

Your questions answered

You likely have many questions about the legal process and your individual case. We want you to be fully informed, so we are happy to answer them. If you have questions that are not answered here, please let us know.

1. What is the False Claims Act?

The False Claims Act (FCA) is a federal law (31 U.S.C. Sections 3729 through 3733) that prohibits people from defrauding the federal government by knowingly presenting (or causing to be presented) a false or fraudulent claim to the government for payment. The FCA was designed to help U.S. taxpayers recover money stolen from the federal government.

The “*qui tam*” provision of the FCA allows a person or people to act as whistleblowers and sue the wrongdoer on behalf of the U.S. government. In such cases, whistleblowers are referred to as “relators.” “*Qui tam*” comes from a Latin phrase meaning “he who sues for the king as well as for himself.” Typically, the whistleblower is or was employed by the company engaged in the wrongdoing. The FCA has express language forbidding retaliation by employers against whistleblowers.

2. Why was the FCA created?

In 1986, Congress recognized that the government, with its limited resources, could not combat on its own all of the fraud that was being perpetrated by contractors and those who receive payments from the government for services. Congress rejuvenated the FCA, a Civil War-era law, by strengthening its *qui tam* section to create incentives for private citizens to help the government fight fraud and recover monies owing to the government.

3. What are typical False Claims Act cases?

False Claims Act cases involve a variety of government programs and/or contracts. Virtually any type of fraud in which the government has paid money, or has been billed for money, based on false claims will likely fall under the FCA. Many successful FCA cases have involved Medicare and military contracting fraud. Other successful cases have dealt with federal funding for environmental, anti-terrorism, energy, farm, and education programs.



Here are some examples of frauds that have already been prosecuted under the FCA:

- Billing the government for services and goods that were never rendered or delivered.
- Selling the government broken or untested equipment that fails to comply with contract specifications.
- Being overpaid by the government for a good or service and not reporting it.
- Skimming profits off the sale of municipal bonds.
- Mining or harvesting more natural resources from public lands than reported to the government.
- Lying to the government about the value of imported goods, or about where the goods came from.
- Lying to the government about whether a contractor is a member of a minority group or a veteran.
- Billing the government for research that never occurred or was falsified.

Here are some examples that apply specifically to the field of health care:

- Performing and billing the government for unnecessary medical procedures in order to increase the amount of Medicare reimbursement.
- Charging the government twice for a service or good that only should have been billed once (double billing).
- Billing the government for brand name drugs where generic drugs were actually used.
- Using multiple billing codes on medical tests in order to increase government reimbursement for the test (unbundling).
- Lying to the government about the true wholesale price of prescription drugs in order to receive a greater reimbursement.
- Lying to the government by reporting – via billing codes – that a patient’s illness and costs were greater than they actually were

(“upcoding”).

- Charging the government for work performed by a doctor that was actually performed by a nurse or resident intern.
- Nursing home practices that unfairly bill Medicare for certain services.
- Hospice providers that accept unqualified patients or that improperly revoke a patient’s hospice admission to take advantage of Medicare.

4. Who can be a whistleblower?

Any person or entity that has evidence of a fraud occurring against federal contracts or programs can act as a whistleblower under the False Claims Act. Anyone filing a lawsuit under the FCA’s *qui tam* provisions is known as a “relator.” More than one person or entity can jointly file a *qui tam* suit.

5. What if someone else has already filed a FCA suit against the company I’m thinking of suing under FCA?

If another person or the government has already filed a FCA suit based on the same fraud you’re aware of, it is possible your suit could be dismissed. This aspect of the FCA is sometimes called the “first to file” rule. That is why it is often important to file your FCA suit as soon as possible.

6. What are the benefits of being a whistleblower?

In addition to the benefit of helping to eliminate fraud against the government, there are important financial rewards. If a person who files a *qui tam* suit receives a favorable judgment or settlement in their case – thus allowing the government to recover money lost in the fraud – the person could receive 15 to 30 percent of that money that is recovered in the case. The government’s recovery could include up to three times the amount of money it paid out under the false claim, plus a penalty of \$5,500 to \$11,000 per false claim.

In order to be eligible to receive a portion of this payout, a person must have filed a *qui tam* suit. Merely informing the government of the fraud is not enough under the FCA.

7. What should I do if I know about fraud against the government?

Before you take any action, it is a good idea to consult an attorney who has experience handling FCA cases, and who can offer useful advice on how best to proceed and investigate your claims. If you decide to proceed with a *qui tam* case, your attorney can help you assemble as strong a case as possible. The more prepared you are before filing suit, the higher your chance of success. It is also important not to discuss the fraud with anyone but your attorneys prior to filing your suit. If others hear of the fraud and file a *qui tam* suit before you, your suit is at risk of being dismissed. Also, if the government discovers the fraud on its own and starts its own lawsuit or investigation before you file your *qui tam* suit, your suit will be at risk for dismissal.

8. If I know about fraud, how quickly must I act? Is there a statute of limitations?

Under the False Claims Act, a *qui tam* suit must be filed: 1) within six years from the date of the fraud; or 2) three years after the government knew or should have known about the fraud, and no later than 10 years after the fraud. Despite this lengthy period, the general rule is that the sooner you file your case the better.

9. Would my employer know right away if I decided to file a *qui tam* suit or report their fraud to the government?

Your employer should not know about the lawsuit and subsequent government investigation for at least several months or possibly even years. *Qui tam* suits are filed under seal and kept secret under the False Claims Act. Attorneys and government agents involved in investigating the allegations in a *qui tam* suit are not permitted

to reveal any information about the suit while it's being investigated. However, once the investigation is completed, the suit is made public and the employer/defendant is notified.

10. What role does the government play in a whistleblower lawsuit?

Once you have filed your *qui tam* suit under the False Claims Act, the government may decide to join your side in the suit. It is usually advantageous if the government decides to join your suit because your case will have the resources of the U.S. Department of Justice at its disposal. If the government declines to join you in your case, you can still proceed with it alone.

Working with experienced attorneys who have the capacity and experience to investigate and litigate complex cases from start to finish can increase the likelihood of the government joining your case, and is absolutely critical to the success of your case if the government declines intervention.



Every year since 2003, the *National Law Journal* has selected Lief Cabraser as one of the nation's top plaintiffs' law firms.

11. What are the remedies for False Claims Act violations?

Those who violate the False Claims Act can be liable for three times the amount that the government was defrauded, plus penalties of \$5,500 to \$11,000 for each false claim. Each time the violator fraudulently billed the government counts as a separate claim. As a result, penalties can be an important component of an FCA claim.

12. What if I have information on a state being defrauded, as opposed to the federal government?

Many states have their own version of the False Claims Act to discourage frauds against state and local governments. Among those states are: California, Delaware, Washington D.C., Florida, Georgia, Hawai'i, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. Some states have laws that mirror the federal FCA; others have laws limited to health care fraud; still others have unique provisions. It is important for your attorneys to be aware of these state-specific provisions.

13. What about tax fraud?

The U.S. tax code has its own provisions that allow whistleblowers to obtain a reward for reporting tax fraud. As with the False Claims Act, the IRS whistleblower provisions provide for whistleblowers to be awarded 15 to 30 percent of the amount recovered, plus triple damages.

14. What about securities fraud and other types of financial fraud?

The Dodd-Frank Wall Street Reform and Consumer Protection Act allows for any individual, or for two or more individuals acting jointly, to receive a reward if they provide the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission

(CFTC), or other agencies information about violations of federal securities laws. Examples of securities laws violations that would fall into this category are insider trading, accounting fraud, bribing a foreign official (Foreign Corrupt Practices Act violations), and money laundering. In order to receive a reward, the information turned over by the whistleblower must lead to the government recovering \$1 million or more. If that requirement is met, the whistleblower can receive from 10 to 30 percent of the amount the government recovers.

These new Dodd-Frank whistleblower provisions also offer FCA-like protections against retaliation by employers.

Lieff Cabraser can provide valuable assistance for individuals considering being a whistleblower on securities or tax fraud. As with FCA suits, seeking an attorney's or tax advice prior to filing such a suit is highly recommended and can maximize your likelihood of success.

15. What are the risks associated with being a whistleblower? How would the False Claims Act protect me?

Unfortunately, whistleblowers are commonly subject to retaliation. However, whistleblower protections have dramatically expanded in recent years due to the passage of new laws and pro-employee interpretations of existing law. One example is the explicit anti-retaliation provision under the False Claims Act. The degree of legal protection a whistleblower receives depends on the type of whistleblowing, the role of the whistleblower, and the type of company, among other issues.

16. How do I protect myself from retaliation for whistleblowing?

It is important that you seek legal advice early and meet with counsel. Lieff Cabraser has a nationwide, top-rated employment practice dedicated to protecting employees who have

been treated unfairly, including being retaliated against by their employers for challenging illegal practices. Our False Claims Act and employment attorneys can advise you on whether and how to serve as a whistleblower and can protect you against retaliation.

17. Who can I contact for help in evaluating my case?

Lieff Cabraser has an active practice representing whistleblowers in both federal and state False Claims Act cases. Our attorneys are highly experienced and have a track record of success with such suits. We will review your claim for free and with no obligation. Please call us toll-free at **1-800-541-7358** (San Francisco), or **1-888-321-1510** (New York).



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