

# Trump's FCA Expansion Plan Heightens Compliance Risk

By **Sarah Jarvis**

Law360 (March 4, 2026, 8:29 PM EST) -- In light of the Trump administration's record False Claims Act enforcement haul, companies should be especially mindful of a planned expansion in the scope of enforcement and the false compliance certification risks that may bring, attorneys say.

While a recent report from the U.S. Department of Justice indicated that healthcare saw the lion's share of last year's record \$6.8 billion FCA enforcement haul, the Trump administration has targeted new areas of potential investigation under the law, such as healthcare for transgender minors and diversity, equity and inclusion programs, which the DOJ says are discriminatory.

As those developments play out alongside a legal challenge to the whistleblower provisions of the law, experts say companies need to be especially vigilant when it comes to their compliance certification processes.

Jacqueline Romero, a partner at BakerHostetler and former U.S. attorney for the Eastern District of Pennsylvania, said companies should keep in mind that internal complaints that once might have been managed quietly now "routinely" become a federal litigation risk. Firms should evaluate how they are following up on such complaints and how they're assessing those risks, she added.

"For companies that are receiving government money or even certifying compliance in any form, the FCA is no longer some kind of a niche risk," Romero said. "It's a core enterprise-level exposure that demands board-level attention."

## Historic, Expanding Enforcement

The DOJ **said in January** that it had secured more than \$6.8 billion via settlements and judgments under the FCA in the fiscal year that ended September 2025, which it said was the largest amount recovered in a single year in the history of the law.

Of that sum, more than \$5.7 billion related to matters involving the healthcare industry, according to the DOJ. Major cases included a **\$949 million judgment** against Omnicare and CVS over the submission of millions of false prescription claims for long-term care patients and Teva's **\$450 million settlement** for allegedly fixing the prices of generic drugs and raising the price of a multiple sclerosis treatment while covering Medicare recipients' copays.

The DOJ also secured a **\$1.6 billion verdict** against Johnson & Johnson's Janssen unit after a New Jersey jury found the company had defrauded Medicare and Medicaid by promoting HIV drugs for unapproved uses.

Government procurement fraud was also an FCA focus area last year, with the DOJ ending its second-largest procurement fraud case in history. In that matter, Raytheon Co. **agreed** to pay \$428 million to resolve allegations that it knowingly provided false cost and pricing data when negotiating with the U.S. Department of Defense for various government contracts and double-billed on a weapons maintenance contract.

Veronica Nannis, a partner at Joseph Greenwald & Laake PA who represents whistleblowers, called the overall dollar amount from the DOJ's enforcement report "eye-popping," and noted the figure has been going up every year for several years.

Bill Meyers, a principal in the litigation group at Goldberg Kohn Ltd., told Law360 that the DOJ's enforcement numbers are "sort of a trailing indicator of fraud that was occurring at some point in the past, including during the pandemic." The record numbers are therefore not so surprising, he said, pointing to a pandemic-era increase in available money through initiatives such as the Paycheck Protection Program.

"People like to say that as day follows night, if there's new government money that becomes available, there will be bad actors who will try to get that government money, even if they're not actually entitled to it," Meyers said. "And there's a lot of money that was injected into the system during the pandemic."

Nannis said it's typical for a new presidential administration to set its own priorities for the FCA, noting as an example that the Biden administration started the Civil Cyber-Fraud Initiative under the FCA in 2021.

The Trump administration has made moves to expand FCA enforcement to new areas, including services associated with gender transition for minors. U.S. Attorney General Pam Bondi issued a memorandum in April directing the DOJ's Civil Division to investigate potential false claims tied to such services.

The DOJ subsequently issued subpoenas to healthcare providers, several of which have been challenged in court, though the department hasn't announced any FCA settlements or judgments stemming from Bondi's directive.

The Trump administration has also targeted DEI programs, with the DOJ **announcing** in May that it would use the FCA to go after any recipients of federal funds that the agency determines promote DEI policies or allow antisemitism to thrive.

Last month, a senior DOJ official **said** the department is prioritizing purportedly discriminatory uses of DEI programs.

"At the top of the list for me and what's coming into focus as the heart of many of our investigations are companies that implemented programs and practices that pressured supervisors and management to make hiring and promotion decisions based on race or sex," said Brenna Jenny, deputy assistant attorney general of the DOJ's Commercial Litigation Branch.

In an interview on Feb. 5, before Jenny made these remarks, Goldberg Kohn's Meyers predicted that the administration's intent to target DEI programs for FCA enforcement would play out in the form of enforcement against discriminatory employment practices.

"I think it's pretty consistent with how other administrations have tried to use the FCA as a fraud enforcement tool and to react to the fraud du jour, and to use it as a way to recover ill-gotten gains," Meyers told Law360.

Nannis said the Trump administration's focus on fraud in the areas of DEI and gender-affirming care are without precedent. She predicted it will be difficult to bring any initial cases in those areas because of ambiguity with the required element of scienter, or intent.

"It will be very, very difficult — an uphill battle — to prove that a company knowingly violated an executive order that changed, or seemed to change, the interpretation of the executive orders before that, and/or federal law before that, like Title VII and Title IX," Nannis said.

## Compliance Risks

BakerHostetler's Romero said FCA cases lately have often been based on false compliance certification theories, particularly in areas such as cybersecurity, trade and customs fraud and government contracting compliance. One example could be a defense contractor certifying that its cybersecurity is up to certain standards before the government eventually uncovers that wasn't the case, she said.

Rather than a company simply overbilling the government or submitting claims it wasn't entitled to, the case instead becomes, "You weren't entitled to any of it because you certified that you had cybersecurity standards that were up to the government standards, and they weren't," she said.

"That's a false claim," Romero said of that scenario. "Every claim that you submitted to the government for reimbursement is considered false."

False certification risk also crops up with trade and customs enforcement, she added, offering the hypothetical of a company certifying that its goods came from Cambodia when they actually came from China and would have therefore been subject to higher tariffs.

Romero said the DOJ is not broadly retreating from FCA enforcement despite the government's pullback in other areas, such as U.S. Securities and Exchange Commission enforcement or Foreign Corrupt Practices Act matters. But the DOJ has selectively dismissed weak or duplicative qui tam cases to help manage what she said is, given the enforcement expansion, an overloaded pipeline of FCA matters.

"I think that DOJ is having to be a little bit more skeptical on some FCA matters, simply because they're seeing such a volume, and not all of it is worthy of DOJ investigation," she said.

Nannis, of Joseph Greenwald, said both the relators bar and the defense bar are waiting to see the first cases in more novel areas of FCA enforcement come out from under seal to see what precise law the government is arguing and how the allegations fare.

She noted that earlier in Trump's second term, the government put out a call for contractors to certify they had no "illegal DEI" — a **legally ambiguous** term that is being debated in court.

Nannis said if she were in the government and wanted to show that this was a priority under the FCA, she would start there. If companies made those certifications to the government and then the government found out that they did have "illegal DEI," or a whistleblower came forward with evidence that the certification was inaccurate, "those would be easier cases to bring because you got the defendants to sign those certifications," she said.

"I would think that those would be some of the first cases, because those are easier than ones where there's no certification, and you're just trying to rely on the law and the precedent that ... is not really there, and it's not really clear," she said.

Nannis predicted that FCA enforcement areas tied to political agenda priorities or campaign promises, such as DEI and gender-affirming care, won't withstand future administrations as easily as more bipartisan areas, such as Medicaid and defense fraud.

### A Looming Legal Challenge

In *Zafirov v. Florida Medical Associates*, the Eleventh Circuit is **weighing** a legal challenge to the qui tam, or whistleblower, provisions of the FCA, with the appellate judges grappling, among other things, with a 2023 opinion by U.S. Supreme Court Justice Clarence Thomas, in which he raised "serious constitutional questions" about the qui tam system.

That appellate proceeding centers on a lower court **ruling** that declared the qui tam action provisions of the False Claims Act unconstitutional, finding they allow self-appointed whistleblowers to usurp executive power by suing on behalf of the government. U.S. District Judge Kathryn Kimball Mizelle, who issued the first-of-its-kind ruling, is a former clerk for Justice Thomas.

Nannis said that if the qui tam provisions of the FCA were found to be unconstitutional by the Supreme Court, Congress would face pressure to fix that issue. But she noted that it could be a drawn-out battle with a lot of lobbying, "during which time hundreds of millions or billions of dollars in fraud could be going undetected and not pursued and not enforced, depending on how long it took them."

Whistleblowers filed a record-breaking 1,297 qui tam suits last year — the most ever in one year, according to the DOJ. Whistleblowers often share in the recovery of their qui tam cases, such as a cut of 15% to 30%.

Meyers, of Goldberg Kohn, thinks the *Zafirov* case will end up before the high court eventually. But even if the high court determines there are constitutional weaknesses in parts of the FCA, he also predicted Congress would remedy the statute in order to preserve the "public-private partnership" that the qui tam system creates.

Despite the change in some priorities dictated by the Trump administration and the eventual outcome of the *Zafirov* case, Meyers said companies should not assume there's a "get-out-of-jail-free" card coming their way.

"I think the message to corporate America is that you need to continue to take the FCA very seriously, and you need to make sure that you're doing everything you can compliance-wise to not run afoul of the FCA," he said. "It's going to continue to be something that you need to focus on."

--Additional reporting by Hailey Konnath, Cara Salvatore, Julie Manganis, Stewart Bishop, Madeline Lyskawa, Lauren Berg, Dan McKay and Celeste Bott. Editing by Alanna Weissman and Drashti Mehta.