

# CBCA Opens New Avenue for Small Enforcement Actions Under the AFCA

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**PRACTICES** Government Contracts, White Collar and Investigations

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Fraud claims against contractors have almost exclusively been pursued by the Department of Justice (or qui tam relators) in court. Now, in a significant change, certain fraud claims can be referred by an agency to a board of contract appeals for adjudication. Effective Feb. 27, 2026, the Civilian Board of Contract Appeals (CBCA or Board) issued [procedural rules](#) implementing the CBCA's jurisdiction to adjudicate claims brought by federal agencies under the AFCA. Those claims may seek civil penalties against individuals and companies for making, submitting, or presenting false claims or statements to the government. As amended last year, the AFCA offers agencies a streamlined administrative avenue for pursuing false claims that might otherwise go unpursued through traditional FCA litigation in federal court.

## What is the Administrative False Claims Act?

The AFCA is an update and rebranding of the Program Fraud and Civil Remedies Act of 1986 (PFCRA). The PFCRA was rarely used because claims were limited to \$150,000 in recoverable liability, DOJ approval was required to proceed, recovered funds went directly to the Treasury instead of to the agency and claims could only be brought by agencies that maintained Administrative Law Judges (ALJs). Section 5203 of the National Defense Authorization Act for Fiscal Year 2025, which renamed the PFCRA as the AFCA, addressed these points by:

- Increasing the liability ceiling for claims to \$1 million (based on either the amount of money or the value of property or services requested or demanded);
- Allowing government agencies to recoup “costs expended investigating or prosecuting the claim, including court or hearing costs” before any remaining balance is returned to the Treasury;
- Granting the CBCA, the Postal Service Board and other agency boards jurisdiction over claims if the agency does not employ an ALJ or other presiding official and refers an AFCA claim to a member of the Board.

Notably, the Armed Services Board of Contract Appeals, unlike other agency boards of contract appeals, was not granted AFCA jurisdiction.

## What conduct is penalized under the AFCA, and what is the penalty?

The AFCA roughly mirrors the False Claims Act, penalizing “false, fictitious or fraudulent” claims or statements made, presented or submitted to the government. The act covers “reverse false claims” as well: requests, demands or submissions to the government that have the effect of “concealing or improperly avoiding or decreasing an obligation to pay or transmit property, services or money.”

The AFCA specifies a civil penalty of up to \$5,000 per claim or statement, subject to adjustment for inflation, which brings the effective penalty amount closer to \$10,000. If the government paid a false

claim, the statute provides for an additional “assessment in lieu of damages” of up to twice the amount of the claim or portion of the claim determined to be false.

## **How are AFCA claims brought?**

AFCA claims are subject to detailed statutory procedures (31 U.S.C. § 3803):

- First, an agency “investigating official”—usually the agency Inspector General (IG)—must investigate allegations of a false claim and make a finding of potential liability.
- Second, an agency “reviewing official”—a high-ranking agency official designated by the agency head—must determine whether there is adequate evidence.
- Third, the reviewing official notifies the Attorney General (AG) that the agency intends to pursue a case, whereupon the AG has 90 days to decide whether to approve the claim.
- Finally, if the AG approves, the matter is referred to a “presiding official” for adjudication—either an agency administrative law judge, another agency officer or employee meeting certain qualifications, or a member of a board of contract appeals (e.g., the CBCA).

The agency is not required to notify the entity accused of a false claim until the case is referred to the presiding official.

The Contract Disputes Act (CDA), as amended, gives the chair of each contract appeals board authority to decline an agency AFCA referral if accepting the case would adversely affect other cases. If the chair of the agency’s own board declines a referral, the reviewing official may further pursue the referral with “any other board” that has jurisdiction.

## **What is the procedure at the CBCA for AFCA claims?**

The CBCA’s rules for AFCA referrals, 48 C.F.R. Part 6107, are based on the Board’s rules of procedure for CDA appeals but differ in several respects.

Agencies may initiate an AFCA case referral by filing a Complaint with the Board with a copy of the notice of referral that the “complainant” (the agency) provided to the “respondent” (the party accused of a false claim or statement) pursuant to AFCA requirements. Respondents respond to the Complaint by filing an Answer. For AFCA matters, the presiding Board member will “set a schedule, oversee any discovery, conduct conferences, hearings, and other proceedings, and decide the merits.” AFCA matters are decided by one Board member. This contrasts with contractor appeals under the CDA, which are generally decided by a three-judge panel. Rulings on AFCA cases are binding on the parties but are not precedential; nevertheless, decisions that resolve “all or part of a case on the merits” will be published on the board’s website.

Unlike CDA cases, appeals from Board decisions under the AFCA are not heard by the Federal Circuit. Instead, decisions may be appealed to the local federal district court or the United States District Court for the District of Columbia.

## **Are there any open questions regarding how the AFCA will be applied?**

The CBCA rules leave several unresolved questions.

First, the CBCA rules do not address government AFCA counterclaims. The government cannot bring FCA counterclaims at the CBCA—unlike at the Court of Federal Claims. Nor do the Board’s rules for AFCA matters provide for AFCA counterclaims. Agencies might attempt to refer parallel claims in fraud under the AFCA and route them to the same presiding CBCA judge. A parallel fraud claim would need to undergo the described internal agency processes and obtain DOJ approval. Once before the Board, the AFCA matter would be subject to the specific rules and procedures discussed above, including decision by the single presiding judge alone.

Second, although the AFCA statute encompasses false claims and statements relating to federal grants and assistance agreements, the CBCA’s rules do not address grant-related claims.

Finally, there is a fundamental question remaining regarding the constitutionality of AFCA claims. In a 2024 decision, *Securities and Exchange Commission (SEC) v. Jarkesy*, 603 U.S. 109 (2024), the Supreme Court held that defendants have a Seventh Amendment right to a jury trial with respect to certain agency enforcement actions that impose civil penalties, and that the administrative adjudication of such actions is therefore unconstitutional.

### **What are the takeaways for government contractors?**

The AFCA offers federal agencies a reinvigorated tool for pursuing smaller false claims. For government contractors, the best protection against false claims enforcement remains a robust ethics and compliance program. Strong policies, procedures, training and internal controls help detect and prevent misconduct and ensure compliance with contract and regulatory requirements—particularly in areas of current enforcement focus, such as cybersecurity, small business and socioeconomic programs, anti-discrimination and trade and tariff enforcement.

**For additional information on the new rules, including defending against AFCA claims, please contact a member of Haynes Boone’s [Government Contracts Practice Group](#) or one of the authors below.**