

# Fraud Enforcement and Recovery Act of 2009

In May 2009, the **Fraud Enforcement and Recovery Act of 2009** was signed into law, which makes important amendments to the country's most important tool for fighting fraud, the False Claims Act. This federal False Claim Act legislation has helped protect hundreds of billions spent on government programs from fraud and government waste and expand the ability of whistleblowers to collect compensation.

This Act amended the False Claims Act to: (1) expand liability under such Act for making false or fraudulent claims to the federal government; and (2) apply liability under such Act for presenting a false or fraudulent claim for payment or approval (currently limited to such a claim presented to an officer or employee of the federal government). It requires persons who violate such Act to reimburse the federal government for the costs of a civil action to recover penalties or damages. The Act also modifies and expands provisions of the False Claims Act relating to intervention by the federal government in civil actions for false claims, sharing of information by the attorney general with a claimant, retaliatory relief, and service upon state or local authorities in sealed cases.

The Act also redefines "claim" to include claims submitted "to a contractor, grantee or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest." This language makes explicit the ability of government and whistleblowers to pursue subcontractors and grantees. This expansion will create potential liability to health care providers and other businesses that contract with government programs, including Medicaid and Medicare.

The Act also redefines "obligation" to include "an established duty, whether or not fixed," arising from a variety of relationships, and specifically includes obligations "arising from statute or regulation, or from the retention of any overpayment." This change allows the government and whistleblower to pursue violations of regulatory statutes with penalty provisions as False Claims Act case and pursue false documents that are "material to an obligation to pay or transmit money ... to the Government" regardless of whether a false claim has been submitted. For example, a government contractor who backdates records to support a claim already submitted could be liable under this expansion.

The Act also expands the anti-retaliation provisions from only employees to include "contractors and agents" who "act to stop one or more violations." This expanded protection could extend to contractors in government-funded managed care plans who take action to stop false reporting or illegal denial of service by the plan.

These expansions to the federal False Claims Act should increase the number of federal False Claims Act lawsuits and allow the federal government to crack down on fraud and wasteful spending as well as recoup money that has been fraudulently obtained.

The Fraud Enforcement and Recovery Act also expands federal fraud laws to encompass independent mortgage companies, which are not currently covered by anti-fraud statutes that apply to traditional banks. Such independent mortgage companies originated approximately half of all subprime loans in 2005 and 2006. The bill defines a financial institution that will be covered by

the fraud statutes as any business that finances or refinances mortgages. The Act expands the mortgage-related violations that are subject to both criminal and civil punishments. Additionally, the legislation makes it a crime to appraise a property falsely, an effort to prevent the purposeful inflation of home value appraisals that contributed to the housing bubble and the resulting housing crisis.

The Fraud Enforcement and Recovery Act strengthens protections against attempts to defraud the federal government, particularly through the Troubled Asset Relief Program and the economic stimulus package; expands the financial instruments that are covered by the securities fraud statute; and clarifies a money laundering statute. The Act provides \$490 billion in spending for investigation and prosecution of mortgage fraud, securities fraud, and fraud cases involving federal economic assistance.