

PROCUREMENT FRAUD ELEMENTS OF PROOF HANDBOOK



**Air Force Materiel Command Law Office
Procurement Fraud Division
April 2012**

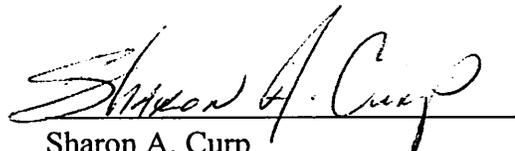
***Procurement Fraud
Elements of Proof
Handbook***

Introduction

Before a court finds a defendant guilty of a criminal offense, the Government must present evidence that is credible and sufficient to prove beyond a reasonable doubt that the defendant committed each element of the particular crime charged. In a civil case, the plaintiff must show by a preponderance of the evidence that the defendant committed each element of the offense.

This *Elements of Proof Handbook* of fraud-related offenses was compiled to assist investigators in the identification of the elements of each offense under investigation. In doing so, investigators will be able to concentrate their efforts on obtaining the evidence required to prove each element.

Should the reader have any questions with regard to any of the offenses contained herein, please contact the Air Force Materiel Command Law Office Fraud Attorney assigned to assist with the ongoing investigation. Additional offenses will be added and revisions will be made as required.



Sharon A. Curp
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OFFENSES

Anti-Kickback Act – 41 U.S.C. § 8702 (formerly cited as 41 USCA § 53)
(civil cause of action - 41 U.S.C § 8706)
(criminal statute - 41 U.S.C. § 8707)

A person may not (1) provide, attempt to provide, or offer to provide a kickback; (2) solicit, accept, or attempt to accept a kickback; or (3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price (A) a subcontractor charges a prime contractor or a higher tier subcontractor; or (B) a prime contractor charges the Federal Government.

41 U.S.C. § 8707 (criminal statute)

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

To prove a violation of § 8707, the Government must prove four elements:

- Element 1 The defendant paid or received a kickback or included the amount of a kickback in the contract price;
- Element 2 The defendant provided something of value to a prime contractor, prime contractor’s employee, subcontractor, or subcontractor’s employee;
- Element 3 The purpose was to improperly obtain or reward favorable treatment in connection with a government contract; and
- Element 4 The defendant acted knowingly and willfully.

Proof Chart

Element	Synopsis of Evidence
Defendant paid or received a kickback or included amount of kickback in contract price	
Defendant provided something of value to a prime contractor, subcontractor, or employee thereof	
Defendant acted for purpose of obtaining or rewarding favorable treatment in connection with a contract	
Defendant acted knowingly and willfully	

Anti-Kickback Act – 41 U.S.C. § 8706(a)(1) (civil cause of action)

The Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty.

To prove a cause of action under § 8706(a)(1), the Government must prove four elements:

- Element 1 The defendant violated 41 U.S.C. § 8702 by paying or receiving a kickback or by including the amount of a kickback in the contract price;
- Element 2 The defendant provided something of value to a prime contractor, prime contractor’s employee, subcontractor, or subcontractor’s employee;
- Element 3 The purpose was to improperly obtain or reward favorable treatment in connection with a government contract; and
- Element 4 The defendant acted knowingly.

Proof Chart

Element	Synopsis of Evidence
Defendant paid or received a kickback or included amount of kickback in contract price	
Defendant provided something of value to a prime contractor, subcontractor, or employee thereof	
Defendant acted for purpose of obtaining or rewarding favorable treatment in connection with a contract	
Defendant acted knowingly	

Anti-Kickback Act – 41 U.S.C. § 8706(a)(2) (civil cause of action)

The Federal Government in a civil action may recover from a person whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

To prove a violation of § 8706(a)(2), the Government must prove three elements:

- Element 1 The defendant violated 41 U.S.C. § 8702 by paying or receiving a kickback or by including the amount of a kickback in the contract price;
- Element 2 The defendant provided something of value to a prime contractor, prime contractor’s employee, subcontractor, or subcontractor’s employee; and
- Element 3 The purpose was to improperly obtain or reward favorable treatment in connection with a government contract.

Proof Chart

Element	Synopsis of Evidence
Defendant paid or received a kickback or included amount of kickback in contract price	
Defendant provided something of value to a prime contractor, subcontractor, or employee thereof	
Defendant acted for purpose of obtaining or rewarding favorable treatment in connection with a contract	

Bribery of Public Officials – 18 U.S.C. § 201(b)(1) and (2) (criminal statute)

Whoever –

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent (A) to influence any official act, or (B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or (C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for: (A) being influenced in the performance of any official act; (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) being induced to do or omit to do any act in violation of the official duty of such official or person

To prove a violation of § 201(b)(1) or (2), the Government must prove six elements:

- Element 1 Bribery involves a public official or person selected to be a public official;
- Element 2 A thing of value;
- Element 3 Request or receipt by the official, or an offer or promise to the official of a thing of value;
- Element 4 Thing of value benefits the official or some other person or entity;
- Element 5 Requisite connection to an official act (thing of value is causally directly connected to the official act); and
- Element 6 Corrupt intent to: (A) influence any official act; or (B) influence a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) or induce such public official to do or omit to do any act in violation of the official duty of such official.

Bribery of Public Officials – 18 U.S.C. § 201(b)(1) and (2) (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Person selected or current public official	
Thing of value	
Request or receipt by the official, or an offer or promise to the official of a thing of value	
Thing of value benefits the official or some other person or entity	
Requisite connection to an official act	
Corrupt intent to:	
(A) Influence any official act; or	
(B) Influence commission of fraud; or	
(C) Induce commission or omission of an official duty	

Illegal Gratuity – 18 U.S.C. § 201(c)(1)(A) or (B) (criminal statute)

Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person

To prove a violation of § 201(c)(1)(A) or (B), the Government must prove six elements:

- Element 1 Illegal gratuities involve a public official, a person selected to be a public official, or a former public official;
- Element 2 A thing of value;
- Element 3 Request or receipt by the official, or an offer or promise to the official of a thing of value;
- Element 4 Thing of value benefits the official;
- Element 5 Requisite connection to an official act (connection not as direct as bribery—does not require proof of *quid pro quo*); and
- Element 6 Knowledge that the donor was paying public official compensation for an official act.

Illegal Gratuity – 18 U.S.C. § 201(c)(1)(A) or (B) (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Person selected, former or current public official	
Thing of Value	
Request or receipt by the official, or an offer or promise to the official of a thing of value	
Thing of value benefits the official	
Requisite connection to an official act	
Knowledge	

**Conspiracy to Commit Offense or to Defraud the United States – 18 U.S.C. § 371
(criminal statute)**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy

To prove a violation of § 371, the Government must prove three elements:

- Element 1 The existence of an agreement by two or more persons to commit an offense against the United States or to defraud the United States;
- Element 2 The defendant’s knowing and voluntary participation in the conspiracy;
and
- Element 3 One of the conspirators engaged in an overt act in furtherance of the conspiracy.

Proof Chart

Element	Synopsis of Evidence
Agreement between two or more persons to commit crime against the U.S. or to defraud the U.S.	
Knowing and voluntary participation in the conspiracy	
Overt act in furtherance of the conspiracy	

**Conspiracy to Defraud the Government With Respect to Claims – 18 U.S.C. § 286
(criminal statute)**

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim

To prove a violation of § 286, the Government must prove four elements:

- Element 1 An agreement, combination or conspiracy;
- Element 2 Intent to defraud the U.S. or any department or agency thereof;
- Element 3 By obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim; and
- Element 4 One of the conspirators engaged in an overt act in furtherance of the agreement, combination or conspiracy.

Proof Chart

Element	Synopsis of Evidence
Agreement, combination or conspiracy	
Intent to defraud	
Obtaining payment by false claim	
Overt act	

Embezzlement – 18 U.S.C. § 641 (criminal statute)

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted

To prove a violation of § 641, the Government must prove five elements:

- Element 1 Whoever knowingly;
- Element 2 Steals, purloins, or converts; or receives, conceals, or retains;
- Element 3 Property, money, record or thing of value;
- Element 4 Belonging to the United States Government; and
- Element 5 Intent to convert or knowing it to have been embezzled, stolen, purloined or converted.

Proof Chart

Element	Synopsis of Evidence
Knowingly	
Steals, purloins, or converts; or receives, conceals, or retains	
Property, money, record or thing of value	
Belonging to the United States Government	
Intent to convert or knowing of embezzlement, theft, or conversion	

**Conspiring to Defraud the United States by Getting a False Claim Paid –
31 U.S.C. § 3729(a)(1)(C) (civil cause of action)**

Any person who conspires to defraud the Government by getting a false or fraudulent claim allowed or paid

To prove a violation of § 3729(a)(1)(C), the Government must prove six elements:

- Element 1 A claim to the United States;
- Element 2 Which is false or fraudulent;
- Element 3 An agreement (conspiracy) among two or more persons to submit the false claim;
- Element 4 An act in furtherance of the agreement;
- Element 5 Defendant acted knowingly as defined by the Act; and
- Element 6 The falsity was material.

Proof Chart

Element	Synopsis of Evidence
Presentation of a claim	
Claim was false or fraudulent	
Agreement	
Act in furtherance of agreement	
Knowledge	
Materiality	

**False Certification as a Basis for False Claims Act Liability –
31 U.S.C. §§ 3729(a)(1)(A) or (B) (civil cause of action)**

Express Certification

Claim that falsely certifies compliance with a particular statute, regulation or contractual term where compliance is a prerequisite to payment.

To prove an express certification case, the Government must prove five elements:

- Element 1 A statute, regulation or contract provision required some form of compliance;
- Element 2 The defendant expressly certified compliance with the statute, regulation or contract provision;
- Element 3 The defendant failed to comply with the statute, regulation or contract provision;
- Element 4 When the defendant expressly certified compliance, it knew that it had not complied with the statute, regulation or contract provision – i.e., defendant acted knowingly within the meaning of §3729(B); and
- Element 5 Compliance with the statute, regulation or contract provision was a prerequisite to payment.

Proof Chart

Element	Synopsis of Evidence
Statute, regulation or contract clause mandates compliance	
Defendant expressly certified compliance with the statute, regulation or contract provision	
Defendant failed to comply with the statute, regulation or contract provision	
When defendant certified compliance, it knew that it had not complied with the statute, regulation or contract provision	
Compliance with the statute, regulation or contract provision was a prerequisite to payment	

Implied Certification

Although no signed certification of compliance with a statute, regulation or contract clause, certification is implied by the submission of a claim.

To prove an implied certification case, the Government must prove five elements:

- Element 1 The defendant submitted a claim;
- Element 2 By submitting the claim, the defendant impliedly certified compliance with the statute, regulation or contract provision;
- Element 3 The defendant failed to comply with the statute, regulation or contract provision;
- Element 4 When the defendant submitted its claim, it knew that it had not complied with the statute, regulation or contract provision – i.e., defendant acted knowingly within the meaning of §3729(B); and
- Element 5 Compliance with the statute, regulation or contract provision was a prerequisite to payment.

Proof Chart

Element	Synopsis of Evidence
Defendant submitted a claim	
By submitting the claim, defendant impliedly certified compliance with the statute, regulation, or contract clause	
Defendant failed to comply with the statute, regulation or contract clause	
When defendant certified compliance, it knew that it had not complied with the statute, regulation or contract provision	
Compliance with the statute, regulation or contract provision was a prerequisite to payment	

Fraud-in-the-Inducement - 31 U.S.C. § 3729 (civil cause of action)

Knowing use of deceit or misrepresentation of facts upon which the United States relies, resulting in the United States acting to its disadvantage or detriment

To prove a fraud-in-the-inducement case, the Government must prove four elements:

- Element 1 A defendant knowingly;
- Element 2 Uses deception or misrepresents a material fact;
- Element 3 Upon which the United States relies in deciding whether to enter into a contractual agreement; and
- Element 4 The United States acts to its disadvantage or detriment.

Proof Chart

Element	Synopsis of Evidence
Knowing	
Deception or misrepresentation of a material fact	
United States reliance	
Disadvantage or detriment	

Fraudulent Accounting - 31 U.S.C. § 3729 (civil cause of action)

Knowingly making or using a false record or statement in an attempt to obtain payment by the United States of a false claim

To prove a fraudulent accounting case, the Government must prove three elements:

- Element 1 A person acts knowingly;
- Element 2 In making or using a false record or statement (i.e. make unallowable cost look like an allowable cost);
- Element 3 In an attempt to obtain Government payment of a false claim.

Proof Chart

Element	Synopsis of Evidence
Knowingly	
Make or use false record or statement	
Attempt to obtain payment of false claim	

**Making a False Statement to Get a False Claim Paid – 31 U.S.C. § 3729(a)(1)(B)
(civil cause of action)**

Any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim

To prove a violation of Subsection (a)(1)(B), the Government must prove four elements:

- Element 1 A claim was presented to the United States;
- Element 2 A person made a false statement or record for the purpose of securing payment of the claim;
- Element 3 The person making the false statement or record acted knowingly – i.e. knew that the statement or record was false and acted for the purpose of securing payment of a claim; and
- Element 4 The falsity was material.

Proof Chart

Element	Synopsis of Evidence
Presentation of a claim	
Claim is false or fraudulent	
Knowledge	
Materiality	

**Mischarging – Charging for Work Not Done or Goods Not Delivered - 31 U.S.C. § 3729
(civil cause of action)**

Any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval by the United States for work not completed or goods not delivered

To prove a mischarging case, the Government must prove four elements:

- Element 1 A person must present, or cause another person to present, a claim for payment or approval to the United States for work not completed or goods not delivered;
- Element 2 The claim must be false or fraudulent;
- Element 3 The person must act knowing that the claim was false or fraudulent; and
- Element 4 The falsity must be material.

Proof Chart

Element	Synopsis of Evidence
Presentation of a claim	
Claim is false or fraudulent	
Knowledge	
Materiality	

Presentation of a False Claim for Payment – 31 U.S.C. § 3729(a)(1)(A)
(civil cause of action)

Any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval

To prove a violation of Subsection (a)(1)(A), the Government must prove four elements:

- Element 1 A person must present, or cause another person to present, a “claim” for payment or approval to the United States;
- Element 2 The claim must be false or fraudulent;
- Element 3 The person must act knowing that the claim was false; and
- Element 4 The falsity was material.

Proof Chart

Element	Synopsis of Evidence
Presentation of a claim	
Claim is false or fraudulent	
Knowledge	
Materiality	

Product Substitution 31 U.S.C. § 3729 (civil cause of action)

Any person who knowingly delivers, or causes to be delivered, goods or products used, or to be used, by the United States that are of a different quality, consistency, or specification than required by agreement with the United States for the purpose to defraud

To prove a product substitution case, the Government must prove four elements:

- Element 1 A person must deliver, or cause another person to deliver, goods or products for use by the United States;
- Element 2 The goods or products differ in quality, consistency or specification than required by the contract with the United States;
- Element 3 The person must act knowing that the goods or products are of a different quality, consistency or specification than required by the contract; and
- Element 4 The person must act with the purpose to defraud the United States.

Proof Chart

Element	Synopsis of Evidence
Delivery of goods or products	
Differing quality, consistency, or specification	
Knowledge	
Fraudulent	

Reverse False Claim – 31 U.S.C. § 3729(a)(1)(G) (civil cause of action)

Any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government

To prove a violation of Subsection (a)(1)(G), the Government must prove five elements:

- Element 1 The defendant had an existing obligation to pay money or to transfer property to the Government;
- Element 2 The defendant made, used, or caused someone else to make or use, a false record or a false statement;
- Element 3 The defendant acted to conceal, avoid or decrease his obligation to the Government;
- Element 4 The defendant acted knowingly when making or using the false record or statement or causing it to be made or used; and
- Element 5 The falsity was material.

Proof Chart

Element	Synopsis of Evidence
Existing obligation to Government	
False record or statement	
To conceal, avoid or decrease obligation	
Knowledge	
Materiality	

False, Fictitious or Fraudulent Claims – 18 U.S.C. § 287 (criminal statute)

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent

To prove a violation of § 287, the Government must prove three elements, and in some jurisdictions a fourth element of materiality:

- Element 1 Defendant presented or caused another to present, a claim for payment or approval to a department or agency of the United States;
- Element 2 The claim was false, fictitious or fraudulent; and
- Element 3 The defendant knew that the claim was false, fictitious or fraudulent.
- Element 4 In some jurisdictions, the Government must prove that the falsity was material.

Proof Chart

Element	Synopsis of Evidence
Presentation of a claim	
Claim is false, fictitious or fraudulent	
Knowledge	
Materiality (in some jurisdictions)	

False Statements – 18 U.S.C. § 1001 (criminal statute)

Whoever knowingly and willfully: falsifies, conceals, or covers up a material fact by any trick, scheme or device; makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States

To prove a violation of § 1001, the Government must prove four elements:

- Element 1 A person or entity “knowingly and willfully”;
- Element 2 Makes a false statement;
- Element 3 The false statement was material; and
- Element 4 The false statement concerned a matter within the jurisdiction of the Federal Government

Proof Chart

Element	Synopsis of Evidence
Defendant acted knowingly and willfully	
Defendant made a false statement	
False statement was material	
Matter was within Federal jurisdiction	

Mail Fraud – 18 U.S.C. § 1341 (criminal statute)

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5122)), or affects a financial institution

To prove a violation of § 1341, the Government must prove three elements:

- Element 1 The person devised or intended to devise a scheme to defraud (or to perform specified fraudulent acts);
- Element 2 Intent; and
- Element 3 Used the mail for the purpose of executing, or attempting to execute, the scheme (or specific fraudulent acts).

Proof Chart

Element	Synopsis of Evidence
Scheme to defraud	
Intent	
Use of the mail	

Wire Fraud – 18 U.S.C. § 1343 (criminal statute)

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5122)), or affects a financial institution

To prove a violation of § 1343, the Government must prove four elements:

- Element 1 Voluntarily and intentionally devised or participated in a scheme to defraud or obtain money or property through false or fraudulent pretenses;
- Element 2 Intent to defraud;
- Element 3 The use of interstate wire communications was reasonably foreseeable; and
- Element 4 Interstate wire communications were actually used.

Proof Chart

Element	Synopsis of Evidence
Scheme to defraud	
Intent	
Foreseeable use of wire communication	
Actual use of wire communication	

Major Fraud Against the United States – 18 U.S.C. § 1031(a) (criminal statute)

Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent (1) to defraud the United States; or (2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance . . . or in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value . . . is \$1,000,000 or more

To prove a violation of § 1031(a) , the Government must prove four elements:

- Element 1 Defendant executed or attempted to execute a scheme or artifice with the intent to defraud the United States or to obtain money or property from the United States by false pretenses or representations;
- Element 2 Defendant did so knowingly;
- Element 3 Defendant attempted to execute or executed the scheme or artifice in a procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there was a prime contract with the United States; and
- Element 4 The value of the contract or subcontract was \$1 million or more.

Proof Chart

Element	Synopsis of Evidence
Scheme to defraud or to obtain money or property	
Defendant acted knowingly	
Defendant was a prime contractor or subcontractor	
Contract value of at least \$1 million	

Money Laundering – 18 U.S.C. § 1956(a)(1)(A) (criminal statute)

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or (ii) with intent to engage in conduct constituting a violation of § 7201 or 7206 of the Internal Revenue Code of 1986

To prove a violation of § 1956(a)(1)(A), the Government must prove four elements:

- Element 1 Knowingly;
- Element 2 Uses property or proceeds from unlawful activity;
- Element 3 In a financial transaction; and
- Element 4 With the intent to
 - (a) Promote the carrying on of an unlawful activity; or
 - (b) Engage in conduct violating § 7201 or § 7206 of the Internal Revenue Code of 1986.

Proof Chart

Element	Synopsis of Evidence
Knowingly	
Use property or proceeds from unlawful activity	
Financial transaction	
Intent to:	
(a) Promote unlawful activity; or	
(b) Violate § 7201 or § 7206 of Internal Revenue Code	

Money Laundering – 18 U.S.C. § 1956(a)(1)(B) (criminal statute)

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(B) knowing that the transaction is designed in whole or in part-- (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law,

To prove a violation of § 1956(a)(1)(B), the Government must prove four elements:

- Element 1 Knowingly;
- Element 2 Uses property or proceeds from unlawful activity;
- Element 3 In a financial transaction; and
- Element 4 With the knowledge that transaction is designed to:
 - (a) Conceal the nature, location, source, ownership or control of proceeds of unlawful activity; or
 - (b) Avoid transaction reporting as required by law.

Proof Chart

Element	Synopsis of Evidence
Knowingly	
Use property or proceeds from unlawful activity	
Financial transaction	
Transaction designed to:	
(a) Conceal nature, location, source, ownership, or control of proceeds of unlawful activity; or	
(b) Avoid transaction reporting	

Money Laundering – 18 U.S.C. § 1956(a)(2) (criminal statute)

Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law...

To prove a violation of § 1956(a)(2), the Government must prove four elements:

- Element 1 Transport, transmit or transfer;
- Element 2 Monetary instrument or funds
- Element 3 From:
 - (a) A place inside the United States to a place outside the United States; or
 - (b) A place outside the United States to a place inside the United States;
- Element 4 With:
 - (a) The intent to promote an unlawful activity; or
 - (b) Knowledge that instrument or funds involved represent proceeds from unlawful activity with transport designed to:
 - i. Conceal or disguise the nature, location, source, ownership or control of the proceeds; or
 - ii. Avoid a required transaction reporting.

Money Laundering – 18 U.S.C. § 1956(a)(2) (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Transport, transmit, or transfer	
Monetary instrument or funds	
From: (a) Inside to outside of United States; or (b) Outside to inside of United States	
With:	
(a) Intent to promote unlawful activity; or	
(b) Knowledge that funds represent proceeds of unlawful activity and transport designed to: <ul style="list-style-type: none"> <li data-bbox="264 1336 782 1442">(i) Conceal nature, location, source, ownership or control of proceeds; or <li data-bbox="264 1485 711 1555">(ii) Avoid required transaction reporting 	

Money Laundering – 18 U.S.C. § 1956(a)(3) (criminal statute)

Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity

To prove a violation of § 1956(a)(3), the Government must prove four elements:

- Element 1 Conducts or attempts to conduct;
- Element 2 A financial transaction;
- Element 3 Involving property represented to be proceeds of an unlawful activity or used to facilitate an unlawful activity; and
- Element 4 With the intent to:
 - (a) Promote the carrying on of an unlawful activity; or
 - (b) Conceal the nature, location, source, ownership or control of property believed to be the proceeds of an unlawful activity; or
 - (c) To avoid a transaction reporting requirement as required by State or Federal law.

Money Laundering – 18 U.S.C. § 1956(a)(3) (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Conducts or attempts to conduct	
Financial transaction	
Involving proceeds from or used to facilitate unlawful activity	
Intent to:	
(a) Promote unlawful activity; or	
(b) Conceal nature, location, source, ownership, or control of proceeds of unlawful activity; or	
(c) Avoid transaction reporting	

Theft of Trade Secrets – 18 U.S.C. § 1832(a) (criminal statute)

Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly--(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information; (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information; (3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization; (4) attempts to commit any offense described in paragraphs (1) through (3); or (5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy

To prove a violation of § 1832(a), the Government must prove five elements:

- Element 1 Information was a trade secret;
- Element 2 Defendant knew that the information was a trade secret;
- Element 3 Trade secret was used in interstate or foreign commerce
- Element 4 Defendant knowingly:
 - (a) Intended to convert the trade secret for the economic benefit of someone other than the owner; or
 - (b) Stole, obtained, destroyed or copied or otherwise conveyed a trade secret without the consent of the owner; or
 - (c) Received, bought or possessed trade secrets that have been obtained without the owner's consent; or
 - (d) Attempted to wrongfully obtain or transmit a trade secret without the consent of the owner; or
 - (e) Conspired to wrongfully obtain or transmit a trade secret without the consent of the owner; and
- Element 5 Defendant knew or intended that the owner of the trade secret would be injured by the misappropriation.

Theft of Trade Secrets – 18 U.S.C. § 1832(a) (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Information was trade secret	
Defendant knew information was trade secret	
Trade secret was used in interstate or foreign commerce	
Knowing	
(a) Intentional conversion for the benefit of another; or	
(b) Stole, obtained, destroyed, copied or otherwise without the consent of the owner; or	
(c) Receipt, purchase or possession without the owner's consent; or	
(d) Attempt to wrongfully obtain or transmit; or	
(e) Conspiracy to wrongfully obtain or transmit	
Knowledge of or intent to injure	

Trafficking in Counterfeit Goods or Services – 18 U.S.C. § 2320 (criminal statute) cont'd

Proof Chart

Element	Synopsis of Evidence
Trafficked or attempted to traffic in goods or services	
Did so intentionally	
Used a counterfeit mark on or in connection with such goods or services	
Knew the mark was counterfeit	

STATUTES

▽

Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes (Refs & Annos)

▣ Chapter 11. Bribery, Graft, and Conflicts of Interest (Refs & Annos)

→→ § 201. Bribery of public officials and witnesses

(a) For the purpose of this section--

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absents himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever--

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a

witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

CREDIT(S)

(Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1119; amended Pub.L. 91-405, Title II, § 204(d) (1), Sept. 22, 1970, 84 Stat. 853; Pub.L. 99-646, § 46(a)-(1), Nov. 10, 1986, 100 Stat. 3601-3604; Pub.L. 103-322, Title XXXIII, §§ 330011(b), 330016(2)(D), Sept. 13, 1994, 108 Stat. 2144, 2148.)

C

Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 15. Claims and Services in Matters Affecting Government

→→ § 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 698; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 15. Claims and Services in Matters Affecting Government

→→ § 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 698; Oct. 27, 1986, Pub.L. 99-562, § 7, 100 Stat. 3169.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 19. Conspiracy (Refs & Annos)

→→ § 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 701; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: July 15, 2004

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 31. Embezzlement and Theft (Refs & Annos)

→→ § 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted--

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 725; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(H), (L), 108 Stat. 2147; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 606(a), 110 Stat. 3511; July 15, 2004, Pub.L. 108-275, § 4, 118 Stat. 833.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: July 27, 2006

United States Code Annotated CurrentnessTitle 18. Crimes and Criminal Procedure (Refs & Annos)Part I. Crimes (Refs & Annos)Chapter 47. Fraud and False Statements (Refs & Annos)

→→ § 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to--

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 749; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147; Oct. 11, 1996, Pub.L. 104-292, § 2, 110 Stat. 3459; Dec. 17, 2004, Pub.L. 108-458, Title VI, § 6703(a), 118 Stat. 3766; July 27, 2006, Pub.L. 109-248, Title I, § 141(c), 120 Stat. 603.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

C

Effective: May 20, 2009

United States Code Annotated CurrentnessTitle 18. Crimes and Criminal Procedure (Refs & Annos)Part I. Crimes (Refs & Annos)Chapter 47. Fraud and False Statements (Refs & Annos)

→→ § 1031. Major fraud against the United States

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent--

(1) to defraud the United States; or

(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises,

in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government's purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of such grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, or any constituent part thereof, is \$1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both.

(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$5,000,000 and--

(1) the gross loss to the Government or the gross gain to a defendant is \$500,000 or greater; or

(2) the offense involves a conscious or reckless risk of serious personal injury.

(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed \$10,000,000.

(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).

(e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including--

(1) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the

defendant;

(2) whether the defendant previously has been fined for a similar offense; and

(3) any other pertinent equitable considerations.

(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.

(g)(1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed \$250,000. Upon application by the Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.

(2) An individual is not eligible for such a payment if--

(A) that individual is an officer or employee of a Government agency who furnishes information or renders service in the performance of official duties;

(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;

(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or

(D) that individual participated in the violation of this section with respect to which such payment would be made.

(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.

(h) Any individual who--

(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and

(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

CREDIT(S)

(Added Pub.L. 100-700, § 2(a), Nov. 19, 1988, 102 Stat. 4631; amended Pub.L. 101-123, § 2(a), Oct. 23, 1989, 103

Stat. 759; Pub.L. 103-322, Title XXXIII, § 330002(a), (f), Sept. 13, 1994, 108 Stat. 2140; Pub.L. 111-21, § 2(d), May 20, 2009, 123 Stat. 1618.)

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Effective: January 7, 2008

United States Code Annotated CurrentnessTitle 18. Crimes and Criminal Procedure (Refs & Annos)▣ Part I. Crimes (Refs & Annos)▣ Chapter 63. Mail Fraud and Other Fraud Offenses (Refs & Annos)

→→ § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 763; May 24, 1949, c. 139, § 34, 63 Stat. 94; Aug. 12, 1970, Pub.L. 91-375, § 6(j)(11), 84 Stat. 778; Aug. 9, 1989, Pub.L. 101-73, Title IX, § 961(i), 103 Stat. 500; Nov. 29, 1990, Pub.L. 101-647, Title XXV, § 2504(h), 104 Stat. 4861; Sept. 13, 1994, Pub.L. 103-322, Title XXV, § 250006, Title XXXIII, 330016(1)(H), 108 Stat. 2087, 2147; July 30, 2002, Pub.L. 107-204, Title IX, § 903(a), 116 Stat. 805; Jan. 7, 2008, Pub.L. 110-179, § 4, 121 Stat. 2557.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: January 7, 2008

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes (Refs & Annos)

▣ Chapter 63. Mail Fraud and Other Fraud Offenses (Refs & Annos)

→→ § 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

CREDIT(S)

(Added July 16, 1952, c. 879, § 18(a), 66 Stat. 722; amended July 11, 1956, c. 561, 70 Stat. 523; Aug. 9, 1989, Pub.L. 101-73, Title IX, § 961(j), 103 Stat. 500; Nov. 29, 1990, Pub.L. 101-647, Title XXV, § 2504(i), 104 Stat. 4861; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147; July 30, 2002, Pub.L. 107-204, Title IX, § 903(b), 116 Stat. 805; Jan. 7, 2008, Pub.L. 110-179, § 3, 121 Stat. 2557.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: October 11, 1996

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 90. Protection of Trade Secrets

→→ § 1832. Theft of trade secrets

(a) Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly--

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) Any organization that commits any offense described in subsection (a) shall be fined not more than \$5,000,000.

CREDIT(S)

(Added Pub.L. 104-294, Title I, § 101(a), Oct. 11, 1996, 110 Stat. 3489.)

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 95. Racketeering (Refs & Annos)

→→ § 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.--

(1) **In general.**--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) **Jurisdiction over foreign persons.**--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and--

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.--

(A) In general.--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes--

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 [FN1] of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term "specified unlawful activity" means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978)); [FN2]

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving--

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the

Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 [FN3] (relating to fraudulent Federal credit institution entries), 1007 [FN3] (relating to fraudulent Federal Deposit Insurance transactions), 1014 [FN3] (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 [FN3] (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [7 U.S.C.A. § 2024] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons) [FN4]

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if--

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) Notice of conviction of financial institutions.--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.--**(1)** Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in--

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

CREDIT(S)

(Added Pub.L. 99-570, Title XIII, § 1352(a), Oct. 27, 1986, 100 Stat. 3207-18; amended Pub.L. 100-690, Title VI, §§ 6183, 6465, 6466, 6469(a)(1), 6471(a), (b), Title VII, § 7031, Nov. 18, 1988, 102 Stat. 4354, 4375, 4377, 4378, 4398; Pub.L. 101-647, Title I, §§ 105 to 108, Title XII, § 1205(j), Title XIV, §§ 1402, 1404, Title XXV, § 2506, Title XXXV, § 3557, Nov. 29, 1990, 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927; Pub.L. 102-550, Title XV, §§ 1504(c), 1524, 1526(a), 1527(a), 1530, 1531, 1534, 1536, Oct. 28, 1992, 106 Stat. 4055, 4064 to 4067; Pub.L. 103-322, Title XXXII, § 320104(b), Title XXXIII, §§ 330008(2), 330011(l), 330012, 330019, 330021(1), Sept. 13, 1994, 108 Stat. 2111, 2142, 2145, 2146, 2149, 2150; Pub.L. 103-325, Title IV, §§ 411(c)(2)(E), 413(c)(1), (d), Sept. 23, 1994, 108 Stat. 2253, 2254, 2255; Pub.L. 104-132, Title VII, § 726, Apr. 24, 1996, 110 Stat. 1301; Pub.L. 104-191, Title II, § 246, Aug. 21, 1996, 110 Stat. 2018; Pub.L. 104-294, Title VI, §§ 601(f)(6), 604(b)(38), Oct. 11, 1996, 110 Stat. 3499, 3509; Pub.L. 106-569, Title VII, § 709(a), Dec. 27, 2000, 114 Stat. 3018; Pub.L. 107-56, Title III, §§ 315, 317, 318, 376, Title VIII, § 805(b), Title X, § 1004, Oct. 26, 2001, 115 Stat. 308, 310, 311, 342, 378, 392; Pub.L. 107-273, Div. B, Title IV, § 4002(a)(11), (b)(5), (c)(2), 4005(d)(1), (e), Nov. 2, 2002, 116 Stat. 1807, 1809, 1812, 1813; Pub.L. 108-458, Title VI, § 6909, Dec. 17, 2004, 118 Stat. 3774; Pub.L. 109-164, Title I, § 103(b), Jan. 10, 2006, 119 Stat. 3563; Pub.L. 109-177, Title III, § 311(c), Title IV, §§ 403(b), (c)(1), 405, 406(a)(2), 409, Mar. 9, 2006, 120 Stat. 242, 243, 244, 246; Pub.L. 110-234, Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), May 22, 2008, 122 Stat. 1096, 1097, 1109; Pub.L. 110-246, § 4(a), Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), June 18, 2008, 122 Stat. 1664, 1857, 1858, 1870; Pub.L. 110-358, Title II, § 202, Oct. 8, 2008, 122 Stat. 4003; Pub.L. 111-21, § 2(f)(1), May 20, 2009, 123 Stat. 1618.)

[FN1] So in original. Probably should read "section 1(b)".

[FN2] So in original. The second closing parenthesis probably should not appear.

[FN3] So in original. Probably should be preceded by "section".

[FN4] So in original. Probably should have a semicolon at the end.

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: May 20, 2009

United States Code Annotated CurrentnessTitle 31. Money and Finance (Refs & Annos)

Subtitle III. Financial Management

▣ Chapter 37. Claims (Refs & Annos)▣ Subchapter III. Claims Against the United States Government (Refs & Annos)

→→ § 3729. False claims

(a) Liability for certain acts.--**(1) In general.--**Subject to paragraph (2), any person who--**(A)** knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;**(B)** knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;**(C)** conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);**(D)** has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;**(E)** is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;**(F)** knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or**(G)** knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410 [FN1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--**(A)** the person committing the violation of this subsection furnished officials of the United States responsible for

investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) **Costs of civil actions.**--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) **Definitions.**--For purposes of this section--

(1) the terms "knowing" and "knowingly" --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government--

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) **Exemption from disclosure.**--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) **Exclusion.**--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

[(e) Redesignated (d)]

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub.L. 103-272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(a), May 20, 2009, 123 Stat. 1621.)

[FN1] So in original. Probably should read “Public Law 101-410”.

2009 Acts. Pub.L. 111-21, § 4(f), May 20, 2009, 123 Stat. 1625, provided that: “The amendments made by this section [amending this section and 31 U.S.C.A. §§ 3730 to 3733] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment [May 20, 2009], except that--

“(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1) [amending subsec. (a) of this section], shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) [Act Mar. 2, 1863, c. 67, 12 Stat. 698, which was repealed in the general revision of Title 31; the provisions of the Act are now contained in 31 U.S.C.A. §§ 3729 to 3731] that are pending on or after that date; and

“(2) section 3731(b) of title 31, as amended by subsection (b) [so in original; subsection (b) of Pub.L. 111-21, § 4, amended 31 U.S.C.A. § 3731(c) to (e)]; section 3733, of title 31, as amended by subsection (c) [amending 31 U.S.C.A. § 3733]; and section 3732 of title 31, as amended by subsection (e) [31 U.S.C.A. § 3732]; shall apply to cases pending on the date of enactment [May 20, 2009].”

Current through P.L. 112-89 (excluding P.L. 112-74, 112-78, and 112-81) approved 1-3-12

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41 U.S.C.A. § 8702

Formerly cited as 41 USCA § 53

C

Effective: January 4, 2011

United States Code Annotated Currentness
Title 41. Public Contracts (Refs & Annos)
▣ Subtitle IV. Miscellaneous
▣ Chapter 87. Kickbacks
→ → § 8702. Prohibited conduct

A person may not--

- (1) provide, attempt to provide, or offer to provide a kickback;
- (2) solicit, accept, or attempt to accept a kickback; or
- (3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price--
 - (A) a subcontractor charges a prime contractor or a higher tier subcontractor; or
 - (B) a prime contractor charges the Federal Government.

CREDIT(S)

(Pub.L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3839.)

Current through P.L. 112-89 (excluding P.L. 112-55, 112-74, 112-78, and 112-81) approved 1-3-12

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Effective: January 4, 2011

United States Code Annotated Currentness
Title 41. Public Contracts (Refs & Annos)
▣ Subtitle IV. Miscellaneous
▣ Chapter 87. Kickbacks
→→ § 8706. Civil actions

(a) Amount.--The Federal Government in a civil action may recover from a person--

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to--

(A) twice the amount of each kickback involved in the violation; and

(B) not more than \$10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) Statute of limitations.--A civil action under this section must be brought within 6 years after the later of the date on which--

(1) the prohibited conduct establishing the cause of action occurred; or

(2) the Federal Government first knew or should reasonably have known that the prohibited conduct had occurred.

CREDIT(S)

(Pub.L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3840.)

Current through P.L. 112-89 (excluding P.L. 112-55, 112-74, 112-78, and 112-81) approved 1-3-12

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Westlaw.

41 U.S.C.A. § 8707

Formerly cited as 41 USCA § 54

C

Effective: January 4, 2011

United States Code Annotated Currentness
Title 41. Public Contracts (Refs & Annos)
 ▣ Subtitle IV. Miscellaneous
 ▣ Chapter 87. Kickbacks
 →→ § 8707. Criminal penalties

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

CREDIT(S)

(Pub.L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3841.)

Current through P.L. 112-89 (excluding P.L. 112-55, 112-74, 112-78, and 112-81) approved 1-3-12

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