



The False Claims Act (FCA) is one of the Government’s most powerful civil tools for combating claims of fraud involving government funds. But its specialized procedures can be daunting for companies facing an FCA action. This primer explains some of the FCA’s key features for those not steeped in FCA law and procedure.

At a high level, in an FCA case, a **qui tam relator** often brings a claim in which the Government can choose to **intervene** during the litigation, which can include while the case is under **seal**. A valid FCA claim must allege that the defendant, acting with the appropriate **scienter**, made a **false claim** for payment from the Government or **reverse false claim** preventing repayment to the Government and that such falsity was **material** to the Government’s payment decision. Successful FCA claims can result in the awarding of **treble damages**, **civil penalties** and legal fees.

More details on each of the bolded terms are below:

Qui Tam or Relator

Many FCA cases are filed as *qui tam* or relator actions, meaning that a private whistleblower brings the case on behalf of the Government. Relators are entitled to a portion of the Government’s recovery that varies based on whether or not the Government intervenes (see next definition).

Intervention

After a relator files a *qui tam* FCA case, the Government decides whether or not to intervene. If the Government intervenes, it takes over prosecution of the claim. If it does not, it remains the real party-in-interest, but the relator continues to litigate the case on the Government’s behalf.

Seal

When a relator files a new *qui tam* FCA case, it remains under seal for at least 60 days so the Government can investigate the allegations without informing the defendant and the public. During this time, the Government may serve civil investigative demands (CIDs) on the defendant, requesting documents and other information. Only after the Government makes its intervention decision is the case unsealed and the complaint served on the defendant.

False Claims

Even a term as apparently straightforward as “false” has a unique meaning in the FCA context. A claim for payment can be “false” for purposes of the FCA if there is (1) “factual falsity” (e.g., it misrepresents the good or services provided); (2) an “express false certification” (a false certification that the defendant complied with a statute, regulation, or other legal requirement that is a prerequisite to payment); (3) an “implied false certification” (when a defendant is alleged to make misleading half-truths by failing to disclose noncompliance with material statutory, regulatory, or contractual requirements); or (4) it “results from” an alleged violation of the Anti-Kickback Statute.

Reverse False Claims

The FCA not only imposes liability for false claims for payment but also for “reverse” false claims where the defendant made false statements in order to avoid paying money to the Government, such as tariffs or customs duties.

Scienter

This is the statutory term for the mental state required for liability. A defendant can be liable under the FCA not only if it has actual knowledge that the claims were false but also if it acted in deliberate ignorance or reckless disregard of the truth of the claims. This standard looks at what the defendant knew and believed—not whether there is an objectively reasonable argument for the defendant’s interpretation of an applicable regulatory requirement.

Materiality

Not every false claim submitted with the required scienter triggers FCA liability. Rather, the claim must be one that would be “material” to the Government’s payment decision, meaning it has the natural tendency to influence, or be capable of influencing, the payment decision. This requirement is designed to avoid imposing liability for “garden-variety” breaches of contract and regulatory violations that would not generally impact the Government’s decision to pay claims.

Treble Damages

The FCA automatically triples the Government’s compensatory damages. For example, if a defendant is found liable under the FCA for a \$500 claim for payment to the Government, the defendant would have to pay the Government \$1,500.

Civil Penalties

The FCA also requires the court to assess a civil penalty for each false claim. In 2024, those penalties ranged from \$13,946-\$27,894 per claim.

If your company faces the unfortunate reality of a civil investigative demand or an FCA suit, Dykema’s Government Investigations and Corporate Compliance team has been on the cutting edge of FCA legal developments. Dykema attorneys have experience both with understanding the Government’s perspective on FCA claims (from their previous government experience) and litigating FCA cases against the Government and relators.

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