

## FCA Developments

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June 2026

The U.S. Department of Justice (DOJ or Department) has historically taken an aggressive enforcement approach to fraud involving Government funds, and 2025 was no exception. This article highlights key enforcement statistics, policy priorities, and judicial and legislative developments that companies doing business with the federal Government should bear in mind.

### FCA Enforcement Activity and 2025 Statistics

False Claims Act (FCA) enforcement remained robust in 2025, with total recoveries exceeding \$6.8 billion—the largest annual recovery in the FCA’s history. Healthcare-related matters dominated, accounting for roughly 83% of recoveries (approximately \$5.7 billion), a significant increase from 2024.

Federal procurement—in particular, defense contracting—remained a major target for FCA enforcement. Contractor settlements involved alleged false cost or pricing data, accounting practices, alleged failure to meet contract specifications, and alleged overbilling, showing that government contractors should expect sustained scrutiny at every stage of the procurement process, including eligibility, pricing, proposals, and performance.

Additional recoveries arose from customs and tariff enforcement, cybersecurity, and COVID-19-related matters.

Whistleblower cases (known as *qui tam* actions) continued to drive FCA enforcement. The Department reported 1,297 newly filed *qui tam* suits in 2025, marking the second consecutive record year. Although original government-filed FCA actions declined slightly to 401, these numbers remain well above the historical annual average, signaling that FCA enforcement continues to be a DOJ priority.

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### Practice Areas

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Civil Fraud, False Claims, *Qui Tam* and Whistleblower Actions  
Government Contracts  
Internal Investigations and False Claims Act  
White Collar Defense & Government Investigations

## DOJ Enforcement Priorities

Healthcare fraud remains a central focus. In mid-2025, DOJ and the Department of Health and Human Services formed an FCA Working Group targeting claims involving Medicare Advantage, pharmaceutical pricing, kickbacks, and barriers to patient access to care.

The Department has also expanded FCA enforcement tied to civil rights compliance. Under a new Civil Rights Fraud Initiative, DOJ has emphasized FCA theories based on allegedly discriminatory employment practices, including certain diversity, equity, and inclusion (DEI) programs that, in the Government's view, may violate federal anti-discrimination laws. Recently, DOJ announced its first settlement in this area, and we anticipate more.

Trade-related FCA enforcement has intensified. The Department's Trade Fraud Task Force targets evasion of tariffs and antidumping duties through misrepresentations regarding country of origin, product value, or quantity. In December 2025, DOJ announced its largest customs fraud settlement to date—\$54.4 million—stemming from allegations that an importer misrepresented the country of origin of Chinese-manufactured goods to avoid paying Section 301 tariffs.

Consistent with DOJ's Civil Cyber-Fraud Initiative, the Department has continued to bring FCA enforcement actions for alleged failures to comply with cybersecurity requirements or misrepresentations of cyber capabilities. By early 2026, DOJ had resolved 15 of these cases—almost half involving defense contractors—with settlements amounting to several millions of dollars.

Most recently, in April 2026, DOJ announced its Fraud Oversight through Careful Use of Statistics (FOCUS) initiative. This comes in response to the marked increase in recent years of *qui tam* filings by so-called "data miners"—individuals or entities that analyze publicly available government data for potential indicators of fraud. The FOCUS initiative is intended to allow the Department to more effectively and efficiently identify actionable cases and prioritize its enforcement resources accordingly. Consistent with this purpose, DOJ encourages data miners to proactively engage with the Civil Fraud Section before filing a complaint to explain their analytical methods and demonstrate why their findings reliably correlate with actual fraud. The FOCUS initiative serves as a reminder to contractors and others doing business with the government that an army of would-be relators is out there and more empowered than ever.

## Key Judicial Developments

Courts continue to shape the contours of FCA liability. Several appellate courts are considering challenges to the constitutionality of the FCA's *qui tam* provisions under Article II, with cases pending in the Third, Sixth, and Eleventh Circuits. Further, multiple U.S. Supreme Court justices have voiced ongoing interest in the issue, signaling that the issue could be ripe for the Court's review.

Other notable developments include:

- Causation Under the Anti-Kickback Statute (AKS): A growing circuit split regarding the causation standard for claims under the AKS deepened in 2025. The First Circuit joined the Eighth and Sixth circuits in adopting a “but-for” causation standard for FCA claims predicated on kickback violations.
- Objective Falsity After SuperValu: While the Supreme Court has clarified that scienter under the FCA is a subjective standard, lower courts remain divided on whether a claim must also be objectively false. While a majority of courts that have considered the issue continue to apply the standard, the Seventh Circuit interpreted *SuperValu* as foreclosing objective falsity as a defense to FCA liability.
- Jurisdiction of Customs FCA Cases: The Ninth Circuit confirmed that district courts have jurisdiction over customs FCA claims even though Congress vested the Court of International Trade with exclusive jurisdiction over civil actions brought by the United States to recover customs duties for imported goods.
- Preclusion Issues: The Eleventh Circuit split from the Seventh Circuit in holding that FCA retaliation actions may bar subsequent *qui tam* suits involving the same parties and arising from the same core facts.

### Legislative Outlook

At the federal level, Congress has shown institutional support for the FCA and its *qui tam* framework, indicating legislative readiness should courts invalidate or narrow the statute. At the state level, while no major overhauls have been enacted, Pennsylvania has proposed legislation that could significantly expand state FCA liability.

### Conclusion

The FCA continues to evolve through sustained enforcement activity, expanding theories of liability, and active judicial scrutiny. In light of the Trump Administration’s explicit calls for more whistleblowers, we expect that many of these lawsuits will align with the Administration’s policy objectives—from traditional health care fraud to newer issues such as tariff evasion and alleged fraud related to DEI programs. To be sure, the trend lines point to a more robust and increasingly diversified FCA enforcement in 2026. Companies should remain attentive to these developments and assess their compliance programs accordingly.