Whistleblower Legal Terms Glossary

Compiled by The Anti-Fraud Coalition

Anti-Kickback Statute (AKS)

- The AKS is a federal law that forbids offering or accepting payment or other advantages in return for the referral of patients or other business from a healthcare provider whose goods or services are payable to federal healthcare programs.

- The AKS is intended to prevent healthcare providers from prioritizing financial rewards over best practices for patient health.

Article II of the Constitution

- Article II of the Constitution is frequently brought up in debates about the constitutionality of the *qui tam* provision of the False Claims Act (FCA). There are two specific arguments – the Take Care clause and the Appointments clause – that are referenced. The Take Care clause defines the duties and powers of the Executive Branch, and the Appointments clause necessitates the Executive Branch to appoint officials.

- Opponents of the *qui tam* provision's constitutionality argue that the Take Care clause is violated because *qui tam* actions infringe on the ability of the Executive Branch to enforce laws, but proponents of the *qui tam* provision argue that it expands, rather than inhibits, the power of the Executive Branch because the government has significant power over *qui tam* cases. For the Appointments clause, some argue that those bringing *qui tam* cases, referred to as "relators," have the same power as a government official without having been appointed. Others dismiss this idea, stating that relators' abilities are well within government control and therefore they do not count as government officials. Read more about the history of this debate here.

Center for Medicare and Medicaid Services (CMS)

- CMS is a federal agency that extends healthcare services via Medicare, Medicaid, and more. When healthcare providers submit claims for reimbursement of services to Medicare, Medicaid, or another federal healthcare program, CMS is responsible for distributing government funds to those providers. Read more about the organization and history of CMS here.

Civil Penalties

- When a defendant is held liable for a civil violation, the judicial system imposes a civil penalty for the violations of laws or regulations. It is typically a monetary fine, and for the FCA, these penalties range from $13,946 to $27,894 for each violation of the statute. The range of penalties are updated frequently to account for inflation.

Defendant

- In civil cases, the defendant is the person or entity being sued by the plaintiff. The defendant is responding to the action brought by another individual, entity, or the government.

Discovery

- Discovery refers to the time when parties can obtain evidence from their opposition. It occurs after the motion to dismiss stage and before summary judgement (both terms defined below).

Dodd-Frank Act

- The Dodd-Frank Wall Street Reform and Consumer Protection Act, frequently referred to as the Dodd-Frank Act, provides a pathway for whistleblowers to receive an award from regulatory agencies after voluntarily providing them with original information that results in a successful enforcement action where over $1,000,000 is recovered. The award amount granted under the Dodd-Frank Act is between 10 and 30% of the money recovered in the enforcement action.

- The Dodd-Frank Act also explicitly prohibits retaliation against whistleblowers by employers and creates a private cause of action in the even that whistleblowers are retaliated against in violation of the Act.

False Claims Act (FCA)

- The False Claims Act (FCA) prohibits the presenting of false or fraudulent claims to the federal government. It includes a *qui tam* provision, which allows private citizens, known as "relators," to file an action pursuing damages on behalf of the government. If held liable, the offending party is required to pay trebled damages and a civil penalty for each violation of the FCA. The trebled damages serve to deter other parties from violating the FCA.

- Examples of FCA violations include submitting fraudulent claims for reimbursement to federal healthcare programs, participating in a kickback scheme that results in false claims to the government, applying for and receiving a loan for the government despite being ineligible, and more.

Government declination / intervention

- Government declination or intervention occurs after a relator brings a *qui tam* case that is filed under seal. While under seal, the government investigates the information in the relator's complaint and determines whether it wants to intervene or decline to intervene in the case. If the government intervenes, the relator and their counsel take the back seat in the case. If the government declines to intervene, the relator may continue with the action on behalf of the government. Declination does not mean that the government is not paying attention to the case; government officials keep track of the progress of the case and can decide to intervene at any moment.

- While the relator will typically receive a higher portion of the government's recovery of a successful case when the government does not intervene, cases where the government declines to intervene may be less likely to succeed than cases where the government chooses to intervene.

Magistrate judge

- In simple terms, a magistrate judge serves as an assistant to U.S. District Court judges. They can oversee civil trials when parties consent and provide a recommendation for the U.S. District Court judge.

Materiality

- Materiality determines whether an issue is important enough to have an impact on a decision. In the FCA context, materiality refers to whether the government considered a false submission important enough to hold the defendant liable.

- Specifically, the FCA defines material as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."

Motion to dismiss (MTD)

- A motion to dismiss happens before a case proceeds to trial and before either party conducts discovery. Either party may file a motion to dismiss, and a party can file a motion to dismiss to dismiss all or some of the oppoition's claims.

- For FCA cases, motions to dismiss are most commonly brought against a plaintiff for "failure to state a claim" and for "failure to plead with particularity." Failure to state a claim argues that even if everything the plaintiff says in their complaint is true, it still doesn't have enough facts to prove that a defendant violated the FCA and prevents the case from proceeding to trail. Failure to plead with particularity means that the plaintiff's complaint was too vague or unclear to inform the defendant and court about their claim.

Paycheck Protection Program (PPP)

- According to the U.S. Department of the Treasury, the PPP "is providing small businesses with the resources they need to maintain their payroll, hire back employees who may have been laid off, and cover applicable overhead" to reduce the impacts of the COVID-19 pandemic. In action, the PPP allowed small businesses meeting specific requirements to receive forgivable loans from the government to retain employees and prevent closure.

- In the FCA context, PPP fraud refers to schemes were businesses or individuals applied for and received PPP loans without meeting the specific requirements or using the loans for their intended purpose.

Plaintiff

- The plaintiff is the entity or individual who is responsible for bringing an action. Plaintiffs initiate a legal matter.

Prejudice / without prejudice

- Prejudice is sometimes referred to as "without leave to amend," and without prejudice is referred to as "with leave to amend." Essentially, a case that is dismissed with prejudice may not file an amended complaint or get a second chance to present their arguments while a case dismissed without prejudice may try again.

Qui tam

- *Qui tams* in the context of the FCA are cases that allow private individuals to sue on behalf of the government and receive a portion of any government recovery. It is often pronounced as "key tam."

Relator / whistleblower

- A relator or a whistleblower is someone who brings a *qui tam*, a case against a perpetrator of fraud against the government on behalf of the government. There are multiple government whistleblower programs, not just the FCA. For example, the IRS and SEC both have whistleblower programs with different procedures.

Relator's share

- Under the FCA, a relator may file a case on behalf of the government. If the government intervenes, the relator receives a smaller relator's share from the government's recovery than if the relator pursues the case without government intervention. Relator's share refers to the portion of the government's recovery that the relator receives.

- For cases in which the government does not intervene, the relator's share is typically between 25-30%. For cases in which the government does intervene, the relator's share is between 15-25%. These amounts can vary widely based on the relator’s contribution to the case and any relator involvement in the fraudulent activity.

Seal / Under seal

- When a document or other court filing is placed under seal, it has legal protection of secrecy. The sealed document may not be publicly discussed, and the information may not be spread to outside parties.
- In FCA cases, when a relator files their complaint, it is placed under seal while the government investigates the claims in the complaint and decides whether it wants to intervene in the case.

Stark Law

- Stark Law prohibits doctors or other healthcare providers from referring their patients to services in which they have a financial stake, unless the referral falls under a specific exception. This law is applicable to services covered by federal healthcare programs like Medicare and Medicaid. Its goal is to prevent conflicts of interest and ensure medical decisions are made based on patient needs rather than financial incentives.

Statute of Limitations

- Generally, a statute of limitations is the part of a statute defining a time limit for a certain kind of legal action to be brought.

- Under 31 U.S.C. § 3731(b), FCA claims “may not be brought –
  (1) More than 6 years after the date on which the violation of § 3729 is committed, or
  (2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.”

- In simple terms, an FCA case may not be brought more than six years after the fraud occurred or more than three years after a government official was informed of the fraudulent activity.

Summary Judgement

- Summary judgement happens before a case goes to trial but after the discovery process and after any motions to dismiss.

- A case may be dismissed via summary judgement if there is no genuine dispute of material fact – if there is no dispute about the facts of the case and whether these facts prove whether a party committed fraud. Both defendants and plaintiffs can file for summary judgement.

This glossary was compiled by Rosie Tomiak, Public Interest Advocacy Fellow of TAF Coalition from 2024-2025.