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A False Claims Act Year in Review, and a Look Forward—Part II

By Scott F. Roybal and Jennifer N. Le*

In this two-part article, the authors review the basic elements of the civil False Claims Act, its qui tam provisions, recent Department of Justice enforcement statistics and a number of recent False Claims Act developments. In particular, the first part, published in the May issue of Pratt's Government Contracting Law Report, *began by briefly reviewing the basic elements of the civil False Claims Act (FCA), its qui tam provisions, and recent Department of Justice enforcement statistics. It then discussed the Supreme Court's decisions regarding the government's authority to dismiss* qui tam *actions under 31 U.S.C. § 3730(c)(2)(A), and the correct pleading standard required to prove scienter. The conclusion of this article, published here, reviews Biden administration actions relating to the FCA, the status of proposed amendments to the FCA, the growing FCA enforcement against private equity firms, ongoing FCA enforcement against pandemic relief fraud, and rising FCA scrutiny on required cybersecurity measures as well as the increased FCA enforcement on higher education institutions.*

BIDEN ADMINISTRATION IMPLEMENTS POLICIES TO INCENTIVIZE VOLUNTARY SELF-DISCLOSURE AND PROMOTE CORPORATE COMPLIANCE

In 2023, the Department of Justice (DOJ) launched several policies and programs designed to further encourage companies to voluntarily self-report misconduct and implement robust compliance programs to prevent criminal prosecution. These policies and programs build on previous positions taken by DOJ, which presumably emphasize prosecutorial leniency and discretion in certain criminal cases, especially those involving voluntary self-disclosures and substantial cooperation.

The Voluntary Self-Disclosure Policy

On February 22, 2023, the DOJ announced a new single voluntary self-disclosure (VSD) policy adopted by and effective across all 94 U.S. Attorney's Offices. The VSD policy provides clear requirements for companies to obtain a presumption of a declination by self-reporting, even where

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"aggravating circumstances" exist. This policy follows the so-called Monaco Memo, issued by Deputy Attorney General Lisa Monaco on September 15, 2022, instructing each DOJ prosecutorial component to "review its policies on corporate voluntary self-disclosure" and establish a policy that credits companies who voluntary self-disclose. The Monaco Memo further stressed the importance of voluntary self-disclosures by companies in enabling the government to investigate and hold individual wrongdoers accountable "more quickly than would otherwise be the case."

Under the new VSD policy, the government will not seek a guilty plea (and may resolve the matter via a declination or non-prosecution or deferred prosecution agreement) where absent aggravating factors,[1] a company voluntarily and timely self-reports (including disclosing all known relevant facts regarding the misconduct and preserving and producing relevant documents and information), cooperates and remediates the criminal conduct (e.g., through disgorgement, forfeiture, and/or restitution). Additionally, under those circumstances, the government may choose not to impose criminal penalties and a company will receive at minimum a 50% reduction off of the low end of the U.S. Sentencing Guidelines fine range. The government will also not impose a monitorship where the company can demonstrate it has implemented an effective compliance program.

Where aggravating factors exist that warrant a guilty plea, a company could still receive reduced penalties and no imposition of a monitorship if it has an effective compliance program. However, not all aggravating factors will lead to prosecution. In his remarks on September 31, 2023, Principal Associate Deputy Attorney General Marshall Miller stated that "even companies that have so-called 'aggravating circumstances' still have a path to a declination if they come forward and voluntarily self-disclose."

Thus, as clearly outlined in the VSD policy, companies seeking credit with the DOJ must do more than just self-report. Companies coming forward must also fully cooperate (including providing helpful information about the individual wrongdoers), remediate, and implement effective compliance that can detect and fix misconduct to ensure good corporate citizenry. In other words, as stated by Deputy Attorney General Monaco on October 4, 2023, the DOJ is looking for companies to "step up and own up."

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[1] Aggravating factors that may warrant a guilty please include misconduct that: poses a grave threat to national security, public health, or the environment; is deeply pervasive throughout the company; or involved current executive management of the company.

Mergers and Acquisitions Safe Harbor Policy

Continuing with its promotion of voluntary self-reporting and after receiving feedback from the private sector, the DOJ announced on October 4, 2023, a Department-wide Mergers & Acquisitions Safe Harbor Policy (the Safe Harbor Policy) to address voluntary self-disclosures made in connection with M&A transactions. Upon implementing the policy, Deputy Attorney General Monaco stressed that the DOJ did not want to discourage companies with strong compliance programs from acquiring companies with ineffective compliance programs and a history of misconduct. Rather, the DOJ wants to incentivize acquiring companies to disclose misconduct uncovered.

The Safe Harbor Policy allows acquiring companies in bona fide, arms-length M&A transactions to secure a presumption of a declination if they promptly and voluntarily disclose criminal misconduct within the Safe Harbor period, cooperate with the investigations, and provide timely and appropriate remediation, restitution and disgorgement. To qualify, as a baseline, companies must: (1) voluntarily self-disclose the misconduct within six months from the date of closing, whether the misconduct was discovered pre or post-acquisition, and (2) remediate the misconduct within one year from the date of closing. The timing requirements are flexible and may be adjusted for reasonableness based on the complexity, facts, and issues of each M&A transaction. However, companies uncovering misconduct threatening national security or involving ongoing or imminent harm should not wait until the clock runs out to self-disclose.

The Safe Harbor Policy treats aggravating factors disclosed in an M&A context more leniently. The presence of aggravating factors in sellers' reported misconduct will not affect buyers' ability to receive a declination. And, absent aggravating factors, when buyers voluntarily self-report, sellers can also qualify for voluntary self-disclosure benefits, including receiving a declination. The DOJ also will not assess the disclosed misconduct under the policy to any future recidivist analysis for the acquiring companies.

According to Deputy Attorney General Monaco, the Safe Harbor Policy underscores the importance of effective compliance focused due-diligence in M&A transactions. The DOJ encourages acquiring companies wishing to de-risk transactions to be vigilant in diligence, self-report misconduct and meaningfully cooperate. Acquiring companies who fail to do so, will be subject to full successor liability.

DOJ's Criminal Division's Pilot Program on Compensation Incentives and Clawbacks

The DOJ expects companies to enhance their compliance by tying their compensation structure to effectively promote good behavior and deter

misconduct among their executives and employees. To this end, the DOJ's Criminal Division, on March 15, 2023, initiated a two-part pilot program on compensation incentives and clawbacks set to run for three years.

Under the pilot program, all corporate resolutions with the Criminal Division will require companies to include compliance-promoting criteria within its compensation and bonus system. Such criteria can include:

(1) Prohibition on bonuses for employees who fail to satisfy compliance performance requirements;

(2) Incentives and promotion attached to employees' commitment to compliance; and

(3) Disciplinary measures (e.g., policies that claw back bonuses or compensation) for employees who violate applicable laws, knew of such violation, or failed in their oversight responsibilities to detect, report and/or prevent such violation.

The pilot program also provides an incentive to companies to claw back compensation from wrongdoers by adjusting criminal penalties based on such clawback efforts. Companies can reduce potential criminal penalties if they make a good-faith effort to claw back compensation, even if they are unsuccessful. Notably, there is a double benefit under this program: for every dollar a company successful recoups from the wrongdoer, it can reduce that same dollar amount from the applicable fine. For companies that cannot claw back monies at the time of resolution, they must pay the applicable fines. However, such companies may reserve credit equaling the amount they tried to claw back. The credit will be released to the companies upon a successful clawback. And, where companies are unsuccessful in their clawback efforts, the DOJ will still credit the good faith attempt by releasing back to the companies up to 25% of the sought amount.

In his September 2023 remarks, Principal Associate Deputy Attorney General Miller urged companies to revisit their compliance policies and ensure they have an active and ongoing clawback policy. To earn credit with the DOJ, Principal Associate Deputy Attorney General Miller warned that companies must have a robust clawback policy not just a "paper policy" hardly acted upon.

Impact of the DOJ's Recent Policies and Programs in the FCA Context

The DOJ clearly expressed in 2023 that it is placing a premium on voluntary self-disclosure and corporate compliance. In doing so, the DOJ hopes to enlist corporate entities in assisting it to successfully investigate cases and target the individuals involved in the misconduct. Companies facing potential FCA issues

should consider working with legal counsel to enhance their corporate policies (e.g., compensation and clawback) to account for the DOJ's latest enforcement priorities.

A number of the cases cited by the DOJ that have benefited from the VSD policy and Safe Harbor Policy have mostly involved the Foreign Corrupt Practices Act, leaving many wondering if the same benefits apply in the FCA space. The DOJ responded with a resounding "yes" when in October 2023, it issued a criminal declination to HealthSun Health Plans, Inc. (HealthSun), based on the VSD policy, for voluntarily self-disclosing Medicare Advantage fraud and fully cooperating with the government in its investigation. Specifically, the investigation found evidence that HealthSun's former director of Medicare Risk Adjustment Analytics led a scheme that overcharged $53 million to the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) based on falsified submissions of chronic illness diagnoses for patients enrolled in its Medicare Advantage Plan. In issuing the criminal declination, the DOJ found that HealthSun met all requisite qualifications under the VSD Policy, including fully cooperating with the government and timely remediating the misconduct by: terminating the employees involved in the fraud; reporting the fraud to CMS; improving its compliance program and internal controls by, among other things, significant investment in designing and implementing a risk-based Medicare Advantage compliance program; and agreeing to remit all $53 million to CMS immediately via wire transfer. This is a major win for HealthSun who avoided criminal prosecution, millions in fines, and potential treble damages for FCA violations.

Although the DOJ's recent policies focus on avoiding criminal liability, there's optimism that companies' good faith efforts in corporate compliance and voluntarily self-disclosing misconduct may continue to bode well for earning credit with the DOJ's Civil Division in FCA matters as well, further mitigating potential fines. Currently, the Civil Division has its own specific guidance for earning cooperation credit, including through voluntary self-disclosures, involving FCA matters (codified in Justice Manual, § 4-4.112). Much of the VSD policy aligns with the Civil Divisions' guidance in § 4-4.112. However, there is a key distinction between the two policies: the VSD policy has clear metrics for deducting penalties and fines, while the Civil Division's guidance in § 4-4.112 does not.

Notwithstanding, there is hope that a revision to the Civil Division's guidance may be on the horizon. In launching the Safe Harbor Policy, Deputy Attorney General Monaco instructed each Division, including the Civil Division, to "tailor its application of [the] policy to fit their specific enforcement regime, and will consider how [the] policy will be implemented in

practice." This instruction falls in line with the DOJ's goal of consistency, transparency and application of their "corporate enforcement policies across the Department, beyond the criminal context to other enforcement resolutions." With this mandate, the Civil Division may incorporate the Safe Harbor Policy, which will likely require it to consider establishing clearer and more precise terms for calculating its cooperation credit in FCA matters and other matters under its purview.

Status of Proposed Amendments to the FCA

After a two-year effort to push through the False Claims Amendments Act, Senator Chuck Grassley[2] and a bipartisan group of senators have once again introduced a newly revised False Claims Amendments Act of 2023 on July 25, 2023. Like its predecessors, the bill proposes substantial changes to the FCA aimed at addressing its so-called "loopholes." The bill differs from its predecessors by: (1) removing proposed amendments related to the government's dismissal authority, a likely response to the Supreme Court's recent ruling in *Polansky*, and (2) adding in proposed amendments for a report from the Government Accountability Office (GAO) on FCA enforcement actions. The bill is currently referred to the Committee on the Judiciary and has yet to pass in the Senate. Key proposed changes to the FCA include the following:

- *Materiality*: The amended materiality proposal states: "In determining materiality, the decision of the Government to forego a refund or pay a claim despite actual knowledge of fraud or falsity shall not be considered dispositive if other reasons exist for the decision of the Government with respect to such refund or payment." This amendment is intended to curb perceived problems Senator Grassley and other bi-partisan supporters of the bill have with the Supreme Court's decision in *Universal Health Servs., Inc. v. United States ex rel., Escobar*.[3] The proposed change weakens the materiality requirement and the "other reasons" language makes prevailing at the motion to dismiss or summary judgement juncture more challenging for defendants.
- *FCA Retaliation*: Specifies that whistleblower protections apply to "current or former" employees, contractors, or agents. The change encourages former employees to report witnessed fraud without fear of repercussions, including potential legal action.
- *GAO Reporting*: Requires the GAO to produce a report on the benefits

[2] Senator Grassley has long been among the strongest supporters of the FCA on Capitol Hill, and is responsible for key amendments strengthening FCA enforcement in 1986 and 2010.

[3] Universal Health Servs., Inc. v. United States ex rel., Escobar, 136 S. Ct. 1989 (2016).

detailing the efficacy of FCA enforcement actions, including a description of the benefits and challenges thereto. Additionally, the report shall include information on the amount recovered under the FCA since its 1986 amendment.

Growing FCA Enforcement Against Private Equity Firms

Over the past several years, DOJ and whistleblowers have increasingly targeted private equity firms for potential violations of the FCA. In June 2020, Principal Deputy Assistant Attorney General Ethan P. Davis of DOJ addressed the U.S. Chamber of Commerce and warned private equity firms that its enforcement efforts could target such firms that sometimes invest in companies that receive payments from the U.S. government. He stated that private equity firms should be aware of laws and regulations designed to prevent fraud from occurring in highly-regulated areas like healthcare or the life sciences.

Later that year, in November 2020, DOJ announced the former owners of Therakos, Inc. paid $11.5 million to settle FCA allegations of promoting a drug-device system between 2006 and 2015 for unapproved uses to pediatric patients. Among the federal healthcare program payors to Therakos were Medicaid, The Federal Employee Health Benefits Program, and Tricare. The private equity firm, The Gores Group, was swept up in the investigation and prosecution because it had acquired Therakos from Johnson & Johnson in 2012 in the midst of the alleged misconduct and failed to take affirmative steps to prevent it from continuing.[4]

In 2023, the government continued to keep its watchful eye on private equity firms. Senators Sheldon Whitehouse and Chuck Grassley led several investigations on behalf of the Senate Committee on the Budget, into private equity firms acquiring controlling stakes in healthcare services organizations that operate hospitals. The two Senators launched these ongoing investigations in response to the growing studies and reports finding that many of these acquisitions have negative outcomes for providers and patients (including substandard medical care and safety, wholesale facility closures, and staffing reductions). Many of these investigations involve allegations related to exploitation of hospital assets and mismanagement of facilities resulting in a series of patient-care violations including Medicare fraud implicating the FCA.

The Senate's keen interest in investigating private equity firms will only promote further FCA actions against them, especially for private equity firms involved in healthcare acquisitions. The DOJ and whistleblowers view private

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[4] United States ex rel. Johnson v. Therakos, Inc. et al., No. 12-cv-1454 (E.D. Pa., filed March 22, 2012).

equity firms as attractive targets because of their deep pockets. As with all FCA cases, liability will depend on many factors including (1) the private equity firm's knowledge of the underlying acts, and (2) how such acts may have led to submission of potential false claims to the government. Some emerging trends from recent cases reveal that FCA exposure increases where private equity firms fail to take corrective actions after learning of regulatory violations from a portfolio company, have an active role in the portfolio company's operational and decision-making process, or generally fail to effect appropriate compliance programs to prevent and detect fraud. Often times, FCA plaintiffs will also compare patterns and practices of the portfolio company before and after the acquisition to establish one or more of the requisite elements of liability under the FCA.

Ongoing Priority FCA Enforcement Against Pandemic Relief Fraud

For more than three years, practitioners in the white collar and FCA areas have written about the impending flood of government and whistleblower prosecution as a result of the COVID-19 pandemic, the CARES Act, and other pandemic relief responses from the federal government. Trillions of dollars were spent by the federal government in pandemic relief, often rushed with opaque qualifications for receipt. Numerous enforcement bodies were created to address anticipated pandemic relief fraud, including the Special Inspector General for Pandemic Recovery, Congressional oversight committees, and various, multi-jurisdictional task forces within the DOJ and related agencies. The DOJ initially brought a flurry of criminal charges against obvious pandemic fraudsters based on misrepresentations in relief applications, such as fraudulent Paycheck Protection Program (PPP) applications, and for misuse of funds. Since March 2020, many enforcement actions have targeted the most obvious cases of fraud such as:

(1) PPP loans to non-existent businesses;

(2) Loan applicants that falsified the number of employees; and

(3) Loans that were used for unauthorized purchases such as expensive cars, properties, and vacations.

As predicted, wrongful or deceitful applications for pandemic relief funds have also resulted in civil liability under the FCA. Despite the expected modest rollout of publicly announced FCA claims and settlements related to COVID-19 in 2021 and 2022, there is reasonable certainty of voluminous audits and FCA enforcement actions underway and on the horizon based on false claims for pandemic relief. For example, the federal government spent over $813 billion on the PPP loan program alone. The Inspector General of the Small Business Administration (SBA) reported in May 2022 that his office had identified

"more than 70,000 loans totaling over $4.6 billion in potentially fraudulent PPP loans."[5] And, on August 5, 2022, President Biden signed two bills extending the statute of limitations for civil and criminal enforcement for fraud in connection with the PPP program and Economic Injury Disaster Loans (EIDL) to 10 years to ensure there is plenty of time to investigate and prosecute suspected fraudsters.[6]

In September 2022, the DOJ reported its first settlement of alleged PPP loan fraud targeting PPP lenders. Prosperity Bank settled allegations that it violated the FCA because it approved a PPP loan despite knowing that the applicant lied when checking "no" to a question related to facing criminal charges. The settlement amounted to two times the loan processing fee earned by the lender.

Last year in October 2023, DOJ announced a $9 million settlement with Victory Automotive Group Inc. (Victory), one of its largest FCA settlements involving PPP loan fraud to date. The settlement resolved a qui tam lawsuit captioned *U.S. ex rel. Jones v. Victory Automotive Group, Inc, et al.*,[7] and awarded the whistleblower/relator of that case $1.62 million. According to the DOJ's settlement, Victory settled allegations that it had inaccurately certified on its PPP loan application that it was a small business with fewer than 500 employees when in actuality Victory shared a common operational control with dozens of automobile dealerships across the county, totaling more than 3,000 employees. As such, Victory was never eligible for the $6,282.363 PPP loan it received, which was later forgiven in full. The settlement demonstrates the DOJ's commitment to holding accountable those who undermined the purpose of the PPP program and knowingly and improperly obtained pandemic relief funds for which they were not eligible or entitled to. As remarked by Michael C. Galdo, director of DOJ's COVID-19 Fraud Enforcement, the DOJ will identify and aggressively pursue any instances of fraud or misconduct involving the PPP program. Moreover, PPP loan forgiveness will not preclude the DOJ from making the necessary inquiry to assess whether a company was eligible for the loan in the first place.

And, in another case of false certification in connection with the PPP program, in June 2023, the DOJ settled FCA charges against the Institute of Policy Studies (IPS) for inaccurately certifying in its application for Second Draw PPP loans that it was "not a business concern or entity primarily engaged

[5] See SBA OIG Inspection Report, SBA's Handling of Potentially Fraudulent Paycheck Protection Program Loans, Report Number 22-13 (May 26, 2022).

[6] See H.R. 7352 and H.R. 7334.

[7] U.S. ex rel. Jones v. Victory Automotive Group, Inc, et al., No. 8:21-cv-1742 (M.D. Fla.).

in political or lobbying activities including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents." The evidence indicated the opposite: IPS had publicly described itself as a think tank in various sections of its websites, LinkedIn, and in various public documents, including reports and press releases. According to its own corporate bylaws, IPS states that it conducts research and produces publications "to educate the public on important matters of public policy." This case was brought to the DOJ's attention by a qui tam relator's FCA action.

Recipients and lenders of the PPP loan program and other forms of pandemic relief funds should heed the lessons from these latest settlements and prudently conduct reasonable due diligence of their applications and lending processes for the PPP and other relief funds, use of such funds under the required terms and conditions, and related loan forgiveness representations to correct or clarify any misrepresentations or false certifications in order to mitigate potential enforcement in the near future.

Rising FCA Scrutiny on Required Cybersecurity Measures

In October 2021, the DOJ launched its Civil Cyber-Fraud Initiative, sparking expectations for increased enforcement actions and qui tam cases under the FCA related to cybersecurity issues. While the initiative was seemingly slow with little movement in 2022, 2023 witnessed a surge in activity, which included settlements, an unsealed qui tam complaint, and regulatory development hinting at future enforcement risks for all companies doing work with the government.

First, in March 2023, the DOJ announced that Jelly Bean Communications Design LLC (Jelly Bean) agreed to pay $293,771 to resolve FCA allegations that it failed to secure personal information on a federally funded Florida children health insurance website, which Jelly Bean created, hosted, and maintained. Contrary to its representations in agreements and invoices for payment, Jelly Bean had allegedly from 2014 to 2020 knowingly failed to maintain and update security software systems underlying the insurance website, HealthKids.org, and its related websites, leaving the site and data collected vulnerable to attacks and hacks. Around December 2020, more than 500,000 applications submitted on the website were in fact hacked, potentially exposing applicant's personal identifying information and data. The DOJ took these allegations seriously and in resolving the case highlighted that it will use the FCA to hold accountable government contractors, companies, and management for knowingly failing to comply with their cybersecurity obligations and placing such sensitive information, especially medical and personal information, at risk.

In September 2023, the DOJ reported another cyber-fraud related settlement with Verizon Business Network Services LLC (Verizon) that agreed to pay $4 million dollars to settle FCA allegations. The DOJ's settlement alleged that Verizon's Managed Trusted Internet Protocol Service (MTIPS) (designed to provide federal agencies with secure connections to the public internet and other external networks) did not sufficiently satisfy three required cybersecurity controls for Trusted Internet Connections with respect to certain General Services Administration contracts from 2017 to 2021. Notably, Verizon received significant cooperation credit for voluntarily self-disclosing the issue, conducting its own internal investigation, fully cooperating with the government's investigation (including providing supplemental written disclosures), and promptly remediating the issue. The DOJ stated that of the $4 million amount, $2.7 million was restitution and $1.3 million was the FCA penalty amounting to approximately 1.5X the restitution as opposed to double or treble damages.

In September 2023, the Eastern District of Pennsylvania unsealed a qui tam FCA lawsuit against Pennsylvania State University (Penn State), alleging that Penn State violated the FCA by submitting to the Department of Defense false attestations of compliance with certain cybersecurity standards requiring adequate security for covered sensitive defense information. Though the case is ongoing, the DOJ in late September 2023 notified the Court that it will not be intervening "at this time," potentially due to the complexity and uncertainty surrounding federal cybersecurity compliance in the defense area.

Lastly, 2023 saw significant regulatory activities, particularly with the Federal Acquisition Regulatory Council proposing two substantial rules to increase cybersecurity requirements for federal contractors. The first proposed rule seeks to standardize contractual cyber requirements across all federal agencies. The second proposed rule would enhance requirements mandating federal contractors to share information about cyber threats and incidents, including requiring the reporting of cybersecurity incidents within 8 hours of discovery. Both rules expressly state that compliance with cybersecurity requirements and incident reporting are material to government contract eligibility and payment. Passage of these rules will directly affect federal contractors by increasing FCA enforcement exposure.

Increased FCA Enforcement on Higher Education Institutions

Higher education institutions have increasingly become easy targets for FCA litigations due to their reliance on significant and varied federal funding, including research grants, Title IV funds/financial aid for students, defense contracts, and Medicare/Medicaid payments through school-affiliated hospitals and medical facilities. These categories of federal funding are breeding grounds

for FCA exposure and liability particularly because they require their recipients to attest, certify and represent that they are eligible for the funds and can comply with the funds' various performance and regulatory requirements (including complying with cybersecurity measures and disclosure/reporting obligations). The DOJ and whistleblower counsel have higher education institutions squarely in their crosshairs.

For instance, in October 2023, DOJ entered into a $1.9 million FCA settlement with Stanford University (Stanford). DOJ initiated the FCA action alleging that Stanford knowingly failed to make the requisite disclosures in its grant proposals submitted to the Army, Navy and Air Force, the National Aeronautics and Space Administration and the National Science Foundation that its faculty members had current and pending foreign funding in direct support of their research projects. One Stanford professor even received research foreign funding in connection with his employment at a Chinese university, which was also not disclosed to the relevant federal agencies. The DOJ warned that it will continue to use the FCA to pursue and prosecute institutions that fail to meet their disclosure obligations, which causes harm to the grant awarding process as well as potentially threaten government interests when foreign entities are involved.

In September 2023, the U.S. District Court for the Eastern District of Pennsylvania unsealed a qui tam FCA lawsuit against Penn State, which was brought by the university's former chief information officer, Matthew Decker, for the school's Applied Research Laboratory who was a part of a team assigned to evaluate the university's compliance with requirements related to certain defense contracts. Decker specifically alleged that Penn State falsely submitted self-attestations of cybersecurity compliance to obtain funding from the Department of Defense and that the university failed to fix these deficiencies even after he raised them to the university's leadership.

Because higher education institutions are becoming frequent targets of the FCA, it is more important than ever that they have policies and practices in place to ensure compliance with potentially complex terms and conditions of doing business with the government.