

## Bipartisan Group of Senators Proposes Amendments to False Claims Act

Richard P. Kusserow | August 12, 2021

### Key Points:

- Amendments would result in significant modifications to statutory language.
- Burden of justifying dismissal of cases would be codified.

A bipartisan group of United States senators recently introduced a bill titled the *False Claims Amendments Act of 2021*. If signed into law, the legislation would [modify the False Claims Act](#) (FCA) in several key areas.

Among the [significant elements of the bill](#) are the following:

1. **Materiality.** New statutory language would specify that the government or a relator may establish materiality by a preponderance of the evidence. However, a defendant would only be able to rebut a materiality argument by clear and convincing evidence. This would make it harder for defendants to assert a lack of materiality defense.
2. **Discovery Requests in Non-Intervened Qui Tam Cases.** A new provision would be added to the FCA that, upon a motion by the government, would require the court to order the requesting party to reimburse the government for expenses incurred in responding to discovery requests “unless the [requesting] party can demonstrate that the information sought is relevant, proportionate to the needs of the case, and not unduly burdensome on the Government.”
3. **Government Dismissal Authority.** With regard to Department of Justice (DOJ) motions to dismiss, new language would require the court to hold a hearing at which the government would have the burden of demonstrating reasons for dismissal. The qui tam plaintiff would have an opportunity to “show that the reasons are fraudulent, arbitrary, and capricious, or contrary to law.”
4. **False Claims Act Retaliation.** The FCA’s anti-retaliation provisions would, in addition to applying to current employees, now also apply to acts taken against former employees, contractors, and agents.

5. **Retroactivity.** The proposed amendments would apply to any case filed on or after the date of enactment. They would also apply retroactively to any case pending on the date of enactment.
6. **Comptroller General Report.** The Comptroller General would be charged with submitting a report to Congress on the effectiveness of the FCA over the first 18 months after the bill becomes law.

The same group of senators introduced an additional bill that would amend the [Program Fraud Civil Remedies Act \(PFCRA\)](#), which complements the FCA but typically involves smaller cases and false statements that the DOJ might not otherwise select for enforcement. Together, the two pieces of proposed legislation would create the *Administrative False Claims Act of 2021*.

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