

The Program Fraud Civil Remedies Act

Lori Vassar
DOI OIG

Travis J. Farris
SBA OIG

Goals of this Training

Familiarize NSF OIG personnel with
The Program Fraud Civil Remedies Act
of 1986 (PFCRA)

- Overview
- History
- Basic Principles
- PFCRA Case Elements
- PFCRA Procedures
- Application

Resource for Forms and Other Guidance



Program Fraud Civil Remedies Act Practitioner's Guide

Prepared by
The Investigations Committee
Program Fraud Civil Remedies Act
Working Group

*Approved by
The Council of the Inspectors General
on Integrity and Efficiency
November 19, 2013*

PFCRA

- **Overview**
- History
- Basic Principles
- PFCRA Case Elements
- PFCRA Procedures
- Application

What's It All About?

PFCRA is an administrative remedy designed to ensure Federal agencies have redress for smaller false and fraudulent claims not selected for enforcement litigation by the Department of Justice.

PFCRA Provisions

31 U.S.C. §§ 3801 *et seq.*

- Provide Federal executive branch agencies with an administrative remedy for small-dollar fraud cases for false claims and statements not selected for DOJ enforcement
- Liability of accused party is determined during administrative proceedings
- Presiding official is ALJ or other qualified individuals authorized under PFCRA

PFCRA

- Overview
- **History**
- Basic Principles
- PFCRA Case Elements
- PFCRA Procedures
- Application

PFCRA - History



- Passed in 1986 – Mini False Claims Act (Claims less than \$150,000).
- 1991 GAO Report – PFCRAs not used extensively – 41 Cases to DOJ between 1986 – 1990.
- 2012 GAO Report – 141 Cases to DOJ between 2006 – 2010 (96% from HUD).
- FY 2011-2013 – nearly \$5.4 million collected by HUD.

PFCRA

- Overview
- History
- **Basic Principles**
- PFCRA Case Elements
- PFCRA Procedures
- Application

Cause for Liability

- Making, presenting, submitting, or causing to be made, presented or submitted to the Government or the recipient of the Government's largess;
- A False Claim or a False Statement; and
- Knowing or having reason to know that the claim or statement is false.

False Claim

- A request for property or services, which is supported by a statement that is:
 - false, fictitious, or fraudulent;
 - is supported by a material fact that is false, fictitious, or fraudulent; and/or
 - omits a material fact that the maker has a duty to include.
- Damages: up to \$5,000, plus double the amount of the claim.



Note on Penalties

- This presentation uses the current \$5,000 NSF Penalty. 45 C.F.R. § 681.3. Other agencies use different penalty amounts.
- The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note) provides penalty adjustment once every four years by Federal Register notice.

False Statement

- A statement that includes a material fact that is false, fictitious, or fraudulent; or omits a material fact that the maker has a duty to include.
- The statement is accompanied by a certification or affirmation of truthfulness.
- Damages: up to \$5,000.

Examples of False Claims

- Invoice
- Request for Reimbursement
- SBIR/STTR Grants
- Payroll
- Small Business Contract Invoices from Ineligible Businesses
- Other Grant Claims



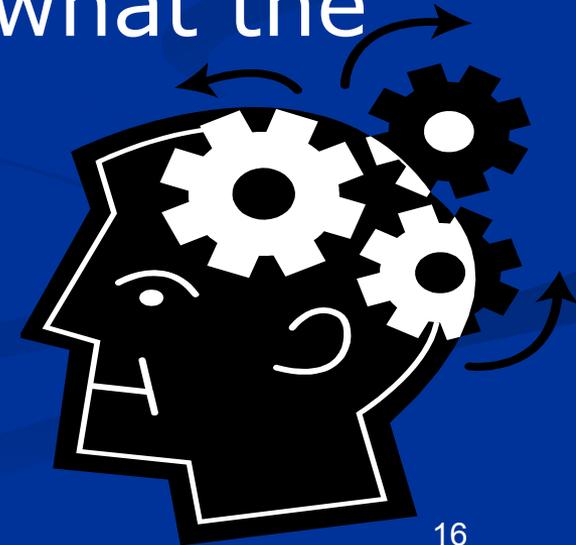
Examples of False Statements

- False Owner's or Contractor's Cost Certification
- False Financial Statement
- False Accounting Report
- False Certifications Required by Program Regulation or Handbook
- False Property Inspection Report



Knowledge Requirement

- Actual Knowledge;
- Deliberate Ignorance (affirmatively hides from the truth); or
- Reckless Disregard (gross negligence; does not care what the truth is).



Remedies for False Claims

- Civil Penalty of up to \$5,000 for each false claim, including false statement that causes claim to be paid
- Assessment of double the amount of paid claim
- Recovery limited to claims of \$150,000 or less

Remedies for False Statements

- Civil Penalty of up to \$5,000 for each false statement



PFCRA

- Overview
- History
- Basic Principles
- **PFCRA Case Elements**
- PFCRA Procedures
- Application

Statutory Elements

- Impose civil penalties and assessments for:
 - Persons
 - Make, Submit or Present or,
 - Cause to Be Made, Submitted or Presented
 - False Fictitious or Fraudulent
 - Claims or Statements
 - They Knew or Had Reason to Know were False
 - To Federal Authorities or their agents.

6 Year Statute of Limitations.

“Person”

- Individual
- Partnership
- Corporation
- Association
- Private Organization
- Entity

Make, Submit or Present . . .

Some affirmative action required.

Cause to Be Made, Submitted or Presented

A liable party does not need to submit the claim personally. PFCRA liability may arise where a person submits false documents that cause a program participant to submit a false claim.

False, Fictitious or Fraudulent

As the terms indicate, the information or submission cannot be true.

****Use caution with cases that involve certifications of intent or future actions.**

Statement

- Representation, certification, affirmation document or other submission
- Made:
 - With respect to a claim
 - With respect to eligibility for contracts, grants, loans or benefits
- Statement must be accompanied **by express certification** of truthfulness or accuracy
- No need to show that any claim was paid

PFCRA

- Overview
- History
- Basic Principles
- PFCRA Case Elements
- **PFCRA Procedures**
- Application

Procedure

- There must be an investigative report referred by the NSF Office of Inspector General.
- OIG report is submitted to the Reviewing Official (General Counsel of NSF or the General Counsel's designee).
- Department of Justice must approve all PFCRA actions.
- Cases are tried in front of Administrative Law Judges, appointed pursuant to 5 U.S.C. Sec. 3105 or detailed to NSF pursuant to 5 U.S.C. Sec. 3344.

OIG Report

- Presents findings and conclusions of investigation/audit to Reviewing Official.
- Should contain all evidence necessary to assess the proposed action.
- Should contain contact information for an investigating agent/auditor.

**Shortcut – The
Practitioner's
Guide has forms.**

Reviewing Official

- Assesses whether the evidence supports a finding of liability under the PFCRA
- If appropriate, drafts a request for authorization to proceed with a PFCRA
- Determines whether there is a reasonable prospect of collecting an appropriate amount of penalties and assessments

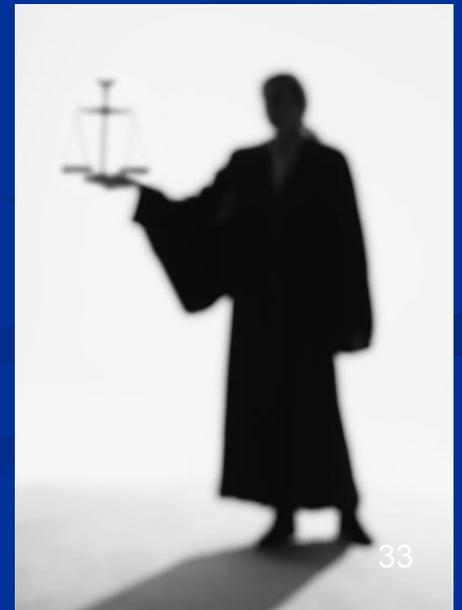
Request for PFCRA Authorization from NSF

1. Reasons for the referral of the allegations
2. Statement specifying the evidence
3. Description and number of claims, statements, or penalties at issue
4. Value of property or services requested or demanded
5. Any relevant exculpatory or mitigating circumstances
6. Statement regarding reasonable prospect of collecting an appropriate amount of penalties and assessments

**Shortcut – The
Practitioner's
Guide has forms.**

After DOJ Approval:

**Litigate the Case
before Administrative
Law Judge**



**Shortcut – The
Practitioner’s
Guide has forms.**

Judicial Review

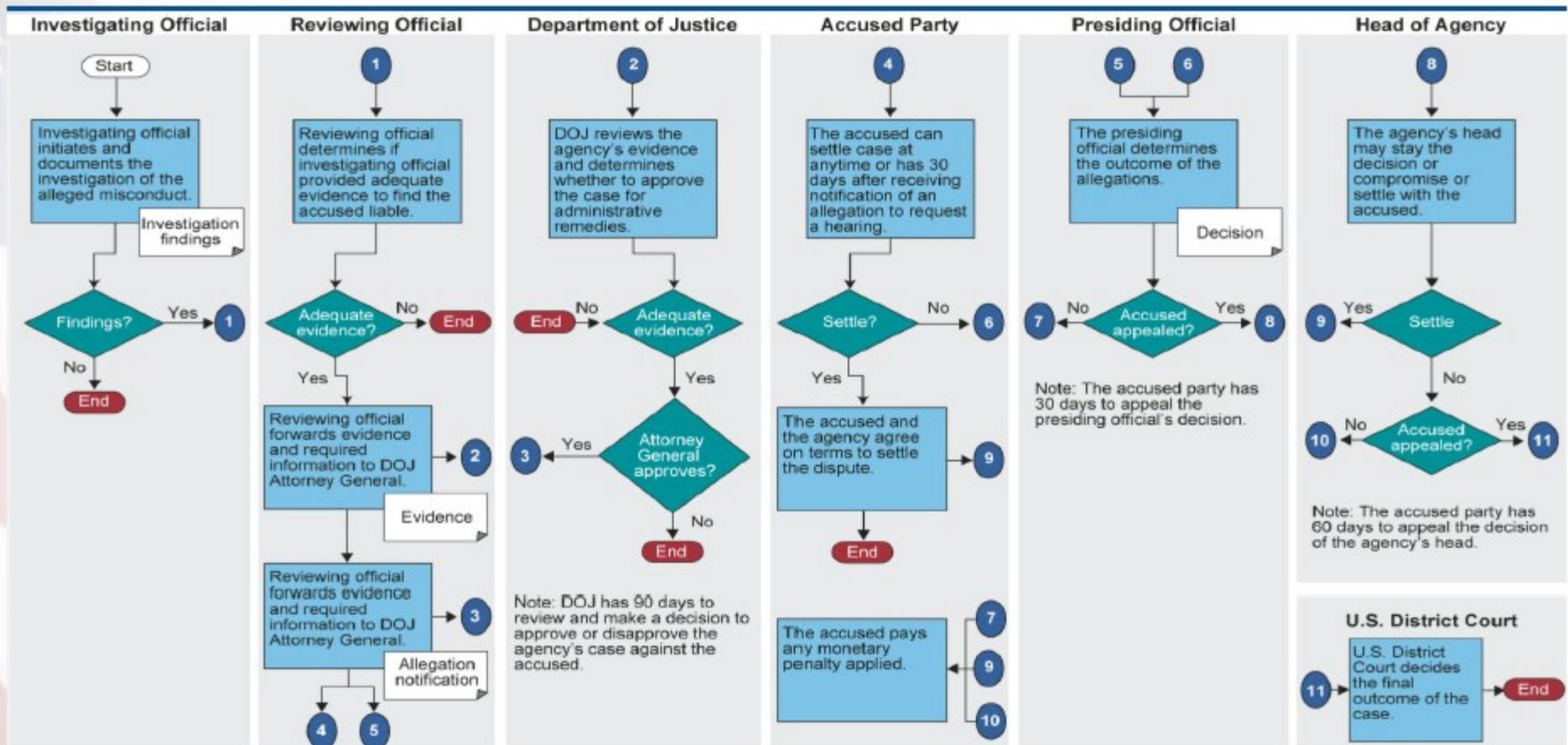
- Appeal lies with District Courts within 60 days of final Agency decision
- Respondent must exhaust administrative appeals
- ALJ's factual findings are conclusive unless unsupported by substantial evidence
- Courts have jurisdiction to affirm, modify, remand for further consideration, or set aside, in whole or in part, the ALJ decision
- District Court can enter judgment in Government's favor

Collection of PFCRA ALJ Judgments

- If affirmative collection necessary, DOJ must file a civil action to have judgment entered in Federal court
- Liability and the determination of amounts of penalties and assessments is not subject to review in a collection action
- 3-year statute of limitations on collection actions



Background: PFCRA Process



**Remember – The
Practitioner's
Guide has forms
that fit this
process.**

PFCRA

- Overview
- History
- Basic Principles
- PFCRA Case Elements
- PFCRA Procedures
- **Application**

Hypothetical #1

- Small Business receives ten \$100,000 SBIR Phase 1 grants to develop projects related to rechargeable batteries.
- All projects were previously submitted to, and funded by, SBIR grants at other agencies (the PI is big on recycling).

Hypothetical #1 Results

- NSF can sue the business (and possibly the individuals) for a \$50,000 civil penalty (ten claims at \$5,000) and \$2,000,000 (double the claimed amount) in assessments.
- Maximum Case Value: \$2,050,000.

Example #1

- Landlord rented a house to his mother and brother using HUD's Housing Assistance Payment (HAP) program. HAP payments cover only a portion of the rent. Landlord never collected the tenant's share but did get \$23,603.00 from 43 HAP payments. (Other payments out of statute.)
- Landlord certified in program documents that no family member living in the house had an ownership interest in the unit. Landlord knew his mother was a partial owner of the house. Mother also affirmed in program documents that she did not own any real estate.

Result?

Result, Example 1

- Landlord and mother jointly and severally liable for \$283,706.
 - \$236,500 in penalties ($\$5,500 \times 43$).
 - \$47,206 assessment ($\$23,603 \times 2$).
- Mother separately liable for an additional \$18,000 in penalties (\$3,000 for 6 false statements).
- Case involved Secretarial appeal.

Example #2

- Husband and wife submitted a \$126,510 claim the HUD-funded Road Home Homeowner Assistance grant program. This program helped homeowners recover from Hurricane Katrina.
- The couple, however, did not own the home at the time Katrina hit. They submitted a false affidavit to get the grant.

Result?

Result, Example #2

- Husband and wife jointly and severally liable for \$260,520.
 - \$253,020 assessment ($\$126,510 \times 2$)
 - \$7,500 in penalties (HUD has adjusted its penalties for inflation).
- Default Judgment.

Identifying Cases

- Program Areas
 - Funds Given to Localities
 - Contracts – Set-Aside or Performance Issues
 - Grants
 - Employee Actions
- Collateral Actions
 - Convictions
 - Declinations
- Potentially Liable Parties
 - Direct Participants
 - Vicarious Liability



Conclusion

Facilitating PFCRA Use at NSF

- Use after successful criminal prosecution
- Proactive OIG involvement to ID cases and provide training
- Close coordination between offices (NSF OIG, NSF OGC and DOJ Civil Fraud)
- Standard referral templates valuable
- High deterrent effect if well publicized
- Most contracts fall within PFCRA thresholds
- Success tracked/reported in Semiannuals

Question & Answer

