



PROGRAM FRAUD CIVIL REMEDIES ACT: **FREQUENTLY ASKED QUESTIONS**

Q. What is the Program Fraud Civil Remedies Act (PFCRA)?

A. Congress enacted the PFCRA to give agencies the ability to initiate administrative proceedings on claims of \$150,000 or less, when the U.S. Department of Justice elects not to pursue False Claims Act remedies for the claims. Federal agencies may administratively pursue these “small” false claims and certified false statements within six years of the claim being made. A person may be penalized \$5,000 per claim or statement and may also be assessed up to double the amount falsely claimed. The Department’s regulations pertaining to PFCRA can be found at 43 C.F.R. §§ 35.1-35.47.

Q. How is the PFCRA different from the False Claims Act (FCA)?

A. The PFCRA provides an administrative remedy promulgated to complement the FCA. PFCRA cases typically involve smaller claims and false statements the Department of Justice might not otherwise select for criminal or civil enforcement. Under the FCA, 31 U.S.C. §§ 3729-3733, damages are treble rather than the double damages available under the PFCRA. The range of penalties under the FCA is from \$11,181 to \$22,363 for violations occurring after January 29, 2018, rather than \$5,000 for DOI PFCRA cases. The PFCRA’s liability provisions are similar to the liability provisions of the False Claims Act, except PFCRA extends to false statements even in the absence of any claim. Under PFCRA, the false statements must be certified.

Q. What are the statutory elements?

A.

1. Person
2. Makes, presents, submits, or
3. Causes to be made, presented, or submitted to the Government or a recipient of the Government
4. False, fictitious, or fraudulent
5. Claims or statements
6. Person knew or had reason to know were false
7. To Federal authorities or their agents.

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Q. Who may actions be taken against?

A. Actions may be brought against “persons”, which means any individual, partnership, corporation, association, or private organization, including a non-profit organization.

Q. What is a false claim?

A. A request for payment, property, services, or benefits, which is false or fraudulent and/or omits a material fact that the maker has a duty to include. Examples include invoices, progress payment requests, and submissions related to leases, and grant and cooperative agreements. (The term “claim” expressly excludes claims made in any Federal tax return.)

Q: What is a false statement?

A representation, certification, affirmation document or other submission that is accompanied by an express certification of truthfulness or accuracy, made with respect to a claim or with respect to eligibility for contracts, grants, loans or other benefits. The PFCRA is also well suited for public integrity matters such as time and attendance or travel voucher fraud. There is no need to show that any claim was paid.

Q. What is the knowledge requirement? Does it have to be actual knowledge?

No. It can be actual knowledge, deliberative ignorance (affirmatively hides from the truth) or reckless disregard (gross negligence or does not care what the truth is).

Q. What is the process for PFCRA actions?

PFCRA cases have six discrete procedural steps:

1. The Investigating Official investigates allegations of PFCRA liability and submits a Report of Investigation on any potential PFCRA matter to a Reviewing Official.
2. The Reviewing Official assesses the evidence and plausibility of the PFCRA case. If the case is viable, the Reviewing Official may forward the matter to the DOJ for authorization to proceed with the PFCRA case.
3. If the DOJ authorizes the filing of a PFCRA case, the DOJ sends an authorization memorandum to the Reviewing Official.
4. Upon receiving the authorization memorandum, the Reviewing Official prepares the PFCRA claim and litigates the matter before a Presiding Officer.

5. A defendant may appeal adverse findings to the head of the Agency, and ultimately, to a U.S. District Court.
6. PFCRA provides for the enforcement of judgments through a separate suit filed by a U.S. Attorney in U.S. District Court. The statute also provides for the collection of judgments by administrative offset.

Q. Who is the DOI Investigating Official, Reviewing Official, the Presiding Officer, and the DOJ approving office?

A. The Investigating Official is the DOI Inspector General. The Reviewing Official is the DOI Solicitor, specifically the General Law Division. The Presiding Officer is an administrative law judge from the DOI Office of Hearings and Appeals. The DOJ authorization is made by the DOJ Commercial Litigation Branch, Civil Division.

Q. What are the available remedies under PFCRA?

A. The remedies vary based on the nature of the conduct that gives rise to the PFCRA violation. If the violation is based upon a false claim, the Government may recover a civil penalty of up to \$5,000 per claim, which can be adjusted for inflation. In addition, if the Government paid the false claim, then the Government may also recover an assessment, in lieu of damages, of up to twice the amount of the claim.

Q. What are the damages and penalties?

A. Damages generally are the difference between what the U.S. paid and the amount it would have paid if the claims or statements had been truthful. This is a flexible standard. In cases involving only certified, false written statements, the person is liable only for the penalty of up to \$5,000 for each false statement. Penalties can be adjusted for inflation with a Federal Register notice issued by DOI. No actual damages are required; however, only penalties can be sought in those instances.

These PFCRA remedies are available in addition to any other remedies available to the Government (*i.e.*, criminal, civil (including, potentially, the False Claims Act), and administrative (*e.g.*, suspension and debarment and contract remedies)). However, the law generally allows recovery of only one remedy for the same conduct, meaning, *e.g.*, that a civil judgment must be credited for any criminal restitution ordered and collected based upon the same conduct. Similarly, any administrative judgment must be credited for any civil judgment on the same facts.

Q. What is the evidentiary standard that must be met for a PFCRA action?

A. The standard of proof for PFCRA actions is “preponderance of the evidence”. The preponderance standard means proof by information that, compared with information opposing

it, leads to the conclusion that the fact at issue is more probably true than not. The Government must prove that the statement or claim is false or fraudulent. The Presiding Officer issues an initial decision including findings of fact and conclusions of law, and the amount of any penalties and assessments imposed. The initial decision becomes final if the defendant does not appeal.

Q. Is there a limit on the amount of the claims?

The authority to bring a case under PFCRA is limited to a claim of \$150,000 or less. Multiple claims may be pursued in each case.

Q. Is there a statute of limitations?

Under PFCRA, the Presiding Officer must commence a hearing within six years of the submission of the claim or statement. 31 U.S.C. § 3808(a). The Presiding Officer commences a hearing by issuing what amounts to a scheduling order. 31 U.S.C. § 3803(d)(2)(B).

Q: What happens to the funds collected under PFCRA?

DOI deposits all penalties and assessments collected under the PFCRA into miscellaneous receipts at the U.S. Treasury. Most PFCRA actions settle before there is an administrative hearing.

Q: What are some of the advantages of pursuing PFCRA cases?

The PFCRA allows executive branch agencies to determine, with Department of Justice coordination, their own enforcement priorities. PFCRA enhances the deterrent value of a comprehensive enforcement scheme by ensuring potential wrongdoers do not believe the Department will avoid pursuing justice for smaller dollar false claims and false statements.