

False Claims Act of 1863

The **False Claims Act of 1863** (FCA)^[1] is an American federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs. It is the federal government's primary litigation tool in combating fraud against the federal government.^[2] The law includes a *qui tam* provision that allows people who are not affiliated with the government, called "relators" under the law, to file actions on behalf of the government. This is informally called "whistleblowing", especially when the relator is employed by the organization accused in the suit. Persons filing actions under the Act stand to receive a portion (15–30%, depending on certain factors) of any recovered damages.^[3]

As of 2024, over 83% of all FCA actions were initiated by whistleblowers.^[4] Claims under the law have typically involved government health care programs (Medicare, Medicaid and TriCare), military, or other government spending programs. FCA actions dominate the list of largest pharmaceutical settlements. Between 1987 and 2019, the government recovered more than \$62 billion under the False Claims Act.^[5]

History

Qui tam laws have history dating back to the Middle Ages in England. In 1318, King Edward II offered one third of the penalty to the relator when the relator successfully sued government officials who moonlighted as wine merchants.^[6] The Maintenance and Embracery Act 1540 of Henry VIII provided that common informers could sue for certain forms of interference with the course of justice in legal proceedings that were concerned with the title to land.^[7] This act is still in force today in the Republic

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Long title	An Act to prevent and punish Frauds upon the Government of the United States.
Acronyms (colloquial)	FCA
Nicknames	Lincoln's Law
Enacted by	the 37th United States Congress
	Citations
Statutes at Large	12 Stat. 696 (https://legislink.org/us/stat-12-696)
U.S.C. sections created	31 U.S.C. §§ 3729 (https://www.law.cornell.edu/uscode/text/31/3729)–3733 (https://www.law.cornell.edu/uscode/text/31/3733)

Legislative history

- **Introduced** in the United States Senate as S. 467 (<https://www.congress.gov/bill/37th-congress/senate-bill/467/text?s=2&r=1&q=%7B%22search%22%3A%22fraud%22%7D%7D>) by Jacob M. Howard R-MI on January 29, 1863
- **Signed into law** by President Abraham Lincoln on March 2, 1863

Major amendments

False Claims Act Amendments (Pub. L. 99–562 (<https://uslaw.link/citation/us-law/public/99/562>), 100 Stat. 3153 (<https://legislink.org/us/s>

of Ireland, although in 1967 it was extinguished in England. The idea of a common informer bringing suit for damages to the Commonwealth was later brought to Massachusetts, where "penalties for fraud in the sale of bread [are] to be distributed one third to inspector who discovered the fraud and the remainder for the benefit of the town where the offense occurred."^[6] Other statutes can be found on the colonial law books of Connecticut, New York, Virginia and South Carolina.^[6]

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.^[8] In response, Congress passed the False Claims Act. President Lincoln signed it into law on March 2, 1863, 12 Stat. 696 (<https://legislink.org/us/stat-12-696>),^[9] and it is therefore sometimes called the "Lincoln Law".^[10]

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")^[11] In a *qui tam* action, the citizen filing suit is called a "relator".^[12]^[13] 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.^[14]

U.S. Senator Jacob M. Howard, who sponsored the legislation, justified giving rewards to whistleblowers, many of whom had engaged in unethical activities themselves. He said, "I have based the [*qui tam* provision] upon the old-fashioned idea of holding out a temptation, and 'setting a rogue to catch a rogue,' which is the safest

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Fraud Enforcement and Recovery Act of 2009
Affordable Care Act

United States Supreme Court cases

United States v. Cohn, 270 U.S. 339 (<https://supreme.justia.com/cases/federal/us/270/339/>) (1926)

United States v. Gilliland, 312 U.S. 86 (<https://supreme.justia.com/cases/federal/us/312/86/>) (1941)

United States ex rel. Marcus v. Hess, 317 U.S. 537 (<https://supreme.justia.com/cases/federal/us/317/537/>) (1943)

United States v. Grainger, 346 U.S. 235 (<https://supreme.justia.com/cases/federal/us/346/235/>) (1953)

Rainwater v. United States, 356 U.S. 590 (<https://supreme.justia.com/cases/federal/us/356/590/>) (1958)

United States v. McNinch, 356 U.S. 595 (<https://supreme.justia.com/cases/federal/us/356/595/>) (1958)

United States v. Neifert-White Co., 390 U.S. 228 (<https://supreme.justia.com/cases/federal/us/390/228/>) (1968)

United States v. Bornstein, 423 U.S. 303 (<https://supreme.justia.com/cases/federal/us/423/303/>) (1976)

United States v. Halper, 490 U.S. 435 (<https://supreme.justia.com/cases/federal/us/490/435/>) (1989)

Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939 (<https://supreme.justia.com/cases/federal/us/520/939/>) (1997)

Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (<https://supreme.justia.com/cases/federal/us/529/765/>) (2000)

Cook County v. United States ex rel. Chandler, 538 U.S. 119 (<https://supreme.justia.com/cases/federal/us/538/119/>) (2003)

Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson, 545 U.S. 409 (<https://supreme.justia.com/cases/federal/us/545/409/>) (2005)

Rockwell International Corp. v. United States, 549 U.S. 457 (<https://supreme.justia.com/cases/federal/us/549/457/>) (2007)

and most expeditious way I have ever discovered of bringing rogues to justice."^[15]

In the massive military spending leading up to and during World War II, the U.S. Attorney General relied on criminal provisions of the law to deal with fraud, rather than using the FCA. As a result, attorneys would wait for the Department of Justice to file criminal cases and then immediately file civil suits under the FCA, a practice decried at the time as "parasitic". Congress moved to abolish the FCA but at the last minute decided instead to reduce the relator's share of the recovered proceeds.^{[16]:1267-1271[17]:6}

The law was again amended in 1986, again due to issues with military spending. Under President Ronald Reagan's military buildup, reports of massive fraud among military contractors had become major news, and Congress acted to strengthen the FCA.^{[16]:1271-77}

The first *qui tam* case under the amended False Claims Act was filed in 1987 by an eye surgeon against an eye clinic and one of its doctors, alleging unnecessary surgeries and other procedures were being performed.^[18] The case settled in 1988 for a total of \$605,000. However, the law was primarily used in the beginning against defense contractors. By the late 1990s, health care fraud began to receive more focus, accounting for approximately 40% of recoveries by 2008^{[16]:1271} *Franklin v. Parke-Davis*, filed in 1996, was the first case to apply the FCA to fraud committed by a pharma company against the government, due to bills submitted for payment by Medicaid/Medicare for treatments that those programs do not pay for as they are not FDA-approved or otherwise listed on a government formulary. FCA cases against pharma companies are often related to off-label marketing of drugs by drug companies, which is illegal under a different law, the Federal Food, Drug, and Cosmetic Act; the intersection occurs when off-label marketing leads to prescriptions being filled and bills for those prescriptions being submitted to Medicare/Medicaid.^[19]

As of 2019, more than 72 percent of all federal FCA actions were initiated by whistleblowers.^[4]^{[20]:229} The government recovered \$62.1 billion under the False Claims Act between 1987 and 2019

Allison Engine Co. v. United States ex rel.

Sanders, 553 U.S. 662 (<https://supreme.justia.com/cases/federal/us/553/662/>) (2008)

United States ex rel. Eisenstein v. City of New York, 556 U.S. 928 (<https://supreme.justia.com/cases/federal/us/556/928/>) (2009)

Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson, 559 U.S. 280 (<https://supreme.justia.com/cases/federal/us/559/280/>) (2010)

Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401 (<https://supreme.justia.com/cases/federal/us/563/401/>) (2011)

Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter, 575 U.S. 650 (<https://supreme.justia.com/cases/federal/us/575/650/>) (2015)

Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176 (<https://supreme.justia.com/cases/federal/us/579/176/>) (2016)

State Farm Fire & Casualty Co. v. United States ex rel. Rigsby, 580 U.S. 26 (<https://supreme.justia.com/cases/federal/us/580/26/>) (2016)

Cochise Consultancy, Inc. v. United States ex rel. Hunt, 587 U.S. 262 (<https://supreme.justia.com/cases/federal/us/587/262/>) (2019)

United States ex rel. Schutte v. Supervalu Inc., 598 U.S. 739 (<https://supreme.justia.com/cases/federal/us/598/739/>) (2023)

United States ex rel. Polansky v. Executive Health Resources, Inc., 599 U.S. 419 (<https://supreme.justia.com/cases/federal/us/599/419/>) (2023)

Wisconsin Bell, Inc. v. United States ex rel. Heath, No. 23-1127 (<https://supreme.justia.com/cases/federal/us/604/23-1127/>), 604 U.S. ____ (2025)

and of this amount, over \$44.7 billion or 72% was from *qui tam* cases brought by relators.^[4] In 2014, whistleblowers filed over 700 False Claims Act lawsuits.^[21] In 2014, the Department of Justice had its highest annual recovery in False Claims Act history, obtaining more than \$6.1 billion in settlements and judgments from civil cases involving fraud and false claims against the government.^[4] In fiscal year 2019, the Department of Justice recovered over \$3 billion under the False Claims Act, \$2.2 billion of which were generated by whistleblowers. Since 2010, the federal government has recovered over \$37.6 billion in False Claims Act settlements and judgments.^[4] In 2020, the DOJ recovered \$2.2 billion from FCA cases: \$1.6 billion of that total was from cases filed under the FCA.^[22] *Qui tam* whistleblowers received a total of \$309 million in whistleblower rewards in 2020.^[22]

Provisions

The Act establishes liability when any person or entity improperly receives from or avoids payment to the Federal government. 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.
8. The False Claims act does not apply to IRS Tax matters.^[23]

The statute provides that anyone who violates the law "is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990,^[24] plus 3 times the amount of damages which the Government sustains because of the act of that person."^[25] The False Claims Act requires a separate penalty for each violation of the statute.^[26] Under the Civil Penalties Inflation Adjustment Act,^[24] False Claims Act penalties are periodically adjusted for inflation.^[26] In 2020, the penalties range from \$11,665 to \$23,331 per violation.^[27]

Certain claims are not actionable, including:

1. certain actions against armed forces members, members of the United States Congress, members of the judiciary, or senior executive branch officials,^[28]
2. claims, records, or statements made under the Internal Revenue Code of 1986 which would include tax fraud;^[29]

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;^{[30][31]}