

# **ILLEGAL SECTION 8 SIDE PAYMENTS & THE FEDERAL FALSE CLAIMS ACT**

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# PURPOSE OF FALSE CLAIMS ACT

To encourage private citizens to combat fraud on the Government by encouraging a private person, as a “Relator,” to file suit on behalf of the United States against a person or a business entity who has submitted false claims for money to the United States

“Qui Tam...” short for “he who brings a case on behalf of our lord the King, as well as for himself”

# **FALSE CLAIMS ACT:**

**31 U.S.C. 3729 et seq**

**Enacted in 1863**

**Amended in 1986 to encourage  
whistleblowers**

**Amended in 2009, (Fraud Enforcement  
Recovery Act), *inter alia*, expanding  
definition of “claim” and “liability”**

# **PROHIBITED CONDUCT** *(as amended, 5.20.09)*

A person (or company) is liable under the act if s/he, it:

**3729 (a)(1)(A): knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;**

**(a)(1)(B): knowingly makes, uses or causes to be made or used, a false record or statement material to a false or fraudulent claim** *(eff. 6.7.08, applies to all claims pending on or after that date)*

# **DEFINITIONS 3729(b)**

**(1) the terms “knowing” and “knowingly”—**

**(A) mean that a person, with respect to information—**

**(i) has actual knowledge of the information;**

**(ii) acts in deliberate ignorance of the truth or falsity of the information; or**

**(iii) acts in reckless disregard of the truth or falsity of the information and**

**(B) *require no proof of specific intent to defraud***

## **3729(b)(2): the term “claim”—**

**(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—**

**(i) is presented to an officer, employee, or agent of the United States; or**

**(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spend or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government—**

**(I) provides or has provided any portion of the money or property requested or demanded; or**

**(II) will reimburse such contractor, grantee, or other recipient for any portion of the money which is requested or demanded; and....**

## **3730(b): Actions By Private Persons**

**(1) A person may bring a civil action...for the person and for the United States Government...in the name of the Government**

**(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served [in advance] on the Government pursuant to [FRCiv.P] 4d(4). The complaint shall be filed in camera, shall remain under seal for at least 60 days**

**3730(c): [Government must choose whether to:**

- (1) intervene and assume responsibility for case**
- (2) upon motion and order, dismiss the case, or**
- (3) decline and allow private person to pursue]**

# **DAMAGES:**

## ***To Government:***

**3729(a)(1) civil penalty of between \$5,500 and \$11,000 *per claim* for each false claim to the Government plus 3 times the amount of damages sustained by Government**

## ***To Qui Tam Plaintiff:***

**3730(d)(1): 15%-25% of recovery if Government intervenes**

**3730(d)(2): 25%-30% of recovery if Government does not intervene, plus attorney fees and costs**

# ***STATUTE OF LIMITATIONS***

**3731(b):**

**6 years after date on which violation occurred, or**

**3 years after date when the material facts are known or should have been known by the US official charged with responsibility to act under the circumstances, but in no event more than 10 years after violation**

**Whichever occurs last**

**Government's Complaint-In-Intervention relates back to Relator's original Complaint**

# ***IMPORTANT LEGAL CAUTIONS***

- **Only the Relator who is the “*First To File*” may share recovery with the Government; 3730(b)(5)**
- **Relator’s allegations cannot be based upon a “public disclosure,” unless the Relator is the “original source,” of the public information; 3730(e)(4)**
- **Relator must not discuss case with anyone while under seal; some courts have dismissed cases where Relator has talked**

## Section 8 Housing Choice Voucher Program

### *Contractual Provisions and Regulations Conditioning Receipt Of Housing Assistance Payments Upon Compliance With HAP Contract:*

- **24 C.F.R. §982.451(b)(3):** The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.
- **24 C.F.R. § 982.451(b)(4)(ii):** The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant. (emphasis added)
- **HAP Contract, Part B, ¶6a:** During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

- **HAP Contract, Part B, ¶8d: During the term of this contract, the owner certifies that:....d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD or any other public or private source) for rental of the contract unit during the HAP contract term. (emphasis added)**
- **HAP Contract, Part C, ¶4c(1): During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed: (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.**
- **HAP Contract, Part C, ¶5e: The owner may not charge or accept, from the family or any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease. (emphasis added)**

- HUD defines “Fraud” and “abuse” in the context of the Section 8 Program as:  
a single act or pattern of actions made with the intent to deceive or mislead, constituting a false statement, omission, or concealment of a substantive fact. Fraud and abuse result in the payment of housing choice voucher program funds in violation of program requirements.  
  
HUD Housing Choice Voucher Program Guidebook, ¶22-2, p. 22-1;  
[http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11766.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11766.pdf)
- HUD prescribes that an owner/landlord’s collection of extra or “side” payments of money from Section 8 tenants in excess of the tenant portion share of rent established by the PHA constitutes “fraud and abuse.” Housing Choice Voucher Program Guidebook, ¶22-2, p. 22-1.
- HUD OIG Fraud Alert, 73 Fed.Reg. 39712-39713 (7/2008)

## Section 8 False Claims Act Cases

- *United States ex rel. Sutton v. Reynolds*, 564 F.Supp. 2d 1183 (D.Ore.2007)
- *United States ex rel. Stearns v. Lane*, 2010 WL 3702538 (D.Vt. 2010)
- *United States ex rel. Wade v. DBS Investments, LLC*, 2012 WL 3759015 (S.D. Fla. 2010)
- *United States ex rel. Smith v. Gilbert Realty Co.*, (a) 1993 U.S. Dist. LEXIS 21228 (E.D. Mich. 1993); (b) 840 F.Supp. 71 (E.D. Mich. 1993); (c) 9 F.Supp. 2d 800 (E.D. Mich. 1998; (d) 34 F.Supp. 2d 527 (E.D. Mich. 1998)
- *United States ex rel. Coleman v. Hernandez*, 490 F.Supp. 2d 278 (D.Conn. 2007)

**See, also:**

- ***United States ex rel. Newberry v. Horton*, No. 11-20153 (S.D. Fla. 2011)**
- ***United States ex rel. Richards*, No. 11-1539 (W.D.Pa. 2011)**

**State Claims (supplemental jurisdiction)**

- **Fair Credit Extension Uniformity Act, 73 P.S. 2270.4 et seq., per UTPCPL, 73 P.S. 201-1 et seq.**
- **Unjust enrichment**