

The False Claims Act

(FCA)



THE FALSE CLAIM ACT

False Claims Act (FCA), 31 U.S.C. §§ 3729 - 3733, is a federal statute originally enacted in 1863 in response to defense contractor fraud during the American Civil War.



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The FCA provides that any person who knowingly submitted false claims to the government was liable for double the government's damages plus a penalty of \$2,000 for each false claim. The FCA has been amended several times and now provides that violators are liable for treble damages plus a penalty that is linked to inflation.

In addition to allowing the United States to pursue perpetrators of fraud on its own, the FCA allows private citizens to file suits on behalf of the government (called “qui tam” suits) against those who have defrauded the government. Private citizens who successfully bring qui tam actions may receive a portion of the government’s recovery.

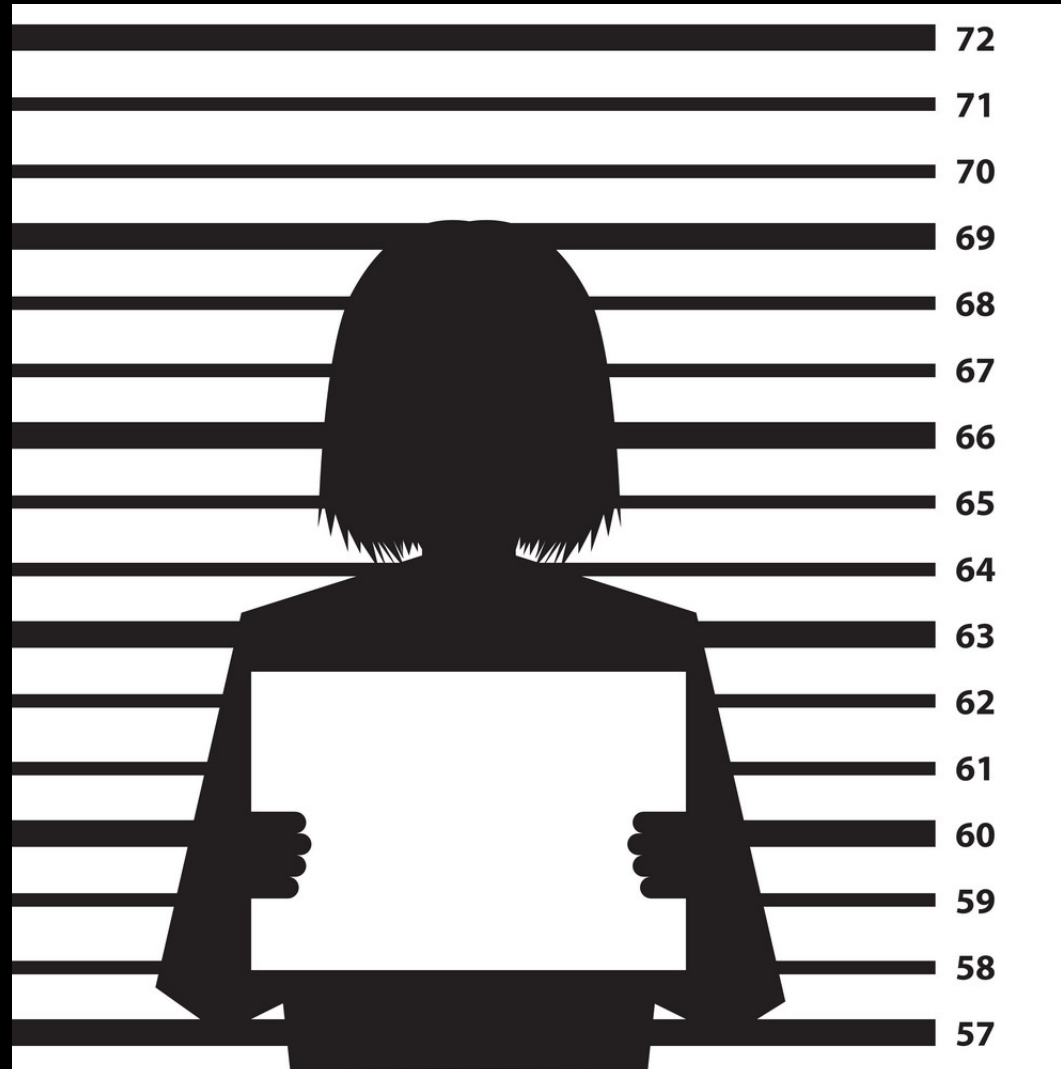
Many Fraud Section investigations and lawsuits arise from such qui tam actions.

The Department of Justice obtained more than \$3 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2019.



Criminal False Claim

18 U.S.C. § 287 is a provision that is designed to make it a crime for anyone who attempts to obtain money, goods, or services from the government through different departments and agencies by presenting a false, fictitious, or fraudulent claim.





It should be noted the federal prosecutor must be able to prove a defendant knowingly intended to deceive the government to provide them with a payment knowing they were not entitled to receive.

In other words, in a situation where there was a good faith mistake to receive a payment, or if there was a contract dispute between a contractor and the government on the terms of payment, this would not typically be sufficient for prosecution under this statute.



Federal False claims cases can involve a wide range of activity, but it will primarily deal with one simple theory. When someone makes a claim they are entitled to receive money from the government, they can't use any type of deception, fraud, or false representations to obtain the money.

False claims under 18 U.S.C. § 287 is a serious federal offense that can result in a sentence of up to five years in federal prison and a substantial fine.

Defenses for 18 U.S.C. § 287 Federal False Claims Act Charges

- **No intent to defraud**

Even in a situation where it can't be disputed you were not entitled to money or services claimed against the United States, the prosecutor has to prove you specifically had intent to defraud.

- **Mistake of fact**

An honest mistake on the terms of a government contract, or were negligent on presenting a claim requesting more money than you were owed. Again, this is another way to argue there was a lack of fraudulent intent.





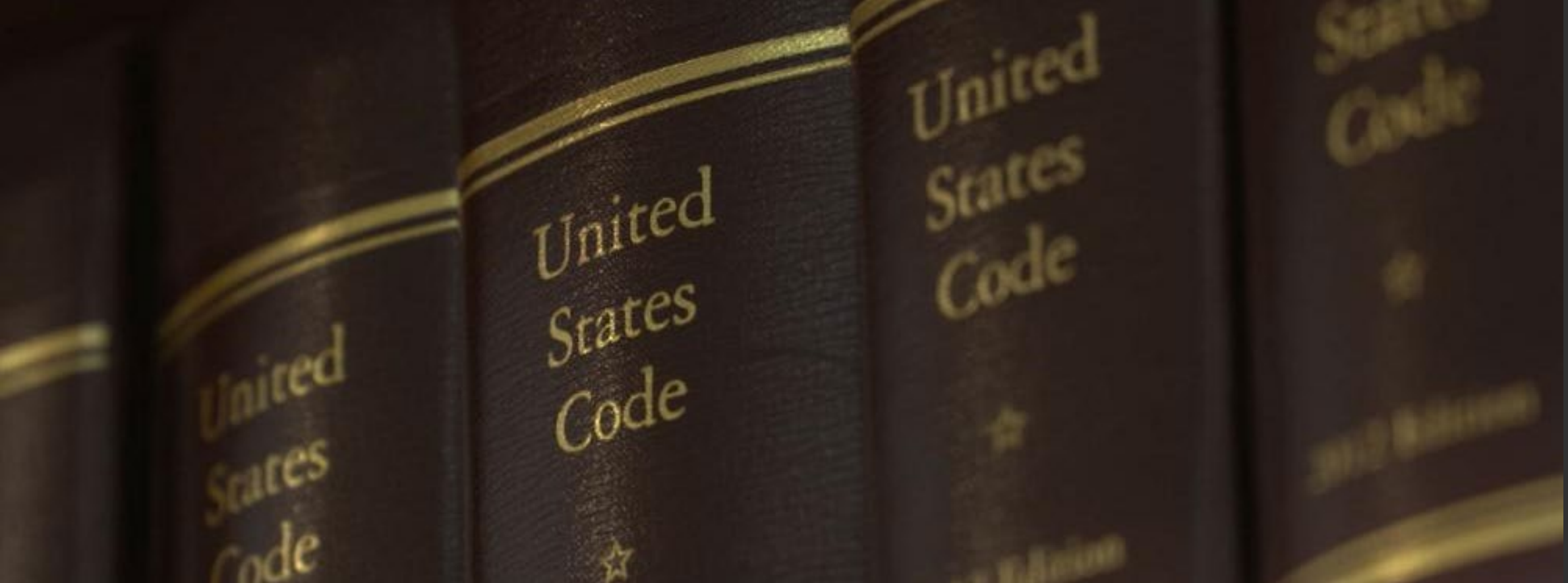
Related Crimes

Mail Fraud:

(18 USC 1341)



- Mail fraud is defined as the use of the U.S. Postal Service in any criminal attempt to gain money or things of value. The original crime carries its own penalties in addition to the penalties involved with mail fraud, regardless of whether the original crime is tax fraud, health care fraud, or any other number of possible offenses.



The United States Code Section 1341 provides punishment for anyone involved in an attempt to fraud or swindle who places in a post office to mail any material to be delivered by the Postal Service.

It also includes any commercial interstate carrier in an attempt to fraud or swindle. It states says a person will be imprisoned for up to 20 years. In addition, any violation that impacts a financial institution can lead to a prison sentence of up to 30 years and a fine up to \$1 million dollars. or both jail and a fine.

Mail Fraud: Does not refer to a specific type of fraudulent scheme. Rather, it is simply the crime of facilitating a fraudulent scheme or conduct by utilizing the U.S. Mail.



There are two elements to the federal crime of Mail Fraud:

1. Devising or intending to devise a scheme to defraud, or performing specific fraudulent acts, and;
2. Using the mail for the specific purpose of executing the scheme of the fraudulent acts.



For Example:

Suppose A decides to defraud B by purporting to sell a piece of property to B which A does not own.



In the course of convincing B to forward the purchase money, A sends several letters to B containing false deeds, etc. showing A's ownership of the property.

B relies on the information in these letters and sends the money to A.



A can be charged with defrauding B as to the property sale, but also with Mail Fraud as A utilized the mail for the purpose of attempting to execute the scheme.



18 USC 1341

As with Mail Fraud, Wire Fraud does not refer to a specific type of fraudulent scheme. Rather, it is simply the crime of facilitating whatever fraudulent scheme or conduct one is engaged in by utilizing interstate telephone calls or other electronic communications.

The essential elements of Wire Fraud are the existence of a fraudulent scheme, and the use of interstate telephone or other electronic communications to execute, or attempt to execute, that scheme.



Wire Fraud:

Punishable with up to 20
years in jail,

a fine,

or both.



Recent Enforcement Actions: