

# False Claims Act

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## False Claims Act Provides:

- A **person** who **knowingly** submits a **false** or fraudulent **claim** to the government, or makes a false statement to get such a claim approved, is liable for both **damages** and **penalties**.

## Person

A “**person**” is defined broadly as:

- Any natural person, partnership, corporation, association, or other legal entity.

31 U.S.C. § 3733(l)(4)

“Person” includes a county or municipality, but does not include a state or state agency.

Cook County v. U.S. ex rel. Chandler, 123 S.Ct. 1239 (2003), Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 788 (2000)

## Claim

A **claim** submitted to the government is:

- any request for money or property if the government funds a portion of the money or property requested

subcontractor’s claim

claim submitted to state program

31 U.S.C. § 3729(c)

## False or Fraudulent

A **false** or **fraudulent** claim is:

- an inaccurate, deceptive or misleading claim of entitlement to money or property.

31 U.S.C. § 3729(a)

## Knowingly

The Act defines “**knowingly**” as:

- **actual knowledge** that the claim is false;
- **deliberate ignorance** as to the truth or falsity of the claim; or
- **reckless disregard** as to the truth or falsity of the claim.

31 U.S.C. § 3729(b)(1)(2)(3)

## “Knowingly” in context

- doctor bills Medicare for service not provided; makes up patient and service date (**actual knowledge**)
- doctor tells office manager to increase revenues: “I don’t want to know how you do it, just do it” (**deliberate ignorance**)

## “Knowingly” in context: (continued)

- doctor signs a stack of blank claim forms, certifying to accuracy of information submitted (**reckless disregard**)
- NOT: doctor erroneously bills Medicare for a non-covered service; a reasonably prudent doctor would have known the service wasn’t covered (**negligence**)

## Damages and Penalties

- A defendant is liable for:
  - three times the damages sustained by the government because of the false claim; and
  - a civil penalty of \$5,500 to \$11,000 per false claim (for conduct after 9-29-99).

31 U.S.C. § 3729(a)

## Damages and Penalties

### Example

- 1 false claim every week, resulting in \$100,000 overpayment in a year
  - $\$100,000 \times 3 = \$300,000$
  - $52 \times \$5,500 = \$286,000$
  - or
  - $52 \times \$11,000 = \$572,000$
  - total: minimum = \$586,000
  - or
  - maximum = \$872,000

## *Qui Tam Procedure*

- relator files a complaint under seal
- serves complaint on the Attorney General and the U.S. Attorney, along with a statement of “substantially all material evidence and information the [relator] possesses”

31 U.S.C. § 3730(b)(2)

## *Qui Tam Procedure* (continued)

- government is then given 60 days to investigate the facts and allegations while the case remains under seal

31 U.S.C. § 3730(b)(2)

## *Qui Tam* Procedure (continued)

- government may obtain extensions of the 60-day period for good cause shown
- after 60 days and any extensions, government must decide whether to intervene and take over the case or decline to intervene; it files its decision

31 U.S.C. § 3730(b)(3)

## *Qui Tam* Procedure (continued)

- once government either intervenes or declines, complaint is unsealed and served on defendant

31 U.S.C. § 3730(b)(4)

## Once Case Is Filed

- government may open parallel criminal case based on alleged conduct of defendant
- one or more agencies will become involved:
  - HHS-OIG
  - FBI
  - DCIS

## Once Case Is Filed (continued)

- U.S. Attorney's Office has its own ACE investigator and health care fraud auditor
- need for agency coordination

## Relator's Share

- if the government intervenes, the relator gets **15 - 25%** of the total recovery, depending on extent to which relator “substantially contributed to the prosecution of the action”

31 U.S.C. § 3730(d)(1)

## Relator's Share (continued)

- if the government does not intervene, the relator gets **25 - 30%** of the total recovery
- a prevailing relator gets reasonable costs, fees and expenses from defendant

31 U.S.C. § 3730 (d)(2)

## Relator's Share (continued)

- a prevailing defendant can recover fees and expenses from a relator only if the Court determines the action was “clearly frivolous, clearly vexatious or brought primarily for purposes of harassment”

31 U.S.C. § 3730(d)(4)

## Relator's Share (continued)

- relator may recover even if he/she “planned and initiated” the fraud, as long as the relator isn't criminally convicted of such conduct. The Court is authorized to award less than 15% to such a relator.

31 U.S.C. § 3730(d)(3)

## Prohibited *Qui Tam* Actions

- Only the first relator who files a complaint may maintain a case.
  - Rush to the courthouse may not help the government

31 U.S.C. § 3730(b)(5)

## Prohibited *Qui Tam* Actions

Court lacks jurisdiction when:

- action is based upon publicly disclosed allegations or transactions
  - **“Public disclosure” comes from:**
    - criminal, civil, or administrative hearing
    - congressional, administrative, or GAO report, hearing, audit, or investigation; or
    - news media

## Prohibited *Qui Tam* Actions (continued)

- An action may be based upon a public disclosure if the relator was an “original source”

31 U.S.C. § 3730(e)(4)(A)

## Original Source

A relator is an “original source” if he/she:

- has direct and independent knowledge of the information on which the allegations are based;
- has voluntarily provided that information to the government before filing the *qui tam* complaint;
- and

## Original Source (continued)

- (in the 9th and 2nd circuits) was a direct or indirect source to the entity that made the public disclosure.

31 U.S.C. § 3730(e)(4)(B)

## Original Source

- Split of authority (6<sup>th</sup> Circuit and D.C. Circuit hold): to qualify as an original source, information must be voluntarily provided to the government before a relator files a private action arising out of the fraud
  - concern that a relator could seek payment for silence

## Relator's Employment Protection

- Any employee who is discharged, demoted, harassed or otherwise discriminated against because of filing a *qui tam* complaint, or assisting in another's *qui tam* case, is entitled to:
  - all relief necessary to make the employee whole, including:

## Relator's Employment Protection (continued)

- reinstatement to same seniority
- 2 times any back pay lost
- interest on the back pay
- compensation for damages sustained as a result of the discrimination
- litigation costs and attorney's fees