



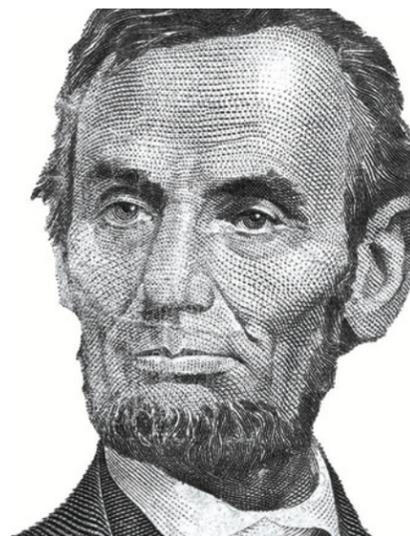
the 1986
**FALSE CLAIMS ACT
AMENDMENTS**



A Retrospective Look At Twenty Years of
Effective Fraud Fighting In America



INTRODUCTION



During the Civil War, unscrupulous defense contractors drained the U.S. Treasury with impunity. President Abraham Lincoln responded by proposing the enactment of the False Claims Act (FCA) to unleash whistleblowers to help the government suppress fraud that was plaguing the Union Army. However, during World War II, Congress overreacted to an unfortunate situation where a False Claims Act suit was filed based entirely on the information in a government indictment. The amendments at that time had the unfortunate effect of disabling the FCA at the very moment when government programs entered an era of major growth. Not surprisingly, without whistleblowers to unravel the inner workings of fraudulent schemes, federal law enforcement officials were overwhelmed and outmatched by a well-funded army of dishonest government contractors.

The FCA was revived, in 1986, after congressional hearings and GAO reports exposed rampant fraud in the defense procurement process (you will recall the stories of \$500 hammers and \$7200 coffee makers). Senator Charles Grassley and Congressman Howard Berman collaborated to push Amendments through Congress that President Ronald Reagan signed into law, re-enlisting whistleblowers in a national effort against fraud. Indeed, Congress's intent was to reinstate a "coordinated effort" between private citizens and the government, fighting side by side to effectively and to efficiently protect the U.S. Treasury, so as to "enhance the Government's ability to recover losses sustained through fraud against the Government."¹

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This publication chronicles the Act's remarkable success over the last twenty years and highlights the pivotal role whistleblowers have played in recovering nearly \$17 billion in stolen funds.

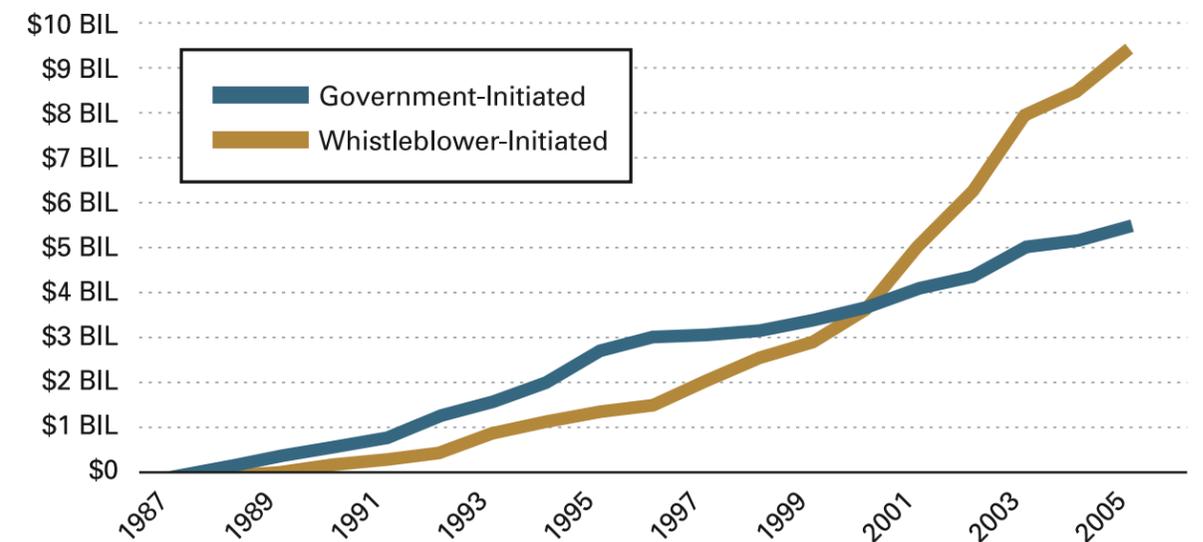
¹ S.Rep. 99-345, at 1, U.S. Code Cong. & Admin. News 1986, 5266-67.



The 1986 False Claims Act Amendments have been a success on many levels. The Department of Justice's statistics on FCA settlements (see appendix) reveal that the '86 Amendments ushered in a new era of fraud enforcement. The amount of fraud money recovered has risen dramatically and whistleblowers have become the primary source of successful FCA actions. The size of recoveries have increased significantly over time because of whistleblower suits and, whistleblowers have greatly expanded the reach of the Act to protect the American tax dollar from fraud in many new arenas.

With government spending reaching all-time highs and with fraud oftentimes masked by seemingly innocuous business transactions, the last twenty years of fraud enforcement has been marked by a remarkable shift. Specifically, the U.S. Department of Justice has, over time, increasingly relied on whistleblowers to uncover and initiate cases against government contractors. Thus, in 1987, not a single stolen dollar was recovered through whistleblower-initiated suits; last year, however, over eighty percent of the money returned to the federal government originated from such cases. As this graph depicts, the trend has pushed the amount recovered by whistleblowers to nearly \$10 billion.

Stolen Dollars Recovered in Government-Initiated FCA Suits Versus Whistleblower-Initiated FCA Suits

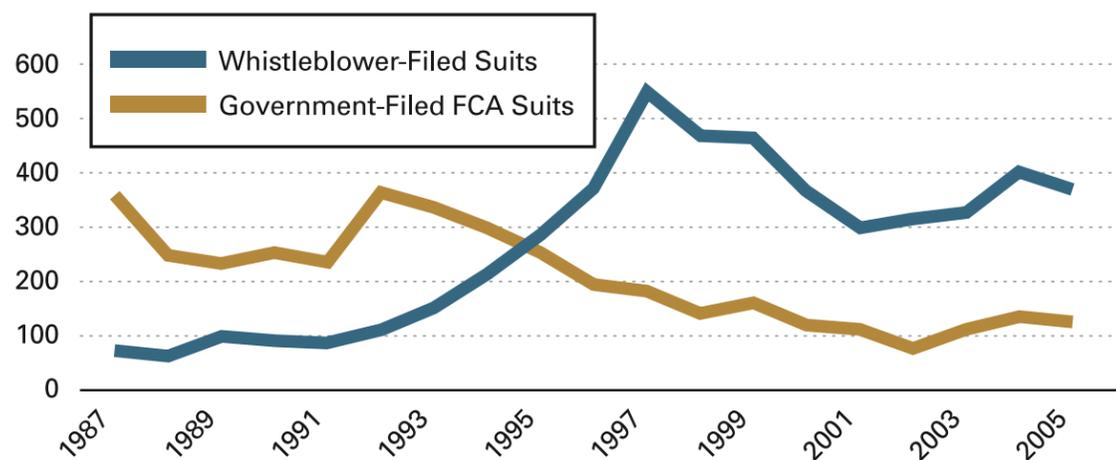




Last year, over 80% of the money returned to the federal government was from whistleblower-initiated FCA suits.

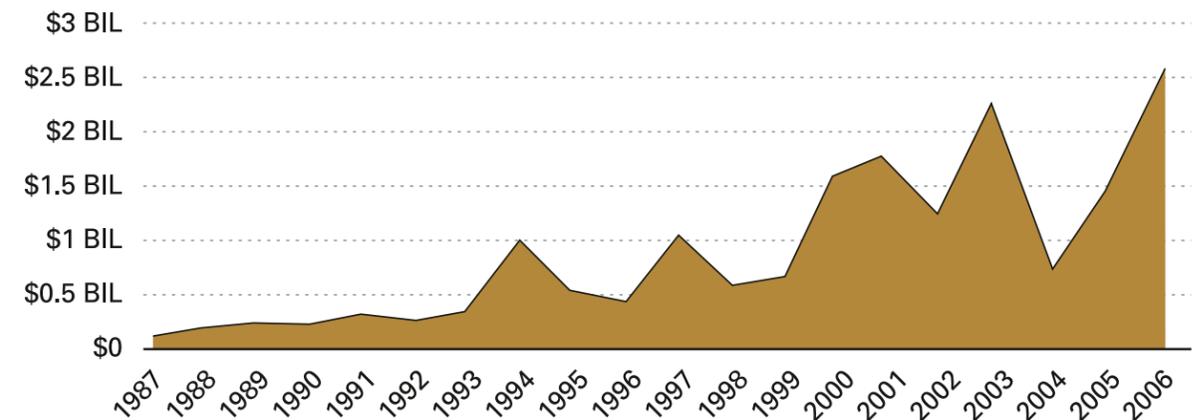
While the total number of new FCA actions has remained relatively constant (e.g., 427 in 1987, 513 in 1995, 494 in 2005), there has been a significant shift from government-filed suits to whistleblower-filed suits. Only 15% of all new FCA actions filed in 1987 were whistleblower suits. In 1995, this percentage rose to 54%. Last year, nearly 80% of all new FCA actions were filed by whistleblowers.

Number of Government-Filed FCA Suits Versus Whistleblower-Filed Suits



Even more impressive than the growing role of whistleblowers is the resulting efficiency whistleblowers have brought to the overall fraud enforcement system. In 1987 73 FCA settlements returned only \$87 million to the American treasury, or less than \$1.2 million per settlement. Last year, however, the federal government, in securing over \$1.4 billion in stolen funds, recouped close to \$14 million per settlement. In addition, the total yearly recoveries have dramatically increased, jumping from an average of \$368 million from 1987 to 1996, to an average of over \$1.25 billion from 1997 to 2005. 2006 promises to be the most successful year yet under the FCA, with recoveries exceeding \$2.6.

Total Amount of Yearly FCA Settlements



As detailed by a recent Taxpayers Against Fraud Education Fund study,² the federal government is not only seeing an increased return in individual FCA settlements, but is now realizing a remarkable \$15-to-\$1 return to the government for money spent investigating and prosecuting FCA whistleblower actions involving health care fraud. In fact, this study is the third update of an original 2001 study that showed a return of \$8 for every \$1 invested. Each subsequent study has shown an increased return on investment, climbing from \$8-to-\$1 to \$9-to-\$1 to \$13-to-\$1 to \$15-to-1. In short, despite the “concern” defense industry opponents voiced that the 1986 FCA Amendments would “clog the system” with frivolous whistleblower suits, the Amendments have actually made fraud enforcement more cost-effective and efficient. Indeed, to appreciate the true reach and impact of the 1986 FCA Amendments, one only needs to view the different companies represented on the “Top 25 FCA Settlements” list of the past twenty years.

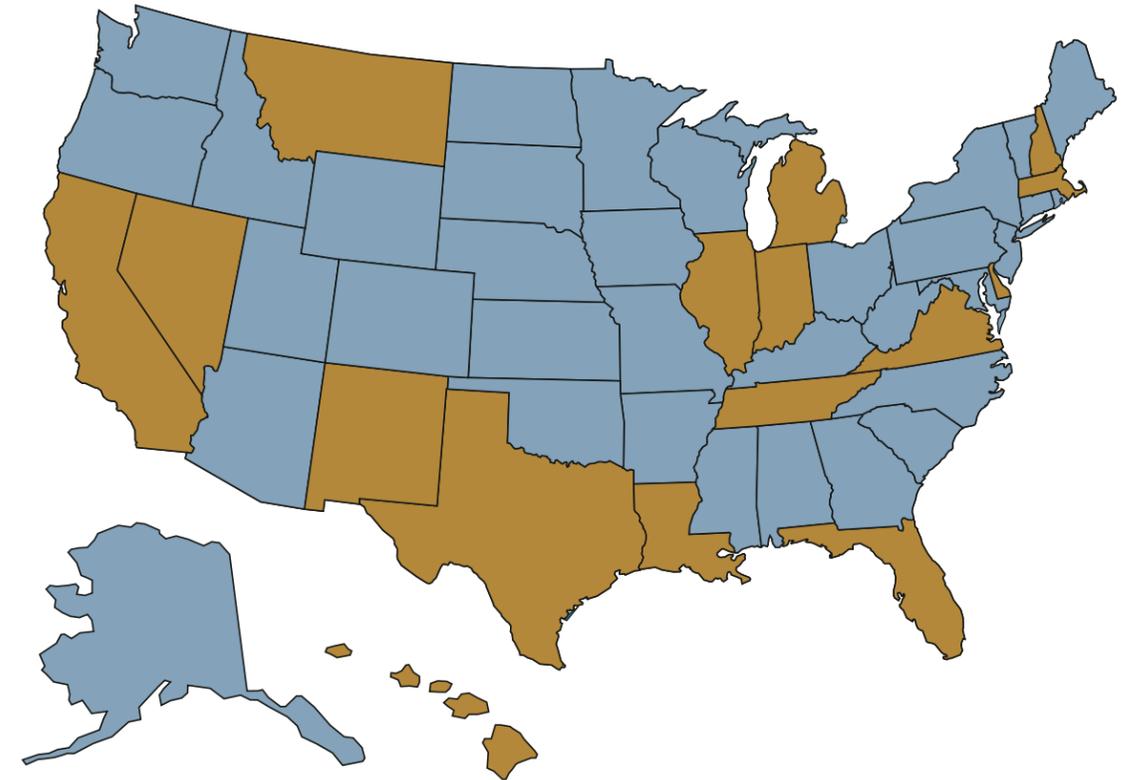
² See Jack A. Meyer, *Fighting Medicare Fraud: More Bang for the Federal Buck* (July 2006), available at <http://www.taf.org/FCA-2006report.pdf>.



Company	Settlement Amount
1) Tenet Healthcare	\$900,000,000
2) HCA *	\$731,400,000
3) HCA *	\$631,000,000
4) Serono Group *	\$567,000,000
5) TAP Pharmaceuticals Products Inc. *	\$559,483,560
6) Abbott Labs *	\$400,000,000
7) Fresenius Medical Care of N. America*	\$385,000,000
8) SmithKline Beecham Clinical Labs (tie)	\$325,000,000
8) HealthSouth * (tie)	\$325,000,000
9) National Medical Enterprises *	\$324,200,000
10) Gambro Healthcare	\$310,000,000
11) Schering-Plough *	\$292,969,482
12) AstraZeneca *	\$266,127,844
13) Saint Barnabas Hospitals	\$265,000,000
14) Bayer Corp. *	\$257,200,000
15) First American Health Care Of Georgia	\$225,000,000
16) BankAmerica *	\$187,000,000
17) Laboratory Corporation of America *	\$182,000,000
18) Beverly Enterprises Inc. *	\$170,000,000
19) Pfizer/Warner-Lambert *	\$152,000,000
20) United Technologies (tied)	\$150,000,000
20) GlaxoSmithKline	\$150,000,000
21) Blue Cross Blue Shield Illinois *	\$140,000,000
22) Caremark	\$137,500,000
23) Mario Gabelli & Lynch Interactive	\$130,000,000
24) King Pharmaceutical	\$124,000,000
25) Northrop Grumman	\$111,200,000

* means criminal fines were also levied. Amounts listed are only for Federal FCA settlements; additional state claims may also have been paid.

Thankfully for the public fisc, it appears that the trend of increased reliance on whistleblower initiated cases is continuing and spreading. Several states and municipalities, recognizing the success of the federal False Claims Act, have passed their own versions of the Act. As depicted by the gold states on this map, state False Claims Acts have been enacted in traditionally Republican states, such as Texas and Tennessee, to traditionally Democrat states, like California and Massachusetts. When it comes to fighting fraud in America, both sides of the aisle have truly embraced False Claims Act legislation.



However, while the federal False Claims Act has been quite successful, a significant lack of success in fighting fraud has, until very recently, characterized the Medicaid program. A 2003 Taxpayers Against Fraud report revealed that many times fewer Medicaid fraud dollars were being recovered than Medicare dollars.¹ This difference derived from several problems, most of which have their root in the complications of the joint federal-state nature of the Medicaid program.

Recently, Congress sought to remedy this situation through section 6031 of the Deficit Reduction Act of 2005, which incentivizes States to pass their own FCAs and to use them to go after Medicaid fraud dollars.² Hopefully all States will enact FCAs that comply with the requirements of the Deficit Reduction Act, solidifying effective fraud fighting in America.

¹ See Andy Schneider, *Reducing Medicaid Fraud: The Potential of the False Claims Act* (June 2003), available at <http://www.taf.org/publications/PDF/reducingmedicaidfraud.pdf> (showing that the federal government was recovering 24 times more Medicare money under the FCA than Medicaid money, even though the two programs were roughly the same size).

² For an additional information, including a model state FCA and a table on how much more money each state will get back if they have a qualifying state FCA law, please visit <http://www.taf.org/cashbackstatefca.htm>.



Taxpayers Against Fraud and its sister organization, TAF Education Fund (TAF) were created to protect the False Claims Act from special interests bent on weakening the new law. The first attacks came from the defense industry which sought weakening amendments from the Act in 1988 and 1990, and which then tried to get the courts to declare the False Claims Act unconstitutional. These attempts failed, thanks in part to a spirited defense put forth by friends and supporters of the FCA mobilized by Taxpayers Against Fraud.

In 1998, another attack against the FCA was launched, this time from the American Hospital Association. TAF joined with consumer and senior citizen groups to run full-page ads in Roll Call asking, “Remember when Congress used to be against fraud?” TAF pointed out that in 1997 alone prosecutors indicted 282 defendants for health fraud crimes and opened more than 4,000 civil cases while regaining more than \$1 billion for the U.S. treasury. That same year, the FBI and several other federal agencies served 35 warrants on the largest hospital chain in the world—an investigation that eventually recovered over \$2 billion.

In the end, the Hospital Association’s credibility failed in the face of overwhelming evidence, and the False Claims Act was unscathed. Since then, TAF has worked to defend and expand the Act in courts, in the States, and on Capitol Hill. Here is a brief look at some of TAF’s efforts:

- TAF’s research studies are quoted by The Wall Street Journal and The New York Times and have become well known among influential policy makers for highlighting the value of the FCA.
- TAF’s amicus curiae briefs work to put individual cases within a larger context. One such brief was cited by the U.S. Supreme Court in the recent Banks and Banaitis decision, which excluded relators from that double-taxation ruling.
- TAF worked with Senator Grassley and his staff to repeal the unfair double taxation of qui tam relator awards.
- TAF works to defend the FCA in Washington against both overt and covert attempts to weaken the law, while pushing for increased enforcement and procedural clarifications to speed FCA recoveries.
- TAF’s web site, on-line newsletter, and False Claims Act & Qui Tam Quarterly Review are the leading



- edge of False Claims Act information, with each communications vehicle addressing different audiences. In print and on the web, Taxpayers Against Fraud remains the most comprehensive source of FCA information.
- TAF acts as the hub for the qui tam relator’s bar, providing an online forum for practice advice and information sharing, message development, and continuing legal education through our annual conference and membership services.
- TAF is leading the push to get States to embrace their own False Claims Act laws, drafting model language and fighting off weakening amendments advanced by lobbyists for fraudsters.
- TAF is an active and trusted guide for prospective whistleblowers seeking to develop their own cases, find lawyers, and considering next steps. When a whistleblower is looking for guidance, TAF is often the first place they turn.

FY	NEW MATTERS			SETTLEMENTS & JUDGEMENTS			RELATOR SHARE AWARDS			
	Non Qui Tam	Qui Tam	Total	Non Qui Tam	Qui Tam		Total Qui Tam and Non Qui Tam	Where US Inter-vened or Other-wise Pursued	Where US Declined	Total
					Where US Inter-vened or Other-wise Pursued	Where US Declined				
1987	361	66	86,479,949	0	0	0	86,479,949	0	0	0
1988	246	60	172,843,696	355,000	35,431	390,431	173,234,127	88,750	8,638	97,388
1989	236	95	197,202,180	15,111,719	0	15,111,719	212,313,899	1,446,770	0	1,446,770
1990	256	82	193,239,367	40,483,367	75,000	40,558,367	233,797,734	6,590,936	20,670	6,611,606
1991	243	90	270,945,467	69,705,771	69,500	69,775,271	340,720,738	10,667,537	18,750	10,686,287
1992	357	119	136,862,236	134,099,447	994,456	135,093,903	271,956,139	24,196,648	259,784	24,456,432
1993	329	132	187,234,076	171,438,383	5,978,000	177,416,383	364,650,459	25,636,134	1,756,902	27,393,036
1994	291	222	706,187,897	379,646,074	1,822,323	381,468,397	1,087,656,294	70,112,579	538,897	70,651,476
1995	236	277	279,522,866	245,463,627	1,813,200	247,276,827	526,799,693	46,475,379	517,238	46,992,617
1996	187	363	247,357,271	124,565,203	14,033,433	138,598,636	385,955,907	22,193,539	3,896,058	26,089,597
1997	185	533	468,549,359	622,666,381	7,136,144	629,802,525	1,098,351,884	65,938,921	1,981,346	67,920,267
1998	119	470	151,585,794	432,813,410	29,225,385	462,038,795	613,624,589	69,660,944	8,527,750	78,188,694
1999	141	481	196,613,009	454,268,984	62,509,047	516,778,031	713,391,040	49,414,054	17,593,462	67,007,516
2000	96	367	367,887,197	1,202,552,907	1,814,847	1,204,367,754	1,572,254,951	183,600,387	391,733	183,992,120
2001	88	309	494,496,974	1,175,104,715	125,726,963	1,300,831,678	1,795,328,652	187,475,850	30,294,843	217,770,693
2002	63	320	113,692,470	1,066,606,748	29,866,186	1,096,472,934	1,210,165,404	159,198,889	5,593,086	164,791,975
2003	93	334	703,003,368	1,429,086,502	87,140,070	1,516,226,572	2,219,229,940	308,280,386	19,322,900	327,603,286
2004	113	415	115,656,023	556,072,685	9,474,879	565,547,564	681,203,587	109,627,498	2,433,638	112,061,136
2005	100	394	276,794,983	1,119,347,507	22,396,229	1,141,743,736	1,418,538,719	160,199,544	6,175,933	166,375,477
Total	3,740	5,129	5,366,154,182	9,239,388,430	400,111,093	9,639,499,523	15,005,653,705	1,500,804,745	99,331,628	1,600,136,373

1. “New Matters” refers to newly received referrals and investigations, and newly filed qui tam actions.
 2. Non qui tam settlements and judgments do not include matters delegated to United States Attorneys’ offices. The Civil Division maintains no data on such matters.
 3. Relator share awards are calculated on the portion of the settlement or judgment attributable to the relator’s claims which may not be the entire settlement or judgment amount. Relator share awards do not include amounts recovered in subsection (h) or other personal claims. See 31 U.S.C. § 3730(h).



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