



The U.S. Department of Justice (DOJ) [announced](#) that it initiated a record-high 500 new False Claims Act (FCA) cases in Fiscal Year 2023.

The government and whistleblowers (*qui tam* relators) were party to 543 settlements and judgments under the FCA during the same period, the largest number of settlements and judgments in a single year, and a 54% increase from the prior year, according to the DOJ.

The DOJ's announcement of its statistics for FY 2023 FCA settlements and judgments also revealed that the DOJ obtained \$2.68 billion in FCA judgments and settlements, an increase from the \$2.2 billion obtained in FCA cases the prior fiscal year. The \$2.2 billion figure was lower than recoveries obtained in FY 2021 and FY 2019. Still, FY 2023 was the fifteenth straight year in which the DOJ's FCA recoveries exceeded \$2 billion.

The DOJ's statistics are the latest sign that FCA enforcement continues to be active, with significant numbers of new cases in the pipeline. Indeed, according to the DOJ, the number of *qui tam* cases filed by relators increased to 712 in FY 2023—the third highest yearly total ever—triggering DOJ investigations into the relator's allegations. In [remarks](#) before the Federal Bar Association's *Qui Tam* Conference, Brian Boynton, the Principal Deputy Assistant Attorney General in the DOJ's Civil Division, highlighted cybersecurity, pandemic fraud, healthcare referral schemes, and fraud involving nursing home care as among the DOJ's priority areas of focus in FCA enforcement.

In this Update, we break down the DOJ's statistics and their significance.

## Key Takeaways From DOJ's FY 2023 FCA Statistics

As the government's primary civil remedy to combat fraud against the government, the FCA imposes treble damages and penalties on persons who knowingly present (or cause to be presented) a false or fraudulent claim for payment to the government. The DOJ has recovered billions of dollars in FCA settlements and judgments from defendants in cases every year. Since 1987, the DOJ has obtained more than \$75 billion in FCA settlements and judgments.

The total dollar amounts of the DOJ's settlements and judgments vary from one year to the next and can often be significantly driven by one or more large-dollar-value settlements.

The following are highlights from the DOJ's FY 2023 statistics, which the DOJ released along with a table regarding historical FCA recovery data dating back to 1987 (after the FCA was strengthened through amendments).

- The DOJ initiated a whopping 500 new FCA cases during FY 2023, the highest number of non-*qui tam* cases brought in any fiscal year since 1987, when the DOJ's statistics start. By contrast, the DOJ initiated 305 new FCA cases in FY 2022 and 212 new cases in FY 2021. The sharp increase signals the DOJ's stronger emphasis on data analytics to identify new cases.
- *Qui tam* relators filed 712 new *qui tam* suits in FY 2023, out of a total of 1,212 new FCA matters. Of those 712 new cases, 348 related to healthcare, 40 related to the U.S. Department of Defense (DoD), and 324 related to other types of cases.
- The statistics show continued reliance on the power of the FCA's *qui tam* provision allowing relators to bring lawsuits alleging violations of the FCA against defendants. Relators can recover between 15% and 30% of any recovery by the government. Of the more than \$2.6 billion in total FCA recoveries in FY 2023, more than \$2.3 billion, or 88%, derived from *qui tam* lawsuits.
- Relators are continuing to pursue—and recover large payouts—in FCA cases, including cases in which the DOJ decides not to intervene, which typically reduces the relator's prospects of successfully obtaining a settlement or judgment. During FY 2023, the government paid more than \$349 million to *qui tam* relators under the FCA. This figure represents a drop from the \$496 million paid to relators in FY 2022 but is consistent with amounts paid to relators in FY 2021 (\$263 million) and FY 2020 (\$328 million). The FY 2022 figures were driven by a single \$900 million settlement in which a relator [reportedly](#) received a record-breaking \$296 million payment.
- Defendants in the healthcare and life sciences industries continue to be a focus in FCA cases. Of more than \$2.6 billion in FCA settlements and judgments obtained in FY 2023, more than \$1.8 billion, or 69%, related to the healthcare and life sciences industries.
- The DOJ's statistics reveal a sharp increase in the amounts recovered from FCA settlements and judgments in procurement fraud cases. The DOJ's total recoveries in DoD-related FCA cases increased more than five times in FY 2023 (compared to the prior fiscal year's \$103 million in recoveries), reaching \$551

million.

- The DOJ initiated a total of 28 new DoD-related non-*qui tam* cases in FY 2023, compared to 26 in FY 2022, 26 in FY 2021, 32 in FY 2020, and 13 in FY 2019.
- The DOJ initiated 94 new healthcare-related non-*qui tam* cases in FY 2023, a slight decrease compared to 100 in FY 2022 and 102 in FY 2021.

## A Look Ahead

The DOJ's FCA statistics for FY 2023 signal growing FCA enforcement efforts, with *qui tam* lawsuits continuing to produce new investigations as well as payouts. At the same time, the statistics demonstrate that the DOJ is increasingly identifying cases on its own, without relying on whistleblowers.

The increased number of DoD-related FCA cases reflects in part the DOJ's active enforcement related to its Civil Cyber-Fraud Initiative focused on cybersecurity noncompliance among contractors and grant recipients. In his remarks highlighting the DOJ's priorities under the FCA, Mr. Boynton noted that the DOJ is currently investigating "many" cases involving alleged violations of cybersecurity requirements. He also stated that the DOJ will "continue to dedicate resources to investigating companies that fail to comply with their cybersecurity obligations" and that the DOJ expects such cases to be a "significant area of enforcement in the coming years." He noted that the cybersecurity-related investigations underway originate from a "variety of sources," including from whistleblowers and from companies making voluntary disclosures.

Mr. Boynton also highlighted the following DOJ priority enforcement areas.

- **Pandemic relief fraud.** The DOJ's COVID-19 Fraud Enforcement Task Force continues to pursue cases involving Paycheck Protection Program (PPP) loans and other relief programs. Mr. Boynton noted that in FY 2023 alone, the DOJ resolved approximately 270 FCA matters involving PPP loans.
- **Healthcare-related financial inducements to generate physician referrals.** Mr. Boynton cited a recent \$345 million [settlement](#) involving alleged improper payments to physicians and an \$85 million [settlement](#) involving alleged kickbacks provided to cardiologists in violation of the Anti-Kickback Statute.
- **Use of the FCA to combat fraudulent schemes involving nursing homes.** Mr. Boynton noted that the DOJ has "aggressively pursued" cases involving "grossly substandard care," citing a \$7.1 million settlement against a nursing care operator.
- **Healthcare fraud involving the Medicare Advantage Program, also known as Medicare Part C.** According to Mr. Boynton, the DOJ "expects to expand its focus" on Medicare Part C cases, which have generally examined vendor recommendations and the accuracy of diagnostic data submitted to Medicare.
- **Intentions to pursue third parties—including private equity firms.** Noting that there is a "wide collection of actors" in the healthcare industry that "may influence" the claims submitted to the government for payment, Mr. Boynton said that the DOJ is committed to holding third parties accountable to the extent they cause false claims to be submitted.

© 2024 Perkins Coie LLP

## Authors



## **Alexander O. Canizares**

Partner

[ACanizares@perkinscoie.com](mailto:ACanizares@perkinscoie.com) [202.654.1769](tel:202.654.1769)

### **Explore more in**

[Government Contracts](#) [White Collar & Investigations](#) [Healthcare](#)

### **Related insights**

Update

## **Wrapping Paper Series: Issues and Trends Facing the Retail Industry During the Holiday Season**

Update

## **New Statutory Requirements for Commercial Leases: SB 1103 Updates California Laws for Landlords and Commercial Tenants**