

As Federal Investigations Into Colleges and Universities Ramp Up, False Claims Act Enforcement Poses Additional Risks and Liabilities

In May 2025, the Department of Justice (DOJ) [announced](#) a new initiative to use the False Claims Act (FCA), 31 U.S.C. § 3729 *et seq.*, to “investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws,” subjecting targeted defendants to treble damages, penalties of up to \$28,619 per claim, and attorney’s fees.¹

A contemporaneous [memorandum](#) released by Deputy Attorney General Todd Blanche explained that the Department would be monitoring educational institutions who receive federal funds for false certifications of compliance with Title IV, Title VI, and Title IX of the Civil Rights Act of 1964, as well as the recent Supreme Court [decision](#) in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), which held that race-based affirmative action programs in college admissions violated the Equal Protection Clause of the Fourteenth Amendment.²

However, colleges and universities should be mindful that “false certification” liability under the FCA extends beyond certifications pertaining to civil rights laws. Recent FCA investigations, lawsuits, and settlements encompass alleged false certifications regarding a variety of statutes and regulations, including cybersecurity requirements, prohibitions on foreign funding for certain researchers and research contracts, and prohibitions against incentive-based pay for student recruiters under Title IV of the Higher Education Act, 20 U.S.C. § 1070 *et seq.*

The FCA is the government’s “primary civil tool to redress false claims for federal funds and property involving government programs and operations.”³ Any entity that does business, directly or indirectly, with the government can be held liable for submitting or causing the submission of a false or fraudulent claim for payment.⁴ A defendant found liable under the FCA faces steep damages, including civil penalties for each claim for payment, actual damages valued at the amount the government paid towards the claims, and treble damages calculated at three times the amount of actual damages.⁵ In just the last fiscal year, the government recovered \$2.6 billion in FCA

¹ See Press Release, *Justice Department Establishes Civil Rights Fraud Initiative*, DOJ (May 19, 2024), available at <https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative>; Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

² See Memorandum from the Deputy Att’y Gen. on the Civil Rights Fraud Initiative (May 19, 2025), available at <https://www.justice.gov/dag/media/1400826/>; see also 42 U.S.C. §§ 2000c *et seq.*, 2000d *et seq.*, 2000h-2.

³ See Press Release, *Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative*, DOJ (Oct. 6, 2021), available at <https://www.justice.gov/archives/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative>.

⁴ 31 USC. § 3729.

⁵ *Id.*

settlements and judgments.⁶ Often FCA cases are initiated by private individuals, or “relators,” who act as whistleblowers under the FCA’s qui tam provision and share in any recovery.⁷

Universities Should Expect Growing Focus on Their Educational Visas and International Students

Universities will likely face increased focus on their certifications of educational visas and issues related to international students more broadly, given current political trends.

There is already precedent for FCA scrutiny on the topic of student visas. In 2021, a former administrator at the International Technological University alleged that the university was falsely certifying that students were qualified for F-1 educational visas by waiving English proficiency requirements, class attendance requirements, and standards related to grading and academic honesty.⁸ According to the allegations, students would work full-time at technology companies in Silicon Valley under the guise of student internships.

The government alleged that these improper work arrangements allowed students to work full-time without needing to acquire H-1B visas, which are more expensive to apply for than F-1 visas, thereby depriving the government of visa-fee revenue. The university settled with the government in 2021 for \$1.17 million. The United States declined to prosecute any of the companies or other individuals involved.

Cybersecurity Requirements Continue to Draw Scrutiny

In 2021, DOJ unveiled the Civil Cyber-Fraud Initiative, announcing that it would use the FCA to pursue contractors or grantees that knowingly failed to adhere to cybersecurity requirements, misrepresented their adherence to cybersecurity requirements, or violated obligations to monitor and report cyber incidents and breaches.⁹

A wave of investigations and litigation followed, including against universities. In 2024, DOJ [reached a landmark settlement](#) with Pennsylvania State University regarding alleged violations of cybersecurity requirements in the Department of Defense and National Aeronautics and Space Administration contracts.¹⁰

⁶ Press Release, False Claims Act Settlements and Judgments Exceed \$2.68 Billion in Fiscal Year 2023, DOJ (Feb. 22, 2024), available at <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-268-billion-fiscal-year-2023>.

⁷ 31 USC. § 3730; Press Release, False Claims Act Settlements and Judgments Exceed \$2.68 Billion in Fiscal Year 2023, DOJ (Feb. 22, 2024), available at <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-268-billion-fiscal-year-2023>.

⁸ Press Release, International Technological University Pay \$1.17 Million Settle False Claims Act Allegations Related Student Visa (Jan. 27, 2021), available at <https://www.oig.dhs.gov/sites/default/files/assets/pr/2021/dojpr-012721-international-technological-university-pay-117-million-settle-false-claims-act-allegations-related-student-visa.pdf>.

⁹ See Press Release, *Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative*, DOJ (Oct. 6, 2021), available at <https://www.justice.gov/archives/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative>.

¹⁰ See Press Release, *Penn State Agrees to Pay \$1.25 Million to Resolve False Claims Act Allegations Relating to Non-Compliance with Contractual Cybersecurity Requirements*, DOJ (Oct. 22, 2024), available at <https://www.justice.gov/archives/opa/pr/pennsylvania-state-university-agrees-pay-125m-resolve-false-claims-act-allegations-relating>.

The DOJ also [filed a complaint-in-intervention](#) in a *qui tam* action against Georgia Tech for an alleged failure to adhere to NIST cybersecurity standards, in litigation that is still ongoing.¹¹

Universities Must Monitor Researcher Conflicts, Including Foreign Government Affiliations and Support

Many federal research contracts and grants require researchers and their institutions to report all current and pending financial support in direct support of the research at issue. They also require researchers to report contemporaneous sources of financial support from, for example, contemporaneous employment at two institutions.¹²

In particular, contracts often prohibit direct support from foreign sources and contemporaneous support from foreign governments. In 2023, Stanford University settled with the United States for \$1.9 million in response to allegations that the university knowingly failed to disclose current and pending foreign funding support received by eleven of its researchers in direct support of their projects, and also failed to disclose a university professor's receipt or expected receipt of foreign government funding during the period of time in which that professor was also working on U.S. federal research grants.¹³ In interviews, the U.S. Attorney noted that "siloed" information appeared to be a key problem in permitting the alleged lapses and that Stanford was "working with NSF to fix" it.¹⁴ Ohio State University settled a similar case in 2022 for approximately \$875,000.¹⁵

Alleged conflicts of interest can arise in other contexts, too. In a case that was settled in 2005, the United States alleged that Harvard University-affiliated leaders of a USAID-sponsored project to help create democratic institutions and financial markets in Russia improperly undertook prohibited investments and personal business dealings in that country.¹⁶ Ultimately, a court found Harvard not liable under the FCA because it neither knew about its codefendants' contractual violations nor could be held vicariously liable for them.¹⁷

¹¹ See Press Release, *United States Files Suit Against the Georgia Institute of Technology and Georgia Tech Research Corporation Alleging Cybersecurity Violations*, DOJ (Aug. 22, 2024), available at <https://www.justice.gov/usao-ndga/pr/united-states-files-suit-against-georgia-institute-technology-and-georgia-tech>.

¹² See, e.g., Memorandum from the Under Sec'y of Def. for Rsch. and Eng'g for the Under Sec'y of Def. for Acquisition and Sustainment, on Actions for the Protection of Intellectual Property, Controlled Information, Key Personnel and Critical Technologies (Mar. 20, 2019), available at <https://www.aau.edu/sites/default/files/Blind-Links/OUSDRResearchProtectionMemo.pdf>.

¹³ See Press Release, *Stanford University Agrees to Pay \$1.9 Million to Resolve Allegations That it Failed to Disclose Foreign Research Support in Federal Grant Proposals*, DOJ (Oct. 2, 2023), available at <https://www.justice.gov/archives/opa/pr/stanford-university-agrees-pay-19-million-resolve-allegations-it-failed-disclose-foreign>.

¹⁴ See Theresa Defino, *DOJ: Stanford FCA Case Involved Failures to Disclose Foreign Support from Seven Countries*, 20 REP. RSCH. COMPLIANCE, no. 11, at 1, 8 (2023), available at <https://compliancecosmos.org/sites/default/files/pdf/Report-on-Research-Compliance-v20n11-%5B11-2023%5D.pdf>.

¹⁵ See Press Release, *Ohio State University Pays Over \$875,000 to Resolve Allegations that It Failed to Disclose Professor's Foreign Government Support*, DOJ (Nov. 10, 2022), available at <https://www.justice.gov/archives/opa/pr/ohio-state-university-pays-over-875000-resolve-allegations-it-failed-disclose-professor-s>.

¹⁶ See generally *United States v. Pres. & Fellows of Harv. Coll.*, 323 F.Supp.2d 151 (D. Mass. 2004).

¹⁷ See *Russia Case (and Dust) Settle*, HARV. MAG., Nov.–Dec. 2005, available at <https://www.harvardmagazine.com/2005/11/russia-case-and-dust-set.html>.

Research Misconduct by University Employees May Give Rise to FCA Risk

Universities may be held responsible for substantive misconduct and improper expensing undertaken by the researchers and laboratories that they supervise. Duke University, for example, settled an FCA case in 2019 for \$112.5 million after a relator alleged that a colleague knowingly submitted falsified or fabricated results in connection with thirty National Institutes of Health (NIH) and to the Environmental Protection Agency research grants.¹⁸ The University of North Texas Health Science Center settled a case for \$13 million after self-reporting that it inaccurately measured time and effort reports related to federal research grants from NIH over a period of five years.¹⁹

University Medical Centers Present Additional FCA Risks and Liabilities

Universities that operate medical centers regularly encounter the same FCA issues implicating Medicare and Medicaid reimbursements that other hospitals do. For example, the University of Miami agreed to a \$22 million settlement in 2021 to resolve allegations that its hospital facilities engaged in improper billing, ordering medically unnecessary laboratory tests, and submitting inflated claims for reimbursement.²⁰

Universities Have Faced False Certification Challenges for Incentive-Based Recruitment

Colleges and universities have also faced FCA enforcement for creating incentive-based structures to compensate student recruiters allegedly in violation of Title IV of the Higher Education Act, while falsely certifying compliance with that law to obtain student aid funding.²¹ In the 2000s, the University of Phoenix and Oakland City University settled cases brought by relators who worked on their admissions and enrollment teams for \$67.5 million and \$5.3 million, respectively, plus attorneys' fees.²² American Intercontinental University settled a Title IV case in 2017, brought by a similar relator, for \$10 million plus \$22 million in attorneys' fees.²³

Universities should also exercise caution when working with admissions and enrollment vendors. In investigations affecting multiple universities that contracted with a now-defunct vendor named Joined Inc., DOJ obtained FCA settlements in response to allegations that the total compensation package

¹⁸ See Press Release, *Duke University Agrees to Pay U.S. \$112.5 Million to Settle False Claims Act Allegations Related to Scientific Research Misconduct*, DOJ (Mar. 25, 2019), available at <https://www.justice.gov/archives/opa/pr/duke-university-agrees-pay-us-1125-million-settle-false-claims-act-allegations-related>.

¹⁹ See Press Release, *University of North Texas Health Science Center to Pay \$13 Million to Settle Claims Related to Federal Grants*, DOJ (Feb. 16, 2018), <https://www.justice.gov/usao-ndtx/pr/university-north-texas-health-science-center-pay-13-million-settle-claims-related>.

²⁰ Press Release, *University of Miami to Pay \$22 Million to Settle Claims Involving Medically Unnecessary Laboratory Tests and Fraudulent Billing Practices*, DOJ (May 10, 2021), available at <https://www.justice.gov/archives/opa/pr/university-miami-pay-22-million-settle-claims-involving-medically-unnecessary-laboratory>.

²¹ See 20 U.S.C. § 1070 *et seq.*

²² See Press Release, *University of Phoenix Settles False Claims Act Lawsuit for \$67.5 Million*, DOJ (Dec. 15, 2009), available at <https://www.justice.gov/archives/opa/pr/university-phoenix-settles-false-claims-act-lawsuit-675-million>; Elizabeth Quill, *University Will Pay \$5.3-Million to Settle Whistle-Blower's Lawsuit*, CHRON. HIGHER ED. (Aug. 10, 2007), available at <https://www.chronicle.com/article/university-will-pay-5-3-million-to-settle-whistle-blowers-lawsuit/>.

²³ See *Career Education Corp and American Intercontinental University Entered into a Settlement Agreement with Private Plaintiffs*, REUTERS (Feb. 21, 2017, 5:15 PM), available at <https://www.reuters.com/article/brief-career-education-corp-and-american-intercontinental-university-entered-into-a-settlement-agreement-with-private-plaintiffs-idUSFWN1G60YG/>.

amounted to incentive-based compensation in violation of Title IV, even as the universities argued that the vendor was subject to an exception to that prohibition that permits bundling services.²⁴

Courts Often Dismiss Relators' Theories of False Claims Related to Accreditation

Relators have alleged that universities defrauded the government by allegedly not adhering to certain educational standards. The theory is that by not adhering to standards—at least in the relators' view—the university has fraudulently obtained accreditation, and then falsely certified to the government that it is accredited. Nontraditional and online universities are most likely to face these kinds of allegations. Courts, however, have been reluctant to daisy-chain inferences in the way relators seek, including in cases brought against Kaplan University and Chapman University.²⁵

Potential Retaliation Lawsuits Pursuant to 31 U.S.C. § 3730(h) Add to FCA Risks

It is important to keep in mind that FCA defendants may be held liable for alleged retaliation against FCA relators, even if the relator cannot ultimately prove their substantive FCA claims. The “whistleblower” protection provisions of the FCA extends to individuals undertaking reasonable investigations to act against potential fraud in good faith, and it can extend to internal reporting.²⁶ As in other areas of the law, retaliation cognizable under the FCA encompasses actions beyond firing or demotion, including disparagement and harassment.²⁷

Finally, because DOJ continues to strongly encourage knowledgeable parties to bring claims as relators, colleges and universities must have adequate safeguards in place to appropriately handle prospective relators without exposing themselves to litigation risks on retaliation claims.

²⁴ See Press Release, *California University To Pay \$225,000 For Allegedly Violating Ban On Incentive Compensation*, DOJ (Oct. 20, 2020), available at <https://www.justice.gov/usao-sc/pr/california-university-pay-225000-allegedly-violating-ban-incentive-compensation>; Press Release, *Oral Roberts University To Pay Over \$300,000 for Allegedly Violating Ban on Incentive Compensation*, DOJ (June 5, 2019), available at <https://www.justice.gov/archives/opa/pr/oral-roberts-university-pay-over-300000-allegedly-violating-ban-incentive-compensation>.

²⁵ See *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1056–57 (11th Cir. 2015); Martin Van Der Werf, *Judge Dismisses Whistle-Blower Case that Threatened Chapman U.'s Accreditation*, CHRON. HIGHER ED. (Nov. 2, 2007), available at <https://www.chronicle.com/article/judge-dismisses-whistle-blower-case-that-threatened-chapman-u-s-accreditation/>.

²⁶ Compare *United States ex rel. Lang v. Northwestern Univ.*, 472 F.3d 493, 495 (7th Cir. 2006) (comparing the relator to “Chicken Little” and affirming dismissal) with *United States ex rel. Yesudian v. Howard Univ.*, 153 F.3d 731, 739–41 (D.C. Cir. 1998) (“[I]t is sufficient that a plaintiff be investigating matters that reasonably could lead to a viable False Claims Act case” (quotation omitted)).

²⁷ See *United States ex rel. Rosenfeld v. Univ. of Miami*, 2018 WL 8581772, at *7–*9 (concluding that the relator had stated a claim upon which relief could be granted for alleged retaliation that included a piece in the *Miami Herald* “disparaging” the relator).

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