False Claims Act

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The **False Claims Act** (31 U.S.C. §§ 3729–3733, also called the "**Lincoln Law**") is an American federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs. The law includes a "qui tam" provision that allows people who are not affiliated with the government to file actions on behalf of the government (informally called "whistleblowing"). Persons filing under the Act stand to receive a portion (usually about 15–25 percent) of any recovered damages. Claims under the law have typically involved health care, military, or other government spending programs, and dominate the list of largest pharmaceutical settlements. The government has recovered nearly $22 billion under the False Claims Act between 1987 (after the significant 1986 amendments) and 2008.[1]

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[edit] History

The American Civil War (1861–1865) was marked by fraud on all levels, both in the Union north and the Confederate south. During the war, unscrupulous contractors sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition, and rancid rations and provisions, among other unscrupulous actions.[2] In response, Congress passed the False Claims Act on March 2, 1863, 12 Stat. 696.[3] Because it was passed under the administration of President Abraham Lincoln, the False Claims Act is often referred to as the "Lincoln Law."[4]

Importantly, a reward was offered in what is called the "qui tam" provision, which permits citizens to sue on behalf of the government and be paid a percentage of the recovery. *Qui tam* is an abbreviated form of the Latin legal phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur* ("he who brings a case on behalf of our lord the King, as well as for himself") In a *qui tam* action, the citizen filing suit is called a "relator". As an exception to the general legal rule of standing, courts have held that *qui tam* relators are "partially assigned" a portion of the government's legal injury, thereby allowing relators to proceed with their suits.[5]

[edit] Provisions

The Act establishes liability when any person or entity improperly receives from or avoids payment to the Federal government (tax fraud is excepted). The Act prohibits:

1. Knowingly presenting, or causing to be presented a false claim for payment or approval;
2. Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
3. Conspiring to commit any violation of the False Claims Act;
4. Falsely certifying the type or amount of property to be used by the Government;
5. Certifying receipt of property on a document without completely knowing that the information is true;
6. Knowingly buying Government property from an unauthorized officer of the Government, and;
7. Knowingly making, using, or causing to be made or used a false record to avoid, or decrease an obligation to pay or transmit property to the Government.

The most commonly used of these provisions are the first and second, prohibiting the presentation of false claims to the government and making false records to get a false claim paid. By far the most frequent cases involve situations in which a defendant—usually a corporation but on occasion an individual—overcharges the federal government for goods or services. Other typical cases entail failure to test a product as required by the rigorous government specifications or selling defective products.

The False Claims Act was amended in 1943 to, most notably, reduce the relator's share of the recovered proceeds.* The law was again amended in 1986. By that time, there was great concern that the national deficit had risen dangerously and President Ronald Reagan had declared that a vast amount of government spending was being misused through waste and fraud.

After the 1986 amendments strengthening the Act were passed (see below), the Act was used primarily against defense contractors. By the late 1990s, however, the focus had shifted to health care fraud, which now accounts for the majority of cases filed by whistleblowers and by the government.

Under the False Claims Act, the Department of Justice is authorized to pay rewards to those who report fraud against the federal government in an amount of between 15 and 30 percent of what it recovers based upon the whistleblower's report.

Certain claims are not actionable, including:

1. certain actions against armed forces members, members of Congress, members of the judiciary, or senior executive branch officials;[6]
2. claims, records, or statements made under the Internal Revenue Code of 1986 which would include tax fraud;[7]

There are unique procedural requirements in False Claims Act cases. For example:

1. a complaint under the False Claims Act must be filed under seal;
2. the complaint must be served on the government but must not be served on the defendant;
3. the complaint must be buttressed by a comprehensive memorandum, not filed in court, but served on the government detailing the factual underpinnings of the complaint.

[edit] 1986 changes

(False Claims Act Amendments (Pub.L. 99-562, 100 Stat. 3153, enacted October 27, 1986)

1. The elimination of the "government possession of information" bar against qui tam lawsuits;
2. The establishment of defendant liability for "deliberate ignorance" and "reckless disregard" of the truth;
3. Restoration of the "preponderance of the evidence" standard for all elements of the claim including damages;
4. Imposition of treble damages and civil fines of $5,000 to $10,000 per false claim;
5. Increased rewards for qui tam plaintiffs of between 15–30 percent of the funds recovered from the defendant;
6. Defendant payment of the successful plaintiff's expenses and attorney's fees, and;
7. Employment protection for whistleblowers including reinstatement with seniority status, special damages, and double back pay.

[edit] 2009 changes

Main article: Fraud Enforcement and Recovery Act of 2009

On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 ("FERA") was signed into law. It includes the most significant amendments to the FCA since the 1986 amendments. FERA enacted the following changes:

1. Expanded the scope of potential FCA liability by eliminating the "presentment" requirement (effectively overruling the Supreme Court's opinion in *Allison Engine Co. v. United States ex rel. Sanders*, 128 S. Ct. 2123 (2008));
2. Redefined "claim" under the FCA to mean "any request or demand, whether under a contract or otherwise for money or property and whether or not the United States has title