matters, of which \$2.4B arose from *qui tam* suits. \$403M in relators' awards.
- In FY 2024, DoD-related FCA recoveries dropped but recoveries in “other” cases jumped by more than 3x to \$1.1B in FY 2024. Nearly 60% of DOJ's settlements and judgments related to healthcare.

FCA Recoveries

DOJ's FCA Settlements and Judgments Are Relatively Consistent Year to Year





“Fairness, Focus and Efficiency” & DOJ’s New White Collar Priorities

- May 12: Head of DOJ’s Criminal Division issued a division-wide memorandum articulating DOJ’s new approach to white-collar criminal enforcement.
- Gives direction to Criminal Division.
- Provides critical clarity on the direction of white collar enforcement under Trump DOJ.
- Directs the Fraud and MLARS Sections to review all existing corporate agreements for potential early termination of DPAs, NPAs and monitorships.

“Fairness, Focus and Efficiency” & DOJ’s New White Collar Priorities

DOJ’s identified “**high impact**” enforcement areas include:



Key FCA Case Law Developments

Qui Tam Constitutional Attack

U.S. ex rel. Zafirov v. Florida Medical Associates, LLC **(11th Circuit)**

- Appeal of Middle District of Florida decision concluding that the *qui tam* statute is unconstitutional in violation of the Appointments Clause. Departure from precedent.
- 11th Circuit oral argument set for the week of December 8, 2025.
- Issue: whether relators are Officers of the United States.
- Follows Justice Thomas dissent in *Polansky* citing “serious constitutional questions” about *qui tam* device.
- DOJ defending constitutionality of *qui tam* provision.

U.S. ex rel. Montcrief v. Peripheral Vascular Associates, 133 F.4th 395 (5th Cir. 2025)

- In concurring opinion, U.S. Circuit Judge Kyle Duncan suggested *qui tam* statute may violate the Appointments and Take Care Clauses.



Other Issues and Case Law Developments

FCA Penalties

U.S. ex rel. Taylor v. Healthcare Associates of Texas (N.D. Tex. Feb. 26, 2025)

- After a two-week trial in a Medicare fraud *qui tam* case, the jury rendered a verdict finding the defendants submitted more than 21,000 false claims to Medicare, resulting in ~\$2.8 million in single damages.
- The relator sought final judgment of nearly ~\$8.2 million in trebled damages and **~\$450 million** in civil penalties. Defendants argued the requested civil penalties were unconstitutionally excessive under the Eighth Amendment.
- The court **reduced the penalties** to three times the government's damages (~\$8.2 million), finding (1) that the Excessive Fines Clause of the Eighth Amendment applies to the FCA and (2) that the penalties urged by the relator were **excessive in violation of the Eighth Amendment**.
- The “ratio of penalty to damages” urged by the relator was “over 100 to 1, and is out of line with additional similar FCA cases.”

Takeaways:

- FCA penalties are statutory, ranging from >\$14k to >\$28k per claim, as adjusted each year.
- Arguments that penalties are unconstitutionally excessive may arise in jury cases involving large numbers of claims.

Cybersecurity and the FCA

DOJ and relators continue to pursue FCA cases alleging violations of cybersecurity requirements—even in the absence of a breach.

- Non-compliance with DFARS 252.204-7012 and NIST SP 800-171 as well as privacy data.
- Misrepresentations of cybersecurity practices.
- Failure to timely report cyber breaches or incidents where required.

MORSECORP (Mar. 2025)

- \$4.6M settlement with defense contractor.
- Allegedly did not “fully” implement NIST 800-171 controls and lacked a System Security Plan.
- Allegedly failed to update a score in SPRS until after receiving DOJ subpoena and after cybersecurity consultant notified MORSE that its score was actually -142, not 104.

Georgia Tech (Aug. 2024 complaint)

- DOJ filed complaint in *qui tam* case against university and lab. Alleged failure to meet DFARS cybersecurity requirements.
- Settlement discussions pending.

Aero Turbine, Inc. (July 31, 2025)

- \$1.75M settlement.
- Private Equity (PE) firm and its portfolio company defense contractor resolved allegations of non-compliance with NIST 800-171 controls under Air Force contracts.
- First cybersecurity settlement with a PE firm.
- Highlights risks for PE firms and portfolio companies and the importance of diligence regarding cybersecurity in M&A activity.
- Companies received cooperation credit by making timely self-disclosures, cooperating in investigations, and taking prompt remedial measures.



DOJ's Civil Rights Fraud Initiative

- **DOJ May 19, 2025 initiative** prioritizes bringing FCA actions against “those who defraud the United States by taking its money while knowingly violating civil rights laws.”
- DOJ “**strongly encourages**” *qui tam* suits under the initiative.
- DOJ July 30, 2025 guidance regarding unlawful DEI outlines areas DOJ regards as unlawful discrimination in employment context.
- **EO 14173** (Jan. 21, 2025) calls for new certification requirements for every contract and grant with the prospect of FCA enforcement.
 - Certify that they do not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.
 - Agree that compliance with such anti-discrimination laws is material to the government’s payment decision.
 - ***Litigation challenging EO 14173 is pending.***

Takeaways:

- Anticipate DOJ scrutiny of DEI programs and policies.
- Attention to DOJ guidance and agency-specific guidance.
- *Qui tam* cases with parallel/related discrimination cases.



Customs and Import Fraud

- DOJ has signaled its intent to prioritize FCA investigations and cases related to import classifications (e.g., country of origin), tariffs, and compliance with antidumping duty/countervailing duties.
- **August 29, 2025** – DOJ launched a cross-agency **Trade Fraud Task Force** with DHS to pursue enforcement actions against importers and other parties who seek to evade tariffs and other duties. Includes Civil Fraud and National Courts Sections within DOJ's Civil Division.
- **Takeaways:**
 - DOJ is deploying resources to pursue FCA actions to address customs and import fraud.
 - Anticipate uptick in FCA cases including under reverse false claims theory.
 - Attention to import compliance and tracking of duty obligations.

Allied Stone Inc.

Aug. 19, 2025 – Supplier of countertop and cabinetry products agreed to pay \$12.4M to resolve allegations that it violated FCA by **evading antidumping and countervailing duties** on imports from China.

Global Office Furniture, LLC

July 15, 2025 – DOJ filed a complaint alleging that a furniture company defrauded CBP by **knowingly undervaluing** imported office furniture to avoid paying >\$2M in customs duties.

Takeaways

- FCA enforcement landscape continues to present heightened risks for government contractors and grant recipients.
- Proactive compliance, strong internal controls, reporting mechanisms, and robust policies can reduce exposure to potential FCA liability.
- Document good faith, reasonable decision-making and interpretations.
- DOJ cybersecurity cases underscore importance of ongoing attention to safeguarding CUI using NIST 800-171 controls and documentation.
- Anticipate DOJ inquiries into DEI initiatives and whistleblower litigation combining allegations of fraud with employment discrimination claims.

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What FCA areas are of most interest to you?

a.) Timekeeping/labor charging



0%

b.) Cybersecurity



0%

c.) DEI/employment



0%

d.) Customs/imports



0%

e.) Other



0%

Case Study # 1 – The Hotline Report

- You are the General Counsel of IT services provider Acme Corp.
- On March 3, 2025, you receive an email from Acme's Chief Compliance Officer: "We just got an anonymous report I think you need to read."
- Reporting Party worked at the company for nearly 20 years.
- Cites concerns about a "**breakdown of controls**" and "total failure" to implement cybersecurity requirements under government contracts.
- Participated in a **gap assessment** finding shortfalls in NIST 800-171 implementation. Prepared a Plan of Action & Milestones and submitted 100 score to DoD.
- Heard that a **cybersecurity consultant** called Red Alert had been hired. It concluded that did not meet **nearly two-thirds** of the NIST 800-171 controls. Their report was circulated to the C Suite.
- The company "**sat on the report.**" Reporting Party told CISO's team it needed fix SPRS score and close compliance gaps.
- Warns that if firm's management won't address the issue, "**I will have no choice but to take action.**"

Case Study # 1: Key Considerations

- Internal investigation nuts and bolts, e.g., outside counsel
- Reporting Party as potential whistleblower
- Cybersecurity consultant report and attorney-client privilege issues
- C Suite knowledge of potential issues

Case Study # 2 – DOJ Civil Investigative Demand

- You are the GC of Smith Corp. On June 5, 2025, you receive a call from Associate General Counsel about a “broad” CID from DOJ.
- The CID seeks 15 categories of documents. Return date is June 20, 2025.
- The CID states DOJ is conducting an investigation into whether Smith “**and/or one of its suppliers** may have violated” the FCA in connection with cybersecurity requirements in Air Force contracts.
- Requests documents related to IT Problem Fixer Corp., a supplier.
- The CID also seeks “**any and all communications with consultants and vendors** related to Smith’s cybersecurity program and implementation of NIST 800-171/DFARS 7012 compliance.”
- Also asks for “any and all communications between Smith Corp and **IT Problem Fixer Corp.** related to implementation of NIST SP 800-171 controls by either company.”

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What steps should Smith Corp.'s outside counsel prioritize?

a.) Contact IT Problem Fixer and ask them to preserve documents.



b.) Collect and review communications with IT Problem Fixer related to cybersecurity requirements.



c.) Contact DOJ to negotiate a new return date on the CID and narrow scope.



Case Study # 2: Key Considerations

- Document preservation and hold notices
- Narrowing broad CIDs and subpoenas
- Contractual remedies to obtain information from suppliers/subcontractors
- Insurance coverage and notifications
- Allowable costs



Case Study # 3 – Internal Investigation and Disclosure Considerations



- Smith engages outside counsel to conduct an internal investigation into the issues raised in the CID.
- After reviewing documents and conducting interviews, outside counsel **verbally presents its findings** to you.
- It cited vigorous disagreement among several functions in the company about the extent to which the company complies with DFARS cybersecurity requirements.
- CISO Brian Fitzgerald stated in an interview that he believes the company has “**utterly failed**” its obligations.
- Outside counsel reports that “**our assessment is that these concerns are not well founded.** The company appears to have implemented nearly all of the relevant NIST 800-171 controls.”
- Counsel adds: “**We have concerns about the subcontractor, IT Problem Fixer.** They have refused to respond to requests for information and claim ‘we don’t have any CUI.’ But Smith’s team believes IT Problem Fixer does possess CUI.”
- The following week, you hear that Mr. Fitzgerald has given notice, saying to colleagues: “I can’t be here anymore.”
- He says he has “repeatedly voiced his concerns” but “no one will listen.”

Case Study # 3: Key Considerations

- Effective responses to an employee who may have incomplete information about a compliance issue.
- Whether to interview an employee who has given notice and may be a whistleblower.
- Disclosure to the Government and Mandatory Disclosure Rule (FAR 52.203-13) considerations.
- DOJ policy emphasis on self-disclosures, cooperation, and remedial measures.

Questions?

Thank you!

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