
False Claims Act Investigations and Defense: An Overview and Practice Guide

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Roadmap

- 1** What is the False Claims Act?
- 2** Nuts and Bolts of FCA Investigations and Defense
- 3** Common Types of FCA Cases
- 4** Recent FCA Developments and New Regulatory Risks

History of the False Claims Act

- **Statutory Provisions:** 31 U.S.C. §§ 3729-3733
- **Origins:** Enacted in 1863 during the Civil War to combat Union Army supplier fraud
- **Modern Evolution:** Significantly strengthened in 1986 with amendments that created the modern FCA enforcement framework

Elements of False Claims Act Liability

1. Knowingly **submitting false claims** to the government
2. Knowingly **making false records or statements** to get false claims paid

“Knowingly”: Actual knowledge, deliberate ignorance, or reckless disregard

Penalties & Damages

1. **Treble damages:** 3x the government's actual damages
2. **Civil penalties:** \$14,000-\$28,000 per false claim (adjusted for inflation)
3. **Recovery statistics:** FY 2024 saw \$2.9 billion in recoveries

Qui Tam Provisions

- 1. Private enforcement mechanism:** Whistleblowers can sue on government's behalf
- 2. Relator rewards:** 15-30% of recovery depending on government intervention
- 3. Seal requirement:** Cases remain under seal for 60+ days while government investigates
- 4. Record activity:** 979 new *qui tam* cases filed in FY 2024 (37% increase)

FCA In Practice: Investigation Process

1. Initial Trigger

- i. Qui tam complaint filed under seal
- ii. Government-initiated investigation
- iii. Referral from other agencies (OIG, GAO, etc.)

2. Government Investigation Phase

- i. Civil Investigative Demands (“CIDs”)
- ii. Expert analysis and damage calculations
- iii. Coordination with criminal authorities when appropriate

3. Intervention Decision

- i. Government has 60 days (often extended) to decide whether to intervene
- ii. Factors: strength of case, potential recovery, policy priorities
- iii. Intervention rate: Government intervenes in ~20% of cases but these account for ~80% of recoveries

Defending FCA Allegations: Core Strategies and Practical Considerations

1. Internal Investigation

- i. Privilege considerations
- ii. Issue litigation hold to preserve relevant documents, emails, texts, etc.
- iii. Review internal documents
- iv. Interview key personnel

2. Assess Exposure

- i. Materiality challenges: Was the alleged falsehood material to payment decision?
- ii. Scienyer defenses: Lack of knowledge, good faith interpretation
- iii. Damages disputes: Actual harm to government
- iv. Statute of limitations: 6 years from violation or 3 years from government knowledge

3. Government Strategy

- i. Understand Posture of Case
- ii. Consider DOJ Guidelines for cooperation credit
- iii. Balance Cooperation with preservation of ACP/WPP and other client interests
- iv. Avoid premature disclosures unless strategically advantageous

Primary Types of FCA Enforcement

1. Healthcare Fraud
2. Government Contracting and Defense
3. PPP and Pandemic-Related Fraud

Healthcare: Recent Cases

1. Walgreens (\$300 million)
 - Invalid prescriptions

2. McKinsey (\$323 million)
 - Consulting liability and failure to disclose conflicts

3. Seoul Medical Group (\$62.85 million)
 - Diagnosis fraud

Healthcare: Common Allegations

1. Anti-Kickback Statute (AKS) violations
2. Medically Unnecessary Services
3. Upcoding Schemes
4. Off-Label Marketing

Gov't Contracting & Defense: Recent Cases

1. Raytheon (\$428 million)
 - Inaccurate cost/pricing data & double-billing

2. Lockheed Martin (\$29.7 million)
 - F-35 pricing fraud

PPP & Pandemic Fraud: Common Allegations

1. Misrepresenting employee numbers or business size
2. Multiple PPP loans for same business
3. Submission of false financial records
4. Failure to disclose foreign government affiliation
5. Use of funds for unauthorized purposes

PPP & Pandemic Fraud: Recent Cases

1. Unified Case Services (\$18 million)
 - Misrepresented employee count & omitted key ownership details
2. YAPP USA (\$14.2 million)
 - Subsidiary of Chinese state-owned company
3. Horn USA (\$4.15 million)
 - Misrepresented employee count

Enforcement in 2025: Summary

1. 2025 FCA enforcement is on pace with prior years
 - 128 settlements totaling \$1.257 billion through May 2025

2. Strong pipeline for future enforcement
 - 1,402 new FCA cases filed in 2024

3. DOJ-HHS FCA Working Group (July 2025)
 - Focus on healthcare fraud

Enforcement in 2025: New Priorities

1. Civil Rights Fraud Initiative

- “False certification” in connection with DEI and campus antisemitism

2. Customs and Tariff Fraud

- Misreporting country of origin, undervaluing goods

3. Transgender Care and Healthcare Fraud

- Providers who bill federal programs for non-covered gender-affirming care
- General healthcare fraud

Enforcement in 2025: Administrative FCA

1. Administrative remedy for claims DOJ opts not to prosecute
2. Expanded as part of FY 2025 NDAA
 - Higher claim value; broader scope; more adjudicators; longer statute of limitations
3. Seventh Amendment Concerns
 - Defendants in AFCA claims may be entitled to trial by jury
 - See *SEC v. Jarkesy*, 603 U.S. 109 (2024)