How FCA, FCPA Risks Are Shifting As Feds Pull Back

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The defining feature of financial crime enforcement in 2025 was undoubtedly the pullback by the federal government. As we near the midpoint of 2026, that retreat shows no signs of slowing.

The clearest illustration of this is the U.S. Department of Justice's May issuance of a new white collar crime enforcement plan reorienting resources toward fraud on government programs, cartel and transnational criminal organization money laundering, trade and customs fraud, and crime committed by foreign actors.

Furthering this objective is the DOJ's recently announced National Fraud Enforcement Division, which focuses on government program fraud and assumes control over three Criminal Division units: the Tax Section, the Health Care Fraud Unit, and the Market, Government and Consumer Fraud Unit.

The transferred focus of these prosecutors is anticipated to create additional slowdowns in fraud enforcement in areas such as traditional market manipulation and fraud schemes targeting retail investors.

However, while federal enforcement has receded in certain areas, other actors have stepped up to the plate.

Two significant enforcement regimes — the False Claims Act and the Foreign Corrupt Practices Act — illustrate how enforcement has migrated away from federal regulators, shifting in one instance to private whistleblowers and in the other to foreign prosecutorial authorities, reshaping how and where corporate misconduct is ultimately pursued.

Federal pullback from financial crime enforcement has not quieted FCA exposure. It has redirected it. While the DOJ actually accelerated FCA recoveries to record highs in 2025, the more significant development is that private whistleblowers are increasingly driving enforcement. The FCA plaintiffs' bar is on the offensive and winning.

Additionally, after a pause directed by the White House, the DOJ fundamentally restructured its approach to the FCPA, narrowing the statute's reach to conduct implicating U.S. national security and economic competitiveness and stepping back from the expansive global anti-corruption posture that had defined enforcement for a generation.

Foreign enforcement authorities, animated in part by a perceived American retreat from global anti-corruption leadership, are beginning to build coordinated prosecutorial infrastructure to pursue conduct the DOJ is no longer prioritizing.

Taken together, these developments point to a common conclusion: The U.S. is no longer the singular organizing force in key areas of financial crime enforcement.

Enforcement risk remains substantial, but it is increasingly decentralized, driven by actors whose incentives, constraints and priorities differ from those of federal regulators.

The FCA: The Vacuum Filled From the Inside

The FCA presents a more complex version of the enforcement substitution dynamic examined here. Unlike other federal agencies, the DOJ has not wholly retreated from FCA enforcement.

By the numbers, it actually accelerated it, recovering a record $6.8 billion in fiscal year 2025, the highest single-year total in the statute's history.[6] At first glance, the FCA appears to be a story of federal continuity rather than federal retreat.

That reading misses an important development of the FCA into a private enforcement mechanism. FCA data reveals that the statute has evolved into a private enforcement system operating largely independently of the DOJ's priorities.

The statute thus allows private enforcement to fill gaps created not by the DOJ retreat from FCA enforcement, but by the broader retreat of other federal agencies and enforcement regimes.

The qui tam mechanism, which empowers private whistleblowers to file suit on the government's behalf and receive 15% to 30% of any recovery, is perhaps becoming a vehicle through which private actors pursue fraud in sectors where the relevant regulatory agency has stood down, criminal prosecution has wound down, or the administration has deprioritized traditional enforcement.

The FCA's architecture was not designed for this purpose, but it is performing it.

The scale of private relator activity in fiscal year 2025 makes the point quantitatively. Whistleblowers filed a record 1,297 new qui tam actions, shattering the prior record of 980 filed in fiscal year 2024, and amounting to more than five new suits every business day, according to a DOJ press release from January. Qui tam actions accounted for more than three-quarters of all new FCA matters.

More telling still, recoveries in cases where the DOJ declined to intervene and left relators to litigate entirely on their own totaled more than 33% of all FCA recoveries in fiscal year 2025.

Two of the year's largest individual recoveries came in precisely such cases.

One was a $1.6 billion verdict in a case alleging false claims about prescription drugs (U.S. ex rel. Penelow v. Janssen Products LP in the U.S. District Court for the District of New Jersey, then appealed to the U.S. Court of Appeals for the Third Circuit). The other was a $289 million verdict in a case alleging inflated pricing for generic drugs (U.S. ex rel. Behnke v. CVS Caremark Corp. in the U.S. District Court for the Eastern District of Pennsylvania).

Both were pursued to trial by relators without DOJ participation.

This pattern — record recoveries driven by private actors operating independently of the government — cements the structural transformation in how the FCA functions. It is no longer primarily a government enforcement tool that private citizens supplement.

It is increasingly a private enforcement mechanism that the government funds through sharing recoveries and facilitates through the statute's procedural infrastructure, but does not meaningfully control.

This trend will only accelerate after the White House's recent executive order establishing a task force to "coordinate and accelerate a comprehensive national strategy to stop fraud, waste, and abuse within Federal benefit programs."

The order directs the DOJ to promote the meritorious pursuit of FCA cases brought by private parties involving fraud in federal benefits programs.

The sectors where this dynamic is most consequential for financial crime practitioners are not the traditional healthcare and defense contracting cases that have historically dominated FCA enforcement. They are the areas where other federal enforcement has diminished or proven insufficient and where the FCA appears to be filling the gap.

Customs and tariff fraud is a clear example.

As the administration has restructured trade enforcement, and the regulatory apparatus governing import compliance has shifted rapidly and struggled to keep up with soaring need, private relators have moved aggressively into customs fraud.

The administration itself encouraged this, directing whistleblowers toward tariff evasion cases and establishing a cross-agency Trade Fraud Task Force. The DOJ previewed a fiscal year 2026 customs fraud settlement of $54.4 million as the largest in FCA history, in U.S. ex rel. Stover v. Ceratizit USA Inc. in the U.S. District Court for the Eastern District of Michigan.

For trading firms, financial institutions with trade finance exposure and importers operating across tariff regimes that have shifted repeatedly since 2025, FCA exposure is now a live financial crime risk, driven not by regulatory examination but by competitors, former employees and data miners with access to publicly available import data.

Cybersecurity presents a parallel dynamic.

The U.S. Securities and Exchange Commission signaled in 2025 that it was pulling back from the prior administration's posture on cybersecurity disclosure enforcement.

But the FCA has moved into the space the SEC may be vacating. Federal contractors that certify compliance with cybersecurity requirements while failing to implement adequate controls face qui tam exposure that the SEC's posture does nothing to diminish. According to the DOJ, FCA cybersecurity settlements exceeded $52 million across nine cases in fiscal year 2025, more than tripling in each of the prior two years.

Some of the most significant cases were initiated not by SEC referral or regulatory examination, but by former employees and internal whistleblowers who had no connection to federal enforcement priorities.

The lesson that emerges from the FCA's trajectory is distinct from areas where an enforcement gap was created by federal agencies standing down and an alternative enforcer stepping into the same territory.

In the FCA context, the mechanism is more subtle: Agency retreat or failings left certain categories of corporate conduct without their primary federal regulator, and private relators are filling those gaps through a statute that gives them both the standing and the financial motivation to act regardless of where an agency's priorities lie.

The result for companies is that the regulatory quiet they may be experiencing in one enforcement channel can coexist with significant and growing exposure in another one operated heavily by private actors with purely financial motives and no institutional constraints.

The FCPA: Enforcement Migration, Not Enforcement Vacuum

The FCPA has governed the antibribery compliance obligations of U.S. companies and foreign issuers for nearly 50 years, and for much of that period has operated as the de facto global anti-corruption enforcement standard.

The events of 2025 meaningfully disrupted that arrangement. But the story of the FCPA's transformation may not be a story of an enforcement vacuum, but instead a story of enforcement migration.

On Feb. 10, 2025, President Donald Trump issued an executive order directing the DOJ to pause all new FCPA investigations and enforcement actions, conduct a comprehensive review of existing matters, and issue updated guidelines prioritizing American interests and economic competitiveness.

The pause was sweeping in effect. FCPA enforcement was nearly nonexistent in the first three quarters of 2025, and the review process resulted in the termination of "approximately half of the active FCPA investigative docket," according to a March 2026 article from Just Security.

The SEC brought no FCPA enforcement actions after January 2025 and disbanded its dedicated FCPA unit.

On June 9, 2025, the DOJ issued new guidelines formally ending the pause, but the guidelines confirmed the narrowing rather than reversing it.

The new framework directs prosecutors to focus on FCPA cases implicating four priority factors: misconduct associated with cartels or transnational criminal organizations; conduct that unfairly disadvantages law-abiding U.S. companies in foreign markets; cases involving national security sectors; and serious misconduct involving substantial bribe payments.

Critically, the guidelines introduced a directive instructing prosecutors to assess, before initiating U.S. proceedings, whether a capable and willing foreign authority could pursue the same conduct instead.

That instruction is the legal mechanism through which enforcement migration operates. The DOJ has formally invited foreign enforcement authorities to assume primary jurisdiction over cases the U.S. is declining to pursue, and those authorities have accepted.

The consequence of this narrowing is not necessarily a gap in global anti-corruption enforcement. It may be a redistribution of enforcement authority along jurisdictional and institutional lines.

As the DOJ focuses its FCPA enforcement on conduct tied to U.S. national security, cartels, transnational criminal organizations, critical infrastructure, and major competitive harm to American companies, foreign prosecutors are positioned to claim a larger share of the antibribery field. Cases once expected to be led from Washington may increasingly be led from London, Paris, or Bern.

The formation of the International Anti-Corruption Prosecutorial Taskforce makes this trajectory concrete. Six weeks after the FCPA pause was announced, the U.K.'s Serious Fraud Office, France's Parquet National Financier, and Switzerland's Office of the Attorney General jointly established the task force, which recognizes the "significant threat of bribery and corruption and the severe harm that it causes," and the importance of working together to confront that threat.

The architecture of coordinated international anti-corruption enforcement may be rebuilt with Washington no longer at its center.

Where Do We Go From Here?

The evolution of the FCA and FCPA underscores a broader reality about the current enforcement landscape: Federal retrenchment has not reduced accountability. It has redistributed it.

Under the FCA, enforcement has shifted heavily to private actors, creating a system driven by financial incentives rather than policy priorities. Under the FCPA, enforcement has shifted across borders, with foreign authorities assuming a larger role in policing global corruption.

In both cases, the result is a form of enforcement that is less centralized, less predictable, and less controllable than the system it is replacing.

For companies navigating this environment, the strategic challenge is not simply compliance with existing rules, but adaptation to a fundamentally altered enforcement architecture — one in which the absence of federal action no longer signals reduced risk, but rather a change in who will impose it.

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[1] Memorandum from Matthew R. Galeotti, Head of the Criminal Division, U.S. Dept. of Just., to All Criminal Division Personnel (May 12, 2025), 1-5, https://www.justice.gov/criminal/media/1400046/dl.

[2] Memorandum from Acting Attorney General Todd Blanche, Establishment of the National Fraud Enforcement Division (Apr. 7, 2026) at 1, available at https://www.justice.gov/ag/media/1435311/dl?inline. This memorandum leaves key questions unanswered, including the fate of the Criminal Division's existing fraud units and the ultimate scope of any reorganization.

[3] Phillip Bantz, DOJ Fraud Division Set To Shake Up White-Collar Enforcement, Law360 (May 13, 2026), https://www.law360.com/fintech/articles/2477084?nl_pk=2db94745-38ca-4029-98bf-12ec3d563382&utm_source=newsletter&utm_medium=email&utm_campaign=fintech&utm_content=2026-05-14&read_main=1&nlsidx=0&nlaidx=3.

[4] See Exec. Order No. 14209, 90 C.F.R. §9587 (2025).

[5] Memorandum from Todd Blanche, Deputy Attorney General, U.S. Dept. of Just., to Head of the Criminal Division (June 9, 2025), https://www.justice.gov/dag/media/1403031/dl.

[6] See, e.g., Press Release, U.S. Dep't of Just., False Claims Act Settlements and Judgments Exceed $6.8B in Fiscal Year 2025 (Jan. 16, 2026), https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-68b-fiscal-year-2025 (linking to Fact Sheet, U.S. Dep't of Just., Fact Sheet False Claims Act Settlements and Judgments FY2025 (Jan. 16, 2026), https://www.justice.gov/opa/media/1424126/dl).

[7] False Claims Act Settlements and Judgments Exceed $6.8B in Fiscal Year 2025, supra note 35.

[8] Id.

[9] Federal Bar Association Blog, 10 Takeaways from DOJ's Record-Setting FY2025 Civil Fraud Recoveries, Federal Bar Association (Apr. 7, 2026), https://www.fedbar.org/blog/10-takeaways-from-dojs-record-setting-fy2025-civil-fraud-recoveries/.

[10] Fact Sheet False Claims Act Settlements and Judgments FY2025, supra note 35.

[11] Exec. Order No. 14,395, Establishing the Task Force to Eliminate Fraud, 91 Fed. Reg. 13,485 (Mar. 19, 2026).

[12] Press Release, U.S. Dep't of Just., Departments of Justice and Homeland Security Partnering on Cross-Agency Trade Fraud Task Force (Aug. 29, 2025), https://www.justice.gov/opa/pr/departments-justice-and-homeland-security-partnering-cross-agency-trade-fraud-task-force.

[13] Fact Sheet False Claims Act Settlements and Judgments FY2025, supra note 35.

[14] On November 20, 2025, the SEC announced that it jointly stipulated with defendants to dismiss with prejudice its civil enforcement litigation against SolarWinds and its CISO, SEC Litigation Release, SEC Dismisses Civil Enforcement Action Against SolarWinds and Chief Information Security Officer (Nov. 20, 2025), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26423. This dismissal aligns with the SEC's stated shift toward a more traditional, "back to basics" enforcement approach.

[15] Fact Sheet False Claims Act Settlements and Judgments FY2025, supra note 35 ("In this year alone, the Department has recovered over $52 million in nine cybersecurity fraud settlements and civil cybersecurity fraud settlements have more than tripled in each of the past two years.").

[16] See, e.g., Press Release, U.S. Dep't of Just., Illumina Inc. to Pay $9.8M to Resolve False Claims Act Allegations Arising from Cybersecurity Vulnerabilities in Genomic Sequencing Systems (July 31, 2025), https://www.justice.gov/opa/pr/illumina-inc-pay-98m-resolve-false-claims-act-allegations-arising-cybersecurity.

[17] Exec. Order No. 14209, 90 C.F.R. §9587 (2025).

[18] Richard Nephew, A Year Later — What Did the Pause on FCPA Enforcement Do?, Just Security (Mar. 10, 2026), https://www.justsecurity.org/133481/year-later-fcpa-enforcement-pause/.

[19] Id.

[20] Memorandum from Todd Blanche, supra note 3.

[21] Id.

[22] Id. at 4 ("To prioritize cases that warrant investigation by U.S. authorities, FCPA prosecutors should also consider the likelihood (or lack thereof) that an appropriate foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct."); see also Remarks of Acting Assistant Attorney General Matthew R. Galeotti, Criminal Division, U.S. Dep't of Justice, at the American Conference Institute Conference (June 10, 2025), https://www.justice.gov/opa/speech/head-justice-departments-criminal-division-matthew-r-galeotti-delivers-remarks-american, ("Conduct that does not implicate U.S. interests should be left to our foreign counterparts or appropriate regulators.").

[23] International Anti-Corruption Prosecutorial Taskforce, Founding Statement (Mar. 20, 2025), https://assets.publishing.service.gov.uk/media/67dc0bb3931ea30d1b7ee33d/International_Anti-Corruption_Prosecutorial_Taskforce.pdf.

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