

FEDERAL FALSE CLAIMS PROCEEDINGS

Persons subject to suit:

Individuals, partnerships, corporations, and joint ventures but not federal or state agencies.

Knowledge requirement – violator must have actual knowledge of the falsity of the claim, deliberate ignorance, or reckless disregard for the truth

Examples of False Claims:

- Services Not Rendered (the defendant claims they were rendered by submitting a bill for payment)
- Upcoding (billing for a more expensive and extensive service than the one actually rendered)
- Defective Pricing (lying about how much something will cost)
- Claim Tainted By Kickbacks

Barriers to Whistleblower Recovery:

- Another case alleging the same fraud was filed first
- The claims are based on a public disclosure (but no bar if whistleblower's disclosure predated the public disclosure or added something substantial to the public disclosure)
- The whistleblower planned and initiated the fraud (but it is not necessarily a bar if the whistleblower played some role)
- The whistleblower interfered with the investigation by violating the seal (secrecy) of the case

Process for Court Cases under the FCA:

- Whistleblower files the case under seal in federal court\ul style="list-style-type: none;"> - Remains under seal until government decides whether to intervene, which can take years
 - Defendant is not served with the complaint until government decides whether to intervene
- Whistleblower must give the Department of Justice a disclosure with substantially all material information and evidence that supports the allegations
- Government investigates
- Government decides whether or not to intervene
 - Three out of four cases are declined, sometimes because of weakness of the case or likely recovery too small, but sometimes simply because government lawyers don't have the time or resources to pursue
- If Government declines, whistleblower decides whether to proceed without the government