

False Claims Acts

The federal False Claims Act ("FCA") allows qualifying "whistleblowers" who file lawsuits (referred to as *qui tam* actions) against companies and individuals suspected of defrauding the government to receive between 15 and 30 percent of amounts obtained by the United States government from defendants charged with violations of the Act. The FCA, which provides for *triple* damages and payment of attorneys' fees, prohibits the making of claims for payment from federal funds where the claims are knowingly false within the meaning of the statute. There are similar statutes in more than two dozen states, including New York, Connecticut and New Jersey. To qualify under the FCA, the claim of the whistleblower, referred to as the "relator", cannot be based on the facts of another already pending FCA action. Also, the claim cannot be based on "publicly disclosed" allegations as defined in the statute, unless the whistleblower is an "original source" of the information within the meaning of the law. Awards can be reduced if the whistleblower initiated or planned the conduct giving rise to the claim. The statute provides employee whistleblowers with protection against retaliatory employment action, including the right to sue for damages.

After the *qui tam* lawsuit is filed, the government can intervene and join the action, or the government may decline intervention, in which case the whistleblower may proceed with the action unilaterally. Any reward for the relator, or whistleblower, is calculated based upon the amount that the government recovers, not the actual losses. Rewards are determined by the contributions to the *qui tam* case made by the whistleblowers. Since 1986, FCA settlements and judgments have totaled more than \$12 billion. A global pharmaceutical company settled FCA charges in 2010 for \$600 million, out of which the whistleblower received approximately \$96 million. A national defense contractor settled FCA charges in 2009 for \$325 million, out of which the whistleblower received approximately \$49 million. Also in 2009, a national laboratory testing company settled FCA charges for \$269 million, out of which the whistleblower received approximately \$45 million. There are many other examples. A list of the largest FCA settlements can be found at www.taf.org, the website of the organization Taxpayers Against Fraud.

IRS Whistleblower Law

Whistleblowers who provide information about tax fraud or tax underpayments to the Internal Revenue Service ("IRS") can qualify for significant rewards under the Tax Relief and Health Act of 2006, which is modeled after the reward section of the federal False Claims Act. Under the law, whistleblowers who provide information about tax fraud or tax underpayments exceeding \$2 million (counting tax, penalties and interest) may receive a reward of 15 percent to 30 percent of the amount the IRS collects as a result of the information, depending on the extent of the whistleblower's contribution. If the tax evader is an individual, he or she must have an annual income in excess of \$200,000 to qualify under this provision of the law. If a reward from the IRS fails to recognize the whistleblower's contribution, the whistleblower may appeal the reward amount to the U.S. Tax Court. If the whistleblower initiated or planned the tax fraud, the IRS may

reduce or deny a reward. A whistleblower reward also may be reduced if the whistleblower's allegations have been previously disclosed.

The IRS also has an award program for other whistleblowers - generally those who do not meet the dollar thresholds of \$2 million in dispute or cases involving individual taxpayers with gross income of less than \$200,000. The awards through this program are less, with a maximum award of 15 percent up to \$10 million. In addition, the awards are discretionary and the informant cannot dispute the outcome of the claim in Tax Court.

The IRS will keep the whistleblower's identity confidential to the fullest extent permitted by law, but there may be circumstances in which the IRS will be unable to pursue the matter without revealing the whistleblower's identity, in which case the IRS would inform the whistleblower before deciding whether to proceed with the case. The IRS pays rewards after it completes an investigation into the tax fraud or tax underpayments and after the taxes, penalties, interest, additions to tax and additional amounts that are finally determined to be owed to the IRS have been collected.

SEC and CFTC Whistleblower Laws

Under the recently enacted Dodd-Frank Wall Street Reform and Protection Act ("Dodd-Frank"), whistleblowers who report securities law violations are entitled to a reward if the Securities and Exchange Commission ("SEC"), Commodity Futures Trading Commission ("CFTC") or any other government entity recovers funds as a result of the whistleblower's information. The new SEC whistleblower program is broader than a predecessor SEC whistleblower program, which just covered insider trading violations. Now whistleblowers who voluntarily provide "original information" about securities law violations - from insider trading to money laundering to violations of the Foreign Corrupt Practices Act -- will receive a reward if the SEC and any other government authorities recover more than \$1 million based on the information. Dodd-Frank establishes a similar whistleblower reward program for the CFTC.

Under the law, whistleblowers may recover 10 to 30 percent of the monies the SEC, CFTC and other prosecuting authorities collect based on the whistleblower's information if more than \$1 million is collected. The law lists certain factors that will be considered to determine the whistleblower's reward, including the significance of the information provided, the assistance provided by the whistleblower and his or her counsel and the "programmatic interest" of the SEC "in deterring violations of the securities law." The law further provides that employers may not fire, demote, suspend, threaten, harass, or discriminate against a whistleblower, and any whistleblower who suffers from employment retaliation may sue for reinstatement, back pay and any other damages that occurred. Whistleblowers may report fraud anonymously, as long as they have retained an attorney to represent them. In general, their identities will remain confidential unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any of several entities specified in the law.