

Amendments to the False Claims Act Signed Into Law

June 11, 2009

On May 20, 2009, President Obama signed the Fraud Enforcement and Recovery Act (S. 386), containing several sweeping amendments to the federal False Claims Act (FCA).

The Government Contracts team of McGlinchey Stafford PLLC has generated this alert to update its [March 19, 2009 alert](#), which announced the then-proposed amendments to the FCA contained in S. 386 and the False Claims Clarification Act of 2009 (S. 458). The legislation signed by President Obama incorporates amendments proposed by both bills as well as other amendments proposed in the House of Representatives.

Clients should be especially aware of the following changes:

- (1) **Broader FCA Liability.** The originally proposed language imposed liability on a person who knowingly makes, uses, or causes to be made or used, a false record or statement “to get a false or fraudulent claim paid or approved.” The new law imposes liability on any person who knowingly makes, uses, or causes to be made or used, a false record or statement “material to a false or fraudulent claim.” This effectively overrules the Supreme Court’s decision in *Allison Engine Co. v. United States ex rel. Sanders*, 128 S. Ct. 2123 (2008), which held that liability attaches only when a person submits a false claim or statement with the specific intent to get the claim paid.
- (2) **Retroactive Application.** Most of the amendments took effect on May 20, 2009, and apply to any conduct on or after that date. However, the provision amending the FCA to impose liability for false statements “material to a false or fraudulent claim,” took effect as if the legislation were enacted on June 7, 2008, and applies to all claims under the FCA that are pending on or after that date.
- (3) **Heightened Repayment Obligations.** The new law makes it a violation of the FCA to knowingly conceal or avoid an obligation to pay or transmit money to the federal government. This provision extends to any overpayment by the government as well as any obligation to transmit money or property to the government.
- (4) **Evisceration of the Presentment Clause.** Previously, liability under the FCA attached only when an individual or entity knowingly “presented” a false claim or statement to an officer of the U.S. Now, liability attaches not only when false claims are presented to the U.S. but to any false claims or statements made to a recipient of federal funds.
- (5) **Expansion of Anti-Retaliation Provision.** Before, only employees were protected by the anti-retaliation provision of the FCA. Now, under the new law, contractors and agents of the prime contractor or any recipient of federal funds are also protected by the anti-retaliation provision.

The new law includes multiple other changes to the FCA and other laws in an effort to increase accountability and oversight in government contracting. For more information, please contact a McGlinchey government contracts attorney.