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Universities and other educational institutions that receive federal funding are at an increased risk for whistleblower lawsuits, according to a Sept. 10 article in the National Law Journal.

Several universities, including the Internet-based University of Phoenix, are battling charges filed under the False Claims Act that the schools misled the government in order to collect federal dollars. The schools have argued, among other things, that the actions against them are an improper expansion of the False Claims Act.

The story quotes Vorys partner Glenn V. Whitaker, a nationally regarded expert on False Claims.

"There's been an expansion of the FCA in ways that I don't think anybody understood . . . and that nobody quite envisioned," Whitaker told the publication. "There's a whole area out there where you have entities like universities that receive federal funding, and then lawyers come along and say, 'Well, if the U.S. knew that you were doing this and this, they wouldn't fund you.' "

Whitaker told the Journal that he believes no entity that receives federal funding is immune from an FCA claim.

Whitaker practices in the area of general litigation with emphasis on the representation of individuals and corporations in complex civil litigation and criminal proceedings. His expertise includes qui tam and false claims litigation, environmental issues, construction law, toxic torts, health care fraud and abuse, government procurement and antitrust violations. Mr. Whitaker has represented defendants in a wide variety of complex *qui tam* False Claims Act actions.

His expertise is widely sought after, and he has written extensively on the subject, most recently on changes in federal law that are expected encourage False Claims filings in the health care area.

Whitaker is a Fellow of the American College of Trial Lawyers, a member of the American Board of Trial Advocates and a Master of the Bench of the Potter Stewart American Inn of Court. He was recently named in *The Best Lawyers in America* in four categories: Bet-the-Company, Commercial and Personal Litigation and White Collar Criminal Defense. He was also included in *Ohio Lawyer* as one of

Ohio's "Winningest" litigators. In 2004, Whitaker was selected by his peers as one of the top 10 "Super Lawyers" in Ohio. He is a member of the Cincinnati, Ohio State, Maryland, District of Columbia, and American Bar Associations (Litigation and Criminal Justice Sections, White Collar Crime Committee). He was Co-Chairman of the 1993 National Institute on Health Care Fraud presented by the ABA Section of Criminal Justice.

Recent changes in federal law have helped create an upsurge in False Claims Act filing. Under the False Claims Act, individuals are permitted to bring actions against companies they believe have committed fraud against the government. The U.S. Justice Department then determines whether it will join the suit. The plaintiff then shares in any financial penalties, which can include trebled damages. Given the nature of the FCA's penalty provisions, FCA defendants can be liable for devastating amounts of money even if the government has not sustained any actual damages.

Whitaker advises corporate clients that a compliance program is essential. In fact, the Department of Justice has recently taken the position that the absence of a compliance program will be evidence of reckless behavior which could satisfy the scienter requirement of the Act. If there are effective internal procedures available to allow for employees to complain about issues that they become aware of during their employment, it is much less likely that the same employees will feel compelled to bring their issues to the attention of federal investigators. In any event, it is more likely that the company will learn about these issues through its compliance program and make corrective action before the matter becomes serious enough to warrant governmental intervention in a qui tam lawsuit.

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