

Insights: Alert

Recent Changes in Appropriations Legislation May Have Given "Baby False Claims Act" New Teeth

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On December 23, 2024, President Biden signed into law H.R. 5009 - "Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025." (2025 NDAA). First passed in 1961, the NDAA is a series of United States federal laws, updated annually, primarily addressing the annual budget and expenditures of the U.S. Department of Defense. However, buried within the newly passed 2025 NDAA is the "Administrative False Claims Act", a new federal program intended to revitalize the little used Program Fraud Civil Remedies Act (PFCRA) of 31 U.S.C. 3801.

Growing Pains

The PFCRA, also known as the "Baby False Claims Act", is an administrative remedy designed to reach frauds not selected for False Claims Act (FCA) cases. Enacted almost 40 years ago, it provided a mechanism for administrative agencies to pursue false claims of \$150,000 or less, after receiving U.S. Department of Justice (DOJ) approval.

When it was first introduced in 1986, legislative history indicated that the PFCRA was to be widely used by executive branch agencies to independently pursue cases that the DOJ simply did not have resources for. However, over time, it became clear that agencies were unable (or unwilling) to pursue PFCRA cases.

According to a 2012 Congressional Research Services Report, between 2006 and 2010, only five agencies used PFCRA's authorities to refer 141 cases to the DOJ (HUD, HHS, Department of Energy, the Corporation for National and Community Service, and the Nuclear Regulatory Commission). Of the 141 cases, 135, or 96 percent, were referred by HUD. The remaining four agencies referred a total of six cases during this period.

The 2012 Congressional Research Services Report concluded that the lack of PFCRA's utilization was due to several factors including:

1. Other high-dollar cases that often took precedence over PFCRA cases (the PFCRA only applied to false claims up to \$150,000);
2. Lengthy time for DOJ follow-up with the referring agencies to obtain necessary information; and
3. PFCRA cases had to be approved by the Attorney General or a designated Assistant Attorney General, instead of a director-level official who may approve other fraud cases involving similar dollar amounts.

Taking its First Steps

Understanding the problems that plagued the PFCRA, Senator Chuck Grassley, R-Iowa, introduced numerous legislations throughout the years to afford the PFCRA and FCA with additional support. Finally, with the passage of language introduced by Senator Grassley in the 2025 NDAA, agencies will have the additional support in pursuing these administrative false claims act cases.

The 2025 NDAA revises several portions of PFCRA. Administratively, the PFCRA is renamed to the Administrative False Claims Act (AFCA). Substantively, the AFCA raises the ceiling for claims that may be handled administratively from \$150,000 to \$1 million and codifies the adjustment of this cap for inflation. The AFCA now allows administrative agencies to recoup costs associated with investigating and prosecuting such cases.

However, certain portions of the PFCRA remain unchanged. The AFCA still requires contested cases to be heard before the agency's Administrative Law Judge or another presiding official, under the preponderance of the evidence standard. Agencies will still therefore have to dedicate independent resources to pursuing and trying these cases.

Perhaps most noteworthy is the fact that the AFCA, like the PFCRA, still does not allow *qui tam* actions. Historically, *qui tam* actions have played a large role in standard FCA cases. To illustrate this point, in January of 2023, the Justice Department announced the successful recovery of over \$2.2 billion through FCA cases that would have otherwise been lost to fraud in FY2022. More than \$1.9 billion of those claims were recovered through *qui tam* provisions. The AFCA's decision not to allow *qui tam* actions perhaps lessens the immediate impact of the new legislation.

Implications for Government Contractors

For government contractors, the new AFCA will most likely eventually lead to greater agency scrutiny. Like the PFCRA, the AFCA is intended to cast a wider net than typical FCA claims. Unlike the FCA, the AFCA covers false statements even in the absence of a claim for monetary payment. Moreover, the AFCA charges enforcement of the AFCA upon the agency inspector generals – the same entity responsible for receiving a contractor's Federal Acquisition Regulation 52.203-13 mandatory disclosures. Thus, reporting requirements and FAR 52.203-13 requirements should be monitored carefully as the agency now has more incentive to independently assert damages for a contractor's potential false statement.

The silver lining here is that, given the AFCA's damage cap of double damages (rather than treble damages found in the FCA), contractors may be able to negotiate resolutions directly with the contracting agencies for lower amounts, moving matters along more efficiently and providing more flexibility for settlements. However, as part of any settlement agreement, contractors should still attempt to release potential AFCA claims along with FCA claims.

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