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ALERT

New Administrative False Claims Act Gives Federal Agencies More Power to Pursue and Settle Fraud Claims in 2025

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Buried deep in the 2025 National Defense Authorization Act is a change to federal law that could breathe new life into an often-neglected civil fraud enforcement tool in the coming year. The newly anointed Administrative False Claims Act (AFCA) renames and revitalizes the Program Fraud Civil Remedies Act of 1986 (PFCRA). Introduced by U.S. Senator Chuck Grassley (R-IA), a champion of the False Claims Act (FCA), the legislation is heading to President Biden's desk where it is expected to be signed into law within the next week. Under the new law, administrative agencies will soon have expanded powers to pursue and settle up to $1 million in fraud claims and other allegations of false statements made to the Government.

Legislative Background

The Administrative False Claims Act will strengthen and expand the reach of the PFCRA, making the frequently overlooked law more enticing for agency use. Enacted almost 40 years ago, the PFCRA provides a mechanism for administrative agencies, with U.S. Department of Justice approval, to pursue false claims and statements. It applies to false claims of $150,000 or less and imposes double damages and penalties up to $13,946 for each claim. The PFCRA also gives contracting and other administrative agencies the power to conduct their own investigations and settle claims. Unlike the FCA, there is no *qui tam* provision that would allow a whistleblower to bring a claim in the name of the Government. Notably, the PFCRA process has gone largely unused since its inception, with many agencies finding the administrative scheme cumbersome and determining that going after such lower-dollar false

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claims is not worth expending the time and resources necessary to do so.

Under the existing PFCRA, the agency Inspector General initiates investigations of false claims, issuing subpoenas for records and other documents in furtherance of the investigation. At the end of the investigation, the Inspector General submits a report containing findings and conclusions from the investigation to the General Counsel of the agency. The General Counsel then assesses the evidence and, if the PFCRA case appears viable, forwards it to the Department of Justice for authorization. Next, the Department of Justice reviews the agency's evidence and decides whether to allow the case to move forward. Upon obtaining authorization from the Department of Justice, the agency General Counsel may commence an action pursuant to the PFCRA. In doing so, the General Counsel must issue notice of the allegations to the accused party, who can settle the case at any time with the agency or request a hearing within 30 days of receiving the notification. Contested cases are heard before the agency's Administrative Law Judge or another presiding official authorized by the Act, who determines liability under the preponderance of the evidence standard. At the conclusion of the proceedings, the accused party has the right to appeal an adverse decision, first to the head of the agency, and then to a U.S. district court.

With the passage of the new Administrative False Claims Act, Congress is revamping the statute in several ways. Most importantly, the Administrative False Claims Act 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. Also, the AFCA allows administrative agencies to recoup costs associated with investigating and prosecuting cases that fall within the confines of the statute. The AFCA further reduces the burden on administrative agencies by expanding the categories of employees who can hear cases brought under the Act. Senator Grassley has also announced that Congress will budget more resources to the Department of Justice to increase the number of officials who can review AFCA claims. Interestingly, however, Congress has refrained from adding a *qui tam* provision to the AFCA, thus mitigating some of the statute's bite.

Takeaways

For government contractors, grantees, and others doing business with the Government, the new law comes with both pros and cons.

On the one hand, passage of the Administrative False Claims Act is likely to precipitate greater administrative agency scrutiny and enforcement of allegedly fraudulent lower-dollar claims. Furthermore, considering that agency Inspector Generals are charged with both enforcement of the AFCA and receiving contractor's mandatory disclosures under FAR 52.203-13, contractors should be cognizant of the greater scrutiny and potential follow-on enforcement that could come from making (or not making) such disclosures. And with the AFCA set to become a more widely utilized complement to the FCA, companies doing business with the Government ought to be wary of one of the AFCA's key distinguishing features: In contrast to the FCA, the AFCA covers false statements even in the absence of any claim. Practitioners would thus be wise to negotiate releases of any potential AFCA claims in their FCA settlement agreements with the Government.

On the other hand, the lower damages and penalties accompanying the AFCA compared to those available under the FCA might facilitate settlement for claims in the $150,000 to $1 million range. Contractors may be able to negotiate resolutions directly with the contracting agencies, moving matters along more efficiently and providing more flexibility for settlements. And, under the AFCA, which provides for only double damages, administrative agencies may be willing to resolve alleged false claims for less than double damages. That said, those who do business with the Government should brace themselves for increased enforcement efforts as agencies get ready to dust off this long-dormant tool for combating civil fraud.