False Claims Act FAQ

1. What is the False Claims Act?

The goal of the False Claims Act, codified at 31 U.S.C. §§3729-3733, is to incentivize integrity, bring law enforcement attention to schemes that defraud taxpayers, and to change corrupt corporate cultures by imposing liability on companies and individuals that defraud the federal government. It aims to achieve that goal in large part by allowing private individuals who are not affiliated with the government to file complaints on behalf of the government. These claims are called *qui tam* lawsuits.

The False Claims Act and *qui tam* lawsuits allow whistleblowers to obtain significant compensation for the professional and personal risks they take to expose and stop fraud against the government – fraud that can endanger the lives of patients, put our military personnel at risk, and shortchange our teachers and students. In addition, the False Claims Act provides relators significant protections against potential retaliation against whistleblowers by the entity that allegedly engaged in the fraud.

2. What does “*qui tam*” mean?

*Qui tam* is the technical legal term for the unique mechanism in the federal False Claims Act that allows private persons and entities with evidence of fraud against the federal government to sue the wrongdoer on behalf of the government. The term “*qui tam*” stands for a longer Latin phrase – *qui tam pro domino rege quam pro se ipso in hac parte sequitur* – which means, “he who brings an action for the king as well as for himself.”

A *qui tam* action is therefore one brought under the False Claims Act by a private plaintiff on behalf of the federal government (rather than by the government itself). These actions are sometimes referred to as “whistleblower lawsuits.” With a *qui tam* lawsuit, the government has the right to intervene and join the action.
Or the government may decline intervention, in which case the private plaintiff may proceed on his own.

*Qui tam* lawsuits are a type of civil lawsuit that has become a powerful way for whistleblowers to help the government stop many kinds of fraud — *e.g.*, Medicare and Medicaid fraud, defense contractor fraud, education services fraud, and numerous other types of frauds that impact the government financially — and recover billions that have been absconded from the U.S. Treasury and taxpayers.

3. **What is a “relator”?**

A whistleblower who files a suit under the False Claims Act is known as a “relator” instead of a plaintiff. Technically, the United States is the plaintiff.

4. **What types of activities are covered by the False Claims Act?**

The False Claims Act covers fraud involving any federally funded contract or program, with limited exceptions. A broad array of scenarios can constitute False Claims Act violations. Examples include the following:

- a contractor falsifies test results or other information regarding the quality or cost of products it sells to the government;
- a health care provider bills Medicare for services that were not provided or were unnecessary; or
- a grant recipient charges the government for costs not related to the grant.

5. **Does the False Claims Act cover tax fraud?**

No. The False Claims Act explicitly excludes tax fraud. There is a separate IRS whistleblower law that provides for whistleblower awards, codified at 26 U.S.C. §7623. For more information on how the firm can assist you in IRS whistleblower actions, please see our IRS Whistleblower section.

6. **Does the False Claims Act cover securities fraud?**

No. There is a separate whistleblower statute that covers securities law violations known as the Dodd-Frank Wall Street Reform and Protection Act of 2010 (“Dodd-Frank Act”), codified at 15 U.S.C. §78u-6. Relators who report securities law violations — from insider trading and accounting fraud to money laundering to violations of the Foreign Corrupt Practices Act — will receive a reward if the SEC or any other government authorities recover more than $1 million based on that information. The Dodd-Frank Act establishes a similar whistleblower reward program for the CFTC. For more information on how the firm can assist you in these whistleblower actions, please see our securities whistleblower section.
7. Does the False Claims Act cover government mismanagement or inefficiency?

No. While the government may lose millions of dollars each year through waste and mismanagement, as well as the waste and mismanagement of outsiders (e.g., government contractors) or bureaucratic inefficiencies, the False Claims Act does not provide a remedy for mismanagement or inefficiencies that do not rise to the level of fraud.

8. What happens when a person uncovers or detects fraud against the government?

Once a person has evidence of fraud against the government and decides to blow the whistle, that person should find a lawyer who is experienced in representing whistleblowers. Thorough research should be done and careful consideration should be given to the selection of an attorney as the work by that attorney will be essential to the success of the *qui tam* case and will be a major factor in determining whether a whistleblower will receive a reward and the amount of the reward.

9. What happens when a *qui tam* lawsuit is filed?

A *qui tam* action must be filed in federal district court. In addition, a copy of the complaint, along with a written disclosure statement of substantially all material evidence and information in the whistleblower’s possession, must be served on the U.S. Department of Justice and should also be served on the U.S. Attorney’s Office for the district in which the action is brought.

The *qui tam* complaint is initially filed “under seal” for at least 60 days, meaning that it is kept secret from everyone but the government. This gives the Department of Justice time to investigate the allegations. Even the person or entity being accused of fraud (i.e., the defendant) is not told about the case. This 60-day seal period may be extended upon request by the government. It is not unusual for the seal period to last a year or more.

During the period in which the action is kept under seal, the government investigates the allegations, often with the assistance of the attorney retained by the whistleblower, and decides whether it will join, or “intervene,” in the case. The government intervenes in only a small percentage of *qui tam* lawsuits.

10. What is the liability for violating the False Claims Act?

Individuals and entities who violate the False Claims Act are liable for three times the dollar amount that the government is defrauded and can face additional civil penalties of $5,500 to $11,000 for each false claim submitted to the government.

11. How much money can a whistleblower receive for bringing a *qui tam* action?
A whistleblower in a *qui tam* lawsuit can receive between 15% and 30% of the total recovery from the defendant, whether the recovery is achieved through a favorable judgment or settlement. If the government intervenes and joins an action brought by the whistleblower, the whistleblower generally is eligible to receive at least 15%, but not more than 25%, of the recovery, depending upon the whistleblower’s contribution to the prosecution of the action. If the government chooses not to intervene, and the whistleblower proceeds with the action on his own, the whistleblower can receive up to 30% of the recovery.

12. **Can a whistleblower keep his identity a secret if a *qui tam* action is filed?**

Because the complaint cannot be sealed indefinitely, eventually the identity of a whistleblower will be revealed. However, the identity of a whistleblower will remain secret to everyone but the government during the seal period. The defendant will not learn that a *qui tam* complaint has been filed against it, let alone the identity of the whistleblower, until the government decides to lift the seal.

If the government declines to intervene in the whistleblower lawsuit, the whistleblower will have to decide whether to continue with the action. If the whistleblower continues with the action, her identity will almost always become public knowledge. If the whistleblower does not continue with the action, her identity and the fact that she filed a *qui tam* complaint will remain secret from the public (including the defendant).

13. **Are there protections for a whistleblower against his employer for blowing the whistle under the False Claims Act?**

Yes. Under §3730(h) of the False Claims Act (15 U.S.C. §3730(h)), any employee who is discharged, demoted, harassed or otherwise discriminated against because of lawful acts by the employee in reporting fraud is entitled to all relief necessary to make the employee whole. This includes things such as reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorneys’ fees. In addition, there may be additional state employment laws that provide remedies for such discrimination.

Robbins Geller Rudman & Dowd LLP is committed to fighting for our whistleblower clients in their courageous efforts to combat fraud. We are dedicated to ensuring that our clients receive the compensation and protection they deserve. If you are aware of any securities, commodities, or tax law violations or fraud on the government and would like to consult with us on a confidential basis about a potential whistleblower case, please contact Jonah H. Goldstein or James E. Barz.